

*Facility Operating License Nos. DPR-80 and DPR-82:* The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* July 8, 2003 (68 FR 40716). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 15, 2003.

No significant hazards consideration comments received: No.

**STP Nuclear Operating Company, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas**

*Date of amendment request:* March 31, 2003.

*Brief description of amendments:* The amendments replace "Central Power and Light Company (CPL)" with "AEP Texas Central Company" throughout the Operating License of each unit.

*Date of issuance:* August 11, 2003.

*Effective date:* As of the date of issuance and shall be implemented 30 days from the date of issuance.

*Amendment Nos.:* Unit 1—155; Unit 2—143.

*Facility Operating License Nos. NPF-76 and NPF-80:* The amendments revised the Facility Operating Licenses.

*Date of initial notice in **Federal Register**:* June 10, 2003 (68 FR 34673). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 11, 2003.

No significant hazards consideration comments received: No.

**Tennessee Valley Authority, Docket No. 50-390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee**

*Date of application for amendment:* December 13, 2002, as supplemented May 19 and July 11, 2003.

*Brief description of amendment:* The amendment revised Technical Specification (TS) 5.7.2.12, "Steam Generator (SG) Tube Surveillance Program." The revised TS allows the use of Westinghouse leak-limiting Alloy 800 sleeves to repair defective SG tubes as an alternative to plugging the tube.

*Date of issuance:* August 15, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment No.:* 44.

*Facility Operating License No. NPF-90:* Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* March 18, 2003 (68FR12958). The supplemental letters provided clarifying information that did not expand the scope of the original request and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 15, 2003.

No significant hazards consideration comments received: No.

**Virginia Electric and Power Company, et al., Docket Nos. 50-280 and 50-281, Surry Power Station, Units 1 and 2, Surry County, Virginia**

*Date of application for amendments:* November 5, 2002.

*Brief Description of amendments:* These amendments delete the requirement to perform a 15-minute degassed beta and gamma activity test of the secondary coolant and require that the dose equivalent I-131 analysis be performed on a more conservative monthly basis.

*Date of issuance:* August 15, 2003.

*Effective date:* August 15, 2003.

*Amendment Nos.:* 234 and 233.

*Renewed Facility Operating License Nos. DPR-32 and DPR-37:* Amendments change the Technical Specifications.

*Date of initial notice in **Federal Register**:* December 24, 2002 (67 FR 78525). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 15, 2003.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 25th day of August, 2003.

For the Nuclear Regulatory Commission.

**Eric J. Leeds,**

*Deputy Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 03-22106 Filed 8-29-03; 8:45 am]

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## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

#### Summary of Proposal(s)

- (1) *Collection title:* Request for Medicare Payment.
- (2) *Form(s) submitted:* G-740S, CMS-1500.
- (3) *OMB Number:* 3220-0131.
- (4) *Expiration date of current OMB clearance:* 10/31/2003.
- (5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* See Justification (Item No. 12).

(8) *Total annual responses:* 1.

(9) *Total annual reporting hours:* 1.

(10) *Collection description:* The Railroad Retirement Board (RRB) administers the Medicare program for persons covered by the Railroad Retirement System. The collection obtains the information needed by Palmetto GBA, the RRB's carrier, to pay claims for services covered under Part B of the program.

**FOR FURTHER INFORMATION CONTACT:** Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312-751-3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611-2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 03-22227 Filed 8-29-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26170; File No. 812-13010]

### The Equitable Life Assurance Society of the United States, et al.; Notice of Application

August 26, 2003.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for an amended order under Section 6(c) of the Investment Company Act of 1940, as amended ("Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder.

**APPLICANTS:** The Equitable Life Assurance Society of the United States ("Equitable Life"), The Equitable of Colorado, Inc. ("EOC," and together with Equitable Life, "Equitable"), Separate Account No. 45 of Equitable Life ("SA 45"), Separate Account No. 49 of Equitable Life ("SA 49"), Separate Account VA of EOC ("SA VA," the foregoing separate accounts each an "Account" and collectively, the

“Accounts”), AXA Advisors, LLC,<sup>1</sup> and AXA Distributors, LLC<sup>2</sup> (collectively, “Applicants”).

