government share of your FEHB coverage. Your coverage will be based on your status as an active employee and your employing agency will deduct your premiums from your salary.

(2) If you elect to waive participation in premium conversion, you will keep your FEHB coverage as an annuitant, but your contributions towards yourFEHB premiums will be made on an after-tax basis. Your employing agency must receive your waiver no later than 60 days after the date you return to Federal employment. A waiver will be effective at the beginning of the first pay period after your employer receives it.

(c) If you did not carry FEHB into retirement and you are reemployed as an employee in a position covered by the premium conversion plan, you may enroll in the FEHB Program as a new employee as described in § 890.301 of this chapter. Upon enrolling in FEHB, you are automatically covered by the premium conversion plan, unless you waive participation as described in § 892.205.

(d) Your status as an annuitant under the retirement regulations and your right to continue FEHB as an annuitant following your period of reemployment is unaffected.

[FR Doc. 00–18209 Filed 7–14–00; 3:19 pm]

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 2 and 50

**RIN 3150 AG38**

### Antitrust Review Authority: Clarification

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission is clarifying its regulations to reflect more clearly its limited antitrust review authority by explicitly limiting the types of applications that must include antitrust information. Specifically, because the Commission is not authorized to conduct antitrust reviews of post-operating license transfer applications, or at least is not required to conduct this type of review and has decided that it no longer will conduct them, no antitrust information is required as part of a post-operating license transfer application. Because the current regulations do not clearly specify which types of applications are not subject to antitrust review, these clarifying amendments will bring the regulations into conformance with the Commission's limited statutory authority to conduct antitrust reviews.

**EFFECTIVE DATE:** This final rule is effective August 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jack R. Goldberg, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–1681; e-mail JRG1@nrc.gov.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In a license transfer application filed on October 27, 1998, by Kansas Gas and Electric Company (KGE) and Kansas City Power and Light Company (KCP&L) (Applicants), Commission approval pursuant to 10 CFR 50.80 was sought of a transfer of the Applicants' possession-only interests in the operating license for the Wolf Creek Generating Station, Unit 1, to a new company, Westar Energy, Inc. Wolf Creek is jointly owned by the Applicants, each of which owns an undivided 47 percent interest. The remaining 6 percent interest is owned by Kansas Electric Power Cooperative, Inc. (KEPCo). The Applicants requested that the Commission amend the operating license for Wolf Creek pursuant to 10 CFR 50.90 by deleting KGE and KCPL as licensees and adding Westar Energy in their place. KEPCo opposed the transfer on antitrust grounds, claiming that the transfer would have anticompetitive effects and would result in ''significant changes'' in the competitive market. KEPCo petitioned the Commission to intervene in the transfer proceeding and requested a hearing, arguing that the Commission should conduct an antitrust review of the proposed transfer under section 105c of the Atomic Energy Act, 42, U.S.C. 2135(c). Applicants opposed the petition and request for a hearing.

By Memorandum and Order dated March 2, 1999, CLI–99–05, 49 NRC 199 (1999), the Commission indicated that although its staff historically has performed a ''significant changes'' review in connection with certain kinds of license transfers, it intended to consider in the Wolf Creek case whether to depart from that practice and ''direct the NRC staff no longer to conduct significant changes reviews in license transfer cases, including the current case.'' In deciding this matter, the Commission stated that it expected to consider a number of factors, including its statutory mandate, its expertise, and its resources. Accordingly, the Commission directed the Applicants and KEPCo to file briefs on the single question: ''whether as a matter of law or policy the Commission may and should eliminate all antitrust reviews in connection with license transfers and therefore terminate this adjudicatory proceeding forthwith.'' *Id.* at 200.

Because the issue of the Commission's authority to conduct antitrust reviews of license transfers is of interest to, and affects, more than only the parties directly involved in, or affected by, the proposed Wolf Creek transfer, the Commission in that case invited *amicus curiae* briefs from ''any interested person or entity.'' CLI–99–05, 49 NRC at 200, n.1. (Briefs on the issue subsequently were received from a number of nonparties.) In addition, widespread notice of the Commission's intent to decide this matter in the Wolf Creek proceeding was provided by publishing that order on the NRC's web site and in the **Federal Register** (64 FR 11069; March 8, 1999), and also by sending copies to organizations known to be active in or interested in the Commission's antitrust activities. *Id.*

After considering the arguments presented in the briefs, and based on a thorough *de novo* review of the scope of the Commission's antitrust authority, the Commission concluded that the structure, language, and history of the Atomic Energy Act do not support its prior practice of conducting antitrust reviews of post-operating license transfers. The Commission stated:

> It now seems clear to us that Congress never contemplated such reviews. On the contrary, Congress carefully set out exactly when and how the Commission should exercise its antitrust authority, and limited the Commission's review responsibilities to the anticipatory, prelicensing stage, prior to the commitment of substantial licensee resources and at a time when the Commission's opportunity to fashion effective antitrust relief was at its maximum. The Act's antitrust provisions nowhere even mention post-operating license transfers.
>
> The statutory scheme is best understood, in our view, as an implied prohibition against additional Commission antitrust reviews beyond those Congress specified. At the least, the statute cannot be viewed as a requirement of such reviews. In these circumstances, and given what we view as strong policy reasons against a continued expansive view of our antitrust authority, we have decided to abandon our prior practice of conducting antitrust reviews of post-operating license transfers. * * .
>
> Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), CLI–99–19, 49 NRC 441, 446 (1999) (Wolf Creek).

## II. Discussion

The Commission's decision in Wolf Creek was based on a thorough consideration of the documented

purpose of Congress's grant of limited antitrust authority to the NRC's predecessor, the Atomic Energy Commission, the statutory framework of that authority, the carefully-crafted statutory language, and the legislative history of the antitrust amendments to the Atomic Energy Act. The Commission's Wolf Creek decision explained that, in eliminating the theretofore government monopoly over atomic energy, Congress wished to provide incentives for its further development for peaceful purposes but was concerned that the high costs of nuclear power plants could enable the large electric utilities to monopolize nuclear generating facilities to the anticompetitive harm of smaller utilities. Therefore, Congress amended the Atomic Energy Act to provide for an antitrust review in the prelicensing stages of the regulatory licensing process. Congress focused its grant of antitrust review authority on the two steps of the Commission's licensing process: The application for the facility's construction permit and the application for the facility's initial operating license. It is at these early stages of the facility's licensing that the Commission historically was believed by Congress to be in a unique position to remedy a situation inconsistent with the antitrust laws by providing ownership access and related bulk power services to smaller electric systems competitively disadvantaged by the planned operation of the nuclear facility. Congress emphasized that the Commission's review responsibilities were to be exercised at the anticipatory, prelicensing stages prior to the commitment of substantial licensee resources and at a time when the Commission's opportunity to fashion effective relief was at its maximum. See Wolf Creek at 446–448.

The Commission next focused on the structure and language of its antitrust review authority found exclusively in section 105 of the Atomic Energy Act, 42 U.S.C. 2135. Section 105c provides for a mandatory and complete antitrust review at the construction permit phase of the licensing process when all entities who might wish ownership access to the nuclear facility and who are in a position to raise antitrust concerns are able to seek an appropriate licensing remedy from the Commission prior to actual operation of the facility. The construction permit antitrust review contrasts markedly from the only other review authorized by the statute. Specifically, section 105c explicitly provides that the antitrust review provisions ''shall not apply'' to an application for an operating license unless ''significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review * * * in connection with the construction permit for the facility.'' Section 105c.(2). Following this more limited and conditional review prior to initial operation of the facility, Section 105 makes clear that traditional antitrust forums are available to consider asserted anticompetitive conduct of Commission licensees, which are not relieved of operation of the antitrust laws. Section 105a, b. Further, if any Commission licensee is found to have violated any antitrust law, the Commission has the authority to take any licensing action it deems necessary. Section 105a. *See id.* at 447–452.

After describing this statutory framework and structure, the Commission then closely examined the language of its statutory antitrust review authority. The Commission found that it focused on only two types of applications, namely those for a construction permit and those for an initial operating license, but not for other types of applications explicitly mentioned in Section 103 of the Atomic Energy Act, such as applications to ''acquire'' or ''transfer'' a license. Even if an application to transfer an operating license were considered an application for an operating license for the transferee, the Commission found that the specific ''significant changes'' review process mandated by Section 105 does not lend itself to an antitrust review of post-operating license transfer applications. The Commission noted that its past practice of conducting ''significant changes'' reviews of post-operating license transfer applications did not use the construction permit review as the benchmark for comparison as mandated by Section 105, but instead examined whether there were significant changes compared with the previous *operating license review.* Like the statutory framework, the statutory language was found to be inconsistent with authorization to conduct post-operating license antitrust reviews and certainly could not be found to support a required review at that time. See id. at 452–456.

