for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 185.144 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 185.142 or § 185.143, or any amount agreed upon in a compromise or settlement under § 185.146, may be collected by administrative offset under section 3716 of title 31, United States Code, except that an administrative offset may not be made under section 3716 against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 185.145 Deposit in Treasury of the United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in section 3806(g) of title 31, United States Code.

§ 185.146 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 185.142 or during the pendency of any action to collect penalties and assessments under § 185.143.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 185.142 or of any action to recover penalties and assessments under section 3806 to title 31, United States Code.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 185.147 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 185.108 within 6 years after the date on which such a claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 185.110(b) shall be deemed a notice of hearing for purposes of this section.

(c) the statute of limitations may be executed by written agreement of the parties.

[FR Doc. 95–3347 Filed 2–9–95; 8:45 am]

BILLING CODE 6325–01–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

RIN 3150–AF08

Frequency of Medical Examinations for Use of Respiratory Protection Equipment

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations concerning the frequency at which medical fitness determinations are required to ensure the safe use of respiratory protection equipment. Section 10 CFR 20.1703(a)(3)(v) currently requires the determination by a physician prior to initial fitting of respirators, and at least every 12 months thereafter, that the individual user is physically able to use the respiratory protection equipment. The amended rule requires determination by a physician prior to initial fitting of respirators and either every 12 months thereafter or periodically at a frequency determined by a physician, that the individual user is medically fit to use the respiratory protection equipment. The final rule reduces the burden on licensees without adversely impacting public health and safety.

EFFECTIVE DATE: March 13, 1995.

FOR FURTHER INFORMATION CONTACT: Alan K. Roecklein, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6223.

SUPPLEMENTARY INFORMATION:

Background

The requirement for an annual medical examination to ensure safe use of respiratory equipment has been in the regulations for some time. The need for these examinations was reconfirmed by the American National Standards Institute (ANSI) in ANSI Z88.2–1992. However, considerable experience with implementation of the requirement has indicated that the annual frequency of medical examinations is costly and could be reduced significantly with no adverse impact on health and safety. The NRC Regulatory Review Group reviewed the existing requirement and concluded that the frequency of medical examinations could be reduced without adverse impact on worker safety. This change was recommended to the Commission as a candidate for licensee burden reduction in SECY–94–003 and supported by the Commission by memorandum from Samuel J. Chilk to James M. Taylor dated February 14, 1994.

The ANSI reviewed this issue and, in ANSI Z88.6 1984, published a recommendation that the frequency of medical examination should be determined by a physician and should be reduced based on age of the worker. ANSI recommended an examination every 5 years up to age 35, every 2 years up to age 45, and annually thereafter. ANSI also recommended special additional evaluations after prolonged absence from work for medical reasons or whenever a functional disability has been identified. These ANSI recommendations were reconfirmed in ANSI Z88.2–1992.

A proposed rule was published in the **Federal Register** on September 16, 1994 (59 FR 47565), for public comment. Ten letters of comment were received, all supporting the proposed rule. Consequently the NRC is codifying the rule as it was proposed.

The final rule provides for periodic medical examinations at either the 12-month interval as currently required or optionally at a frequency determined by a physician. Under this rule, licensees can elect to have the physician include in the initial medical examination or at the next 12-month reexamination, a determination of when each individual would need to be reexamined. Part 20 requires written procedures for use of respiratory protection equipment. Consequently, current procedures and license conditions likely include the annual frequency and a change in procedures or license conditions will be needed to implement a change in frequency of reexamination. The recommended frequencies contained in the ANSI standard may provide guidance on determining an appropriate frequency of reexamination which may be useful to physicians in determining frequency of reexamination. However, the Commission is not endorsing this standard. Rather the Commission believes that the frequency of reexamination should be determined by the examining physician.

The final rule uses the terminology ''medically fit'' rather than ''physically able'' to use a respirator. As indicated in

the proposed rule, this terminology has been substituted because it more accurately reflects the purpose of the medical examination. None of the public commenters objected to this change.

ANSI Z88.6–1984 also provides guidelines for the scope of an examination which would demonstrate that a worker was medically fit to use respiratory protection devices. The guidelines include consideration of pulmonary function, cardiovascular factors, neurological and psychological conditions, among others. The NRC staff believes that these guidelines provide an acceptable working definition of the term ''medically fit.''

