containers containing a net weight of 3 pounds or less, if those potatoes are U.S. No. 1 grade or better. This revision allows handlers to pack all smaller-sized types of potatoes into specialty consumer containers to supply the growing market for smaller-sized potatoes packed in such containers. A handler who wishes to pack smaller-sized potatoes may accumulate, over a period of time, such potatoes in bulk containers to be packed later or packed at another facility. These potatoes will be required to meet the U.S. No. 1 grade requirements at the time of packaging.

Growers will benefit because these smaller potatoes are usually culled out, sent to the dehydrator, used for cattle feed, or not harvested at all. This rule will allow growers to market more of their crop and provide a greater range of potato sizes to give consumers more choices. Producers usually receive better returns when their crop is sold for fresh use because potatoes disposed of to dehydrators or used for cattle feed generally yield lower returns.

The third revision categorizes potatoes in the handling regulations under the marketing order by skin-color, flesh-color or type rather than by varietal type. Currently, the handling regulations specify requirements for varietal types of potatoes. For example, § 946.336(b)(2) specifies minimum maturity requirements for Norgolds, Burbanks, and White Rose potato varieties. These varieties are all referred to as white or Russet types of potatoes. The Committee indicated that the Federal-State inspection service inspects potatoes and certifies according to type (i.e., round red, round and long whites, yellow-fleshed, and Russet) rather than to specific varietal types of potatoes. Therefore, the Committee recommended that varietal types of potatoes mentioned in the handling regulations be deleted and that the skin-color, flesh-color or type of potato be specified instead. This revision will clarify the handling regulations so that they will be consistent with inspection and certification procedures.

In a separate action, the import regulation will be revised to allow importers to import any size of red-skinned round type potatoes in containers containing a net weight of 3 pounds or less during the months the potato import regulation is based on Washington marketing order requirements, if the potatoes are U.S. No. 1 grade or better. Such a change to the import regulation is required under section 8e of the Act. Section 8e requires imported potatoes meet the same or comparable requirements as established under the domestic marketing order with which the imports most directly compete.

In addition, § 946.336(i) will be removed from the handling regulations. That paragraph states the same information that is contained in § 980.1 of the import regulations. Since the same information applicable to imported potatoes is contained in the import regulations, paragraph (i) in the domestic handling regulations should be deleted to eliminate duplication or confusion.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented and the Committee's recommendation, it is found that the revisions to the handling regulations will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impractical, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes restrictions on handlers of Washington potatoes and provides additional marketing opportunities by allowing handlers to supply the growing market for smaller-sized potatoes; (2) this action will allow a larger portion of grower deliveries to be packed and sold for fresh use and provide a greater range of potato sizes to give consumers more choices; (3) the action for Washington potatoes was discussed at a public meeting and is fully supported by the industry; (4) the new crop year begins on July 1, 1992, and handlers need time to prepare their packing facilities if they wish to package smaller-sized potatoes; and (5) this action provides a 30-day comment period and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is 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.

2. Section 946.336 is amended by revising paragraphs (a)(2)(i) and (a)(2)(ii), redesignating paragraph (a)(2)(iii) as paragraph (a)(2)(iv), adding a new paragraph (a)(2)(iii), revising paragraphs (b)(1) and (b)(2), and removing paragraph (i) to read as follows:

[Note: This section will be published in the annual Code of Federal Regulations].

§ 946.336 Handling regulation.

* * * * *

(a) * * *

(1) * * *

(2) *Size:* (i) All red, yellow fleshed, and white types may be 1 inch (25.4 mm) minimum diameter, if U.S. No. 1.

(ii) All Russet types must be 2⅛ inches (54.0 mm) minimum diameter or 4 ounces minimum weight during July 15 through August 31 each season, and 2 inches (50.8 mm) or 4 ounces during the remainder of each season.

(iii) Any type of any size may be packed in a 3 pound or less container if the potatoes are U.S. No. 1 grade or better at the time of packing.

(iv) *Tolerances* * * *

* * * * *

(b) *Minimum maturity requirements.*

(1) *Red, yellow fleshed and white types:* Not more than "moderately skinned."

(2) *Russet types:* Not more than "slightly skinned."

