Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on a reported average f.o.b. price of $1.30 per pound of papayas, a handler would have to ship in excess of 3.85 million pounds of papayas to have annual receipts of $5,000,000. Last year, two handlers each shipped in excess of 3.85 million pounds of papayas, and, therefore, could be considered large businesses. The remaining handlers could be considered small businesses under SBA's definition.

Based on a reported average grower price of $0.45 per pound and industry shipments of 36 million pounds, total grower revenues would be $16.2 million. Average grower revenue would, thus, be $40,500. Based on the foregoing, the majority of handlers and producers of papayas may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent fiscal years from $0.0063 per pound to $0.008 per pound of assessable papayas. The Committee recommended 1999–2000 expenditures of $522,500 and the $0.008 per pound assessment rate. The proposed assessment rate of $0.008 is $0.0017 higher than the 1998–99 rate. The quantity of assessable papayas for the 1999–2000 fiscal year is estimated at 40 million pounds. Thus, the $0.008 rate should provide $320,000 in assessment income. Income derived from handler assessments, the Hawaii Department of Agriculture, State of Hawaii (Research), USDA's Foreign Agricultural Service, County of Hawaii, and the Japanese Inspection program, along with interest income of $16,000, would be adequate to cover budgeted expenses. Funds in the reserve (estimated to be about $25,000 at the end of the 1999–2000 fiscal year) would be kept within the maximum permitted in § 928.42(a)(2) of the order. The order authorizes approximately one fiscal year's expenses for the reserve.

The Committee recommended 1999–2000 expenditures of $522,500. The major expenditures recommended by the Committee for the 1999–2000 year include $230,000 for marketing and promotion, $90,500 for research and development, and $98,000 for salaries. Budgeted expenses for these items in 1998–99 were $183,000 for marketing and promotion, $171,500 for research and development, and $98,000 for salaries, respectively.

Regarding alternatives, the Committee discussed decreasing expenditure levels for marketing and promotion, and further reductions in research and development expenditures to avoid increasing the assessment rate, but it determined that the programs should be funded at the recommended levels. The assessment rate of $0.008 per pound of assessable papayas was determined by dividing the assessment income needed by the quantity of assessable papayas, estimated at 40 million pounds for the 1999–2000 fiscal year. This estimate would generate $320,000 in assessment income. When combined with $208,800 in anticipated income from the previously mentioned sources, and $16,000 in interest income, the Committee would have adequate funds to meet its 1999–2000 expenses.

A review of historical information and preliminary information pertaining to the 1999–2000 fiscal year indicates that the grower price for the season could range between $.30 and $0.45 per pound of papayas. Therefore, the estimated assessment revenue for the 1999–2000 fiscal year as a percentage of total grower revenue could range between 1.8 and 2.7 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the papaya industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the April 22, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large papaya handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1999–2000 fiscal year began on July 1, 1999, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable papayas handled during such fiscal year; and (3) handlers are aware of this action which was discussed by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 928 is proposed to be amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR part 928 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 928.226 is revised to read as follows:

§ 928.226 Assessment rate.

On and after July 1, 1999, an assessment rate of $0.008 per pound is established for papayas grown in Hawaii.

Dated: August 26, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–22908 Filed 9–1–99; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[Docket No. PRM–51–7]

Nuclear Energy Institute; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Nuclear Energy Institute (NEI). The petition has been docketed by the Commission and

has been assigned Docket No. PRM–51–7. The petitioner requests that the NRC amend its regulations to delete the requirement for the NRC to evaluate Severe Accident Mitigation Alternatives as part of its National Environmental Policy Act (NEPA) review associated with license renewal. The petitioner requests that the NRC take this action to achieve consistency in the scope of its regulatory requirements associated with NEPA and license renewal.

DATES: Submit comments by November 16, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For a copy of the petition, write to David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking website at http://ruleforum.llnl.gov. This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: CAG@nrc.gov).

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7162 or Toll-free: 1–800–368–5642 or E-mail: DLM1@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1999, the NRC received a petition for rulemaking submitted by the NEI. The petitioner requests that the NRC amend its regulations to delete the requirement for the NRC to evaluate Severe Accident Mitigation Alternatives (SAMAs) as part of its NEPA review associated with license renewal. The petitioner requests that the NRC take this action to achieve consistency in the scope of its regulatory requirements associated with NEPA and license renewal. The petition has been docketed as PRM–51–7. The NRC is soliciting public comment on the petition for rulemaking.

The NRC's regulations implementing NEPA appear in 10 CFR part 51. Paragraph (c)(3)(ii)(L) of § 51.53 requires that an applicant to evaluate SAMAs as part of its environmental report for license renewal if the NRC staff has not previously considered SAMAs for the plant in an environmental impact statement or a related supplement or in an environmental assessment. The NRC's regulations governing the renewal of operating licenses for nuclear power plants appear in 10 CFR part 54.

