2. In § 920.302, paragraph (a)(3) is revised to read as follows:

§ 920.302 Grade, size, pack, and container regulations.

(a) * * *
(1) * * *
(2) * * *
(3) *Maturity Requirements.* Such kiwifruit shall have a minimum of 6.2 percent soluble solids at the time of inspection.
* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

3. In § 944.550, paragraph (a) is revised to read as follows:

§ 944.550 Kiwifruit import regulation.

(a) Pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended, the importation into the United States of any kiwifruit is prohibited unless such kiwifruit meets all the requirements of the U.S. No. 1 grade as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340), except that the kiwifruit shall be ''not badly misshapen,'' and an additional tolerance of 7 percent is provided for kiwifruit that is ''badly misshapen,'' and except that such kiwifruit shall have a minimum of 6.2 percent soluble solids. Such fruit shall be at least Size 45, which means there shall be a maximum of 55 pieces of fruit and the average weight of all samples in a specific lot must weigh at least 8 pounds (3.632 kilograms), provided that no individual sample may be less than 7 pounds 12 ounces (3.472 kilograms).
* * * * *

Dated: July 27, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–19342 Filed 7–27–00; 1:45 pm]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–64]

Atlantic City Electric Company, Austin Energy, Central Maine Power Company, Delmarva Power & Light Company, South Mississippi Electric Power Association, and Washington Electric Cooperative, Inc.; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC or ''Commission'') is denying a petition for rulemaking submitted by the Atlantic City Electric Company, Austin Energy, Central Maine Power Company, Delmarva Power & Light Company, South Mississippi Electric Power Association, and Washington Electric Cooperative, Inc. (PRM–50–64). The petitioners requested that the enforcement provisions of NRC regulations be amended to clarify NRC policy regarding the potential liability of joint owners if other joint owners become financially incapable of bearing their share of the burden for safe operation or decommissioning of a nuclear power plant.[1] The Commission is denying the petition because the NRC's intent is not to impose responsibilities for operating or decommissioning costs pursuant to NRC regulatory requirements on co-owners in a manner inconsistent with contractual ownership agreements, except, and only as a last resort, when highly unusual circumstances relating to the protection of the public's health and safety require it. Also, the petition would not improve the NRC's regulatory process and maintain the same level of protection of the public health and safety provided under current Commission regulations, legal precedent, and policies.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter of denial to the petitioner are available for public inspection or copying in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, D.C. These documents are also available at the NRC's rulemaking website at http://ruleforum.llnl.gov.

FOR FURTHER INFORMATION CONTACT: Brian J. Richter, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1978, *e-mail-bjr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petition

On January 5, 1999 (64 FR 432), the NRC published a notice of receipt of a petition for rulemaking (PRM) filed by the Atlantic City Electric Company, Austin Energy, Central Maine Power Company, Delmarva Power & Light Company, South Mississippi Electric Power Association, and Washington Electric Cooperative, Inc. The petitioners requested that the NRC amend the enforcement provisions of NRC regulations to clarify NRC policy regarding the potential liability of joint owners if other joint owners become financially incapable of bearing their share of the burden for safe operation or decommissioning of a nuclear power plant.

The petitioners are concerned that the NRC's ''Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry'' (Policy Statement) published on August 19, 1997 (62 FR 44071), has resulted in confusion among joint owners of nuclear power plants regarding the potential liability of the owner of a relatively small share of a nuclear power plant. In the Policy Statement, the Commission indicated that it ''reserves the right, in highly unusual situations where adequate protection of the public health and safety would be compromised, if such action were not taken, to *consider* imposing joint and several liability on co-owners of more than *de minimis* shares when one or more co-owners have defaulted.'' (This is as opposed to dividing costs by using a pro rata share approach.) The petitioners believe that a joint owner could incur the burden of all, or an excessive portion, of a plant's costs if other joint owners or the operators defaulted or became financially incapable of bearing their share of the burden. The petitioners believe that the NRC has changed its policy so that it would now ignore existing pro rata cost sharing arrangements that it had previously sanctioned. The petitioners stated that the NRC has published no information regarding what would constitute a *de minimis* share and that the particular circumstances under which the NRC might find the imposition of joint and several liability necessary to protect the public health and safety are not defined.

The petitioners have concluded that these factors have caused much confusion and uncertainty about the potential liability of a joint owner, and can adversely affect the ability to raise capital in an uncertain market that is undergoing consolidation and restructuring.