It should be noted that the NRC staff position is that a complete physical examination of each respirator user is not required, only an initial medical examination and annual or periodic review of medical status and that physicians need not administer each test personally, but may designate individuals such as office nurses as long as the physician is responsible for the program. It is also important to note that Occupational Safety and Health Administration (OSHA), State and other requirements regarding use of respirators and fitness evaluation for exposure to other toxic materials are not waived by this rulemaking.

Agreement States

The amendment applies to all NRC licensees. Agreement States must establish and maintain compatible regulations and programs. Most radiation protection provisions in 10 CFR part 20 are classified as Division I matters of compatibility. However, this rulemaking defines minimum procedures needed to ensure health and safety. As such, an Agreement State should have the flexibility to keep the 12-month frequency or to impose an alternate frequency of examinations if considerations in their State warrant such an approach. The rule is therefore a Division II matter of compatibility. This rulemaking was discussed with representatives of Agreement States at the Organization of Agreement State Managers Workshop and Public Meeting on Rulemaking in Herndon, VA, on July 12, 1994. No comments or objections were offered by the States. Although Agreement States had the opportunity to comment on this proposed change during the public comment period, none submitted comments.

Description

The provisions of 10 CFR 20.1703 (a)(3)(v) are changed to require determination by a physician prior to initial fitting of respirators, and periodically thereafter, either every 12 months or at a frequency determined by a physician, that the individual user is medically fit to use the respiratory protection equipment. Frequency of reexamination is changed from ''at least every 12 months,'' to ''either every 12 months thereafter or periodically at a frequency determined by a physician,'' and the term ''medically fit'' is substituted for the current term ''physically able,'' to make clearer the purpose of the medical determination.

Impact

The Commission believes that this change constitutes a reduction of regulatory burden and an increase in flexibility for licensees, without any significant reduction in worker health or safety. The medical profession contributed significantly to development of the reduced frequencies recommended by ANSI and it is therefore expected that physicians performing examinations will be guided by the ANSI recommendations. ANSI recommended a frequency of reexamination based on age: every 5 years up to age 35; every 2 years up to age 45; and annually thereafter. A change in procedures or license conditions will be needed to implement a change in frequency of reexamination.

The respiratory use medical examination is estimated to cost approximately $150 per examination. The number of examinations performed during an outage at a nuclear power plant is estimated to be 500. If 60 plants have outages each year, the current cost for annual medical examinations is at least $4,500,000. An examination of the demographics of the nuclear workforce (½ <35 years; ⅓ >35 but <45; ⅙ >45) suggests that the number of medical examinations could easily be halved thus saving $2.25 million each year just during maintenance or refueling outages at nuclear power plants. Clearly, considerable savings will be realized by this change freeing resources for more effective health and safety efforts.

Certain materials licensees such as fuel cycle facilities, some research facilities including broad scope academic licensees, and some manufacturing groups also have respiratory protection programs. The impacts on these licensees are minimal because the number of respirator users is small. The rule is expected to result in a reduction in costs due to a reduced frequency of medical reexamination for these licensees.

Although some costs will be incurred by licensees in making revisions to procedures and license conditions, these costs will be offset by the increased flexibility and savings resulting from reduced reexamination frequency.

Ten letters of public comment were received on the proposed rule: The Nuclear Energy Institute (NEI) and seven nuclear utilities including Tennessee Valley Authority (TVA), the University of Texas System, and the National Institute for Occupational Safety and Health (NIOSH) of the Department of Health and Human Services (HHS).

NEI, the seven nuclear utilities, and the University of Texas System all supported the proposed rule. These commenters agreed that the proposed changes would constitute a reduction of regulatory burden and an increase in flexibility for licensees and Agreement States, without any significant reduction in worker health and safety. Several agreed that the recommended age-related frequencies for reexamination found in ANSI Z88.6–1984 should not be codified and should continue to provide useful guidance to physicians and other professionals in determining the suitability of individuals for respirator use. The proposed rule was characterized as appropriately performance-based and as not restricting the exercise of professional medical judgment.

Several commenters agreed that the initial determination by a physician should occur prior to initial fitting of respirators, rather than prior to first field use. These commenters observed that although this change would provide further reduction in burden, there is no clear evidence that such a change would not adversely impact the current level of protection of public health and safety. Others agreed that considerable liability would result if a worker were to experience an adverse reaction to a respirator during an initial fit-test without having had the requisite medical determination.