Finally, the Commission reviewed the legislative history of the antitrust amendments. It found that the Joint Committee on Atomic Energy, in its authoritative report on the Commission's prelicensing antitrust authority, explicitly clarified the scope of the terms ''license application'' and ''application for a license'' in the language which was enacted as Section 105. The Commission stated:

> In its Report, the Joint Committee [11] made clear that the term ''license application'' referred only to applications for construction permits or operating licenses filed as part of the ''initial'' licensing process for a new facility not yet constructed, or for modifications which would result in a substantially different facility:
>
> The committee recognizes that applications may be amended from time to time, that there may be applications to extend or review [sic-renew] a license, and also that the form of an application for construction permit may be such that, from the applicant's standpoint, it ultimately ripens into the application for an operating license. The phrases ''any license application'', ''an application for a license'', and ''any application'' as used in the clarified and revised subsection 105 c. refer to the initial application for a construction permit, the initial application for an operating license, or the initial application for a modification which would constitute a new or substantially different facility, as the case may be, as determined by the Commission. The phrases do not include, for purposes of triggering subsection 105 c., other applications which may be filed during the licensing process.

[11] The Joint Committee Report is the best source of legislative history of the 1970 amendments. *See Alabama Power Co.* v. *NRC*, 692 F.2d, 1362, 1368 (11th Cir. 1982). The Report was considered by both houses in their respective floor deliberations on the antitrust legislation and is entitled to special weight because of the Joint Committee's ''peculiar responsibility and place * * * in the statutory scheme.'' *See Power Reactor Development Co.* v. *International Union*, 367 U.S. 396, 409 (1961).

See id. at 458, quoting Report By The Joint Committee On Atomic Energy: Amending The Atomic Energy Act of 1954, As Amended, To Eliminate The Requirement For A Finding Of Practical Value, To Provide For Prelicensing Antitrust Review Of Production And Utilization Facilities, And To Effectuate Certain Other Purposes Pertaining To Nuclear Facilities, H.R. Rep. No. 91–1470 (also Rep. No. 91–1247), 91st Cong., 2nd Sess., at 29 (1970), 3 U.S. Code and Adm. News 4981 (1970) (''Joint Committee Report'') (*quoting* from legislative history of 1954 Act).

In summary, the Commission concluded that neither the language of the Commission's statutory authority to conduct antitrust reviews nor its legislative history support any authority to perform antitrust reviews of post-operating license transfer applications and certainly cannot be interpreted to require such reviews.

The Commission's Wolf Creek decision is published in its entirety at 64 FR 33916, June 24, 1999, and in the NRC Issuances at 49 NRC 441 (1999).

Because of the Commission's past practice of conducting antitrust reviews of license transfer applications, including those at the post-operating license stage of the regulatory process, the Commission in the Wolf Creek case also closely examined its rules of practice to determine whether they required or warranted revision to conform to its decision in the Wolf Creek decision. The Commission concluded that, notwithstanding its past interpretation of its rules as being consistent with an antitrust review of all transfer applications, including those involving post-operating license transfers, the rules themselves do not explicitly mandate such reviews. *Id.* at 462, 467.

The Commission's practice has been to perform a ''significant changes'' review of applications to directly transfer section 103 construction permit and operating licenses to a new entity, including those applications for post-operating license transfers. While the historical basis for such reviews in the case of post-operating license transfer applications remains cloudy—it does not appear that the Commission ever explicitly focused on the issue of whether such reviews were authorized or required by law, but instead apparently assumed that they were [14]—the reasons, even if known, would have to yield to a determination that such reviews are not authorized by the Act. *See American Telephone & Telegraph Co.* v. *FCC*, 978 F.2d 727, 733 (D.C. Cir. 1992). We now in fact have concluded, upon a close analysis of the Act, that Commission antitrust reviews of post-operating license transfer applications cannot be squared with the terms or intent of the Act and that we therefore lack authority to conduct them. But even if we are wrong about that, and we possess some general residual authority to continue to undertake such antitrust reviews, it is certainly true that the Act nowhere requires them, and we think it sensible from a legal and policy perspective to no longer conduct them.

It is well established in administrative law that, when a statute is susceptible to more than one permissible interpretation, an agency is free to choose among those interpretations. *Chevron*, 467 U.S. at 842–43. This is so even when a new interpretation at issue represents a sharp departure from prior agency views. *Id.* at 862. As the Supreme Court explained in *Chevron*, agency interpretations and policies are not ''carved in stone'' but rather must be subject to re-evaluations of their wisdom on a continuing basis. *Id.* at 863–64. Agencies ''must be given ample latitude to 'adapt its rules and policies to the demands of changing circumstances.' '' *Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 42 (1983), *quoting Permian Basin Area Rate Cases*, 390 U.S. 747, 784 (1968). An agency may change its interpretation of a statute so long as it justifies its new approach with a ''reasoned analysis'' supporting a permissible construction. *Rust* v. *Sullivan*, 500 U.S. 173, 186–87 (1991); *Public Lands Council* v. *Babbit*, 154 F.3d 1160, 1175 (10th Cir. 1998); *First City Bank* v. *National Credit Union Admin Bd.*, 111 F.3d 433, 442 (6th Cir. 1997); *see also Atchison, T. & S. F. Ry. Co.* v. *Wichita Bd. of Trade*, 412 U.S. 800, 808 (1973); *Hatch* v. *FERC*, 654 F.2d 825, 834 (D.C. Cir. 1981); *Greater Boston Television Corp.* v. *FCC*, 444 F.2d 841, 852 (D.C. Cir. 1971).

We therefore give due consideration to the Commission's established practice of conducting antitrust reviews of post-operating license transfer applications but appropriately accord little weight to it in evaluating anew the issue of Section 105's scope and whether, even if such reviews are authorized by an interpretation of Section 105, they should continue as a matter of policy. Moreover, as we noted above, the Commission's actual practice of reviewing license transfer applications for significant changes is on its face inconsistent with the statutory requirement regarding how significant changes must be determined. The fact that the statutory method does not lend itself to post-operating license transfer applications, while the different one actually used does logically apply, also must be considered and suggests that such a review is not required by the plain language of the statute and was never intended by Congress.

In support of the arguments advanced in KEPCo's briefs and some of the amicus briefs that the Commission must conduct antitrust reviews of transfer applications, various NRC regulations and guidance are cited. Just as the Commission's past practices cannot justify continuation of reviews unauthorized by statute, neither can regulations or guidance to the contrary. Before accepting the argument that our regulations require antitrust reviews of post-operating license transfer applications, however, they warrant close consideration.

Section 50.80 of the Commission's regulations, 10 CFR § 50.80, ''Transfer of licenses,'' provides, in relevant part:

(b) An application for transfer of a license shall include [certain technical and financial information described in §§ 50.33 and 50.34 about the proposed transferee] as would be required by those sections if the application were for an initial license, and, if the license to be issued is a class 103 license, the information required by § 50.33a.

Section 50.33a, ''Information requested by the Attorney General for antitrust review,'' which by its terms applies only to applicants for construction permits, requires the submittal of antitrust information in accordance with 10 CFR part 50, Appendix L. Appendix L, in turn, identifies the information ''requested by the Attorney General in connection with his review, pursuant to section 105c of the Atomic Energy Act of 1954, as amended, of certain license applications for nuclear power plants.'' ''Applicant'' is defined in Appendix L as ''the entity applying for authority to construct or operate subject unit and each corporate parent, subsidiary and affiliate.'' ''Subject unit'' is defined as ''the nuclear generating unit or units for which application for construction or operation is being made.'' Appendix L does not explicitly apply to applications to transfer an operating license.