The petitioners requested that the issue of potential liability among joint owners be resolved by amending the regulations concerning enforcement in 10 CFR part 50. The petitioners proposed that the NRC's regulations be amended to provide that if the NRC

[1] In the ''Final Policy Statement on the Restructuring and Deregulation of the Electric Utility Industry,'' published on August 19, 1997 (62 FR 44071), the NRC referred to ''joint and several liability.'' As discussed subsequently in this notice, the NRC believes that ''joint and several regulatory responsibility'' more accurately reflects the concept intended in the final policy statement.

imposes additional requirements to protect public health and safety, the NRC would look first to the entity licensed to operate a nuclear power plant to assume whatever costs are incurred in meeting those requirements. The petitioners also requested that the regulations be amended to provide that if the NRC imposes these additional requirements on co-owners (licensees) who are not licensed to operate the plant, the NRC would not impose upon any of those licensees a proportional responsibility greater than that reflected in contracts establishing the allocation of responsibility among the co-owners.

Public Comments on the Petition

The NRC received 76 comments covering 20 topic areas from 16 commenters, all of whom were licensees or groups representing licensees. Of the 16 commenters, 11 were electric utilities (including five cooperatives) and five comments were from industry groups. Of the industry groups, two represented electric cooperatives and three represented investor-owned electric utilities. Almost all of the commenters agreed with the petitioners that NRC should not impose joint and several liability on its licensees. The cooperative utilities also agreed with other issues and in general favored the petition. The investor-owned utilities disagreed with other issues and consequently were against the petition.

The topic areas raised by the commenters follow (with the number of commenters making that statement appearing in parentheses). The NRC's responses are contained in the paragraphs after each comment.

Comment 1. The Policy Statement is at odds with the pro rata share contractual agreements (reviewed and approved by the NRC). The Commission should clarify that it will not impose operating or decommissioning costs on co-owners greater than their contractual obligations. (10)

Response: The Commission has decided against taking the requested action because it could adversely affect public health and safety in those highly unusual circumstances when public health and safety are at risk and all other remedies have been exhausted. Because all co-owners are co-licensees, each licensee is ultimately responsible for complying with the Commission's regulations and the terms of the license. Although, in virtually all situations, the Commission expects that obligations under a license will be handled on a pro rata basis among co-owners, it cannot rule out highly unusual situations in which it would seek a co-owner to pay more than its pro rata share when essential to protecting public health and safety, *e.g.*, where one of the other co-owners is no longer capable of paying its pro rata share of costs. The rule change contemplated by the petition could prohibit the Commission from remedying such a situation. It would suggest that no matter how much a co-owner's financial outlook changes for the worse from the time of initial licensing, the Commission may not take all necessary action to ensure safe operation or decommissioning. Such a scheme would be inconsistent with the Commission's longstanding authority to take regulatory action in situations involving changed circumstances from initial licensing. *See* Atomic Energy Act §§ 186, 187, 42 U.S.C. 2236, 2237; 10 CFR 50.100; *Cf.*, *All Chemical Isotope Enrichment, Inc.*, LBP–90–26, 32 NRC 30 (1990) (Licensing Board sustained staff revocation of construction permits of a licensee that had failed to disclose its true financial condition during the original licensing proceeding).

Comment 2. Non-operating co-owners should not be liable for more than their contractually agreed upon share of additional, Commission-imposed requirements. (1)

Response: See response to Comment 1.

Comment 3. The Policy Statement has created uncertainty for minority owners because the Commission could impose operating or decommissioning costs on co-owners greater than their contractual obligations. This policy could affect the ability of co-owners to raise funds in financial markets. (6)

Response: The Commission believes that, given the limitations of this policy to highly unusual circumstances and its inapplicability to those co-licensees with *de minimis* shares, minority licensees will not experience significant uncertainty. The Commission notes that comments on the petition from investor-owned utilities or their representatives did not express concern about the impact of raising funds in capital markets, even though investor-owned utilities must go to essentially the same capital markets as the minority owners.