NIOSH supported the NRC goal of reducing the time and effort in the medical fitness determination process. They suggested however, that the NRC should use the word ''evaluation'' rather than ''examination'' when discussing the determination of medical fitness. NIOSH said that the content of an evaluation could include, medical history, questionnaire, physical examination, laboratory tests (such as dextrocardiogram, spirometry, or exercise testing) and results of a monitored worker trial period.

NIOSH recommended that a medical fitness evaluation be performed initially, and annually thereafter or after any significant illness, injury or surgery

that might affect a worker's fitness to use respirators. However, the content of the reevaluations would be determined by a physician and would not necessarily include a physical examination. For example, a questionnaire could be used by a physician to determine whether or not more extensive reevaluations were necessary.

NOISH also recommended that the initial evaluation include at least a limited physical examination that could be performed by a physician or by a non-physician health professional.

The NRC staff believes that its intent is in substantial agreement with NIOSH. Several NRC staff documents have discussed the medical fitness determination in a manner consistent with the NIOSH suggestion. The NRC position continues to be that a complete physical examination of each respirator user is not required, only an initial medical examination and an annual review of medical status (or less frequently as determined by a physician).

The physician might or might not require a physical examination as part of the health assessment. The NRC staff believes that physicians need not administer each test personally, but that the physician may designate someone such as an office nurse to certify medical fitness as long as it is clear that the physician is ultimately responsible for the fitness determination. Likewise, the NRC staff believes that the physician should be involved in the supervision of the fitness program, the review of overall results and individual cases that fall outside certain physician determined parameters, and supervision of personal performing the tests.

The final rule retains the language ''* * * determination by a physician prior to the initial fitting of respirators, and either every 12 months thereafter or periodically at a frequency determined by a physician, that the individual user is medically fit to use the respiratory protection equipment.'' The rule, as codified by this action, does not use the terms examination or evaluation. The NRC does not believe that the level of detail suggested by NIOSH is necessary in the regulations because all of the activities fall within the framework of the ''determination'' by a physician and would be considered as acceptable practice. The discussion in this statement of consideration makes it clear that the fitness determination can consist of several instruments and methods, as suggested by NIOSH.

Finding of No Significant Environmental Impact: Availability

The NRC 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 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.

The NRC has not prepared a separate environmental assessment. The following discussion in conjunction with the regulatory analysis which follows constitutes the assessment. Performing a medical examination to determine that a worker is medically fit to use respiratory protection equipment generates minimal waste, results in small recordkeeping burden, and has no other identifiable environmental impact. The effect of this rulemaking is to allow a reduction in the frequency of such examinations, thus reducing any conceivable environmental impact even further. No comments on the draft assessment in the proposed rule notice were received.

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 3150–0014.

Regulatory Analysis

The regulatory analysis for this rulemaking is as follows:

1. Alternatives

No Action.

The annual medical examination requirement has been in place for a number of years, and is considered by the NRC staff to provide adequate health and safety to workers. However, the annual requirement consumes considerable resources with little demonstrated improvement in worker health or safety when compared to longer examination intervals. The ANSI committee and a peer review of the proposed standard Z88.6 (1984) found no reasons for not reducing the frequency of medical examination. Thus, it would appear that the frequency of medical examination can be significantly reduced at considerable savings and with no adverse impact on worker health and safety. The ''no-action'' alternative is not preferable in view of the cost of compliance relative to the minimal risk reduction observed.

Regulatory Guidance

The alternative of modifying the guidance in Regulatory Guide 8.15 is not considered a viable alternative for providing regulatory relief because the existing rule is very specific, and requirements in the regulations cannot be revised by modifying a regulatory guide.

Changes to Regulation

Because the problem is a specific requirement in a rule, the most effective solution providing regulatory relief is to modify the rule. Other alternatives such as issuance of an order, modifying license conditions or discretionary enforcement were considered. These alternatives are usually interim and are used when immediate action is deemed necessary. Because a permanent correction is desired and there is no reason for immediate action, these other alternatives were not selected.

2. Impact of Proposed Action

Licensees

Licensees that have respiratory protection programs will continue to be required to provide medical examinations to workers. The change is to permit reducing the frequency at which the examinations are required based on determination by a physician. This action constitutes a reduction in burden and costs. Although minor changes in procedures or license conditions will be needed, the related costs are a one time cost that will be offset by the savings in medical reexamination costs.

Workers

Workers will be subject to medical examinations for respirator use less frequently. As found by the ANSI review, experience with the annual respiratory medical examination requirement has shown that less frequent examinations for younger workers, with special examinations if conditions change, will be adequate to identify any medical reasons for not using respirators. The action does not impact medical examination requirements adopted by licensees for other reasons. Licensees will continue to be required to conduct medical examinations.