KEPCo argues that the § 50.80(b) requirement, in conjunction with the procedural requirements governing the filing of applications discussed below, requires the submittal of antitrust information in support of post-operating license transfer applications and that the Wolf Creek case cannot lawfully be dismissed without a ''significant changes'' determination. *See* KEPCo Brief at 11. While we agree that § 50.80 may imply that antitrust information is required for purposes of a ''significant changes'' review, linguistically it need not be read that way. The Applicants plausibly suggest that the phrase ''the license *to be* issued'' could be interpreted to apply only to entities that have not yet been issued an initial license. *See* App. Brief at 11.[15] Moreover, neither this regulation nor any other states the purpose of the submittal of antitrust information. For applications to construct or operate a proposed facility, it is clear that § 50.80(b), in conjunction with § 50.33a and Appendix L, requires the information specified in Appendix L for purposes of the section 105c antitrust review, for construction permits, and for the ''significant changes'' review for operating licenses. But for applications to transfer an existing operating license, there are other section 105 purposes which could be served by the information. Such information could be useful, for example, in determining the fate of any existing antitrust license conditions relative to the transferred license, as well as for purposes of the Commission's section 105b responsibility to report to the Attorney General any information which appears to or tends to indicate a violation of the antitrust laws.

While we acknowledge that information submitted under § 50.80(b) has not been used for these purposes in the past, and has instead been used to develop ''significant changes'' findings, the important point is that § 50.80(b) is simply an information submission rule. It does not, in and of itself, mandate a ''significant changes'' review of license transfer applications. No Commission rule imposes such a legal requirement. Nonetheless, in conjunction with this decision, we are directing the NRC staff to initiate a rulemaking to clarify the terms and purpose of § 50.80(b).[16]

KEPCo also argues that the Commission's procedural requirements governing the filing of license applications supports its position that antitrust review is required in this case. *See* KEPCo Brief at 11–13. The Applicants disagree, arguing that nothing in those regulations states that transfer applications will be subject to antitrust reviews. *See* App. Reply Brief at 3. For the same reasons we believe that the specific language in section 105c does not support antitrust review of post-operating license transfer applications, we do not read our procedural requirements to indicate that there will be an antitrust review of transfer applications. Indeed, the language in 10 CFR 2.101(e)(1) regarding operating license applications under section 103 tracks closely the process described in section 105c. As stated in 10 CFR 2.101(e)(1), the purpose of the antitrust information is to

[14] ???????

enable the staff to determine ''whether significant changes in the licensee's activities or proposed activities have occurred since the completion of the *previous antitrust review in connection with the construction permit.''* (Emphasis added.) As explained above, this description of the process for determining ''significant changes'' is consistent with an antitrust review of the initial operating license application for a facility but wholly inconsistent with an antitrust review of post-operating license transfer applications.

[14] Until recently, the Commission's staff applied the ''significant changes'' review process to both ''direct'' and ''indirect'' transfers. Indirect transfers involve corporate restructuring or reorganizations which leave the licensee itself intact as a corporate entity and therefore involve no application for a new operating license. The vast majority of indirect transfers involve the purchase or acquisition of securities of the licensee (*e.g.,* the acquisition of a licensee by a new parent holding company). In this type of transfer, existing antitrust license conditions continue to apply to the same licensee. The Commission recently did focus on antitrust reviews of indirect license transfer applications and approved the staff's proposal to no longer conduct ''significant changes'' reviews for such applications because there is no effective application for an operating license in such cases. *See* Staff Requirements Memorandum (November 18, 1997) on SECY–97–227, Status Of Staff Actions On Standard Review Plans For Antitrust Reviews And Financial Qualifications And Decommissioning-Funding Assurance Reviews.

[15] This reading is consistent with the history of section 50.80(b). Its primary purpose appears to have been to address transfers which were to occur before issuance of the initial (original) operating license, transfers which unquestionably fall within the scope of section 105c. *See Detroit Edison Company* (Enrico Fermi Atomic Power Plant, Unit No. 2), LBP–78–13, 7 NRC 583, 587–88 (1978). When § 50.80(b) was revised in 1973 to require submission of the antitrust information specified in section 50.33a, the stated purpose was to obtain the ''*prelicensing* antitrust advice by the Attorney General.'' 38 FR 3955, 3956 (February 9, 1973) (emphasis added).

[16] In one important respect the language of § 50.80(b), quoted above, in fact supports the Commission's analysis of section 105 and its legislative history. The phrase ''if the application were for an *initial license''* certainly demonstrates that, consistent with the clearly intended focus of section 105c on antitrust reviews of applications for initial licenses, the Commission has long distinguished initial operating license applications from license transfer applications. Be that as it may, clarification of § 50.80(b) will be appropriate in the wake of our decision that our antitrust authority does not extend to antitrust reviews of post-operating license transfer applications.

Id. at 459–463 (footnotes in original).

Indeed, after considering the various interpretations of the rules advanced by the parties and *amici curiae* in the Wolf Creek proceeding, the Commission concluded: ''Not one comma of the Commission's current regulations need be changed in the wake of a cessation of such reviews, although because of the NRC's past practice of conducting such reviews, we have decided that clarification of our rules is warranted.'' *Id.* at 467. Therefore, the Commission directed that the rules be clarified ''by explicitly limiting which types of applications must include antitrust information,'' *Id.* at 463, and that Regulatory Guide 9.3, ''Information Needed by the AEC Regulatory Staff in Connection with Its Antitrust Review of Operating License Applications for Nuclear Power Plants,'' and NUREG–1574, ''Standard Review Plan on Antitrust Reviews,'' also be clarified.

On November 3, 1999 (64 FR 59671), the Commission published for comment a proposed rule to clarify its regulations consistent with its Wolf Creek decision. Substantive and timely comments were received from (1) the law firm of Akin, Gump, Strauss, Hauer & Feld, on behalf of the FirstEnergy Nuclear Operating Company (FENOC), the licensed operator of the Perry, Davis-Besse, and Beaver Valley nuclear power plants, for the subsidiary owners of those facilities, namely Ohio Edison Company, The Cleveland Electric Illuminating Company, the Toledo Edison Company, and Pennsylvania Power Company, (2) the Nuclear Energy Institute (NEI), on behalf of the nuclear energy industry, (3) the law firm of ShawPittman on behalf of Western Resources, Inc., Kansas Gas and Electric Company, Wisconsin Electric Power Company, Public Service Electric and Gas Company, and Rochester Gas and Electric Corporation (ShawPittman Utilities), (4) Florida Power & Light Company (FPL), the owner and operator of the St. Lucie and Turkey Point nuclear power plants, (5) the law firm of Spiegel & McDiarmid, on behalf of the American Public Power Association, the City of Cleveland, Ohio, the Florida Municipal Power Agency, the City of Gainesville, Florida, Public Citizen, and the American Antitrust Institute (collectively APPA), and (6) Florida Power Corporation. In addition, late comments were received from (7) Jonathon M. Block on behalf of Citizens Awareness Network, Inc. (CAN).

## III. Summary and Analysis of Public Comments

All commenters, except for APPA and CAN, support the Commission's initiative, reflected in the proposed rule, to clarify its regulations regarding the submission of antitrust information so the rules are consistent with the Commission's limited antitrust review authority. All commenters, except for APPA and CAN, endorsed the adoption of the changes to the regulations exactly as proposed. There were no suggestions for different or additional changes. APPA and CAN did not suggest specific alternative rule changes other; they oppose the rule in its entirety.

FENOC emphasized that the Commission's antitrust authority in section 105 of the Atomic Energy Act is specific, not plenary, and that the Commission's Wolf Creek decision appropriately characterized the ''progressively diminishing role'' that Congress intended for the Commission on antitrust matters from the construction permit phase of licensing to the operating license stage, with no review authority granted for post-operating license transfers. FENOC stated that NRC regulations do not require any antitrust reviews in license transfer cases, and that any such review would be duplicative (''redundant and unnecessary'') in light of other express federal governmental antitrust authorities.

NEI believes that the Commission was correct in reconsidering its antitrust authority and that the structure, language and history of the Atomic Energy Act support the Commission's conclusion that antitrust reviews should not be conducted in operating license transfer cases. NEI stated that the approach taken by the Commission to eliminate any ambiguities in its regulations regarding antitrust reviews is sound and should be adopted. NEI also believes that the Commission should initiate a ''separate effort'' to develop guidelines for the disposition of existing antitrust license conditions in license transfer cases.

The ShawPittman Utilities support the Commission's proposed rule clarifying its antitrust authority and, based on both legal and sound public policy justifications, urged the Commission to adopt the revisions set forth in the proposed rule. The ShawPittman Utilities agree with the Commission that the Atomic Energy Act does not authorize the Commission to perform antitrust reviews of license transfer applications, and that such reviews, if authorized, would be ''an inefficient, unnecessary, and duplicative use of the Commission's resources.''