Comment 4. NRC imposition of joint and several liability on co-licensees in a manner inconsistent with co-licensees' contractual agreements would constitute unlawful retroactive rulemaking (4) and is an unconstitutional impairment of contracts and a ''taking'' of property without compensation. The Atomic Energy Act of 1954, as amended, does not contain explicit authorization for the Commission to impose retroactive rules on the subject of joint and several liability, and therefore, the Commission does not possess authority to retroactively impose joint and several liability, citing *Bowen* v. *Georgetown University Hospital*, 488 US 205 (1988). (1)

Response: Commission action ensuring that operating or decommissioning funds are available from co-applicants/co-licensees regardless of the contractual arrangements among co-owners for pro rata sharing of costs does not constitute a retroactive action. Contrary to the commenter's assumption, the Commission never ''approved'' the private contractual arrangements for the sharing of costs among co-owners/co-licensees. The Commission's consideration of co-applicants'/co-licensees' cost-sharing arrangements initially was solely for the purpose of determining, under 10 CFR 50.33, if the co-applicants/co-licensees had the financial qualifications necessary to construct and operate the nuclear power plant. After the Commission assured itself that the co-applicants'/co-licensees' financial qualifications provided for reasonable assurance that co-applicants/co-licensees together would be able to pay for all necessary costs of construction and operation, the Commission's inquiry was satisfied and the appropriate finding could be made.[2] The Commission has reviewed co-owners'/co-licensees' provisions for decommissioning financial assurance, pursuant to 10 CFR 50.75 in a similar manner.

Staff guidance on financial qualifications discloses no intent to approve the specific cost-sharing arrangements made between licensees, as opposed to reviewing the arrangements to ensure that the licensees together possess the necessary financial qualifications. Although power reactor licenses frequently recite the ownership percentages of the co-licensees, those percentages do not invariably reflect the allocation of decommissioning funding obligations. By reciting ownership percentages, the staff did not intend to make any finding about proportional allocation of decommissioning funding obligations. Therefore, the co-owners had no reasonable expectation that their regulatory obligations were limited by those arrangements. In the absence of any regulatory ''approval'' by the NRC of the private contractual arrangement by co-licensees with respect to pro rata cost sharing, there is no legal basis for a claim of retroactivity.

[2] However, since 1984, the NRC has not required Operating License Stage review of the financial qualifications of ''electric utilities,'' as defined in the Commission's regulations (10 CFR 50.2).

Furthermore, Commission action recognizing joint and several regulatory responsibility on co-licensees [3], *e.g.,* to ensure that operating or decommissioning funds are available from co-applicants/co-licensees regardless of the contractual arrangements among co-owners for pro rata sharing of costs, does not alter and therefore leaves undisturbed the contractual rights of a co-owner to recover costs from another co-owner under their contractual agreements in a private cause of action or in a bankruptcy proceeding. The enforcement of those arrangements appropriately lies with the parties to those pro rata—share contracts and the courts, not the NRC, which is neither a party to the contracts nor a tribunal with authority to enforce them. Because Commission action to impose joint and several responsibility has no legal effect upon the private contractual arrangements for cost sharing among co-licensees, it per se follows that this Commission action does not constitute an unconstitutional impairment of the contractual cost sharing agreements among co-licensees, nor does it constitute an unlawful ''taking.''

In sum, the Commission never approved the private contractual arrangements among co-licensees/co-owners for sharing of costs. Therefore, Commission imposition of joint and several regulatory responsibility that may be inconsistent with these private contractual arrangements would not constitute retroactive rulemaking.

Comment 5. If the Commission imposed an additional financial burden on the remaining owners of a nuclear power plant (NPP), and if the rate authorities would not allow additional costs into the rate base, the result would drive the co-owners into financial distress, creating further risks. This action would not only affect minority owners of NPPs, but also investors and State regulatory authorities. (6)

Response: If a licensee experiences financial difficulties, the minority owners of NPPs as well as investors and State regulatory authorities would likely be affected whether or not the Commission imposed additional responsibilities on the minority owners above their pro rata share. Also, the Commission would consider imposing any additional burden only under highly unusual circumstances in which no other regulatory action would protect the public health and safety, such as through bankruptcy courts or financial markets. (Financial markets would come into play, for example, if a financially troubled licensee were to seek refinancing of its ownership share or if it were to sell its share to another party.)

