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10 CFR Parts 2, 50, 51, 52, and 100
Limited Work Authorizations for Nuclear Power Plants; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 50, 51, 52, and 100

RIN 3150–AI05

Limited Work Authorizations for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations applicable to limited work authorizations (LWAs), which allow certain construction activities on production and utilization facilities to commence before a construction permit or combined license is issued. This final rule modifies the scope of activities that are considered construction for which a construction permit, combined license, or LWA is necessary, specifies the scope of construction activities that may be performed under an LWA, and changes the review and approval process for LWA requests. The NRC is adopting these changes to enhance the efficiency of its licensing and approval process for production and utilization facilities, including new nuclear power reactors.

DATES: The effective date is November 8, 2007.

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SUPPLEMENTARY INFORMATION:

I. Background

A. Development of the Supplemental Proposed LWA Rule

1. 10 CFR Part 52 Rulemaking

This LWA rulemaking originated as a supplement to an NRC rulemaking effort to revise 10 CFR part 52. The NRC issued 10 CFR part 52 on April 18, 1989 (54 FR 15372), to reform its licensing process for future nuclear power plants. 10 CFR part 52 added alternative licensing processes in 10 CFR part 52 for early site permits (ESPs), standard design certifications, and combined licenses. These were additions to the two-step licensing process that already existed in 10 CFR part 50. The processes in 10 CFR part 52 allow for resolving safety and environmental issues early in the licensing proceedings and were intended to enhance the safety and reliability of nuclear power plants through standardization.

The NRC had planned to update 10 CFR part 52 after using the standard design certification process. The proposed rulemaking action began with the issuance of SECY–98–282, ''Part 52 Rulemaking Plan,'' on December 4, 1998. The Commission issued a staff requirements memorandum (SRM) on January 14, 1999 (SRM on SECY–98–282), approving the NRC staff's plan for revising 10 CFR part 52. Subsequently, the NRC obtained considerable stakeholder comments on its planned action, conducted three public meetings on the proposed rulemaking, and twice posted draft rule language on the NRC's rulemaking Web site before issuance of the initial proposed rule on July 3, 2003 (68 FR 40026). However, a number of factors, including the experience gained in using the 10 CFR part 52 early site permit process, led the NRC to question whether the July 2003 proposed rule would meet the NRC's objective of improving the effectiveness of its processes for licensing future nuclear power plants (March 13, 2006; 71 FR 12782). As a result, the NRC decided that a substantial rewrite and expansion of the original proposed rulemaking was desirable so that the agency may more effectively and efficiently implement the licensing and approval processes for future nuclear power plants under part 52. Accordingly, the Commission decided to revise the July 2003 proposed rule and published the revised proposed rule for public comment on March 13, 2006 (71 FR 12782). The public comment period on the March 2006 proposed rule ended on May 30, 2006.

2. Industry Stakeholder Comments Seeking Changes to LWA Process

In a May 25, 2006 comment letter,[1] the Nuclear Energy Institute (NEI) suggested modifications to the NRC's LWA process including: (1) That non-safety-related ''LWA–1'' activities, currently reflected in §§ 50.10(c) and 50.10(e)(1), be allowed to proceed without prior authorization from the NRC, and (2) that the approval process for safety-related ''LWA–2'' activities be accelerated. NEI's comment also stated that the current definition of construction in § 50.10(b) reflects the correct interpretation of the Commission's licensing authority under the Atomic Energy Act of 1954, as amended.

NEI supported its suggested changes to the LWA process, stating that the business environment requires that new plant applicants seek to minimize the time interval between a decision to proceed with a combined license application and the start of commercial operation. To achieve this goal, NEI stated that non-safety-related ''LWA–1'' activities would need to be initiated up to 2 years before the activities currently defined as ''construction'' in § 50.10(b). NEI believes that the current LWA

[1] *See* Letter from Adrian P. Heymer, Nuclear Energy Institute, to Annette L. Vietti-Cook, Secretary, U.S. Nuclear Regulatory Commission, *Pre-Licensing Construction Activity and Limited Work Authorization Issues relating to NRC Proposed Rule, ''Licenses, Certifications and Approvals for Nuclear Power Plants,'' 71 FR 12782 (March 13, 2006) (RIN 3150–AG24)* (May 25, 2006) (ADAMS ML061510471).

approval process would constrain the industry's ability to use modern construction practices and needlessly add 18 months to estimated construction schedules for new plants that did not reference an early site permit with LWA authority. NEI's comment letter stated that ''[t]o the extent the NRC determines that these LWA issues cannot be addressed in the current rulemaking, we ask that the Commission initiate an expedited rulemaking.''