The Petitioner's Request

The petitioner requests that the NRC amend its regulations to remove 10 CFR 51.53 (c)(3)(ii)(L). This would eliminate the requirement that the NRC evaluate SAMAs as part of its review of a nuclear power plants application for renewal of its operating license. The petitioner suggests that the rulemaking also include conforming amendments to 10 CFR part 51, Appendix B and that NUREG–1437 be amended to conform with the suggested change.

The petitioner believes that the suggested action would eliminate a conflict with the technical requirements for license renewal. The petitioner states that 10 CFR part 54 is founded on the principle that each plant's current licensing basis remains adequate and carries forward into the renewal term. The petitioner characterizes the Commission as concluding that the adequacy of plant design and operating procedures is beyond the substantive scope of part 54. Yet, the petitioner states that § 51.53(c)(3)(ii)(L) requires that these subjects be extensively analyzed under the procedural requirements in part 51. The petitioner asserts that its suggested approach resolves the conflict between part 51 and part 54 requirements. The petitioner believes that this approach recognizes that the scope of NRC's proposed actions, license renewal determinations under part 54, defines and bounds the scope of environmental review for these actions. The petitioner goes on to state that the courts have held that there is no significant environmental impact requiring further assessment if a proposed action maintains an equivalent level of safety, *City of Aurora* v. *Hunt*, 749 F.2d 1457 (10th Cir. 1984). The petitioner contends that, because part 54 assures that the current level of safety is maintained, there is no increase in risk required to be considered for mitigation under NEPA. Furthermore, the petitioner states that the court action cited by the NRC as the basis for requiring consideration of SAMAs in NEPA evaluations for license renewal, *Limerick Ecology Action* v. *U.S. Nuclear Regulatory Commission*, 869 F. 2d 719 (3rd Cir. 1989), does not preclude the suggested rulemaking. The petitioner also believes that, under established precedent, an EIS does not have to include beyond-design-basis accidents as long as the Commission considers them highly improbable events, *San Luis Obispo Mothers for Peace* v. *NRC*, 751 F2 1287, 1301 (D.C. Cir 1984).

The Petitioner

The NEI characterizes itself as an organization of the nuclear industry responsible for coordinating the efforts of all utilities licensed by the NRC to construct or operate nuclear power plants, and of other nuclear organizations, in all matters involving generic regulatory policy issues and regulatory aspects of generic operating and technical issues affecting the nuclear power industry. Its members include every utility responsible for constructing or operating a commercial nuclear power plant in the United States, as well as major architect/engineering firms and all major nuclear steam supply system vendors.

The Petitioner's Interest in the Requested Action

The petitioner states that 45 commercial nuclear power plants will reach the end of their original 40-year operating license term by 2015. These plants represent billions of dollars in capital investment and generate electricity for 17 million households. Two NRC licensees have submitted license renewal applications; Baltimore Gas and Electric for its two-unit Calvert Cliffs plant and Duke Power for its three-unit Oconee plant. The NEI anticipates that many of the licensees whose licenses will expire in the near future will apply for renewed licenses.

The petitioner characterizes continued plant operation as primarily an economic decision. When considering license renewal, the utility must evaluate future electricity demand, the cost of other electricity supply options versus the cost of continued plant operation, and the efficiency of the NRC license renewal process. The commercial power industry is interested in promoting a license renewal process that focuses on those items the NRC has determined could have a potential effect on the ability of structures and components to function during the extended period of operation. The industry also is interested in ensuring that the NRC properly defines its NEPA review obligations for license renewal so that an efficient, effective process can

be achieved. The petitioner believes that retaining the requirement that the NRC evaluate SAMAs as part of its review of a nuclear power plant's application for renewal of its operating license unnecessarily increases the cost of a license application, and potentially increases the review time for an application by introducing issues that conflict with the fundamental principles underlying part 54.

Discussion

Part 54 Requirements

The NRC adopted regulations governing the renewal of nuclear power plant operating licenses in a final rule adding part 54 to 10 CFR chapter I (56 FR 64943; December 13, 1991). The NRC subsequently revised part 54 in a final rule published May 8, 1995 (60 FR 22461). The petitioner describes this revision as an attempt to make license renewal a more focused, stable, and predictable regulatory process.