FPL agrees with the Commission's Wolf Creek decision that its limited antitrust authority does not extend to operating license transfer applications and urges the Commission to issue a final rule as proposed. FPL further

encouraged the Commission continue its efforts to seek legislation to divest itself from all antitrust authority. FPL commended the Commission for its willingness and open-minded approach to reconsider its antitrust authority and practices and believes that this will contribute to streamlining agency practices and will result in a more efficient NRC, which in turn will improve its mission to protect the public health and safety.

Florida Power Corporation endorses the comments on the proposed rule submitted by the Nuclear Energy Institute.

APPA believes that the Wolf Creek decision is at odds with a prior Commission antitrust decision, Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit No. 2), LBP–78–13, 7 NRC 583, aff'd, ALAB–475, 7 NRC 752 (1978) (Fermi), which held that an antitrust review is required when an applicant is added to a construction permit. APPA believes that there is difficulty interpreting the Atomic Energy Act's antitrust review provisions regarding post-operating license transfers but that the Commission's analysis in Wolf Creek is erroneous. APPA also believes that, even if the Commission's statutory analysis in Wolf Creek is correct, the Commission plainly would err if it eliminates antitrust filing requirements for license transfers involving existing antitrust license conditions and that there is no reasoned basis to eliminate antitrust filings in such circumstances. Finally, APPA believes that if the language of section 105c is sufficiently ambiguous to permit more than one interpretation, the Commission erred by concluding that, considering other federal antitrust authorities, its antitrust review authority is superfluous.

CAN believes that the Commission's proposed rule unlawfully purports to change the substance of the Atomic Energy Act and should be withdrawn in favor of seeking legislative changes from Congress. CAN believes that the purpose of the Commission's antitrust authority in section 105 of the Atomic Energy Act, in conjunction with the inalienability of licenses provided in section 184, is to prevent regulatory gaps in the approval of highly dangerous activities, and that the proposed rule would undermine that purpose. CAN mentions the possibility of multiplied dangers if licensees cannot meet financial obligations, cost cutting by nuclear power plant owners in a competitive environment, potentially serious accidents triggered by overtime patterns, and foreign ownership of nuclear power plants, as well as increased regulatory burdens on the NRC, resulting in an inability of the NRC to inspect large-scale licensees for health and safety violations. CAN asserts that the NRC has failed to evaluate the health and safety and national security consequences of the proposed rule and also has failed to evaluate the environmental impacts of the proposed rule, in violation of the National Environmental Policy Act.

The commenters can be divided into two categories: Those who support a final rule identical to the proposed rule and those who oppose the rule in its entirety and would have the Commission leave in place the current antitrust information reporting requirements (or at least leave them in place for transfers involving nuclear power plants with existing antitrust license conditions). Since no commenter suggested any alternative provisions or language to what was proposed by the Commission, the decision for the Commission is whether the comments opposed to the rule as proposed warrant withdrawal of the proposed rule (or leaving the current reporting requirement in place for transfers involving existing antitrust conditions). For the reasons explained below, the Commission does not believe its analysis of its statutory antitrust review authority is flawed or that, if it has authority but is not required to conduct antitrust reviews of post-operating license transfers, its reasons for discontinuing such reviews are unsound as a matter of law or policy. The Commission therefore agrees with the commenters who support the rule and disagrees with the comments opposing the rule, which are addressed in detail.

*Comment:* APPA asserts that the Commission's Wolf Creek decision on the limits of its antitrust review authority is wrong and at odds with a prior Commission decision involving the Fermi nuclear plant. See Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit No. 2), LBP–78–13, 7 NRC 583, aff'd, ALAB–475, 7 NRC 752 (1978) (Fermi). APPA states that Fermi ''holds that antitrust review is required when an applicant is added to a construction permit. By departing from its Fermi analysis without explanation, the Commission also fails to construe the Atomic Energy Act in light of the express statutory purpose of promoting competition.'' APPA comments at 3 (emphasis in original).

*Response:* The Commission was mindful of the Fermi decision when it decided the Wolf Creek case. See, *e.g.,* Wolf Creek at 462 n.15. See also the November 3, 1999, proposed rule, 64 FR 59673. As noted in Wolf Creek, none of the Commission's prior adjudicatory decisions (nor any other Commission issuances) explicitly addressed the Commission's authority to conduct antitrust reviews of post-operating license transfers. *Id.* at 450 n.4. At most, the prior antitrust adjudicatory decisions reflect an assumption on the part of the Commission that it had such authority. In part, for that reason, the Commission carefully focused on its post-operating license antitrust review authority for the first time in Wolf Creek.

The Fermi case involved an application by Detroit Edison Company (the licensee) for an amendment to its *construction permit* for the Fermi nuclear plant to add the Northern Michigan Electric Cooperative, Inc. and the Wolverine Electric Cooperative, Inc. as minority co-owners. The licensee moved to dismiss on the grounds, *inter alia,* that the NRC's Licensing Board had no jurisdiction to conduct an antitrust review of such an application since a construction permit review already had been conducted and no further review was provided by section 105c unless there was a finding of significant changes at the operating license stage. The Licensing Board reasoned that the statutory language in section 105c ''does not answer the question as to the effect of a proposed amendment to an original *construction permit* to add new co-owners.'' Fermi, LBP–78–13, 7 NRC 583, 587 (emphasis added). The Board, relying on the Commission's South Texas decision, Houston Lighting and Power Company (South Texas Project, Unit Nos. 1 and 2), CLI–77–13, 5 NRC 1303 (1977), emphasized the importance of a '' 'thorough' and 'in-depth' antitrust review at the *construction permit stage,* so that 'once an initial, full antitrust review has been performed, only 'significant changes' warrant reopening.'' LBP–78–13, 7 NRC at 588 (emphasis added), quoting South Texas, 5 NRC at 1310, 1312, 1317. The Board concluded that the two cooperatives' application to become co-licensees was their initial application for a construction permit and therefore subject to the *construction permit* stage antitrust review.

It is clear beyond any question that the Fermi case did not involve or address in any respect the Commission's antitrust review authority over applications to transfer operating licenses, cases where there already had been a construction permit review and a significant changes review. Fermi involved not the post-operating license time frame but the pre-initial operating license, construction phase, where, as Wolf Creek made clear, Congress

carefully focused the Commission's antitrust authority. Wolf Creek analyzed this limitation on the Commission's antitrust authority from the perspective of both the statutory language and its legislative history. The Board's *holding* in Fermi is consistent with the Wolf Creek *decision.*

A careful reading of APPA's comments suggests that not even APPA disagrees with this, and its comments are instructive as much for what they do not say as for what they do. APPA does not assert (as it reasonably could not) that Fermi addressed and resolved the Commission's post-operating license antitrust review authority, and that the Wolf Creek holding is contrary to that of Fermi. APPA says only that Wolf Creek departs from the Fermi ''analysis'' (APPA comments at 3) and ''rationale'' (APPA Comments at 17) without explanation. This refers to the Licensing Board's reasoning that the cooperatives' applications ''constitute *their* ''initial application for a construction permit.'' LBP–78–13, 7 NRC at 588 (emphasis in original). APPA criticizes the Wolf Creek decision for departing from this rationale with no explanation. Extrapolating that rationale to post-operating license transfers, of course, would result in considering the prospective transferees as applicants for *their* initial operating licenses and thus subject to the Section 105c ''significant changes'' review, contrary to the decision in Wolf Creek.

There are two responses to this argument. First, the Commission did not fail to address this reasoning in its Wolf Creek decision. The Commission explicitly considered whether the language of section 105c could accommodate construing the post-operating license transfer application as an application for an operating license and found that it could not. See Wolf Creek at 454–56. So, while the Fermi Licensing Board's reasoning led it to a result for new *construction permit licensees* which was consistent with section 105's language and legislative history, similar reasoning was shown in Wolf Creek to be incompatible with the language and legislative history of section 105's operating license review provisions, and also was shown to be flawed as a practical matter and when measured against the Commission's past practices. Id. at 451–52, 454–59. Second, a rationale suitable to interpreting one provision of a statute—construction permit antitrust reviews—in a manner which is supported by the statutory language and its legislative history cannot be used to interpret another provision—post-operating license antitrust reviews—if it cannot be reconciled with the statutory language and Congressional intent. The Commission's Wolf Creek's decision explains why the rationale used in Fermi does not work for post-operating license transfers (actually a step removed from the initial operating license reviews for the facility contemplated by Congress).