The NRC determined that the changes suggested in the NEI letter could not be incorporated into the final part 52 rule without re-noticing, but that the NEI letter met the sufficiency requirements for a petition for rulemaking as described in 10 CFR 2.802(c). Therefore, the NRC elected to treat the letter as a petition for rulemaking (PRM–50–82).

B. Publication of Supplemental Proposed LWA Rule and External Stakeholder Interactions During the Public Comment Period

The supplemental proposed LWA rule was published in the **Federal Register** on October 17, 2006 (71 FR 61330) for a 30-day public comment period which ended November 16, 2006. During the public comment period, the NRC held a public meeting on November 1, 2006, to answer external stakeholder questions about the supplemental proposed LWA rule. A transcript of the public meeting was made (Agencywide Documents Access and Management System (ADAMS) Accession No. ML063190396), as referenced in the meeting summary (ADAMS Accession No. ML062970517).

In addition, the NRC informally contacted several Federal agencies that traditionally have been interested in environmental impacts statements (EISs) prepared by the NRC before the issuance of LWAs and construction permits, for the purpose of seeking their comments on the supplemental proposed LWA rule. These Federal agencies were the Council on Environmental Quality (CEQ), the U.S. Environmental Protection Agency (EPA), the Federal Energy Regulatory Commission (FERC), and the U.S. Department of the Interior, Fish, and Wildlife Service (FWS).

Finally, the Commission held a public meeting on November 9, 2006, on the overall part 52 rulemaking, at which time industry stakeholders presented additional information on the supplemental proposed LWA rule.

C. Description of Supplemental Proposed LWA Rule

The supplemental proposed LWA rule would narrow the scope of activities requiring permission from the NRC in the form of an LWA by eliminating the concept of ''commencement of construction'' currently described in § 50.10(c) and the authorization described in § 50.10(e)(1). Instead, under the supplemental proposed rule, NRC authorization would be required only before undertaking activities that have a reasonable nexus to radiological health and safety and/or common defense and security (*i.e.*, excavation, subsurface preparation, installation of the foundation, and on-site, in-place fabrication, erection, integration or testing, for any structure, system, or component of a facility required by the Commission's rules and regulations to be described in the site safety analysis report or preliminary or final safety analysis report). While the proposed redefinition of ''construction'' would result in fewer activities requiring NRC permission in the form of an LWA, it also would redefine certain activities (such as the driving of piles) that are currently excluded from the regulatory definition of construction given in § 50.10(b), as construction requiring an LWA.

Further, the supplemental proposed LWA rule provided an optional, phased application and approval procedure for construction permit and combined license applicants to obtain LWAs. The supplemental proposed rule provided for an environmental review and approval process for LWA requests that would allow the NRC to grant an applicant permission to engage in LWA activities after completion of an EIS addressing those activities, but before completion of the comprehensive EIS addressing the underlying request for a construction permit or combined license. The supplemental proposed rule also delineated the environmental review required in situations where the LWA activities are to be conducted at sites for which the Commission has previously prepared an EIS for the construction and operation of a nuclear power plant, and for which a construction permit was issued, but construction of the plant was never completed.

II. Public Comments

A. Overview of Public Comments

The NRC received 13 public comments [2] on the supplemental proposed rule. Ten comments were from external industry stakeholders, consisting of NEI and 7 nuclear power plant licensees—including the 3 applicants for ESPs whose applications are currently pending before the NRC, and 2 companies who have applied (or are expected to apply) for standard design certifications (GE Nuclear and Areva NP). One commenter, Dianne Curran, submitted a comment on behalf of Public Citizen, a consumer advocacy organization, and the Nuclear Information and Resource Service (NIRS), an information and networking organization for organizations concerned about nuclear issues and energy sustainability. One comment was received from the EPA, and one comment was received from an NRC staff individual.