**SUMMARY OF APPLICATION:** Applicants seek an order to amend an Existing Order (described below) to grant exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder to the extent necessary to permit Applicants to recapture certain credits applied to contributions made under certain amended deferred variable annuity contracts and certificates, described herein, including certain amended certificate data pages and endorsements, that Equitable will issue through the Accounts (the “Amended Contracts”), and under contracts and certificates, including certain certificate data pages and endorsements, that Equitable may issue in the future through the Accounts, and any other separate accounts of Equitable Life or EOC (collectively, “Future Accounts”) that are substantially similar in all material respects to the Amended Contracts (the “Future Contracts”). Applicants also request that the order being sought extend to “Equitable Broker-Dealers,” as defined in the applications for the Existing Order (defined below) (“Prior Applications”).<sup>3</sup>

**FILING DATE:** The application was filed on August 22, 2003.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 25, 2003, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester’s interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, c/o The Equitable Life

Assurance Society of the United States, 1290 Avenue of the Americas, New York, New York 10104, Attn: Robin Wagner, Esq. Copy to Foley & Lardner, 3000 K Street, Suite 500, Washington, DC 20007, Attn: Richard T. Choi.

**FOR FURTHER INFORMATION CONTACT:** Mark A. Cowan, Senior Counsel, or Zandra Y. Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC’s Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

#### Applicants’ Representations

1. On May 3, 1999, the Commission issued an order (“May 1999 Order”) <sup>4</sup> exempting certain transactions of Applicants from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder. The May 1999 Order specifically permits the recapture, under specified circumstances, of certain 3% Credits applied to contributions made under Contracts or Future Contracts as defined in the application for the May 1999 Order.<sup>5</sup> Specifically, the May 1999 Order permits recapture of Credits if the Contract is returned during the free look period, or if contributions are made within 3 years of annuitization.

2. On July 28, 1999, the Commission issued an order of exemption amending the May 1999 Order (“July 1999 Order”) <sup>6</sup> to permit the recapture of Credits of up to 5% under Contracts and Future Contracts under the same specified circumstances.

3. On May 21, 2001, the Commission issued an order of exemption (“May 2001 Order”) amending the July 1999 Order (together with the May 1999 Order and the July 1999 Order, the “Existing Order”) <sup>7</sup> to permit the recapture of Credits of up to 6% under Contracts and Future Contracts under the same and certain additional circumstances. The additional circumstances include the recapture of Excess Credits when a Contract owner’s

Net First Year Contributions are lower than Total First Year Contributions, and when a Contract owner fails to fulfill the conditions of a Letter of Intent, all as described in the application for the May 2001 Order.<sup>8</sup>

4. Applicants believe that the Contracts and Amended Contracts are substantially similar in all material respects relevant to the Existing Order, and that the Amended Contracts would constitute Future Contracts covered by the Existing Order. Nevertheless, in view of certain differences from the Contracts reflected in the Amended Contracts, Applicants filed an Application to avoid any uncertainty regarding the availability of such relief with respect to the recapture of Credits of up to 6% under the Amended Contracts under the same circumstances described in the Prior Applications,<sup>9</sup> and under one additional circumstance described in paragraph 8 of Applicants’ Representations, below.

5. The respective Accounts will fund the variable benefits available under the Amended Contracts. Units of interest in Accounts under the Amended Contracts they fund will be registered under the Securities Act of 1933 (the “1933 Act”). Equitable may issue Future Contracts through the Accounts. Equitable also may issue Future Contracts through Future Accounts. That portion of the respective assets of the Accounts that is equal to the reserves and other Amended Contract liabilities with respect to the Accounts is not chargeable with liabilities arising out of any other business of Equitable Life or EOC, as the case may be. Any income, gains or losses, realized or unrealized, from assets allocated to the Accounts are, in accordance with the respective Accounts’ Amended Contracts, credited to or charged against the Accounts, without regard to other income, gains or losses of Equitable Life or EOC, as the case may be. The same will be true of any Future Account of Equitable Life or EOC.