One final comment in response to APPA's comment that Wolf Creek inexplicably departs from the Fermi decision. The Fermi Licensing Board's threshold ruling that it had jurisdiction to consider antitrust issues associated with the addition of new construction permit applicants was affirmed by the Commission's Appeal Board. The Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB–475, 7 NRC 752, 755 n.7 (1978). (The Commission explicitly noted its agreement with this result in Wolf Creek at 362 n.15.) It is not clear, however, that the Appeal Board endorsed the Licensing Board's rationale that APPA urges the Commission now adopt. The Appeal Board in Fermi devoted only one footnote of its opinion to the issue of the Commission's antitrust review authority for the addition of new construction permit applicants and found it ''sufficient simply to note our *essential agreement with the decision on this point.*'' *Id.* (emphasis added). What this means with respect to the Appeal Board's opinion of the Licensing Board's *reasoning* is and must remain a matter of speculation. It does suggest, however, something less than full agreement with everything the Licensing Board said on the issue and literally may reflect only ''essential agreement'' with the *decision* and little or no agreement with the *rationale.* Be that as it may, as explained above, the Commission addressed this rationale in its Wolf Creek decision and found it unsound for determining its antitrust review authority over post-operating license transfers.

APPA states that ''there is a difficulty in interpreting the statute to require a 'significant changes' review'' for post-operating license transfers, but the Commission erred in its analysis and its conclusion that the statute does not require such reviews. APPA Comments at 15. APPA offers this analysis:

> It is obvious that there can be no ''significant changes'' review of the activities of a transferee that is new to an operating license, because there was no prior review against which to measure changes. With respect to a transfer of a license to a new entity, the Commission rejects a forced interpretation of the statute as require [sic] a significant changes review and concludes that therefore no antitrust review is called for. This is not reasonable. Rather, with respect to a new license, the application for transfer is properly viewed as not falling within the proviso of section 105c(2) *at all.* That is, such a transfer application is *not* an application for a license to operate a facility for which a construction permit was issued, because the applicant in question was never issued a construction permit.
>
> This construction of section 105c(2) as focusing on the *applicant* rather than the *facility* eliminates the difficulty that was fastened upon by the Commission in Wolf Creek. * * *
>
> By the logic of Fermi, then, a transfer of an operating license to an entity that was not previously a licensee is an *initial* application for an operating license not preceded by a construction permit, and therefore an antitrust review is necessary. This avoids the linguistic difficulties that the Commission noted in Wolf Creek.

APPA Comments at 15–17 (emphasis in original). The Commission has several responses to this argument.

First, as the Commission explained in Wolf Creek, the language of the statute, as well as its legislative history, undeniably focuses on *certain applications* for licenses for production or utilization *facilities.* See generally Wolf Creek at 448–59. For a given facility, the applications for which section 105c requires an antitrust review are applications for construction permits and applications for operating licenses. Post-operating license transfers are certainly not applications for a construction permit, so to be within the scope of the antitrust review requirements of section 105c, they must be deemed to be applications for a license to operate the facility. But section 105c(2) clearly states that the antitrust review required by paragraph (1) ''shall not apply to an application for a license to operate a utilization or production facility for which a construction permit was issued under section 103 unless the Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review * * * under this subsection in connection with the construction permit for the facility.'' APPA's alternative interpretation of this provision cannot be reconciled with its specific language. The heart of APPA's analysis is its characterization of the request for Commission approval of a post-operating license transfer as an application for an initial operating license by the transferee entity. Putting aside for a moment the fact that such approvals do not result in issuing an initial or any other type of operating license, but rather an amendment to a previously-issued operating license, if we consider such a request as seeking

an initial operating license for the transferee, then we must look first to the language of section 105c(2) to determine whether an antitrust review is required. Since we are considering an application for an operating license, we are governed by the proviso, which, absent a determination of significant changes, clearly and unambiguously prohibits (''shall not'') a review of an application to operate a ''*facility* for which a construction permit *was issued*.'' Since the transferee's application is for an operating license for a facility for which a construction permit was issued, the plain language of the statute prohibits an antitrust review unless the Commission first determines that there are significant changes, which even APPA concedes as ''obvious that there can be no significant changes review.'' APPA Comments at 15. APPA's reasoning simply cannot be justified by the specific language in the statute.

Neither is APPA's analysis consistent with the legislative history in general, which emphasized the need to conduct the complete antitrust review early in the construction phase of the licensing process and a conditional operating license review only if there are ''significant changes in the licensee's activities or proposed activities,'' and that portion of the legislative history which explicitly addressed the limitation on the Commission's antitrust review authority to certain specified applications for a given facility.

> The committee recognizes that applications may be amended from time to time, that there may be applications to extend or review [sic-renew] a license, and also that the form of an application for construction permit may be such that, from the applicant's standpoint, it ultimately ripens into the application for an operating license. The phrases ''any license application'', ''an application for a license'', and ''any application'' as used in the clarified and revised subsection 105 c. refer to the initial application for a construction permit, the initial application for an operating license, or the initial application for a modification which would constitute a new or substantially different facility, as the case may be, as determined by the Commission. The phrases do not include, for purposes of triggering subsection 105 c., other applications which may be filed during the licensing process.

Joint Committee Report at 29. Just as the language of the statute focuses on certain applications for a given facility, so too does this explanation of which types of applications for a given facility are within the statute's scope of review: ''the initial application for a construction permit, the initial application for an operating license, or the initial application for a modification which would constitute a new or substantially different facility.'' For a post-operating license transfer application to be included, it would have to be deemed ''the initial application for an operating license'' as that phrase is used in this explanation in the Joint Committee Report. But is it? It may appear to be included at first thought, but only if the last sentence of the Committee's explanation is ignored. The last sentence makes clear that ''the initial'' applications subject to antitrust review were those filed during the traditional, two-step licensing process eventually leading to the issuance of the initial operating license for the facility: ''The phrases do not include, for purposes of triggering subsection 105 c, *other applications which may be filed during the licensing process.*'' (Emphasis added.) While APPA might argue that the post-operating license transfer application is an application filed during the licensing process because its review constitutes a ''licensing action,'' such a characterization clearly is not the two-step licensing process which Congress addressed when it provided the antitrust review authority contained in Section 105c and focused that authority on the antitrust situation which existed prior to initial operation of the facility. Post-operating license transfer applications certainly fall outside the two-step licensing process and, therefore, are not applications included in the statute or intended to be included by any explanation in the legislative history.

APPA's construction of the statute amounts to reading three types of applications into the scope of section 105c: (1) Applications for facility construction permits, (2) applications for facility operating licenses for which a construction permit antitrust review had been conducted, and, to use APPA's description, (3) ''with respect to a new licensee, the application for transfer is properly viewed as not falling within the proviso of section 105c(2) *at all*. That is, such a transfer application is not an application for a license to operate a facility for which a construction permit was issued, because the applicant in question was never issued a construction permit.'' It is this third type of application which APPA equates to a post-operating license transfer application in order to avoid the inherent problem it acknowledges exists in treating post-operating license transfer applications as type (2) applications subject to the requirement that ''significant changes'' be measured from the previous construction permit review. There are two fundamental problems with this construction. First, it literally makes no sense because it treats a post-operating license transfer application as ''not an application for a license to operate a *facility for which a construction permit was issued,* because the *applicant* in question was never issued a construction permit.'' (Emphasis added.) But under the two-step licensing process existing when the statute was passed, every facility issued an operating licenses is a ''facility for which a construction permit was issued.'' Second, this construction in inconsistent with the language of the statute. The statutory language in the section 105c(2) proviso links the issuance of the construction permit to the *facility* (''*facility for which* a construction permit was issued), not to the *applicant*, as APPA's construction requires. And third, this construction would result in an unconditional, full-blown antitrust review perhaps even decades *after* initial operation of the facility, a prospect that is wholly unsupported by the legislative history, which specifically reflects Congress's rejection of a proposal for an unconditional operating license review even *before* initial operation of the facility. See Wolf Creek discussion at 457–58.