* * * * *

Dated: July 2, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–16062 Filed 7–8–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 948 and 980

[Docket No. FV–92–068IFR]

Colorado Potatoes and Potatoes Imported Into the United States; Change to the Import Size Requirements and Conforming Change to the Colorado Potato Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on exempting red-skinned round type potatoes meeting U.S. No. 1 or better grade requirements that are imported in containers containing 3 pounds or less during the months of July through September from minimum size requirements. This relaxation is based on a recent action taken under the Washington potato marketing order and is required under section 8e of the Agricultural Marketing Agreement Act of 1937. This action also removes from the Colorado potato handling regulations provisions regarding potato import regulations. This action should benefit potato importers and consumers. There is a growing market for smaller-sized potatoes.

EFFECTIVE DATE: July 2, 1992. Comments received by August 10, 1992, will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 205–2830.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act, which provides that whenever certain specified commodities, including red-skinned potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

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 action 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.

Import regulations issued under the Act are based on regulations established under Federal marketing orders for fresh fruits, vegetables, and specialty crops, like potatoes. Thus, import regulations should also have small entity orientation and impact both small and large business entities in a manner comparable to rules issued under such marketing orders.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less that $500,000, and small agricultural service firms, including importers, are defined as those whose annual receipts are less than $3,500,000. Currently, there are about 30 importers of all types of potatoes. The majority of potato importers may be classified as small entities.

The revision to the import regulation (section 980.1) is being initiated by the Department because section 8e of the Act requires imported potatoes to meet the same or comparable requirements as those established under a domestic marketing order. The Act also provides that when two or more marketing orders covering the same commodity are concurrently in effect, imports will be subject to the requirements established for the commodity grown in the area with which the imported commodity is in most direct competition. Currently, section 980.1 of the import regulations provides that during the months of July and August the grade, size, quality, and maturity requirements pursuant to the Washington potato marketing order (7 CFR part 946) shall apply to all imported red-skinned round types of potatoes. A recent review of shipment data indicates that the Washington potato industry, rather than the Colorado potato industry, is typically the dominant shipper of potatoes during the month of September. Thus, the grade, size, quality and maturity requirements pursuant to the Washington potato marketing order shall apply to all imported red-skinned, round types of potatoes from July through September. The requirements under the Colorado potato marketing order will apply during the months of October through the following June. Under the Washington potato marketing order, the recommended revisions will allow handlers to pack any type or size of potato in containers containing a net weight of 3 pounds or less, if the potatoes are U.S. No. 1 grade or better. Thus, the import regulations will be revised to allow importers to import any size of red-skinned round type potatoes in containers containing a net weight of 3 pounds or less. Also, these potatoes must be U.S. No. 1 grade or better. U.S. No. 1 grade consists of potatoes which are similar in varietal characteristics, firm, fairly clean, fairly well-shaped, and free from damage.

In addition, paragraph (h) of section 948.386 is removed from the handling regulations for Colorado potatoes. That paragraph contains the same information that is contained in section 980.1 of the import regulations. Because the same information applicable to imported potatoes is contained in the import regulations, paragraph (h) in the Colorado potato regulations is being removed to eliminate duplication and prevent confusion.

This size requirement exemption brings the import regulations into conformity with the requirements applied under the Washington potato marketing order (7 CFR part 946). The United States Trade Representative has been given an opportunity to review the change in the import regulation and concurs with its issuance.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, it is found that the revisions to the import regulations will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impractical, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective

date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes restrictions on importers by eliminating the size requirement for certain red-skinned round type of potatoes imported in containers containing 3 pounds or less; (2) section 8e of the Act requires import requirements for potatoes to be in conformity with the requirements of the marketing order with which imports most directly compete; (3) this action will allow importers to supply a growing market for smaller-sized potatoes; and (4) this action provides for a 30-day comment period and all comments timely received will be considered prior to the finalization of this action.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

List of Subjects in 7 CFR Part 980

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

For the reasons set forth in the preamble, 7 CFR Parts 948 and 980 are amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

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

§ 948.386 [Amended]

2. Section 948.386 is amended by removing paragraph (h).

PART 980—VEGETABLES; IMPORT REGULATIONS

3. The authority citation for 7 CFR part 980 continues to read as follows:

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

4. Section 980.1 is amended by revising paragraphs (a)(2)(i) and (b)(1) to read as follows:

[*Note: This section will be published in the annual Code of Federal Regulations*].