Comment 6. The NRC should clarify its intent with respect to potential financial obligations of nuclear power plant licensees. (3)

Response: The Commission believes that it has already clearly stated its intent with respect to potential financial obligations of nuclear power plant licensees in the Policy Statement. To the extent that the petitioners are seeking clarification, the Commission trusts that the petitioners will find that clarification in this denial notice, including the Commission's response to these comments. The Commission notes that the term, ''joint and several liability,'' may have connotations for contract law that the Commission did not intend to convey and that the term ''joint and several regulatory responsibility'' more accurately reflects the intent of the Commission's policy statement. Commission guidance on financial obligations is also provided in the ''Standard Review Plan on Power Reactor Financial Qualifications and Decommissioning Funding Assurance'' NUREG–1577, Rev. 1 (March 1999).

Comment 7. The NRC should define or clarify ''*de minimis* share'' and ''joint and several liability'' in ''highly unusual circumstances.'' (5)

Response: As referenced in the Policy Statement, ''*de minimis* share'' means a level of plant ownership below which, even in highly unusual circumstances where recourse to all other potential remedies (*e.g.,* rate regulators, bankruptcy proceedings) has failed, the Commission would not attempt to impose joint and several regulatory responsibility on minority co-owners of a plant. The Commission did not specify a numerical value in the Policy Statement for ''*de minimis* share.'' The Commission recognizes that a licensee with a relatively small percentage of plant ownership is unlikely in most circumstances to have sufficient resources available to assume responsibility for significantly more than its pro rata share if a co-owner defaults. For example, relatively small portions of nuclear units may be owned by small rural electric cooperatives or small municipal electric systems. In addition, ownership arrangements and percentages vary substantially from plant to plant. Given this variation, the Commission believes that it is appropriate to evaluate the imposition of joint and several responsibility on a case-by-case basis, when this consideration becomes necessary in highly unusual circumstances after all other remedies have failed. A unit-by-unit listing of plant ownership percentages is contained in NUREG/CR–6500, Rev. 1, ''Owners of Nuclear Power Plants'' (March 2000).

The Commission does not intend to impose inordinate financial stress on its licensees by seeking their payment of additional safety-related costs above their normal pro rata share as a result of default by a co-owner. The Commission recognizes that, particularly for smaller municipal and cooperative entities, requiring them to pay for more than their pro rata share (an already substantial sum, particularly for a smaller entity) could be counterproductive by potentially causing additional defaults by those entities. In practice, it is unlikely that the Commission would be able to obtain additional funds from a seriously financially stressed smaller licensee to cover a defaulting licensee's safety expenses. As indicated, the Commission would only consider imposing a joint and several regulatory responsibility in highly unusual and, presumably, quite rare circumstances after all other feasible remedies have been exhausted.

In any event, the Commission does not find it advisable to establish what would constitute a *de minimis* share of plant ownership applicable to all circumstances. If the Commission were to establish a numerical *de minimis* threshold of general applicability, it would likely do so by a process that provides an opportunity for public comment on the proposed numerical threshold. However, the Commission does not believe that establishing a numerical *de minimis* threshold is appropriate; the Commission needs to retain flexibility to respond to particular circumstances.

As noted above, the Commission intends to use the term ''joint and several regulatory responsibility'' in place of ''joint and several liability.'' With regard to Commission regulations regarding NPPs, the obligations for which the co-owners/co-licensees could be jointly and severally responsible are those in the Commission's regulations or identified in the license. (See also the response to Comment 1.) By ''highly unusual circumstances'' we mean circumstances when the public health and safety may be at risk because of lack of appropriate action by licensees. The Commission would consider requiring other co-owners/co-licensees to assume additional health and safety expenditures in excess of their pro rata

[3] As discussed later in this notice, the NRC believes that the term, ''joint and several regulatory responsibility'' more accurately reflects the intent of the NRC's policy statement. Thus, the NRC will use the term ''joint and several regulatory responsibility'' in lieu of ''joint and several liability.''

share only after all other remedies have been exhausted (*e.g.,* rate regulators, bankruptcy courts).[4]

Comment 8. NRC's rule on Financial Assurance Requirements for Decommissioning Nuclear Power Plants (September 22, 1998; 63 FR 50465), identified problems that could result from trying to impose joint and several liability. The Policy Statement does not explain why it takes a position different from the rule. (3)

Response: The Commission does not believe that the Policy Statement takes a position different from the final rule on Financial Assurance Requirements for Decommissioning Nuclear Power Plants, but supplements it. The Commission addressed ''joint liability'' in some detail in the proposed rule, published in the **Federal Register** on September 10, 1997 (62 FR 47588). Both the rule and the Policy Statement stated that under virtually all circumstances, pro rata division of decommissioning is acceptable, although the rule did not explicitly address financial assurance in ''highly unusual circumstances.''