NEI supported the general approach and objective of the supplemental proposed rule, but raised three key issues on the supplemental proposed rule: (1) Inclusion of excavation in the definition of ''construction;'' (2) Designation of structures, systems, and components (SSCs) ''required to be described'' in the standard safety analysis report or final safety analysis report (FSAR) as a key element of the definition of ''construction;'' and (3) Limiting submittal of LWA applications up to 12 months in advance of a combined license application. NEI also proposed a number of changes to the supplemental proposed rule to address three less-significant areas of concern: (1) An LWA applicant's reliance on an earlier EIS for an unconstructed facility; (2) LWA applicant's ability to take advantage of the provisions of § 2.101(a)(9) for an accelerated hearing schedule when submitting an LWA application in advance of a combined license application; and (3) The need for ''grandfathering'' of current ESP applicants. Finally, NEI suggested that § 2.101(a)(5) be modified from the March 2006 proposed rule to allow one part of a combined license application to precede or follow the other part of the application by no more than 12 months. The other industry commenters, including GE Nuclear and Areva NP, generally supported the NEI comments, and in some cases provided additional discussion in support of one or more of NEI's specific comments.

Public Citizen and NIRS opposed granting of an LWA in advance of issuance of a construction permit or combined license, in general because

[2] A public comment dated November 7, 2006, from Westinghouse Electric Company LLC, on the main part 52 rulemaking, was erroneously designated as comment no. 1 on the supplemental proposed LWA rule. This number was later assigned to a comment filed by Diane Curran on behalf of Public Citizen and the NIRS.

these commenters perceived the process as introducing additional complexity to the licensing process, and increasing the cost to individuals who wish to participate in the licensing process. These organizations supported the NRC's proposal to include excavation and the driving of piles in the definition of construction.

The EPA indicated that it had no objections to the supplemental proposed LWA rule, stating that the supplemental rule would ''enhance the efficiency of the NRC's LWA approval process, while maintaining appropriate consideration of environmental effects pursuant to NEPA [National Environmental Policy Act of 1969, as amended].'' In addition, NRC was advised by telephone that CEQ had no objection to the supplemental proposed LWA rule, and therefore would not submit a written comment on the rule.

The NRC staff individual provided eight numbered comments on the supplemental proposed LWA rule. The commenter focused on compliance with the NEPA and the potential adverse effect of the supplemental proposed rule on the NRC staff's resources.

B. NRC Response to Public Comments

The NRC has carefully considered the stakeholder comments, and is adopting a final LWA rule which differs in some respects from the supplemental proposed LWA rule. The final rule is described and discussed in more detail in Sections *III. Discussion,* and *IV. Section-by-Section Analysis* of this document.

The NRC is adopting the LWA rule as a separate final rule, rather than incorporating its provisions into the final part 52 rule. Incorporating the provisions of the final LWA rule into the final part 52 rulemaking would have resulted in a delay in publication of the final part 52 rule, because of the additional time needed for NRC consideration and resolution of the substantial issues raised in the public comments on the supplemental proposed LWA rule. Accordingly, the NRC has adopted the final part 52 rulemaking in a separate action, in advance of this final LWA rule.

1. Commission Questions

In the statement of considerations (SOC) for the supplementary proposed LWA rule, the Commission posed three questions, as follows (October 17, 2006; 71 FR 61340, second column):

> As explained above, this supplemental proposed rule would impact the types of activities that could be undertaken without prior approval from the NRC, with NRC approval in the form of an LWA, and with NRC approval in the form of a construction permit or combined license. Therefore, in addition to the general invitation to submit comments on the proposed rule, the NRC also requests comments on the following questions:
>
> 1. What types of activities should be permitted without prior NRC approval?
>
> 2. What types of activities should be permitted under an LWA?
>
> 3. What types of activities should only be permitted after issuance of a construction permit or combined license?

Only one commenter provided separate responses to these three Commission questions; but the responses were simply an abbreviated version of the comments. The remaining commenters addressed the issues raised in these questions in the course of the commenters' discussion on the supplementary proposed LWA rule. Accordingly, the NRC is not providing a separate discussion of these questions and commenters' responses. Instead, the NRC is responding to these issues in the NRC's responses to specific comments.

2. LWA Process

Comment: The Commission should adopt the LWA final rule as a necessary improvement to the existing LWA process. (NEI, Dominion Nuclear North Anna, Duke Energy, Florida Power and Light, Progress Energy, Southern Company, Unistar, Areva, and GE Nuclear)

NRC Response: The NRC agrees with the commenters that the former NRC provisions on LWAs should be amended to improve the LWA process.