Finally, assuming we accept APPA's concession that ''there is a difficulty in interpreting the statute,'' the Commission's interpretation in Wolf Creek certainly is no less reasonable than APPA's has been shown above to be. See *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984). In this regard, it is important to emphasize that the Commission's decision in Wolf Creek to no longer conduct antitrust reviews of post-operating license transfers rested on two alternative grounds, either one of which is sufficient to support that decision: First, the Commission's analysis of the relevant statutory provisions and their legislative history led it to conclude that the scope of its antitrust authority does not include post-operating license transfer reviews; second, even if its antitrust authority is concluded to be broad enough to include such reviews, no reasonable reading of the statute warrants a conclusion that such reviews are mandatory, and the Commission, therefore, has chosen, for the reasons stated in Wolf Creek, to not conduct such reviews as a matter of sound policy. See Wolf Creek at 463–65.

APPA's final argument that the Commission's Wolf Creek analysis is wrong involves the Commission's statement that, absent section 105, the Commission would have no antitrust

authority. APPA Comments at 21. There is no need to argue this academic point of dicta in Wolf Creek, since the Commission was given very specific and limited antitrust authority in section 105. As noted in Wolf Creek, a statutory duty to act under certain specifically-defined circumstances does not include the discretion to act under different circumstances unless the statute warrants such a reading. Wolf Creek at 454, citing *Railway Labor Executives' Association* v. *National Mediation Board*, 29 F.3d 655, 671 (D.C. Cir. 1994) (en banc). For the reasons explained in Wolf Creek and herein, the Commission has concluded that its specific antitrust authority does not include antitrust reviews of post-operating license transfers.[1]

*Comment:* APPA believes that, even if the Commission's Wolf Creek statutory analysis is correct for license transfers in general, the Commission would err if it eliminates antitrust filing requirements for license transfers where there are existing antitrust license conditions, since such conditions must be dispositioned in conjunction with the license transfer.

*Response:* It is true that there may be a number of post-operating license transfers that involve nuclear facilities whose (transferor) licensees are subject to antitrust license conditions imposed by the NRC as a result of the construction permit (or initial operating license) review. In such cases, consideration must be given to the appropriate disposition of the existing license conditions. This was addressed in the Wolf Creek decision. The Commission stated that it would entertain proposals by the parties as to the proper treatment of existing license conditions. Wolf Creek at 466. In fact, that is precisely what the Commission did in the Wolf Creek transfer case itself, although, because the parties reached a settlement, no decision was required by the Commission. The Commission continues to believe that this approach is workable and that retention of the reporting rule for all post-operating license transfer cases where there are existing antitrust conditions is unnecessary. For example, the proper disposition of existing antitrust conditions may be obvious and agreeable to all involved in some cases, or in other cases may be satisfactorily accomplished after considering submissions by the applicants and others much less burdensome than the full scope reporting urged by APPA. In other cases, such reporting might be unnecessary for some transfer applicants, or could be burdensome out of proportion to the benefits. While the possibility cannot be ruled out that the entirety of the information covered by the current rule may be useful or even necessary in some cases to achieve proper disposition of antitrust license conditions, that does not warrant a generally applicable rule that *all* transfer applicants must submit the full scope of information covered by the current rule. Even in cases where it is determined that the current scope of information—or even more—is necessary to dispose of existing antitrust conditions, the Commission is not powerless to obtain and make available the necessary information in the absence of the current rule. The Commission has ample power to require (on its own initiative or at the request of another) whatever information is deemed necessary or appropriate to carry out its responsibility to assure appropriate disposition of existing antitrust license conditions. See, *e.g.,* Atomic Energy Act sections 161b, c, i, o and 182; 10 CFR 2.204, 50.54(f). The Commission need not retain what it considers at best to be an overly broad reporting requirement for the limited purpose of deciding the fate of existing antitrust conditions in certain post-operating license transfer cases. Indeed, in the only case of that nature that has occurred recently—the Wolf Creek case itself—the reporting requirement proved entirely unnecessary when the applicants agreed that the existing antitrust conditions should apply to the entire, post-transfer organization, as APPA has acknowledged (APPA Comments at 9).

*Comment:* Finally, APPA argues that even if the language of section 105c is sufficiently ambiguous to permit more than one interpretation, the Commission erred in concluding that its antitrust review authority would be superfluous.

*Response:* As was made clear in the Wolf Creek decision, the Commission has concluded that it has no authority to conduct antitrust reviews of post-operating license transfers. In the absence of statutory authority for such reviews, it is irrelevant whether such reviews would be largely duplicative of others. While the Commission does not believe the statute is sufficiently ambiguous to result in agency discretion to conduct such reviews, the Commission's Wolf Creek decision made clear that if the statute does permit such reviews, it does not mandate them, and therefore the Commission could cease performing them for the policy and practical reasons explained therein. See Wolf Creek at 463–65. Contrary to APPA's assertion that the Commission relied on statutory and regulatory developments which postdate the 1970 amendments to the Atomic Energy Act to reach its conclusion about the scope and intent of those amendments, APPA Comments at 18–19, the Commission considered those developments not in interpreting its statutory authority but rather only in partial support for what would be an appropriate *policy decision* to terminate antitrust reviews of post-operating license transfers *if* it had statutory authority to conduct them but was not required to do so. The Commission recognizes that APPA views the competitive and regulatory climate as being more hostile to the antitrust interests of it and its members. But as explained in Wolf Creek, *id.,* there are other antitrust authorities and forums with far greater antitrust expertise than the Commission to address potential antitrust problems with proposed mergers and acquisitions of owners of nuclear power facilities.

Subsequent to the Wolf Creek decision and the publication of the proposed rule notice, the issue of multijurisdictional merger notification and review in the United States was addressed in the Final Report of the International Competition Policy Advisory Committee to the Attorney General and Assistant Attorney General for Antitrust (February 28, 2000) (ICPAC Report). As stated therein, ''[t]he majority of Advisory Committee members believe that the overlapping review in the United States is more often than not a defect of the U.S. system and that a more rational or sensible approach would be to give exclusive federal jurisdiction to determine competition policy and the competitive consequences of mergers in federally regulated industries to the DOJ and FTC.'' ICPAC Report at 143. In a discussion of the cost implications of multiple reviews remarkably applicable to those conducted of NRC licensees

[1] The Commission's specific antitrust authority does include other authority which applies both to the post-operating license conduct of a licensee and to conduct occurring before issuance of the operating license. Specifically, even after issuance of the facility operating license, the Commission will refer to the Justice Department any information it has suggesting that a licensee is in violation of the antitrust laws and, upon a finding of an antitrust violation, the Commission has clear authority to fashion a license-related remedy if warranted. See sections 105a and b of the Act. This same authority is available should the Commission encounter a situation where an operating license is transferred from antitrust-compliant licensees to a transferee who may be violating the antitrust laws. If such were the case, it would be brought to the attention of the Justice Department (and perhaps other antitrust law enforcement agencies), the aggrieved parties could bring a private antitrust action, and, if any court found a Commission licensee in violation, a Commission-imposed licensing remedy could be sought.

and applicants for post-operating license transfers, the ICPAC Report states:

> From an industry participant's perspective, in theory, such costs might include the uncertainty generated when multiple entities possess the authority to review the competitive effects of a transaction or practice, but reach differing conclusions on the issue; the increased transaction costs flowing from the need to defend a proposed transaction before multiple agencies; and the uncertainty created by agencies' different time frames for review. From the agencies' perspective, agencies suffer when the duplicative expenditure of resources inherent in concurrent jurisdiction creates an inefficient allocation of scarce resources, particularly when the specialized agency is not bound by the recommendations of the competition agencies with respect to an assessment of competitive effects. Further inefficiencies (and perhaps bad policy) can be created when one agency has the ultimate authority to make decisions that fall within another agency's area of comparative advantage.

*Id.* at 145–46. One expert indicated that the ''sector regulators'' have a long way to go before they can approximate the skills of the antitrust agencies. Addressing the FCC and FERC, this expert said that ''the antitrust agencies remain decidedly preeminent in their capacity to examine competition policy questions in the communications and energy sectors. Only significant increases in resources and experience would enable the FCC and FERC to match the skills of the DOJ and FTC in this field.'' *Id.* at 153 n.174, citing Kovacic Submission, at 24.