Comment 9. The Commission should focus its authority on the defaulting co-owner and its customers, not the other co-owners and their customers. (1)

Response: The Commission intends to focus on those licensees that are not fulfilling their obligations under the license to protect public health and safety. This would include a focus on the defaulting licensee and, as necessary to protect public health and safety in highly unusual circumstances, on the other non-*de minimis* licensees.

Comment 10. The Commission does not have the legal authority to impose joint and several liability. (10) Joint and several liability is neither necessary nor proper, and should be promptly removed by an appropriate rule. (1)

Response: The imposition of a regulatory obligation of joint and several responsibility for the costs of operation and decommissioning among co-licensees of a NPP is neither expressly authorized nor prohibited under the Atomic Energy Act of 1954, as amended (AEA) or related case law. However, the Commission has broad statutory authority under the AEA to take necessary actions to protect public health and safety. See AEA section 161 b & i, 42 U.S.C. 2201 b & i. In fact-specific circumstances joint and several regulatory responsibility has been imposed. *See Public Service Company of New Hampshire* (Seabrook Station, Units 1 and 2), CLI–88–10, 28 NRC 573 (1988); Order against Safety Light Corporation, its predecessor corporation, and several wholly-owned subsidiaries of the predecessor (54 FR 12035–38, 1989). Although joint and several regulatory responsibility has only been imposed in compelling circumstances where such action was necessary to protect public health and safety, the Commission believes it has this authority. Further, it would be inconsistent with the Commission's overriding mission to protect public health and safety for the Commission to remove its flexibility to impose joint and several regulatory responsibility in those highly unusual circumstances where this action is warranted. That position is reflected in the Policy Statement (see 62 FR 44074) and the Commission rejects the petitioners' request that this position be modified.

Comment 11. The Commission has more than sufficient safeguards to ensure adequate funding for NPP operations and decommissioning, even if one of the licensees experiences financial distress. (1)

Response: The Commission believes the statement to be generally true, but considers that there could be circumstances under which recourse to the financial resources of all joint owners that exceed a *de minimis* ownership level might be needed for the particular plant involved.

Comment 12. Private mechanisms are sufficient without reallocation by the Commission. There is no basis to believe that the Commission is better informed or better able to resolve financial arrangements than the parties and the relevant capital markets. (3)

Response: The Commission agrees with the commenters that, in general, it is not better informed nor better able to resolve financial arrangements than the parties and the relevant capital markets. However, the Commission's charge is to protect the public health and safety. When the Commission finds that a licensee's financial distress is such that it cannot fulfill its obligations under the license, and, as a result, the public's health and safety may be affected, the Commission is obligated to address this situation with whatever remedies it is authorized to use. Also, as indicated above, the Commission would only intervene as a last resort when the financial markets, rate regulators, or bankruptcy courts were unable to solve the problem.

Comment 13. If the Commission does not act early (in identifying and acting on a licensee having deteriorating financial circumstances) and fails to track the actual performance of an operator, because it could act late in any event, the Commission runs the risk of tolerating a deteriorating performer, rather than imposing the discipline of more rigorous regulatory attention. (3)

Response: The Commission believes that it has the means at its disposal to identify and respond to a poor performer. Through onsite inspections, the biennial decommissioning funding status reports required to be filed by NRC power reactor licensees under 10 CFR 50.75(f)(1), and other actions, the Commission is able to keep track of the performance of an operator. The Commission expects that these mechanisms would identify performance problems and problems with respect to the adequacy of financial assurance before extraordinary measures would need to be taken.

Comment 14. The Commission should amend its regulations to provide that, in imposing new arrangements, it will look first to the entity having the operating responsibility, and allow the existing contractual arrangements to work in how that operator passes through the additional costs. The Commission should not impose obligations beyond the pro rata or other contractual arrangements in place. (3)

Response: The commenters suggested that the Commission initiate a rulemaking that would require the NRC to look first at the plant operator for financial responsibility. The Commission does not intend to initiate this action because the plant operator may not have majority, or even any, ownership of the facility in many cases. The Commission also believes that it should retain flexibility in those highly unusual circumstances when pro rata responsibility would endanger public health and safety. With respect to the commenters' position on contractual arrangements, the NRC has addressed that point in its responses to Comments 1 and 4.