6. Equitable Life previously offered Contracts as described in the Prior Applications (“2001 Contracts covered by the Existing Order”). Equitable Life currently offers Contracts that constitute Future Contracts covered by the Existing Order. At the appropriate time after

<sup>4</sup> *The Equitable Life Assurance Society of the United States*, Investment Company Act Release No. 23822 (File No. 812–11388).

<sup>5</sup> *The Equitable Life Assurance Society of the United States*, Investment Company Act Release Nos. 23774 (Apr. 7, 1999) (File No. 812–11388).

<sup>6</sup> *The Equitable Life Assurance Society of the United States*, Investment Company Act Release No. 23924 (File No. 812–11662).

<sup>7</sup> *The Equitable Life Assurance Society of the United States*, Investment Company Act Release No. 24980 (File No. 812–12392).

<sup>8</sup> *The Equitable Life Assurance Society of the United States*, Investment Company Act Release No. 24963 (April 26, 2001) (File No. 812–12392).

<sup>9</sup> Pursuant to Rule 0–4 under the Act, Applicants incorporate by reference the statement of facts set out in the Prior Applications to the extent necessary to support this Application. Applicants represent that all of the acts asserted in the Prior Application remain true and accurate in all material aspects to the extent that such facts are relevant to any relief on which Applicants continue to rely.

<sup>1</sup> Formerly named EQ Financial Consultants, Inc.

<sup>2</sup> On January 1, 2002, AXA Distributors, LLC succeeded by merger to all of the functions, rights and obligations of Equitable Distributors, Inc. (“EDI”). Like EDI, AXA Distributors, LLC is owned by Equitable Holdings, LLC.

<sup>3</sup> *The Equitable Life Assurance Society of the United States*, Investment Company Act Release Nos. 23774 (Apr. 7, 1999) (File No. 812–11388), 23889 (July 2, 1999) (File No. 812–11662), and 24963 (April 26, 2001) (File No. 812–12392).

effectiveness of the amended registration statements describing the Amended Contracts, Equitable Life will begin offering the Amended Contracts, as well.

7. The Amended Contracts reflect certain differences from the 2001 Contracts covered by the Existing Order. However, Applicants respectfully submit that these differences do not preclude the Amended Contracts from being substantially similar in all material respects to the 2001 Contracts covered by the Existing Order such that they constitute Future Contracts covered by the Existing Order. Nevertheless, as stated above, Applicants are filing this Application to avoid any uncertainty that may arise as a result of the following differences between the 2001 Contracts covered by the Existing Order and the Amended Contracts:

*a. Separate Account Charges*

2001 Contracts covered by the Existing Order have a mortality and expense risk charge at the annual rate of 1.10% and an administrative expense charge at the annual rate of 0.25%. Amended Contracts have a mortality and expense risk charge at the annual rate of 0.90% and an administrative expense charge of 0.35%.

*b. Death Benefit Options and Death Benefit Charges*

2001 Contracts covered by the Existing Order offer a guaranteed minimum death benefit ("GMDB") of either a "5% roll up to age 80" or an "annual ratchet to age 80" at no additional charge. Amended Contracts offer a GMDB (return of premiums) at no additional charge; an optional "annual ratchet to age 85" death benefit for a charge at the annual rate of 0.25% of the applicable benefit base; and an optional

"greater of 5% roll up to age 85 or annual ratchet to age 85" death benefit for a charge at the annual rate of 0.50% of the applicable benefit base.