For the similar reasons stated in Wolf Creek and in the proposed rule notice, the Commission has decided that its scarce resources should be focused on its core mission of protecting the public health, safety and environment and the common defense and security. This is not to say that the Commission would ignore those who stand to suffer antitrust injury as a result of an operating license transfer involving existing antitrust conditions. As the Commission made clear in Wolf Creek, they will be heard and their views fully considered. But retaining a generic, ''one size fits all'' reporting requirement is not the only way to fulfill that responsibility, and the Commission will fulfill that responsibility with other, more narrowly crafted means.

*Comment:* CAN believes that the Commission's proposed rule unlawfully changes the substance of the Atomic Energy Act and should be withdrawn in favor of the NRC's seeking legislative changes from Congress.

*Response:* The Commission has not changed the ''substance'' of the Atomic Energy Act but instead has sought to conform its rules and practices to the authority actually granted it by the Act. The very purpose of the Commission's careful consideration of its antitrust review authority, based on the views of the parties to the Wolf Creek case, the amicus briefs filed therein at the Commission's invitation, and the commenters in this rulemaking, is to ensure that its practices and rules will *conform* to the Act, not depart from it or ''change'' its substance. CAN provides no discussion or statutory analysis to support its position that the Commission's decision in the Wolf Creek case and this rulemaking are inconsistent with the antitrust authority actually granted by Congress in the Act. CAN merely asserts that the NRC is ''attempting to alter a federal statute by agency rulemaking.'' To the contrary, the Wolf Creek decision and this rulemaking will achieve adherence to the limited antitrust authority provided by the Act. While the Commission agrees with CAN that not acting in accordance with a clear statutory mandate would be a breach of its responsibility, the Commission is equally mindful that it also would be irresponsible to act beyond the scope of its statutory authority. That is precisely what the Commission decided in the Wolf Creek case about its past practice of performing antitrust reviews of post-operating license transfers, and why that practice must cease.

*Comment:* CAN asserts that the proposed rule would create regulatory gaps in the NRC's approval of highly dangerous activities, citing licensees' financial obligations, cost cutting by nuclear power plant owners in the competitive environment, potentially serious accidents triggered by overtime patterns, foreign ownership of nuclear power plants, and increased regulatory burdens on the NRC resulting in an inability to inspect large-scale licensees for health and safety violations.

*Response:* This rule will not result in any gaps in the Commission's regulation of its licensees to ensure adequate protection of the public health and safety. This rule, which is narrowly confined to relieving certain applicants of filing antitrust information, will not change one iota the Commission's review of proposed license transfers for all other purposes, such as operational safety, foreign ownership, financial qualifications, and for every other purpose that such reviews are conducted. Commission reviews and oversight in those and all other areas of Commission responsibility will continue unabated and are unaffected by this rule. Neither will this rule affect in any way the Commission's inspection capabilities or practices. In fact, by freeing up resources no longer utilized for unauthorized and unnecessary antitrust reviews, the Commission actually will be better able to perform its core mission of regulating to protect the public health, safety and environment. As far as the Commission's ability to inspect large-scale licensees, that too is unaffected by this narrow rule and, in any event, is being separately addressed as part of the Commission's oversight of the nuclear power industry's deregulation and consolidation. There simply is no basis to believe that this rule could result in any of the consequences identified by CAN.

*Comment:* CAN asserts that the NRC has failed to evaluate the health and safety and national security consequences of the proposed rule.

*Response:* This comment seems to be related to CAN's previous comment that this rule will result in gaps in the Commission's regulatory program to protect public health and safety and to review license transfers to ensure that the prohibition on foreign ownership of nuclear power plants is met. As explained above, there will be no such gaps and no health and safety or national security consequences of the rule.

*Comment:* CAN asserts that the NRC has failed to evaluate the environmental impacts of the proposed rule, in violation of NEPA.

*Response:* For the same reasons that this rule will have no impact on the Commission's public health and safety responsibilities, it will have no environmental impacts. The rule simply relieves some applicants of the need to submit antitrust information for a review which no longer will be conducted and in no way affects the Commission's environmental obligations or those of its licensees. The Commission has fully complied with the National Environmental Policy Act of 1969, as amended, (NEPA) in promulgating this rule. The proposed rule stated the Commission's determination that this rule, if adopted, falls within the categorical exclusions in 10 CFR 51.22(c)(1), (2) and (3)(i) and (iii) for which neither an Environmental Assessment nor an Environmental Impact Statement is required (64 FR 59671, 59674). No comments were received which disagreed with that determination. CAN's comments do not address that determination but simply assert that the Commission has failed to evaluate the environmental impacts of the rule in violation of NEPA. As stated below, the Commission adheres to that determination.

## IV. Summary of Final Revisions

This final rule, which is identical to the proposed rule, makes clear that, consistent with the decision in the Wolf Creek case, no antitrust information is required to be submitted as part of any application for Commission approval of a post-operating license transfer. Because the current regulations do not clearly specify which types of applications are not subject to antitrust review, these clarifying amendments will bring the regulations into conformance with the Commission's limited statutory authority to conduct antitrust reviews and its decision that such reviews of post-operating license transfer applications are not authorized or, if authorized, are not required and not warranted.[2]

Direct transfers of facility licenses which are proposed *prior* to the issuance of the initial operating license for the facility, however, are and continue to be subject to the Commission's antitrust review.[3] In order to make clear that the Commission's regulations do not require antitrust information as part of applications for post-operating license transfers, the amended regulations specify that antitrust information must be submitted only with applications for construction permits and ''initial'' operating licenses for the facility and applications for transfers of licenses prior to the issuance of the ''initial'' operating license. Thus, the word ''initial'' has been inserted to modify ''operating license'' in appropriate locations and the word ''application'' has been modified where necessary to make clear that the application must be for a construction permit or initial operating license. Appendix L to 10 CFR part 50, ''Information Requested by the Attorney General for Antitrust Review [of] Facility License Applications,'' similarly is amended and clarified and a new definition is added there to define ''initial operation'' to mean operation pursuant to the first operating license issued by the Commission for the facility.

## V. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing,'' directed that the government's writing be in plain language. This memorandum was published June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes were made in the proposed revisions to improve the organization and readability of the existing language of paragraphs being revised. No comments were received on these types of changes and they are not discussed further in this notice.

## VI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is eliminating the submission of antitrust information in connection with post-operating license applications for transfers of facility operating licenses. This rule does not constitute the establishment of a standard that establishes generally-applicable requirements.

## VII. Finding of No Significant Environmental Impact and Categorical Exclusion

The Commission has determined under the National Environmental Policy Act (NEPA) of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule falls within the categorical exclusions appearing at 10 CFR 51.22(c)(1), (2), and (3)(i) and (iii) for which neither an Environmental Assessment nor an Environmental Impact Statement is required.

## VIII. Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0011.

## IX. Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

## X. Regulatory Analysis

These revisions to the regulations clarify that antitrust information is required to be submitted only in connection with applications for construction permits and initial operating licenses and not in connection with applications for post-operating license transfers. Therefore, to the extent that, in the past, antitrust information was submitted with applications for post-operating license transfers, these revisions will reduce the burden on such applicants by eliminating the submission of antitrust information and the costs associated with preparing and submitting that information. In short, the revisions will result in no additional burdens or costs on any applicants or licensees and will reduce burdens and costs on others. Clearly, because the revisions only affect when antitrust information need be submitted to the Commission, there will be no effect on the public health and safety or the common defense and security, and they will continue to be adequately protected. The cost savings to applicants resulting from these revisions justify taking this action.

To determine whether the amendments contained in this rule were appropriate, the Commission considered the following options:

*1. The No-Action Alternative*

This alternative was considered because the current rules are not explicitly inconsistent with the Commission's decision that antitrust reviews of post-operating license transfers are not authorized, or at least are not required and should be discontinued. Because the current rules have been interpreted to be consistent with the Commission's practice of conducting such reviews, however, in that they have been interpreted to require the submission of antitrust information with post-operating license transfer applications, the Commission concluded that clarification of the rules are appropriate. Therefore, the Commission determined that this alternative is not acceptable.

*2. Clarification of 10 CFR Parts 2 and 50*

For the reasons explained above and in the Commission's Wolf Creek decision, the Commission decided that its rules could and should be made clearer that no antitrust information should be submitted with applications for post-operating license transfers because antitrust reviews of such applications are not authorized or, if

[2] The same principle holds in the context of part 52 of the Commission's regulations. Under that part, the operating license is issued simultaneously with the construction permit in a combined license. The application for the combined license is subject to the agency's antitrust review, but antitrust reviews of post-combined license transfer applications are not authorized or, if authorized, are not required and not warranted.