Comment 15. The Commission's assertion that the policy statement ''expressed no change in prior NRC practice or policy'' is ''inexplicable and insupportable.'' Also, the commenter says that the Commission should provide for a full hearing if it considers a change in these policies in the future. (1)

Response: The NRC policy statement in question was published in the **Federal Register** as a proposed policy

[4] The Commission recognizes that if there are inadequate funds to operate the facility safely, the appropriate action would be for the Commission to order the plant to cease operation. Thus, it would be highly unusual for the Commission to require operation under these circumstances. However, should a co-licensee or co-owner default on its decommissioning funding obligation, and, in turn, create a health and safety problem and no other recourse were available, the Commission would be more likely to seek to impose a joint and several regulatory responsibility for decommissioning funding on the remaining owners/licensees.

statement with a request for public comment on the issue of the allocation of responsibility of co-owners (61 FR 49711, 49713 (1996)). The Commission responded to the comments it received on joint and several liability in publishing the final policy statement (62 FR 49071, 49074 (1997)). Moreover, because all co-owners are co-licensees under NRC legal precedent, *See Public Service Co. of Indiana, Inc.* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB–459, 7 NRC 179, 198–201 (1978), the Commission does not believe that the policy statement represents a change in previous policy. In addition, as described above (Comments 1 and 7), under virtually all circumstances short of the highly unusual, the Commission will continue to defer to co-owners' contractually determined divisions of responsibility. Also, see the response to Comment 10.

Comment 16. If the rulemaking continues, it is important that the PRM be more closely aligned and consistent with the existing financial assurance requirements. (1)

Response: The Commission does not intend to initiate a rulemaking in response to the PRM. Hence, the point raised by the commenter is moot.

Comment 17. The PRM should not be granted because commenters disagree with the petitioners' proposed solution, that would establish an artificial distinction between the operator, operating owner, and non-operating owners that would shift the financial burden to the operator or operating owner. The PRM would not improve the NRC's regulatory process, or benefit the industry, and could be subject to misinterpretation. The proposed change would unfairly and inappropriately burden the licensed operator, who could be a minority co-owner, an entity the petition is attempting to protect. Further, the petitioners do not cite any statutes, regulations, etc. that justify the proposed rule. (5)

Response: The Commission agrees that granting the PRM would establish an artificial (and unwarranted for purposes of financial assurance for operations and decommissioning) distinction between operating and non-operating owners. The petitioners' attempt to establish this artificial distinction is counter to NRC legal precedent referred to in the response to Comment 15 (*i.e.,* that all co-owners are co-licensees). Further, the petitioners' position here appears to be contrary to the petitioner's position as discussed in Comment 1 (*i.e.,* NRC should clarify that it will not impose operating or decommissioning costs on co-owners greater than their contractual obligations). The petitioners also do not provide any evidence as to how the granting of the petition would improve the NRC's regulatory process by continuing to ensure that the NRC may take any necessary steps within its statutory authority to assure protection of the public health and safety.

Comment 18. The NRC's existing financial assurance regulations are clear regarding a licensee's and operator's responsibility for ensuring safe operation and that decommissioning costs are available for a NPP. (5) The commenters fail to see what extraordinary circumstances could arise that would allow NRC to consider implementing joint and several liability, given their view that decommissioning funding levels are adequate. (2)

Response: See responses to Comments 6 and 7.

Comment 19. The petitioners misconstrue the plain language of the NRC Policy Statement. (4)

Response: The Commission agrees with the comment, because the policy statement discussion and the response to Comment 15 have indicated that under virtually all circumstances short of the rare and highly unusual, the NRC will continue to defer to co-owners' contractually determined divisions of funding responsibility. However, as one commenter noted, ''The petition appears to assume that the NRC will impose joint and several liability at the first sign of financial difficulty or insolvency.'' This is not the Commission's intent.