The petitioner states that the Statement of Considerations for each rule carefully explained the scope of license renewal for the rule. The petitioner cites NRC's commitment to two critical principles. First, with the exception of the detrimental effects of aging during the period of extended operation, the regulatory process is adequate to ensure that the licensing bases of all currently operating plants provide and maintain an acceptable level of safety so that operation will not be inimical to public health and safety or common defense and security. Second, the current licensing basis continues during the renewal term. The petitioner states that the NRC specifically rejected a requirement for a general demonstration of compliance with the current licensing basis as a prerequisite for issuing a renewed license by narrowing the findings required to be made for issuing a renewed license under 10 CFR 54.29. The petitioner contends that the scope of part 54 focuses license renewal only on those matters that relate to the detrimental effects of aging and that are not currently managed and on certain issues analyzed for a period covering the original term and the renewal term. The petitioner believes that the scope of part 54 is directly relevant to industry's view, as characterized by the petitioner, that SAMAs should not be part of the NEPA review for license renewal.

Part 51 Requirements

As indicated, part 51 contains NRC's regulations implementing NEPA. Section 102(2) of NEPA requires the preparation of an environmental impact statement for every major Federal action significantly affecting the quality of the human environment. Section 51.53 defines the environmental impacts that are to be addressed in the NEPA review for license renewal. The petitioner indicates that many of the environmental issues found to be relevant to license renewal were addressed in a generic environmental impact statement (GEIS) issued as NUREG–1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, in December 1995. The findings of the GEIS are summarized in Appendix B to part 51, which was issued through formal rulemaking in a final rule published December 18, 1996 (61 FR 66543). The GEIS identified and evaluated the potential environmental impacts that the NRC staff determined could be evaluated generically. The GEIS also identified 22 environmental impacts that the NRC staff concluded were not susceptible to generic evaluation and must be evaluated for each plant as part of the license renewal review process.

The petitioner points out that SAMAs are among the items the NRC has designated for plant-specific review. The petitioner describes SAMAs as plant modifications or procedure changes that do not necessarily prevent severe accidents but reduce the offsite consequences or severity of the impact should a severe accident occur. The petitioner indicates that the NRC has defined severe accidents as those that would cause substantial damage to the reactor core, regardless of whether there are severe offsite consequences. The petitioner believes that in codifying the determination to consider SAMAs in conjunction with license renewal at § 51.53(c)(3)(ii)(L), the NRC interpreted the *Limerick Ecology Action* v. *U.S. Nuclear Regulatory Commission* decision to require this action.

Evaluation and Addressing of SAMAs Under the Current Licensing Basis

The petitioner describes actions preformed by licensees to analyze severe accident vulnerabilities and ways to mitigate these vulnerabilities. These actions include conducting Individual Plant Examinations, employing Probabilistic Safety Assessment methodology to evaluate possibly significant, plant-specific risk contributors to severe accidents, and Individual Plant Examination for External Events that focus on external event risks involving fires and seismic events. The petitioner indicates that the results of these examinations indicate that generic upgrades beyond current levels of safety are not justified on a cost-beneficial basis and that the relatively limited risk from external events does not require additional licensee action. However, the petitioner indicates that these actions and any resulting modifications will carry forward into the renewal term.

Bases for Eliminating SAMAs

Scope of License Renewal

The petitioner classifies NEPA as a procedural statute that was enacted to ensure that Federal agency decisionmaking evaluates environmental consequences that may result from a proposed action and informs the public of this decisionmaking process. The petitioner contends that NEPA is not intended to force a particular result. It does not require that any particular environmental issue be considered or that potential environmental impacts control the decision regarding a proposed action. The petitioner describes NEPA case law as providing that the adequacy of an environmental impact statement is dependent on the facts and circumstances related to the proposed action and that a court will apply the ''rule of reason'' in reviewing the adequacy of an environmental impact statement. The petitioner contends that the ''rule of reason'' analysis has not been interpreted to require an exhaustive, detailed discussion of all environmental impacts and that an environmental impact statement will be considered adequate if it provides information reasonably necessary to evaluate the project.

The petitioner states that the NRC must evaluate those impacts resulting from the requested license renewal that have not been evaluated generically in a plant-specific environmental impact statement for license renewal. The petitioner indicates that the NRC specifically determined that extending a license to operate a nuclear power plant does not require the NRC to review all aspects of plant operation or administration, and that the NRC deliberately limited its license renewal process to items related to the extension of the license term or for which aging management does not exist or would be insufficient. Therefore, the petitioner concludes that the impacts appropriately considered under NEPA would be those that reasonably flow from the license renewal decision under part 54. The petitioner references and describes court analyses and decisions in the *City of Aurora* v. *Hunt*, 749 F.2d 1457 (10th Cir. 1984), and *Upper Snake River Chapter of Trout Unlimited* v. *Hodel*, 921 F.2d 232 (9th Cir. 1990),

cases. The petitioner contends that these court actions support industry's contention that because the current licensing basis (of which severe accident management is a part) carries forward to the license renewal term, the status quo will be maintained and because an equivalent level of safety is maintained, SAMAs may be properly excluded from NRC consideration in an environmental impact statement for license renewal.

