supplementary comment concerning the proposed rule to rescind subpart I for NRC licensees other than nuclear power reactors in conjunction with the publication by NRC of its proposed ALARA constraint rule.

EPA is today issuing this notice because NRC has committed to propose a rule to constrain air emissions from licensees other than nuclear power reactors to a level which would result in a dose of no more than 10 mrem/year. The decision by EPA to reaffirm its proposal to rescind Subpart I for these facilities is expressly contingent on this commitment by NRC to propose an ALARA "constraint level" rule and on the stated intention of NRC to require that Agreement States adopt equivalent provisions. A draft of the proposed 'constraint level" rule is attached to the December 21, 1994 letter from NRC Chairman Selin to EPA Administrator Browner, which is included in the public docket and available upon request. In addition, NRC has advised EPA that it expects to publish a proposed "constraint level" rule shortly and that this NRC proposal will not differ in any material respect from the draft rule provided to EPA on December 21, 1994. Therefore, the initial EPA determination and request for comments set forth below are based on the December 21, 1994 draft of the NRC proposal.

III. Initial Determination Concerning Sufficiency of NRC Proposals and Actions to Support Rescission of Subpart I for Licensees Other Than Nuclear Power Reactors

From the language of section 112(d)(9), it is apparent that where EPA has already specifically determined what level of emissions must be achieved to provide an "ample margin of safety," that level is the benchmark by which EPA must evaluate the adequacy of the NRC program. EPA specifically found when it promulgated 40 CFR part 61, subpart I, that 10 mrem/yr would provide the requisite "ample margin of safety."

Section 112(d)(9) does not, however, require exact equivalence between the EPA and NRC programs applicable to a particular category of licensees before EPA may decline to regulate radionuclide emissions from that category. Rather, it requires that EPA conclude that implementation of the NRC program as a whole will achieve substantive protection of the public health equivalent to or better than that which would by achieved by enforcement of the EPA standard. Thus, if the NRC program as a whole will assure that emissions from all affected

licensees remain below the EPA standard, the NRC program may be deemed to provide an ample margin of safety, regardless of whether this results from enforcement by NRC of a single numerical standard.

In deciding whether EPA may decline to regulate a particular category or subcategory of NRC or Agreement State licensees, EPA construes Section 112(d)(9) as requiring that EPA determine: (1) That emissions from NRC licensees (or Agreement State licensees when authority to regulate the licensees has been delegated by NRC) in that category or subcategory will be consistently and predictably at or below a level resulting in a dose of 10 mrem/ year, and (2) that NRC (or the Agreement States) can and will require any individual licensee in that category or subcategory with emissions that cause a dose exceeding 10 mrem/year to reduce the emissions sufficiently that the dose will not exceed 10 mrem/year.

As explained above, EPA has concluded based on the information presented to date that radionuclide emissions from licensees other than nuclear power reactors under the current NRC program are generally well below the level that would result in a dose exceeding 10 mrem/yr. EPA experience in administration of subpart I since it became effective has tended to confirm this conclusion. Out of the thousands of licensees subject to the standard, only 16 facilities are presently reporting radionuclide emissions exceeding the EPA standard, and EPA expects that most of these reported violations will be resolved through EPA approval of adjustments in the COMPLY methodology for calculating doses.

EPA has concluded that the ALARA constraint rule and the other NRC proposals and policies described above, when adopted, will support the requisite determination for rescission under CAA Section 112(d)(9). Promulgation of the ALARA constraint rule will assure that radionuclide emissions by the affected licensees will be consistently and predictably below a level which would result in a dose exceeding 10 mrem/year, and that NRC can require an individual licensee who exceeds the 10 mrem/yr level to take corrective actions to reduce emissions. By making the ALARA constraint rule a matter of Division Level 2 compatibility, NRC will assure that those licensees regulated by individual Agreement States also will be subject to the 10 mrem/yr constraint level and will be required to report and correct any exceedances of that level. Finally, the final adoption by NRC of policy statements establishing specific criteria

for adequacy and compatibility and adopting procedures for suspension or termination of Agreement State programs will resolve previous concerns regarding the ability of NRC to act if it determines that an Agreement State program is inadequate or incompatible.

Based on the above analysis, EPA is today making an initial determination that, if NRC adopts the proposals and policies described above, the NRC program will provide an ample margin of safety to protect the public health under CAA Section 112(d)(9). Based on this initial determination, EPA is also affirming its proposal to rescind subpart I for NRC and Agreement State licensees other than nuclear power reactors, and requesting further comment concerning the sufficiency of the proposed modifications of the NRC program to provide an ample margin of safety.

EPA will make a final determination under Section 112(d)(9) when it takes final action concerning the proposed rescission. EPA intends to take final action concerning its proposal to rescind subpart I for NRC and Agreement State licensees other than nuclear power reactors on or after the date that NRC takes final action on the proposed ALARA "constraint level" rule.

## **IV. Request for Comments**

EPA invites additional comments concerning the following questions:

(1) If NRC adopts the proposed ALARA constraint level rule, will the resultant NRC regulatory program assure that routine radionuclide emissions from NRC licensees other than nuclear power reactors result in doses which are consistently and predictably no greater than 10 mrem/year?

(2) If NRC adopts the proposed ALARA constraint level rule, will NRC have sufficient authority to require any affected facility with routine radionuclide emissions at a level which results in a dose exceeding 10 mrem/yr to reduce its emissions to a level resulting in a dose no greater than 10 mrem/yr?

(3) If NRC makes the proposed ALARA constraint level rule a matter of Division Level 2 compatibility, will this assure that each individual Agreement State establishes an ALARA constraint level for its licensees which is no greater than 10 mrem/yr, and requires its licensees to report and correct exceedances of that level?

(4) Are the NRC policies establishing criteria to evaluate the adequacy and compatibility of Agreement State programs, and adopting procedures to permit suspension or termination of Agreement State programs, sufficient to