Comment: The Commission should not adopt regulations that allow approval of LWA activities in advance of the issuance of a construction permit or combined license. Allowing LWA activities before a plant is licensed would confirm to the public that the licensing process is a sham. The LWA process represents a further segmentation of the licensing process, which will add complexity to the licensing process, and result in further disenfranchisement of the public. (Public Citizen/NIRS 1)

NRC Response: The NRC disagrees with these commenters. The commenters' position fails to recognize that the LWA process has been used by the agency for over 30 years, and therefore the proposed changes to the LWA process would not add to complexity, or otherwise represent further segmentation. The agency's rules include several longstanding requirements directed at avoiding NEPA segmentation. These requirements are retained in their essential form in the final LWA rulemaking.

The NRC does not believe that the final LWA rule adds any further complexity to the licensing process, or otherwise results in further ''disenfranchisement'' of the public. As stated above, the NRC's regulatory regime already includes the LWA process, and the rule does not modify or change the public's ability to participate in the licensing process. Indeed, rather than ''disenfranchising'' the public, the LWA rule may have the effect of enhancing the ability of external stakeholders to participate in a hearing to resolve their issues with respect to a particular nuclear power plant. Because of resource limitations, many public stakeholders have expressed their concern that, because of the broad range of issues addressed by the NRC at each stage of licensing, it is difficult for them to seek resolution in an NRC hearing for the full range of issues that they are interested in. For these stakeholders, the LWA process—by separating out a defined set of issues to be resolved in advance of the underlying combined license or construction permit proceeding—allows public stakeholders to focus their resources on the relevant issues in an LWA hearing. The ''complexity'' of the process provides an orderly sequencing of the overall set of issues that must be resolved, without introducing unlawful segmentation. The NRC believes that if these public stakeholders consider the revised process in this light, they should conclude that the LWA process enhances, rather than detracts from, participation in the licensing process by interested members of the public who are resource-limited.

The NRC does not believe that the NRC's proposed redefinition of ''construction'' constitutes unlawful ''segmentation'' which results in non-compliance with NEPA. Segmentation, as discussed elsewhere in this SOC, embraces the situation where a Federal agency divides what would otherwise be regarded as a single, integrated Federal action into separate, smaller Federal actions, for the purpose of avoiding compliance with NEPA, or otherwise minimizing the apparent impact of the single, integrated Federal action. The NRC's redefinition of construction is not motivated by a desire to avoid compliance with NEPA, nor will it result in a single Federal action being divided into smaller, sequential Federal actions. Rather, the NRC's redefinition reflects its reconsideration of the proper regulatory jurisdiction of the agency, and properly divides what was considered a single Federal action into private action for

which the NRC has no statutory basis for regulation, and the Federal action (licensing of construction activities with a reasonable nexus to radiological health and safety or common defense and security, for which no other regulatory approach is acceptable) which will require compliance with NEPA.

3. SSCs Within Scope of ''Construction''

Comment: The scope of SSCs that must be described in the FSAR is not always clear, even under the words of existing NRC regulations (*e.g.*, 10 CFR 50.34(b)(2)(i)), which requires discussion of certain systems ''insofar as they are pertinent.'' (Areva 1, 2)

NRC Response: The NRC agrees, in part, with these comments and has revised the scope of SSCs that fall within the definition of construction to clearly identify the SSCs that have a reasonable nexus to radiological health and safety, or the common defense and security.

Comment: The NRC's description of activities constituting ''construction,'' which require a combined license or construction permit (October 17, 2006; 71 FR 61337), should be modified to refer to the ''installation or integration of that structure, system, or component into its final plant location and elevation * * *.'' (Progress Energy 4)

NRC Response: The NRC agrees in part with the commenter, and the corresponding language of this SOC has been modified to state ''into its final plant location would require * * *.''