The petitioner asserts that individual licensee and generic industry actions to address severe accidents demonstrate that this issue is part of the license in the current term and that the increase of the license term does not limit or diminish the value of these actions. The petitioner contends that because items in the current licensing basis are not subject to evaluation as part of the license renewal review, the license renewal rule also eliminates the need to consider the impact of their alternatives under NEPA. The petitioner concludes that there can be no NEPA inquiry of the environmental impacts and the mitigation alternatives of severe accidents if there is no change in the risk of a severe accident generated by license renewal.

The Limerick Decision

The petitioner examines the decision *Limerick Ecology Action* v. *U.S. Nuclear Regulatory Commission* and concludes that the holding in this decision is appropriately limited to the facts based on the context in which the decision was made.

First, the NRC relied on a Policy Statement to conclude that it could exclude consideration of severe accident mitigation design alternatives (SAMDAs) from individual licensing proceedings. Although the court found that the policy statement had the effect of a substantive rule, it was unwilling to treat it as a rule and allowed the policy statement to be challenged in an individual proceeding.

Second, the court was influenced by its perception that the NRC failed to give sufficiently careful consideration to SAMDAs before determining that they should not be subject to review in individual proceedings. The court highlighted the differences between the facts in *Limerick* and those in *Baltimore Gas & Electric Co.* v *Natural Resources Defense Council,* 462 U.S. 87 (1985), where the Supreme Court held that it was permissible under NEPA to treat the environmental effects of nuclear fuel storage generically. The court indicated that under the facts of BG&E, the NRC had proceeded under the basis of an extensive formal rulemaking. In *Limerick,* the NRC failed to permit consideration of SAMDAs without an explanation for doing so that was satisfactory to the court. The court concluded that this failure to evaluate SAMDAs in individual licensing proceedings meant that the NRC had concluded inappropriately that no design mitigation alternative would be worthwhile.

Third, the court was not persuaded by the NRC argument on judicial review that the risks of a severe accident are ''remote and speculative.'' The court held that the NRC had not based its decision on this determination and refused to substitute this argument for the reasons NRC articulated in the policy statement. Based on the facts presented, the court was unwilling to read into the policy statement and find that the risk is remote and speculative.

The petitioner contends that the courts articulated bases for deciding that SAMDAs should not have been excluded from consideration in an individual licensing proceeding support limiting the holding of *Limerick* to its facts. The petitioner further contends that *Limerick* does not affect the proposition that the ''rule of reason'' defines whether the environmental impact statement has addressed the significant aspects of probable environmental consequences for the proposed action. Finally, the petitioner contends that the limited nature of license renewal limits NEPA evaluation only to those environmental consequences that may reasonably flow from the proposed action, renewing a plant's license as that plant is currently designed and operated.

Finding That Severe Accidents Are Highly Unlikely

The petitioner contends that, because a ''rule of reason'' applies to all NEPA reviews and because a court has described it as a ''probabilistic rule of reason'' with respect to SAMAs, the NRC is not required to consider beyond design-basis accidents if the Commission reasonably believes that this type of accident is highly unlikely to occur. The petitioner states that the court, in *Limerick,* recognized that NEPA does not require consideration of remote and speculative risks. However, because the NRC's decision to exclude SAMAs in the *Limerick* licensing proceeding had not been based on such a determination, the court declined to uphold the NRC's action on grounds that had not been invoked by the NRC. Therefore, the petitioner contends that the *Limerick* decision did not and cannot preclude the NRC from elimination SAMAs from NEPA consideration based on an NRC finding that these accidents are highly unlikely to occur. As a result, the petitioner believes that the NRC has an ample basis to proceed with a rulemaking to delete § 51.53(c)(3)(ii)(L). The petitioner states that, based on the assessment of severe accident risk in the GEIS and the results of Individual Plant Examinations and Individual Plant Examinations for External Events, the NRC has concluded that the risk of a severe accident significantly affecting the environment is extremely small. Therefore, the petitioner believes that considering further mitigation is not worthwhile and SAMAs should be excluded from part 51 review for license renewal.

The Petitioner's Conclusion

The petitioner believes that the NRC should conduct a rulemaking to exclude the consideration of SAMAs from the NRC's NEPA review for license renewal. The petitioner contends that the requirement to include SAMAs was based on an overly broad application of language in the *Limerick* case. The petitioner states that under NEPA the NRC is responsible for reviewing those impacts that directly and indirectly relate to license renewal. The petitioner contends that this evaluation is bounded by the fact that an applicant's current licensing basis continues in the renewal term and the impacts associated with the current license are not subject to license renewal evaluation unless they can be shown to be potentially greater in the renewal term. The petitioner contends that such a demonstration has not been made for severe accidents and, therefore, cannot be demonstrated for SAMAs.

Dated at Rockville, Maryland, this 27th day of August, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–22915 Filed 9–1–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–56–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.