§ 980.1 Import regulations; Irish potatoes.

(a) * * *

(2) * * *

(i) Imports of red-skinned, round type potatoes during the months of October through the following June are in most direct competition with the marketing of the same type potatoes produced in Area 2, Colorado (San Luis Valley) covered by Order No. 948, as amended (part 948 of this chapter); and during the months of July through September, the marketing of the same type of potatoes is in most direct competition with the same type as produced in the area covered by Order No. 946 (part 946 of this chapter).

* * * * *

(b) * * *

(1) For the period October 1 through the following June of each marketing year, the grade, size, quality, and maturity requirements of Area No. 2, Colorado (San Luis Valley) covered by Marketing Order No. 948, as amended (part 948 of this chapter) applicable to potatoes of the red-skinned round type; and from July 1 through September 30 each marketing year the grade, size, quality, and maturity requirements of Marketing Order No. 946 (part 946 of this chapter) shall be the respective grade, size, quality, and maturity requirements for imported red-skinned round type potatoes, except there shall be no size requirements for imported red-skinned round type of potatoes that are imported in containers containing a net weight of 3 pounds or less, if the potatoes are U.S. No.1 grade or better.

* * * * *

Dated: July 2, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–16061 Filed 7–8–92; 8:45 am]

BILLING CODE 3410–02–M

Agricultural Marketing Service

7 CFR Part 981

[FV–91–462FR]

Almonds Grown in California; Changes to Administrative Rules and Regulations Concerning Eligible Charitable Outlets for Disposition of California Almonds

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes a definition of "charitable outlet" in the administrative rules and regulations issued under the Federal marketing order for California almonds. Under certain conditions, handlers may receive credit against their assessments for distributing sample packets of almonds to charitable outlets. This change will clarify the meaning of a "charitable outlet" for purposes of the creditable advertising program implemented under the order. The action was recommended by the Almond Board of California (Board), which is responsible for local administration of the order.

EFFECTIVE DATE: August 10, 1992.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 205–2830.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 981 (7 CFR part 981), both as amended, hereinafter referred to as the "order," regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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 action 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 115 handlers of almonds who are subject to regulation under the marketing order and approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action amends § 981.441 of Subpart—Administrative Rules and Regulations. Section 981.41 of the order provides authority for crediting a handler's direct expenditures for advertising against such handler's assessment obligation. Section 981.441(d)(1)(i) of the rules and regulations allows handlers credit for distributing generic packages of almonds to charitable or educational outlets. Handlers must file claims with the Board in order to receive credit for the distribution of such sample packages.

Heretofore, there has been no published definitions of "charitable outlet". In the past, Board policy has been to use those charitable organizations described in the Internal Revenue Code (IRC), section 170(c) as a guideline in evaluating advertising claims. Such organizations are those to which contributions are tax deductible. They are listed in the Internal Revenue Service Publication No. 78.

At its December 5, 1991, meeting the Board recommended amending § 981.441 of the Administrative Rules and Regulations to specify that charitable outlets for which handlers may receive credit for distributing generic almond packets must be those charities described in the IRC. This action will clarify the definition of "charitable outlet" contained in § 981.441(d)(1)(i) of the marketing order regulations. This action will not impose any additional economic, regulatory, or recordkeeping burden on handlers.

This final rule is based on a recommendation of the Board, a comment received in response to a proposed rule on this matter, and upon other available information. The Department has decided that the criteria contained in section 170(c) of the IRC are appropriate to establish the definition of "charitable outlet" in the marketing order regulations. The IRC is widely known and establishes the most important requirements for charitable organizations to meet. Under this final rule, charitable outlets would include (1) a state or possession of the United States if the gift is made for public purposes; (2) certain corporations, trusts, community chests, funds, and foundations which are organized and operated exclusively for religious, charitable, scientific, literary, educational or other listed purposes; (3) certain posts or organizations of war veterans; (4) certain domestic fraternal societies, orders, and associations operating under a lodge system, and; (5) certain cemeteries and burial societies. The IRS publication No. 78 lists over 350,000 organizations which have been determined to qualify for tax-deductible contributions under this definition.