Comment 20. The commenter is opposed to the petitioners' position that the Commission should require the entity (the co-owner and also the licensed operator of the plant) to be the first imposed upon by the Commission if additional requirements are needed. There is no basis for singling out the operating co-owner for this extra burden. (1)

Response: The Commission agrees with the comment, because the petitioners' position appears to be contrary to the position the petitioners presented in Comment 1 (*i.e.,* NRC should clarify that it will not impose operating or decommissioning costs on co-owners greater than their contractual obligations). Also, as noted in the response to Comment 1, ''* * * NRC expects that obligations under a license will be handled on a pro rata basis among co-owners * * *'' Nevertheless, the Commission considers it necessary to maintain the flexibility it has to consider the circumstances regarding assurance of operations and decommissioning funds on a case-by-case basis. The Commission does not find merit in a regulation that would require it to impose the requirements and attendant financial demands first on the co-owner licensed to operate the NPP if financial problems affect one or more of the licensees of an NPP.

Reasons for Denial

The Commission is denying the petition for the following reasons:

1. The Commission has already publicly articulated its policy not to impose operating or decommissioning costs on co-owners in a manner inconsistent with their agreed-upon pro rata shares, except when highly unusual circumstances relating to the protection of the public's health and safety require this action. Further, the Commission has publicly articulated its policy that it would not seek more than pro rata shares from co-owners with *de minimis* ownership of the NPP.

2. The PRM would require the licensed operator of a plant to be the first imposed upon by the Commission should additional requirements be needed. This unnecessarily limits the Commission's flexibility when highly unusual circumstances affecting the protection of public health and safety would require action by the Commission.

3. The petitioners' attempt to establish an artificial distinction between the operator, operating owner, and non-operating owner would be counter to Commission legal precedent within the context of Commission consideration of the imposition of joint and several regulatory responsibility.

4. Further, the petitioners contradict themselves by claiming that the Commission should not impose operating or decommissioning costs on co-owners greater than their contractual obligations. However, the petitioners also stated that the financial burden should be shifted to the operator or operating owner (with no reference to the contractual obligations).

5. Commission action ensuring that operating or decommissioning funds are available from co-applicants/co-licensees regardless of the contractual arrangements among co-owners for pro rata sharing of costs does not constitute a retroactive action. Contrary to the petitioners' assertion, the Commission never ''approved'' the private contractual arrangements for the sharing of costs among co-owners. The Commission's consideration of co-applicants' or co-licensees' cost-sharing arrangements initially was solely for the purpose of determining, under 10 CFR 50.33, if the co-applicants/co-licensees, as a group, had the financial qualifications necessary to construct and operate the nuclear power plant.

Subsequently, the Commission also considered cost-sharing arrangements with respect to decommissioning financial assurance, but did not ''approve'' the contractual arrangements in that context either. Accordingly, Commission action to recognize joint and several regulatory responsibility on co-licensees does not constitute retroactive regulatory action.

6. Commission action ensuring that operating or decommissioning funds are available from co-licensees regardless of the contractual arrangements among co-owners for pro rata sharing of costs does not alter, and therefore leaves undisturbed, the contractual rights of a co-owner to recover costs from another co-owner under their contractual agreements in a private cause of action or in a bankruptcy proceeding.

7. Lastly, the PRM does not show how the proposed rule would improve the NRC's regulatory process and maintain the same level of protection of public health and safety provided under current Commission regulations, legal precedent, and policies.

For reasons cited in this document, the Commission denies the petition.

Dated at Rockville, Maryland, this 25th day of July, 2000.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–19242 Filed 7–28–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–373–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 777–200 series airplanes. This proposal would require replacement of certain components. This action is necessary to prevent corrosion of the axle of the main landing gear, which could result in cracking and failure of the axle, loss of the wheels on that axle, and reduced controllability of the airplane on the ground. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–373–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 99–NM–373–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–373–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–373–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report that corrosion was found on an axle on the main landing gear (MLG) of a Boeing Model 777–200 series airplane. The corrosion occurred in an area on which chrome plating was missing. Investigation revealed that the chrome plating on that axle was applied incorrectly. The manufacturer's records indicated that 18 axles were plated at the same time, and the manufacturer has determined that the plating on these other axles (which are installed on a total of eight airplanes) was also applied incorrectly. This condition, if not corrected, could result in corrosion of the MLG axle, which could result in cracking and failure of the axle. Failure of one axle could result in loss of the MLG wheels on that axle. Failure of more than one axle on one MLG could result in loss of multiple wheels and reduced controllability of the airplane on the ground.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–32A0024, dated August 12, 1999, which describes procedures for replacement of existing defective MLG axles with new axles. Accomplishment of the actions