4. Excavation

Comment: It is not necessary to define construction as including excavation of portions of the nuclear power plant facility having a ''reasonable nexus to radiological health and safety.'' Problems identified during excavation should be identified as part of the site characterization and investigation required for preparing a combined license or construction permit. NRC Regulatory Guide (RG) 1.165, ''Identification and Characterization of Seismic Sources and Determination of Safe-Shutdown Earthquake Ground Motion,'' was updated in 1997 to provide that combined license (COL) applicants' FSARs should include a commitment to geologically map all excavations and notify the NRC when excavations are open for inspection. For safety-related SSCs, these excavations and characterization/investigation activities would be conducted under the applicant's quality assurance (QA) program. This could result in relocation of such SSCs. This provides a better process for ensuring safety and would better support an effective licensing process. In addition, NRC will be involved in pre-application activities and may elect to conduct oversight of any activity involving site characterization and site preparation. The examples cited by the NRC in the public meeting as a basis for including excavation within the definition of ''construction'' did not involve questions about the safety of the excavation activities themselves, but rather the conditions that were identified as the result of excavation. In these cases, the commitments to geologic mapping and notification of the NRC are sufficient to meet the NRC's regulatory interests. Accordingly, §§ 50.10(b) and 51.4 should be revised in the final rule to exclude excavation from the definition of construction, provided that the entity conducting excavation geologically maps the excavations and the NRC staff is notified when the excavations are opened for inspection. (NEI 1; GE Nuclear; Progress Energy 1)

NRC Response: The NRC agrees, in part, with this comment and has deleted excavation from the definition of construction in 10 CFR 50.10(a). A construction permit or combined license applicant is responsible, under the current regulations, to demonstrate that the site conditions are acceptable for the proposed facility design. This responsibility exists regardless of whether or not the NRC reviews and approves the proposed excavation activities and inspects the excavation activities as they are accomplished. Inasmuch as NRC inspection and regulatory oversight of the excavation are not necessary for reasonable assurance of adequate protection to public health and safety or common defense and security, and because the applicant bears the burden for accurately characterizing the parent material, the NRC concludes that excavation may be excluded from the definition of construction.

Comment: Excavation and the driving of piles should be considered ''construction.'' Prior agency experience has shown that safety issues have been identified during excavation, citing to the experience of North Anna nuclear power plant, as well as a nuclear power plant in the Midwest where soil conditions identified during excavation necessitated a change in foundation design. Neither the public nor a reviewing court would think that the NRC would be able to make the underlying licensing decision (*i.e.*, granting a construction permit or a combined license) in an unbiased fashion if excavation proceeded in advance of the underlying licensing decision. (Public Citizen/NIRS 2)

NRC Response: The NRC disagrees, in part, with this comment. As discussed in the response immediately above, the NRC concludes that excavation may be excluded from the definition of construction. However, the driving of piles and any other foundation work is defined as construction.

Comment: The SOC for the final rule should specify that excavation includes appropriate erosion control measures necessary to stabilize site excavations pending LWA or license (*i.e.*, combined license or construction permit) approval of construction activities. (NEI 1.5)

NRC Response: The NRC agrees, in part, with this comment. The NRC's definition of construction in the final LWA rule includes: (1) Any change made to the parent material in which the excavation occurs (*e.g.*, soil compaction, rock grouting); and (2) The placement of permanent SSCs that are put into the excavation during or after the excavation (*e.g.*, installation of permanent drainage systems, or placement of mudmats). If the erosion control measures are conducted outside of the excavated hole and do not cover up the exposed soil conditions, then those activities would be allowed under § 50.10(a). However, under the final LWA rule, the placement of temporary SSCs in the excavation, such as retaining walls, drainage systems, and erosion control barriers, all of which are to be removed before fuel load, would not be considered construction.

Comment: ''Construction'' should be limited to above-ground installation of certain SSCs. (Areva 1)

NRC Response: The NRC disagrees. Even under the former provisions of § 50.10(e)(3), construction included the setting of foundations and other work accomplished below grade. The commenter provided no basis for limiting the definition of construction to the above-grade installation of SSCs of interest. No change was made in the final rule as the result of this comment.

Comment: Temporary buildings, structures, and roads, may be located in the eventual location of SSCs for which an LWA is required for excavation under the supplemental proposed LWA rule. If excavation is required for the temporary buildings, structures, and roads, the supplemental proposed rule would appear to prohibit such excavation. The final rule should make clear that excavation for SSCs outside the scope of an LWA, such as temporary buildings, structures, and roads, should be excluded from the definition of construction. (Areva 3)

NRC Response: As discussed previously, the NRC has decided to exclude all excavation from the definition of construction. In addition, the NRC notes that under the final LWA rule, SSCs that are not within the scope of construction may be installed before receipt of an LWA, construction permit, or combined license. Accordingly, the final rule resolves the commenter's issue.