The proposed rule was published in the **Federal Register** on January 27, 1992 (57 FR 3032). Interested persons were invited to submit comments on the proposal until February 26, 1992. One comment was received from an independent handler opposing the regulation. The commenter stated that handlers should be able to distribute almonds to any outlet that the handler believes is needy, regardless of whether the organization is registered with the Internal Revenue Service. The commenter also stated that a handler will not receive the recognition and goodwill if its charity contributions are distributed only among larger organizations that are described in the IRC. The Department believes that the description of the types of organizations in the IRC is broad enough to provide handlers with a large number of organizations to which they can make charitable donations. Handlers will not be restricted to donating to larger charities.

The commenter also requested that the proposal be effective for future disposition of charitable packets and not be applied retroactively. This action is a regulatory promulgation of a Board policy that has been followed for the past several years, and does not change that policy. Thus, this comment is denied.

The Department has made a non-substantive revision to the text of the proposed rule to clarify the definition of "charitable outlet."

After consideration of all relevant matters presented, the Board recommendation, the comment received, and other available information, it is found that the issuance of this rule will tend to effectuate the declared policy of the Act.

Based on the above, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

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

2. Section 981.441(d)(1)(i) is amended by revising the first sentence and adding a new sentence after the revised first sentence to read as follows:

§ 981.441 Crediting for marketing promotion including paid advertising.

* * * * *

(d) * * *

(1) * * *

(i) For the distribution of sample packages containing one-half ounce or less of almonds to charitable or educational outlets. For the purposes of this section, the term "charitable outlet" means an organization to which a charitable contribution as defined in Section 170(c) of the Internal Revenue Code (26 U.S.C. Section 170(c)) may be made. * * *

* * * * *

Dated: July 2, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–16060 Filed 7–8–92; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AD89

Decommissioning Funding for Prematurely Shut Down Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations on the timing of the collection of funds for decommissioning for those nuclear power reactors that have shut down before the expected ends of their operating lives. These amendments require that the NRC evaluate decommissioning funding plans for power reactors that shut down

prematurely on a case-by-case basis. The NRC's evaluation would take into account the specific safety and financial situations at each nuclear power plant.

EFFECTIVE DATE: August 10, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Wood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–1255.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 1988 (53 FR 24018), the NRC published a final rule that amended 10 CFR parts 30, 40, 50, 51, 70, and 72. This final rule established several acceptable methods by which power reactor licensees may provide assurance that they will have sufficient funds to decommission their plants by the time the plants are permanently shut down (53 FR 24043). In considering this final rule, the Commission acknowledged that, in certain instances, reactors might be permanently shut down before completing the full term of their operating lives. However, because the Commission determined that such instances would be infrequent, it did not explicitly include remedies for this situation in the final rule.

In establishing the June 27, 1988, final rule, the Commission recognized that power reactor licensees generally have access to significant amounts of financial capital and are closely regulated. Therefore, the Commission allowed these licensees the option of accumulating decommissioning funds over the projected operating life of the facility rather than requiring that these funds be available or guaranteed prior to operation, or at some time before the end of the projected operating life of the facility. The Commission recognized the risk that, if some reactors did not operate for their entire operating lives, those licensees might have insufficient decommissioning funds at the time of permanent shutdown.

After the NRC published the June 27, 1988, final rule, four power reactor facilities shut down prematurely: The Fort St. Vrain Nuclear Generating Station, the Yankee Rowe Nuclear Power Station, the Rancho Seco Nuclear Generating Station, and the Shoreham Nuclear Power Station. The NRC staff sought the Commission's guidance on the appropriate period for collecting funds to compensate for any shortfall of decommissioning funds for plants such as these that shut down prematurely. The Commission elected to determine the appropriate collection period for any decommissioning funding shortfall for prematurely shut down power reactors on a case-by-case basis. As part of its decision, the Commission directed the NRC staff to prepare a rulemaking that would codify this case-by-case approach. A proposed rule implementing this approach was published in the **Federal Register** on August 21, 1991 (56 FR 41493).

Analysis of and Response to Comments

The NRC received 17 comments in response to the proposed rule. Eleven comments were from NRC-licensed electric utilities; two from utility trade groups; one from a utility counsel; two from bond rating/investment advisory companies; and one from a public interest group.