[3] The paragraph speaks only to the historically typical case in which a construction permit (CP) is issued first, and then years later an operating license (OL). Under part 52, a combined operating license that has the attributes of both a CP and OL are issued and the antitrust review is done before issuance. Thus, there could be no direct transfer of the facility CP before issuance of the initial OL.

authorized, should be discontinued as a matter of policy. Therefore, to make clear that there is no need to submit antitrust information in connection with post-operating license transfers, and because the revisions would result in cost savings to certain applicants, with no additional costs or burdens on anyone, this option was chosen.

**XI. Regulatory Flexibility Certification**

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule. This rule affects only the licensing and operation of nuclear power plants. The entities that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810). Furthermore, this rule does not subject any entities to any additional requirements, nor does it require any additional information from any entity. Instead, the rule clarifies that certain information is not required to be submitted in connection with applications for post-operating license transfers.

**XII. Backfit Analysis**

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule and a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109. The rule does not constitute a backfit because it does not propose a change to or additions to requirements for existing structures, systems, components, procedures, organizations or designs associated with the construction or operation of a facility. Rather, this rule eliminates the need for certain applicants to submit antitrust information with their applications.

**XIII. Small Business Regulatory Enforcement Fairness Act**

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

**XIV. Final Rule**

**List of Subjects**

*10 CFR Part 2*

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

*10 CFR Part 50*

Antitrust, Classified Information, Criminal penalties, Fire protection, 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. 553, the NRC is adopting the following amendments to 10 CFR parts 2 and 50.

## PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

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

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

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Sections 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 890, as amended by section 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.101 paragraphs (e)(1) and (e)(2) are revised to read as follows:

**§ 2.101 Filing of application.**

* * * * *

(e)(1) Upon receipt of the antitrust information responsive to Regulatory Guide 9.3 submitted in connection with an application for a facility's initial operating license under section 103 of the Act, the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, shall publish in the **Federal Register** and in appropriate trade journals a ''Notice of Receipt of Initial Operating License Antitrust Information.'' The notice shall invite persons to submit, within thirty (30) days after publication of the notice, comments or information concerning the antitrust aspects of the application to assist the Director in determining, pursuant to section 105c of the Act, whether significant changes in the licensee's activities or proposed activities have occurred since the completion of the previous antitrust review in connection with the construction permit. The notice shall also state that persons who wish to have their views on the antitrust aspects of the application considered by the NRC and presented to the Attorney General for consideration should submit such views within thirty (30) days after publication of the notice to: U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Chief, Policy Development and Technical Support Branch.

(2) If the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, after reviewing any comments or information received in response to the published notice and any comments or information regarding the applicant received from the Attorney General, concludes that there have been no significant changes since the completion of the previous antitrust review in connection with the construction permit, a finding of no significant changes shall be published in the **Federal Register**, together with a notice stating that any request for reevaluation of such finding should be

submitted within thirty (30) days of publication of the notice. If no requests for reevaluation are received within that time, the finding shall become the NRC's final determination. Requests for a reevaluation of the no significant changes determination may be accepted after the date when the Director's finding becomes final but before the issuance of the initial operating license only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

* * * * *

## PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

3. The authority section 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, 88 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. 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). Section 50.37 also issued under E.O. 12829, 3 CFR 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR 1995 Comp., p. 391. 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. 955 (42 U.S.C 2237).

4. In § 50.42 paragraph (b) is revised to read as follows:

### § 50.42 Additional standards for class 103 licenses.

* * * * *

(b) Due account will be taken of the advice provided by the Attorney General, under subsection 105c of the Act, and to any evidence that may be provided during any proceedings in connection with the antitrust aspects of the application for a construction permit or the facility's initial operating license.

(1) For this purpose, the Commission will promptly transmit to the Attorney General a copy of the construction permit application or initial operating license application. The Commission will request any advice as the Attorney General considers appropriate in regard to the finding to be made by the Commission as to whether the proposed license would create or maintain a situation inconsistent with the antitrust laws, as specified in subsection 105a of the Act. This requirement will not apply—

(i) With respect to the types of class 103 licenses which the Commission, with the approval of the Attorney general, may determine would not significantly affect the applicant's activities under the antitrust laws; and

(ii) To an application for an initial license to operate a production or utilization facility for which a class 103 construction permit was issued unless the Commission, after consultation with the Attorney General, determines such review is advisable on the ground that significant changes have occurred subsequent to the previous review by the Attorney General and the Commission.

(2) The Commission will publish any advice it receives from the Attorney General in the **Federal Register**. After considering the antitrust aspects of the application for a construction permit or initial operating license, the Commission, if it finds that the construction permit or initial operating license to be issued or continued, would create or maintain a situation inconsistent with the antitrust laws specified subsection 105a of the Act, will consider, in determining whether a construction permit or initial operating license should be issued or continued, other factors the Commission considers necessary to protect the public interest, including the need for power in the affected area.[1]

[1] As permitted by subsection 105c(8) of the Act, with respect to proceedings in which an application for a construction permit was filed prior to Dec. 19, 1970, and proceedings in which a written request for antitrust review of an application for an operating license to be issued under section 104b has been made by a person who intervened or sought by timely written notice to the Atomic Energy Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination within 25 days after the date of publication in the **Federal Register** of notice of filing of the application for an operating license or Dec. 19, 1970, whichever is later, the Commission may issue a construction permit or operating license in advance of consideration of, and findings with respect to the antitrust aspects of the application, provided that the permit or license so issued contains the condition specified in § 50.55b.

5. In § 50.80 paragraph (b) is revised to read as follows:

### § 50.80 Transfer of licenses.

* * * * *

(b) An application for transfer of a license shall include as much of the information described in §§ 50.33 and 50.34 of this part with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license, and, if the license to be issued is a class 103 construction permit or initial operating license, the information required by § 50.33a. The Commission may require additional information such as data respecting proposed safeguards against hazards from radioactive materials and the applicant's qualifications to protect against such hazards. The application shall include also a statement of the purposes for which the transfer of the license is requested, the nature of the transaction necessitating or making desirable the transfer of the license, and an agreement to limit access to Restricted Data pursuant to § 50.37. The Commission may require any person who submits an application for license pursuant to the provisions of this section to file a written consent from the existing licensee or a certified copy of an order or judgment of a court of competent jurisdiction attesting to the person's right (subject to the licensing requirements of the Act and these regulations) to possession of the facility involved.

* * * * *

6. In Appendix L to Part 50, the heading of Appendix L and Definition 1 are revised, Definitions 3 through 6 are redesignated as Definitions 4 through 7, and a new Definition 3 is added, to read:

## Appendix L to Part 50—Information Requested by the Attorney General for Antitrust Review of Facility Construction Permits and Initial Operating Licenses

* * * * *

### I. Definitions

1. ''Applicant'' means the entity applying for authority to construct or initially operate subject unit and each corporate parent, subsidiary and affiliate. Where application is made by two or more electric utilities not under common ownership or control, each utility, subject to the applicable exclusions contained in § 50.33a, should set forth separate responses to each item herein.

* * * * *

3. ''Initially operate'' a unit means to operate the unit pursuant to the first operating license issued by the Commission for the unit.

* * * * *

Dated at Rockville, Maryland, this 13th day of July, 2000.

For the Nuclear Regulatory Commission.

**Annette Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 00–18250 Filed 7–18–00; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NM–12–AD; Amendment 39–11818; AD 2000–14–09]**

**RIN 2120–AA64**

## Airworthiness Directives; Short Brothers Model SD3–60 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers Model SD3–60 series airplanes, that requires affixing a label containing revised engine limitations on the ditching hatch, and revising the airplane flight manual to reflect the revised engine limitations. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent the use of incorrect engine limitations, which could result in an overspeed of the propellers and potential for blade failure.

**DATES:** Effective August 23, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager,International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Short Brothers Model SD3–60 series airplanes was published in the **Federal Register** on May 19, 2000 (65 FR 31839). That action proposed to require affixing a label containing revised engine limitations on the ditching hatch, and revising the airplane flight manual to reflect the revised engine limitations.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

### Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

The FAA estimates that 15 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $900, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–14–09 Short Brothers Plc:** Amendment 39–11818. Docket 2000–NM–12–AD.

*Applicability:* Model SD3–60 series airplanes, certificated in any category, serial numbers SH3716 through SH3763 inclusive.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.