5. Compliance With NEPA

Comment: The impacts of the construction activities that the NRC proposes to exclude from its regulations have been part of the NRC regulations since 1972. What has changed causing the NRC to decided that these activities will not longer be part of the environmental review? Has NRC been doing it wrong for more than 30 years (including the 3 early site permits that are either completed or near completion)? (Kugler 1)

NRC Response: As discussed in the ''Discussion'' section of this final rule (as well as the supplemental proposed rule), the 1972 amendment to the definition of construction in 10 CFR 50.10 was made early in the Federal government's implementation of then-new NEPA. Since that time, the Federal case law on NEPA has evolved, with several U.S. Supreme Court decisions on the requirements of NEPA. In addition, in preparing for the expected next generation of nuclear power plant construction applications, the nuclear power industry has reviewed the overall construction process based upon lessons learned from the construction and licensing process used for currently operating reactors. The industry submitted what is essentially a petition for rulemaking seeking changes to the LWA process, reflecting those lessons learned and their understanding of the current state of NEPA law. The NRC has reviewed the applicable law, and for the reasons stated elsewhere in this SOC, agrees with the petitioner that the current definition of construction and the current LWA requirements in § 50.10 are not compelled by NEPA or the Atomic Energy Act (AEA) of 1954, as amended. While the agency's regulations on construction and LWAs were a reasonable implementation of NEPA as understood in 1972, the NRC believes that, with more than 30 years experience in implementing NEPA and the evolving jurisprudence, the time is appropriate for reconsideration and revamping of these NRC requirements.

Comment: The impacts of the construction of a nuclear power plant that NRC now proposes to exclude from NRC regulations are probably 90 percent of the true environmental impacts of construction. Before even talking to the NRC, a power company can clear and grade the land, build roads and railroad spurs, erect permanent and temporary buildings, build numerous plant structures (*e.g.*, cooling water intake and discharge, cooling towers), and build switchyards and transmission lines. After potentially doing all of that, THEN the company would come to the NRC and ask permission to build the power plant *for which all of this work was* done. How does this comply with NEPA? The commenter asserts that the NRC is going to ignore almost all of the construction impacts of the proposed action. (Kugler 2)

NRC Response: The commenter assumes that, if a private action is preparatory to Federal action, then NEPA provides a statutory basis for the agency to extend its otherwise limited jurisdiction under the AEA to those private, preparatory actions, solely for the purpose of agency consideration of the environmental impacts under NEPA. The commenter has not pointed to, and the NRC has not identified, Federal case law that supports such a position. Indeed, even in a case where the Federal agency had unequivocal statutory authority to grant or deny a Federal permit, the U.S. Supreme Court specifically held that the Federal agency was not compelled to require mitigation based upon environmental considerations identified in the NEPA review. *Robertson* v. *Methow Valley Citizens Council,* 490 U.S. 332 (1989).

The commenter also asserts that the NRC is going to ''ignore all the [pre-]construction impacts of the proposed action.'' On the contrary, as stated elsewhere in this SOC, the pre-construction private actions of clearing, grading, access road construction, etc., will be considered in the cumulative impacts analysis in the LWA EIS as the baseline for analyzing the environmental impacts associated with the Federal action authorizing LWA activities. This information will be used when evaluating the environmental impacts of construction and operation of the proposed nuclear power plant.

Comment: The commenter states that the final rule says NRC won't consider the sunk costs of all of this work in your decision whether to approve the request to build the plant. The commenter asserts that NRC has allowed the company to do most of the environmental damage. Who cleans up the mess if the NRC says no? The commenter states that because the NRC has excluded from its review all of this work that's specifically for the purpose of building the plant, the NRC also can't require any redress plan for the site for those impacts. (Kugler 2.a)

NRC Response: The commenter appears to believe that the NRC has authority to exercise its regulatory jurisdiction in an area where it does not otherwise possess regulatory authority under its organic statute, solely for the purpose of ensuring environmental redress of private activities with significant environmental impacts. The NRC does not agree with the commenter's implicit suggestion. As discussed in the response to the previous comment as well as elsewhere in this SOC, the NRC does not possess statutory authority to regulate activities that do not have an impact upon radiological health and safety or common defense and security, and NEPA does not provide independent statutory authority to extend the agency's jurisdiction solely for the purpose of assuring that adverse environmental impacts are considered and mitigated. While this may be a worthy goal, the NRC may not lawfully act in such a manner, absent additional statutory authority which is not currently provided by either NEPA or the AEA.