Except for the comment from the public interest group, all comments supported that part of the proposed rule that would allow the period of funds accumulation for a prematurely shut down reactor to be determined on a case-by-case basis. However, most utilities and their representatives opposed the guidance in the preamble to the proposed rule that would use a bond rating of "A" as a criterion for determining the future solvency of and thus the extent of the funding period for a licensee with a prematurely shut down power reactor.

1. Comment: The use of bond ratings.

The commenters offered a variety of reasons why they considered bond ratings, particularly at the "A" level, to be inappropriate for judging a licensee's ability to pay for decommissioning for a prematurely shut down reactor. These reasons included the following:

(1) Bond ratings are too restrictive and do not allow for variations in licensees situations as contemplated by the case-by-case approach.

(2) Bond rating may not be an accurate indicator of a licensee's future ability to pay for decommissioning.

(3) Not all licensees issue debt that is rated. In the case of poser plants with several owners, owners will likely have different ratings.

(4) Bond ratings would likely decline by virtue of a premature reactor shutdown, thus precipitating further financial problems and further downratings.

(5) Differences in ratings by different services or for different classes of debt issues were not addressed.

(6) Reliance on bond ratings may result in unsound business decisions to avoid accelerated fund accumulation or may discourage use of the SAFSTOR decommissioning option.

(7) A "BBB" rating, or equivalent, is still considered investment grade and is used as a criterion in Regulatory Guide 1.159 [1] and Appendix A to 10 CFR part 30.

(8) A one-year trigger period is too short and may be disruptive.

(9) Possible adverse tax consequences may accrue if accelerated payments are required.

Response: The NRC continues to believe that bond ratings can serve as one of several criteria to estimate the ability of a licensee to pay future decommissioning costs. The NRC did not intend that this rule set a mandatory requirement that a minimum "A" rating must be met before the NRC would approve funding into a shut down reactor's safe storage period. Rather, one reason the "A" rating criterion was proposed was to serve as a screening test of whether additional financial data was required to determine whether the licensee should be allowed to fund decommissioning into a storage period. If a licensee met this criterion, the licensee would not have to prepare and submit additional documentation of its financial situation to be allowed to fund decommissioning into a storage period. A benefit of the proposed screening test was a potential saving of licensee and NRC resources to develop and review the additional financial data.

With respect to the level of rating (i.e., "A" vs "BBB" or equivalent), the preamble to the proposed rule presented a rating of "A" as a threshold below which a licensee would be required, if other criteria were not met, to accelerate payment of any decommissioning funding shortfall. The staff chose an "A" rating because a downrating from "A" to "BBB" would allow a licensee to secure funds or meet other criteria while its rating was still investment grade. To that extent, an "A" rating is not inconsistent with the use of "BBB" ratings in Regulatory Guide 1.159 and appendix A to 10 CFR part 30. In Regulatory Guide 1.159, a "BBB" bond rating was used as a minimum suggested standard for a mixed portfolio of investments in a decommissioning trust. Because of investment diversification, a "BBB" investment standard represents a

[1] Regulatory Guide 1.159 is available for inspection and copying for a fee at the Commission's Public Document Room 2120 L Street, N.W., (Lower Level), Washington, D.C. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, D.C. 20013–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5825 Port Royal Road, Springfield, VA 22161.

relatively low level of financial risk. Similarly, appendix A of part 30 used a "BBB" rating as a minimum for a parent company of a licensee to guarantee decommissioning costs. Because a parent company is a separate legal entity from its subsidiary, the NRC would potentially have access to two sources of funds (the licensee and its parent) thus reducing the risk of decommissioning funding shortfalls. For this reason, the NRC disagrees that an "A" bond rating standard is too stringent as a screening test.

For these reasons, the NRC will continue to use the "A" bond rating as a screening test for determining the decommissioning funding period for prematurely shut down power reactors. If a power reactor licensee cannot pass the initial screening test, or if it has passed the screening test but subsequently loses its "A" bond rating, this licensee could still be allowed to fund into the storage period by meeting other criteria as described below.