Under 2001 Contracts covered by the Existing Order, withdrawals reduce the GMDB as follows: (i) For Contracts with the 5% roll up to age 80, withdrawals reduce the GMDB on a dollar-for-dollar basis to the extent the sum of withdrawals in a contract year is 5% or less of the GMDB on the most recent contract date anniversary, and on a pro-rata basis thereafter; and (ii) for Contracts with the annual ratchet to age 80, all withdrawals reduce the GMDB on a pro-rata basis. Under Amended Contracts, for all death benefit options, withdrawals reduce the GMDB benefit base on a pro-rata basis.

*c. Income Benefit*

2001 Contracts covered by the Existing Order may offer an optional baseBuilder income benefit for a charge at the annual rate of 0.30% of the applicable benefit base. Amended Contracts offer an optional guaranteed minimum income benefit for a charge at the annual rate of 0.55% of the guaranteed minimum income benefit base.

*d. Protection Plus Benefit*

2001 Contracts covered by the Existing Order offer an optional Protection Plus benefit for an annual charge 0.20% of account value (deducted on each contract date anniversary). Amended Contracts offer an optional Protection Plus benefit for an annual charge of 0.35% of account value (deducted on each contract date anniversary).

For Contract owners who elect the Protection Plus benefit (available for nonqualified contracts, subject to state

availability), the death benefit is equal to: (i) The greater of the account value or any applicable death benefit, plus (ii) 40% (25% for annuitant issue ages 70–75) of the lesser of total net contributions or the death benefit less total net contributions. For Amended Contract owners who elect the Protection Plus benefit (available for nonqualified, IRA and tax sheltered annuity contracts, subject to state availability), the death benefit is equal to: (i) The greater of the account value or any applicable death benefit, plus (ii) 40% (25% for annuitant issue ages 71–75) of such death benefit less total net contributions.

*e. Guaranteed Principal Benefits*

Amended Contracts offer a guaranteed principal benefit Option 1 for no additional charge, and a guaranteed principal benefit Option 2 for a charge of 0.50% as a percentage of account value (deducted annually on the first 10 contract date anniversaries).

*f. Administrative Charge*

2001 Contracts covered by the Existing Order do not impose an annual administrative expense charge. Amended Contracts have an annual administrative expense charge of \$30 (deducted from account value on each contract date anniversary).<sup>10</sup> The charge is waived for account values of \$50,000 or more on the contract date anniversary.

*g. Contract Withdrawal Charge*

2001 Contracts covered by the Existing Order and Amended Contracts impose a withdrawal charge equal to a percentage of contributions determined by the contract year in which such contributions are withdrawn as follows<sup>11</sup>:

(In percentages)

Contract year	1	2	3	4	5	6	7	8	9	10+
2001 contracts covered by the existing order .....	8	8	7	6	5	4	3	2	1	0
Amended contracts .....	8	8	7	7	6	5	4	3	0	0

2001 Contracts covered by the Existing Order offer an annual 15% "free corridor" amount. Amended Contracts offer an annual 10% "free withdrawal" amount.

*h. Credits*

2001 Contracts covered by the Existing Order offered Credits based on

contributions as described in the Prior Applications according to the following schedule:

Contributions		Credit rate (as a percentage of contribution)
At Least	But Less Than	
Minimum .....	\$ 250,000 .....	4.0
\$ 250,000 .....	\$ 1,000,000 ...	5.0
\$ 1,000,000 ...	Maximum .....	6.0

<sup>10</sup> During the first two contract years, the charge is the lesser of \$30 or 2% of the account value.

<sup>11</sup> A withdrawal charge applies in two circumstances: (1) if one or more withdrawals are made during a contract year that, in total, exceed the free withdrawal amount or (2) the contract is

surrendered in order to receive its cash value or cash value is applied to a non-life contingent annuity payout option.