Comment: The commenter asserts that NRC won't consider the sunk costs in its review. The commenter also asserts that it sounds like the ''baseline'' for the environmental review will include the environmental damage done by a company in terms of ''pre-application'' activities. In other words, if an applicant for an LWA, CP, or COL has done all of the things NRC now allows without NRC review, the condition of the cleared and partially built site is now the starting point for the environmental review. The commenter states that in terms of comparing this partially built site to any alternative site, NRC has essentially ''pre-selected'' the site chosen by the applicant. The commenter states there will be less environmental impacts at a site that has already had most of the damage done to it as compared to any other site. The commenter believes the NRC has handed its responsibility for the site suitability determination over to the applicant. (Kugler 2.b)

NRC Response: The commenter makes two incorrect assumptions. First, the commenter implicitly assumes that environmental matters are the key determinants of site suitability. The NRC believes that, as a practical matter and as borne out by the history of site suitability determinations in the past, other factors, such as seismic activity and intensity, geological structures, meteorological factors, impediments to development of emergency plans,

security issues, and demographics (population density and distance) from a safety perspective are at least as important, if not more important, than ''environmental'' matters as a key determinant of site suitability.

Second, the commenter assumes that clearing of a site will always tilt the environmental balance in favor of the applicant's ''pre-selected site.'' This may not be true in most cases. For example, even an ''obviously superior'' site from the standpoint of environmental impacts on water—which is likely to be the determining ''environmental'' impact—will require grading and clearing in order to be used. If construction were to be abandoned at the applicant's ''pre-selected site'' and commenced at the ''obviously superior site,'' the environmental impacts of pre-construction activities such as clearing and grading would still have to be performed at the ''obviously superior'' site. In essence, the ''sunk environmental impacts'' associated with preconstruction at the pre-selected site are balanced out by the ''future'' environmental impacts associated with preconstruction at the ''obviously superior'' site. Thus, pre-construction at a ''pre-selected'' site could not, in and of itself, lead to automatic dismissal of otherwise ''obviously superior'' sites.

In any event, the issue of the ''baseline'' for purposes of alternative sites is not addressed directly in the final LWA rule and will be resolved in the development of NRC guidance on implementation of the final LWA rule. Furthermore, the NRC notes that pre-construction impacts will be evaluated as part of the cumulative impacts analysis, which may render moot some aspects of the commenter's concerns in this area.

Comment: How can NRC tell the world in an EIS that the only real impacts of construction of a nuclear power plant will be related to digging a big hole and a few other straggling items that will occur while the structures described in the FSAR are being built? (Kugler 2.c)

NRC Response: The commenter appears to assert that the NRC's EIS for a combined license must attribute to the NRC's Federal action all of the environmental impacts of constructing a nuclear power facility, including the private, pre-construction activities that may be accomplished by the applicant without any NRC approval. The commenter's implicit assertion is incorrect. The NRC's EIS need only describe the environmental impacts of the Federal action as those construction activities, as defined under § 50.10, which can only be accomplished under an LWA and combined license or construction permit.

The environmental impacts of pre-construction activities will also be described in the NRC's EIS because such description is necessary to evaluate the cumulative impacts of the Federal action, in light of the pre-existing impacts of the private, pre-construction action. The cumulative impacts discussion should provide information on the total environmental impacts of constructing the nuclear power plant to both the NRC decisionmaker and the general public.

The NRC notes that, under the final LWA rule, excavation for SSCs that are important from a radiological health and safety or common defense and security standpoint will not be treated as ''construction.'' Therefore, the environmental effects of excavation would not be evaluated as an impact attributable to the Federal licensing action, but instead be added to the environmental baseline for a site.