These criteria include:

(1) A licensee's financial history including its past funding of reactor safety expenditures;

(2) The local rate regulatory environment and other relevant State laws including public utility commission (PUC) commitments;

(3) The number of other generating plants, both nuclear and non-nuclear, in its system. This is another way of measuring the relative impact of decommissioning costs on a particular licensee's finances; and

(4) Other factors that a licensee can demonstrate as being relevant.

The NRC wishes to clarify that it assumes that most licensees with "BBB" bond ratings would still be able to obtain NRC approval of decommissioning funding into the safe storage period for a prematurely shut down reactor. This is because most licensees will be able to successfully meet the other criteria described above even if they are unable to pass the "A" bond rating screening test. Recent exemptions issued to two prematurely shut down plants (Rancho Seco and Shoreham) indicate that bond ratings are only one of several factors that the NRC will use to determine whether a licensee has demonstrated reasonable assurance of its ability to pay decommissioning costs. Finally, this discussion on the use of bond ratings is intended as non-binding guidance only; this final rule includes no such detailed criteria.

2. Comment: It is not necessary to require that all funds should be available in external funds or guaranteed by the time final dismantlement activities commence.

A few commenters disagreed with the NRC's statement that all funds are required to be available or guaranteed in external funds by the time final dismantlement activities commence. Some commenters hypothesized scenarios in which relatively small funding shortfalls may be covered in rates already approved by a licensee's PUC or the Federal Energy Regulatory Commission (FERC) prior to actual collection. In this situation, funds, although not strictly available at the time final dismantlement activities commence, would have a high degree of assurance of being obtained by the time the licensee needed to complete the dismantlement activities. Another commenter suggested that the NRC's requirement of full funding prior to the start of final dismantlement operations is inconsistent with a case-by-case approach. This commenter recommends that licensees be required to provide assurance that funds are available to complete specific dismantlement activities, rather than the entire dismantlement process.

Response: The NRC disagrees with recommendations that the NRC should abandon its general policy of requiring all funds needed for decommissioning be available prior to the start of final dismantlement. As described in the proposed rule (56 FR 41493), the June 27, 1988, final rule clearly requires funds at the time of permanent end of operations. Section 50.75(e)(1) defines the three methods of financial assurance acceptable for power reactor licensees. Two of the methods, prepayment and surety or insurance, provide all funds by the time of permanent shutdown. The third acceptable method, an external sinking fund, is defined as "a fund established and maintained by setting funds aside periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected."

This requirement was imposed to avoid a situation where lack of funds could delay and degrade the decommissioning process to the detriment of public health and safety. Although the dismantlement process can be completed in discrete stages, the potential unavailability of funds at a later stage may conceivably affect the dismantlement process at an earlier stage by creating incentives to "cut corners." Thus, this requirement was not altered in the proposed rule on funding for plants that shut down prematurely and will remain in the final rule.

3. Comment: Accelerated funding when there is a risk of premature shutdown.

One commenter asked the NRC to allow accelerated funding in cases where there is a risk of premature shutdown. This commenter specifically referred to its request for FERC to accelerate funding over a shorter period than the fill remaining operating life so that adequate funds would be available at the time of permanent shutdown. The commenter also indicated that its request was denied by FERC.

Response: The NRC strongly supports any effort by its licensees to accelerate funding, especially when a serious possibility of premature shutdown is anticipated. The NRC further believes that existing regulations (i.e., 10 CFR 50.75(e)) would allow accelerated funding and that, in appropriate circumstances, accelerated funding could be ordered if necessary of desirable for safety. In any case, the NRC would defer to FERC or the appropriate PUC for the appropriate rate treatment of accelerated funding.

4. Comment: Amending 10 CFR 50.82 to clarify issuance of possession-only licenses and other procedural aspects of decommissioning.

One commenter recommended that § 50.82 be amended to indicate the timing and procedures for decommissioning. The commenter requests that the NRC specify when it will issue a possession-only license or other license amendments to permits scaling back site operations.

Response: The NRC is evaluating its regulations concerning decommissioning and is considering issuing proposed amendments to clarify its procedures in the areas suggested by the commenter. To expedite this rule, however, the NRC will consider the timing of possession-only licenses and other license amendment procedures as part of a separate rulemaking action.