NRC Resources

It is estimated that 0.4 staff years of effort by NRC staff will have been expended to complete this rulemaking.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC

certifies that this rule will not have a significant economic impact upon a substantial number of small entities. The amendments apply to all NRC and Agreement State licensees. Because these amendments reduce burden, they are considered to have no adverse economic impact on any large or small entities.

Backfit Analysis

Because 10 CFR part 20 applies to all NRC licensees, any changes to this part must be evaluated to determine if these changes constitute backfitting for reactor licensees such that the provisions of 10 CFR 50.109 apply. The following discussion addresses that evaluation.

The 10 CFR 50.109 definition of ''Backfit'' includes any modification of the procedures required to operate a facility resulting from an amended provision in the Commission's rules. Because this rule will permit but not require nuclear power reactor licensees to modify their procedures regarding the frequency of respiratory medical examinations, the NRC staff believes that the change does not constitute a backfit. In addition, the effect of these changes is to increase flexibility and reduce the frequency at which medical examinations for respiratory use are required. It is estimated that this rule change will save the nuclear power industry and other NRC and State licensees several million dollars per year with no adverse impact on worker health and safety.

Some minor changes in procedures or license conditions will be necessary if a more flexible frequency of examination is adopted. However, the costs will be offset by the savings in reduced frequency of examination. Thus, the NRC believes that the modifications are not backfits. No comments were received on this issue during the public comment period for the proposed rule.

List of Subjects 10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

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 amendments to 10 CFR part 20.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2282); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. In § 20.1703, the introductory text of paragraphs (a) and (a)(3) is restated and paragraph (a)(3)(v) is revised to read as follows:

§ 20.1703 Use of individual respiratory protection equipment.

(a) If the licensee uses respiratory protection equipment to limit intakes pursuant to § 20.1702—

* * * * *

(3) The licensee shall implement and maintain a respiratory protection program that includes—

* * * * *

(v) Determination by a physician prior to the initial fitting of respirators, and either every 12 months thereafter or periodically at a frequency determined by a physician, that the individual user is medically fit to use the respiratory protection equipment.

* * * * *

Dated at Rockville, Maryland, this 1st day of February 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–3372 Filed 2–9–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 95–02]

RIN 1557–AB14

Capital Adequacy: Deferred Tax Assets

AGENCIES: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its capital adequacy rules with respect to deferred tax assets. This final rule limits the amount of certain deferred tax assets that a bank may include in Tier 1 capital for risk-based capital and leverage capital purposes.

The OCC, in consultation with the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Thrift Supervision (OTS) (banking agencies), developed this final rule in response to the Financial Accounting Standards Board's (FASB) issuance of Statement of Financial Accounting Standards No. 109, ''Accounting for Income Taxes'' (FAS 109), in February 1992. The banking agencies adopted the provisions of FAS 109 for reporting in quarterly Consolidated Reports of Condition and Income (Call Reports) beginning January 1, 1993. This reporting change increased the amount of net deferred tax assets that a bank may record on its balance sheet. This final rule will ensure that national banks do not place excessive reliance on deferred tax assets to satisfy the minimum capital adequacy requirements.

EFFECTIVE DATE: April 1, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas G. Rees, Professional Accounting Fellow, Office of the Chief National Bank Examiner, (202) 874–5180; Eugene W. Green, Deputy Chief Accountant, Office of the Chief National Bank Examiner, (202) 874–5180; Roger Tufts, Senior Economic Advisor, Office of the Chief National Bank Examiner, (202) 874–5070; Ronald Shimabukuro, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

In February 1992, the FASB issued FAS 109. FAS 109 provides guidance on how to account for income taxes, including deferred tax assets, and was effective for fiscal years beginning on or after December 15, 1992. FAS 109 generally allows a bank to report certain deferred tax assets it could not previously recognize, which has the effect of increasing bank capital levels. Consequently, the OCC and the other banking agencies were concerned about the impact of the change on the financial institutions they regulate, especially regarding their reported capital levels.

FAS 109—Deferred tax assets are assets that reflect, for financial reporting purposes, the benefits of certain aspects of tax laws and rules. Under FAS 109, a bank reports deferred tax assets that arise from: (1) Tax carryforwards, and (2) deductible temporary differences. Tax carryforwards are deductions or credits that a bank cannot use for current tax purposes, but may carry forward to reduce taxable income or income taxes payable in a future period