Amended Contracts Order may offer Credits based on contributions as described in the Prior Applications Credits according to the following schedule:

Contributions		Credit rate (as a percentage of contribution)
At least	But less than	
Minimum .....	\$ 500,000 .....	4.0
\$ 500,000 .....	\$ 1,000,000 ...	4.5
\$ 1,000,000 ...	Maximum .....	5.0

#### i. Fixed Investment Options

2001 Contracts covered by the Existing Order do not offer a "guaranteed interest account." Amended Contracts offer a "guaranteed interest account" that pays a guaranteed rate of interest and is not subject to a market value adjustment. Equitable will recapture Credits on a pro rata basis from the value in the variable investment options and the guaranteed interest account. If those amounts are insufficient, Equitable will deduct the balance from the fixed maturity options in order of the earliest maturity dates first.

#### j. Annuitization

Under 2001 Contracts covered by the Existing Order and Amended Contracts (except in Florida) annuity payments may not begin earlier than the fifth contract date anniversary. Under Amended Contracts issued in Florida, annuity payments may begin as early as the first contract date anniversary.

8. Applicants may recapture Credits of up to 6% under the Amended Contracts under the same circumstances covered by the Existing Order, described above. In addition, if an Amended Contract owner starts receiving annuity payments under a life contingent annuity payout option before the fifth contract date anniversary, Equitable will recover the Credit that applies to any contribution made within such five-year period.

9. Applicants submit that their request for an order that applies to the Accounts or any Future Account, in connection with the issuance of Amended Contracts described herein and Future Contracts that are substantially similar in all material respects to the Amended Contracts and underwritten or distributed by AXA Advisors, LLC, AXA Distributors, LLC, or Equitable Broker-Dealers, is appropriate in the public interest for the same reasons as those given in support of the Existing Order.

#### Applicants' Legal Analysis

1. Section 6 (c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants request that the Commission issue an amended order pursuant to Section 6(c) of the Act, granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit Applicants to recapture Credits under Amended Contracts under the same circumstances covered by the Existing Order, and if an Amended Contract owner starts receiving annuity payments under a life contingent annuity payout option before the fifth contract date anniversary, as described in paragraph 8 of Applicants' Representations, above.<sup>12</sup>

3. Applicants submit that the recapture of Credits under the Amended Contracts will not raise concerns under Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act, and Rule 22c-1 thereunder for the same reasons given in support of the Existing Order. Applicants submit that when Equitable recaptures any Credit, it is simply retrieving its own assets. Applicants submit that a Contract owner's interest in any Credit allocated before an owner starts receiving annuity payments under a life contingent payout option within the first five contract years is not vested. Rather, Equitable retains the right to, and interest in, the Credit, although not any earnings attributable to the Credit.

4. Applicants state that because a Contract owner's interest in any recapturable Credit is not vested, the owner will not be deprived of a proportionate share of the applicable Account's assets, i.e., a share of the applicable Account's assets proportionate to the Contract owner's annuity account value (taking into account the investment experience attributable to any Credit). The amounts recaptured will never exceed the Credits provided by Equitable from its own general account assets, and Equitable will not recapture any gain attributable to the Credit.

<sup>12</sup> Pursuant to Rule 0-4 under the Act, Applicants incorporate by reference the legal analysis set out in the Prior Application.

5. Applicants submit that the recapture of Credits relating to contributions made prior to the date an owner starts receiving annuity payments under a life contingent annuity payout option before the fifth contract date anniversary is designed to provide Equitable with a measure of protection against "anti-selection." The risk here is that rather than investing contributions over a number of years, a Contract owner could make an initial contribution, receive Credits, then annuitize under a life contingent annuity payout option within the first five contract years leaving Equitable less time to recover the cost of the Credits applied, to its financial detriment. Like the recapture of Credits permitted by the Existing Order, the amounts recaptured will equal the Credits provided by Equitable from its own general account assets, and any gain associated with the Credit will remain part of the Contract owner's Contract value.

6. For the foregoing reasons, Applicants submit that the provisions for recapture of any Credit under the Amended Contracts do not violate Section 2(a)(32), 22(c), and 27(i)(2)(A) of the Act, and Rule 22c-1 thereunder, and that the requested relief therefrom is consistent with the exemptive relief provided under the Existing Order.

#### Conclusion

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**