5. Comment: The case-by-case approach "fails to provide sufficient protection to the public's health and safety."

A commenter argues that many plants will shut down prematurely in the future and safe storage is neither risk free nor cheap. Thus, adequate funds for safe storage must be assured, in addition to funds for actual decommissioning. Therefore, plants must have adequate funding available for the time of

shutdown and not be allowed to fund into the safe storage period. Further, this commenter asserts that "A" bond ratings are inadequate because "in many instances, utility (and other) bonds have gone from investment grade status to junk or default status in one step." In the event of a precipitating incident such as an accident, "there is no likelihood at all that the derating process will be gradual * * *." This commenter concludes by stating that the NRC "should determine how to insure, in each and every case, that adequate funds are available."

Response: This commenter makes several assertions to support the commenter's opposition to funding during a safe storage period. These assertions, however, are not supported by facts. It is not true that most bond ratings, especially for electric utilities, move quickly through several categories of ratings. The process is almost always gradual and, therefore, would almost always give the NRC time to take steps to assure the adequacy of fundings during a storage period. In addition, this commenter also ignores NRC's requirement that its power reactor licensees carry accident recovery insurance of at least $1.06 billion (10 CFR 50.54(w)) to provide a source of funds for accident cleanup and decontamination. This requirement reduces the likelihood that premature decommissioning resulting from an accident would be particularly financially stressful.

More importantly, the NRC would, as stated, evaluate each instance of premature decommissioning on a case-by-case basis. The criteria discussed above provides the NRC with a variety of measures to assure the adequacy of funding. The case-by-case approach that is being adopted in this rule allows the NRC to consider the participation financial situation for each licensee that shuts down its power reactor before the expected end of operation life. In spite of the commenter's assertions, the Commission does not expect this to be a frequent occurrence. When it does occur, in most situations the majority of decommissioning funds will have been collected during the operating life of the shut down reactor. Most licensees currently have substantial amounts collected and would, at the least, be able to fund activities necessary to place a shut down reactor into safe storage. Whatever funding shortfall remains can be collected or guaranteed in a time frame and through funding mechanisms commensurate with a licensee's financial situation. As that financial situation changes, the licensee, under NRC monitoring, would alter funding methods accordingly.

For the reasons presented in the discussion of issues raised, the NRC is issuing this final rule as proposed.

Finding of No Significant Environmental Impact: Availability

This final rule clarifies decommissioning funding arrangements for those licensees whose power reactors are shut down prematurely. This action is required so that the Commission may evaluate on a case-by-case basis the unique financial situation that could confront those licensees. The Commission would continue its requirements for assurance of decommissioning costs but could alter the timing of funds collection according to a licensee's individual financial situation. The Commission believes that if utility licensees were required to have all funds for decommissioning by the time of permanent shutdown as required by the existing rule, some utilities could be unnecessarily financially stressed without significantly increasing the protection of the public health and safety and of the environment.

Neither this action nor the alternative of maintaining the existing rule would significantly affect the environment. Although changes in the timing of collection of funds for decommissioning prematurely shut down power reactors may affect the financial arrangements of licensees and may have economic and social consequences, they would not alter the effect on the environment of the licensed activities considered in the final rule published on June 27, 1988 (53 FR 24018) as analyzed in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG–0586, August 1988).[2] The alternative to this action would not significantly affect the environment. Therefore, the Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this final rule will not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. No other agencies or persons were contacted for this action, and no other documents related to the environmental impact of this action exist. The foregoing constitutes the environmental assessment and finding of no significant impact for this final rule.

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 number 3150–0011.

Regulatory Analysis

On June 27, 1988 (53 FR 24018), the NRC published in the **Federal Register** a final rule amending 10 CFR parts 30, 40, 50, 51, 70 and 72 regarding general requirements for decommissioning nuclear facilities. In that rule, the Commission provided the option that power reactor licensees may collect funds for decommissioning over the projected operating life of the facility but required that all funds needed for decommissioning be accumulated by the time of permanent shutdown. Under the existing rule, power reactor licensees that shut down prematurely would not have the remaining term of the operating license to accumulate decommissioning funds and could be unduly burdened financially if required to raise all remaining decommissioning funds shortly after shutdown. Consequently, the NRC will evaluate the schedule for collecting decommissioning funds for prematurely shut down facilities on a case-by-case basis. A case-by-case approach allows the NRC to evaluate the particular financial circumstances of each affected licensee while continuing to ensure that the public health and safety and the environment are adequately protected. This final rule would generally reduce financial costs for those licensees allowed to extend the collection period of decommissioning funds.

