subpart I. However, after reviewing the language of the final Regulatory Guide issued by NRC pursuant to the September 4, 1992 MOU, EPA concluded that there was no element in the NRC regulatory program which expressly required or assured that licensees other than nuclear power reactors would maintain emissions below the 10 mrem/yr EPA standard. Thus, it was not possible for the Agency to determine that radionuclide emissions would consistently and predictably remain below the EPA standard in the future if EPA were to proceed with rescission, or that NRC or the individual Agreement States would be in a position to require a particular licensee who did exceed 10 mrem/yr to reduce radionuclide emissions.

Another concern regarding the adequacy of the NRC program to support rescission of subpart I for licensees other than nuclear power reactors arose as part of an investigation by the General Accounting Office (GAO) of NRC administration of the Agreement State program. Licenses for facilities other than nuclear power reactors are often administered by individual Agreement States rather than by NRC. In a report entitled "Nuclear Regulation: Better Criteria and Data Would Help Ensure Safety of Nuclear Materials,' GAO found that "NRC lacks criteria and data to evaluate the effectiveness of its two materials programs [agreement and non-agreement state]," and that "For agreement-state programs, NRC does not have specific criteria or procedures to determine when to suspend or revoke an inadequate or incompatible program. GAO/RCED-93-90 Nuclear Materials Regulation at 3 (April 1993). In subsequent Congressional testimony concerning the GAO findings, the NRC Commissioners acknowledged that NRC criteria and procedures should be improved, and stated that NRC was developing new criteria to assess the adequacy and compatibility of individual Agreement State programs, and new procedures which would govern suspension and termination of Agreement State programs.

As contemplated by CAA Section 112(d)(9), EPA and NRC entered into consultations intended to resolve these concerns. The ALARA program, which requires NRC licensees to reduce emissions to the extent feasible below the mandatory ceiling in 10 CFR Part 20, was the principal focus of subsequent discussions between EPA and NRC. In these discussions, EPA and NRC discussed various NRC proposals for a rule which would "constrain" emissions from NRC licensees other than nuclear power reactors, either by

establishing a rebuttable presumption that emissions causing a dose exceeding 10 mrem/yr are not ALARA, or by expressly finding that ALARA requires licensees to maintain emissions at or below the 10 mrem/yr level. During the course of these discussions, a new concern also emerged as to whether the NRC policies on Agreement States which were under development would enable NRC to require that an ALARA "constraint level" be a mandatory element of compatibility. See letter from Mary D. Nichols, EPA Assistant Administrator for Air and Radiation, to NRC Chairman Ivan Selin, July 6, 1994, included in the docket.

On July 22, 1994, NRC proposed a "constraint level" rule which would have required each licensee to develop an ALARA program to maintain or achieve emissions resulting in a dose at or below 10 mrem/year or, in the alternative, to "justify" a conclusion that emissions resulting in a dose exceeding 10 mrem/year are ALARA. See letter from NRC Chairman Ivan Selin to EPA Administrator Carol M. Browner, July 22, 1994, included in the docket. That correspondence also noted that new procedures to assure the adequacy and compatibility of Agreement States were under development, and indicated that NRC would also propose to require Agreement States to adopt the proposed "constraint level" rule as a matter of compatibility.

After reviewing the "constraint level" rule proposed by NRC on July 22, 1994, EPA concluded that the proposed provision permitting licensees to 'justify" emissions in excess of 10 mrem/yr left uncertainty as to whether NRC or an individual Agreement State might accept or countenance as ALARA emissions resulting in a dose exceeding 10 mrem/year. As a consequence, EPA was concerned that it would still not be able to determine that future radionuclide emissions from affected licensees would be consistently and predictably at levels resulting in a dose below 10 mrem/yr, or that NRC or an individual Agreement State would be able to compel a licensee to reduce emissions if the 10 mrem/yr level were exceeded. EPA then advised NRC that EPA did not consider it prudent to proceed with rescission of subpart I for NRC licensees other than nuclear power reactors based on a record which might not adequately support the legal determination required by Section 112(d)(9).

D. NRC Proposals and Actions Responsive to EPA Concerns

On December 21, 1994, after further considering the concerns expressed by EPA, NRC proposed a "constraint" rule construing ALARA as requiring each licensee to limit emissions to a level resulting in a dose no greater than 10 mrem/yr. See letter from NRC Chairman Ivan Selin to EPA Administrator Carol M. Browner, December 21, 1994. included in the docket. Under this proposal, exceeding the ALARA constraint level would not itself be a violation, but any licensee exceeding the 10 mrem/yr constraint would be required to report the exceedance and to take corrective measures to prevent a recurrence. On March 14, 1995, NRC confirmed that it intended to make the proposed constraint rule a matter of Division Level 2 compatibility, which requires each Agreement State to incorporate in its program provisions at least as stringent as those established by the NRC rule. See letter from Robert M. Bernero, Director of the NRC Office Of Nuclear Material Safety and Safeguards, to Mary Nichols, EPA Assistant Administrator for Air and Radiation, March 14, 1995, included in the docket.

NRC has also taken steps which address concerns regarding the adequacy of criteria and procedures for the Agreement State program. NRC has published a draft policy statement concerning adequacy and compatibility criteria, 59 FR 37269 (July 21, 1994), and a draft policy statement setting forth procedures which permit suspension or termination of individual Agreement State programs. 59 FR 40059 (August 5, 1994). In the March 14, 1995 letter, NRC assured EPA that the final policy statement on compatibility criteria would be consistent with the NRC proposal to make the ALARA 'constraint level" rule a matter of Division Level 2 compatibility, and that NRC intends to finalize both policy statements shortly.

After reviewing the proposed rule described in the December 21, 1994 letter and the additional assurances provided in the March 14, 1995 letter, EPA advised NRC that it had concluded that adoption by NRC of the proposals and policies set forth in these letters should be sufficient to resolve the Agency's stated concerns regarding its ability to make the finding required to support rescission under CAA Section 112(d)(9). See letter from EPA Administrator Carol M. Browner to NRC Chairman Ivan Selin, March 31, 1995, included in the docket. In that correspondence, EPA also stated its intent to publish this notice requesting