This final rule would not create substantial costs for other licensees. The rule will not signficantly affect state and local governments and geographical regions, or the environment, or create substantial costs to the NRC or other Federal agencies. The foregoing discussion constitutes the regulatory analysis for this final rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final

[2] Copies of NUREG–0586 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, D.C. 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC.

rule will not have a significant impact upon a substantial number of small entities. The rule will potentially affect licensees of approximately 118 nuclear power reactors. Nuclear power plant licensees do not fall within the definition of small businesses as defined in Section 3 of the Small Business Act, 15 U.S.C. 632, the Small Business Size Standards of the Small Business Administrator (13 CFR part 121), or the Commission's Size Standards (50 FR 50241; December 9, 1985).

Backfit Analysis

The NRC has determined that this final rule does not impose a backfit as defined in 10 CFR 50.109(a)(1). Therefore, a backfit analysis is not required for this rule.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201 as amended, 202, 206, 68 Stat. 1242 as amended 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 995 (42 U.S.C. 2237).

For the purposes of sec. 223, 66 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.5, 50.46 (a) and (b), and 50.54(c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.5, 50.7(a), 50.10(a)–(c), 50.34 (a) and (e), 50.44(a)–(c), 50.46 (a) and (b), 50.47(b), 50.48 (a), (c), (d), and (e), 50.49(a), 50.54 (a), (i), (i),(1), (1)–(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a),(c)–(e), (g), and (h), 50.59(c), 50.60(a), 50.62(b), 50.64(b), 50.65, and 50.80 (a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.49(d), (h), and (j), 50.54 (w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71 (a)–(c) and (e), 50.72(a), 50.73 (a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 50.82 is amended by revising paragraph (a) to read as follows:

§ 50.82 Application for termination of license.

(a) Any licensee may apply to the Commission for authority to surrender a license voluntarily and to decommission its facility. For a facility that permanently ceases operation after July 27, 1988, this application must be made within two years following permanent cessation of operations, and in no case later than one year prior to expiration of the operating license. Each application for termination of license must be accompanied, or preceded, by a proposed decommissioning plan. For a facility which has permanently ceased operation prior to July 27, 1988, requirements for contents of the decommissioning plan as specified in paragraphs (b) through (d) of this section may be modified with approval of the Commission to reflect the fact that the decommissioning process has been initiated previously. For a facility which has permanently ceased operation before the expiration of its operating license, the collection period for any shortfall of funds will be determined, upon application by the licensee, on a case-by-case basis taking into account the specific financial situation of each licensee.

* * * * *

Dated at Rockville, Maryland this 26th day of June, 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92–16133 Filed 7–8–92; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0698]

RIN 7100-AB13

Bank Holding Companies and Change in Bank Control Investment Advisory Activities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is revising its interpretive rule regarding investment advisory activities of bank holding companies to provide expressly that a bank holding company or its nonbank subsidiary may act as an agent for customers in the brokerage of shares of an investment company advised by the holding company or any of its subsidiaries. In addition, the revision will provide that a bank holding company or its nonbank subsidiary may provide investment advice to customers regarding the purchase or sale of shares of an investment company advised by a holding company affiliate. In both instances, the Board requires certain disclosures to be made to address potential conflicts of interests or adverse effects.

EFFECTIVE DATE: August 10, 1992.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452-3583), or Thomas M. Corsi, Senior Attorney (202/452-3275), Legal Division; or Robert S. Plotkin, Assistant Director (202/452-2782), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

In 1971, the U.S. Supreme Court held that the operation of a mutual fund by a national bank was prohibited by the Glass-Steagall Act because it involved the bank in prohibited securities underwriting and distributing activities.[1] Subsequent to the Court's decision, the Board amended its Regulation Y to permit a bank holding company to furnish investment advice to an open-end investment company (*i.e.*, a mutual

[1] *Investment Company Institute* v. *Camp*, 401 U.S. 617 (1971).