Comment: How are applicants and NRC going to divide impacts if some of the construction activities now out side (sic.) the NRC's scope are going on at the same time as activities inside NRC's scope? For example, traffic impacts of the construction workforce are often an issue. But how does the NRC deal with it if part of the workforce is building cooling towers and intake systems, and part is building FSAR-listed structures? Another case is property taxes. The property taxes paid by the company are a significant item in the socioeconomic review. Are the applicant and the NRC now going to have to differentiate between taxes paid for FSAR-related facilities and taxes paid for other facilities? (Kugler 2.d)

NRC Response: The commenter raises a number of detailed issues with respect to NRC implementation of the final rule in the course of preparing EISs. None of these matters appear to raise issues that are insurmountable or would be unusually difficult to resolve. For example, the need to apportion the taxes for FSAR-related SSCs, versus taxes on other portions of the facility whose construction does not require NRC approval could be resolved by simply treating all the taxes paid as a benefit of operation, and the impacts from all portions of the plant as an impact of operation. The NRC expects that the staff will develop supplemental guidance to the environmental standard review plan on these and other implementation matters.

Comment: The commenter states that the rule says that if an LWA is issued, the EIS to build and operate a nuclear power plant will be a supplement to the EIS for the LWA. The commenter believes this means that the EIS that evaluates the impacts of building and operating a large commercial power plant will be a supplement to the EIS for digging a big hole. The commenter states that assuming the EIS for the big hole ignores all of the other impacts of construction that may already have taken place, it's going to be pretty limited in scope. The commenter states that this EIS of very limited scope will now become the base document, and the EIS that considers ALL of the impacts of operations will be a supplement to it. (Kugler 3)

NRC Response: The NRC believes that the proposed rule is consistent with NEPA. The commenter presented no rationale why the NRC's proposal violates either NEPA or CEQ's implementing regulations. NEPA itself only requires that a statement be prepared addressing the environmental impacts and alternatives of major Federal actions significantly affecting the environment. The statute does not contain any language specifically constraining the manner in which each EIS for two sequential Federal actions must be prepared. Hence, the NRC is free to select a manner of NEPA compliance which best meets the agency's needs.

The commenter appears to be concerned that, if the LWA applicant chooses to submit an environmental report limited to LWA activities, then the LWA EIS would be a relatively narrow document which cannot be the basis for a supplemental EIS with a greatly expanded scope of subject matters addressed. The NRC does not believe that the commenter's concern is well-founded. First, the CEQ's regulations specifically permit ''tiering'' of EISs to ''eliminate repetitive discussions of the same issues and to focus on the actual issue ripe for consideration at each level of the environmental review * * *'' (40 CFR 1502.20). Although most of the tiering discussion refers to a broad initial EIS followed by more specific EIS tiering on the earlier EIS, 40 CFR 1502.20 also states, ''Tiering may also be appropriate for *different stages of actions* (emphasis added).'' The NRC believes that the LWA is a stage in the overall Federal action of issuing a license for construction (and, in the case of a combined license under part 52, operation) of a nuclear power plant. It is logical to evaluate the environmental impacts of the activities that occur first (*i.e.*, LWA activities), followed by evaluation of the impacts of activities that occur thereafter (*i.e.*, main construction and operation). The

potential for segmentation of the Federal impacts is minimized, as discussed previously, by various provisions of the rule which, *inter alia,* prohibit NRC consideration of sunk costs, require consideration of all environmental impacts and benefits attributable to LWA activities in the supplemental EIS prepared for the underlying combined license or construction permit application, and require the applicant/licensee to develop and, if necessary, implement a redress plan. Second, the CEQ regulations also encourage agencies to incorporate by reference material into an EIS to cut down on bulk without impeding agency and public review of the action. Nothing in the CEQ regulations suggests that incorporation by reference is precluded where the material being incorporated is smaller in bulk than the EIS into which the material is being incorporated. The NRC believes the purpose of incorporation by reference is served by incorporating the LWA EIS into the supplemental EIS prepared at the combined license or construction permit stage.

Comment: The commenter states the LWA EIS will only be looking at the impacts of digging the big hole and pouring the foundation. At what point does the NRC staff evaluate the impacts of construction and operation to determine whether the site is SUITABLE for the construction and operation of a nuclear power plant? Is that done later? Does that mean that NRC could authorize digging the hole at a site that could later be determined by NRC to be unsuitable? (Kugler 4)

NRC Response: The NRC has decided that excavation should not be considered ''construction,'' and that NRC permission is not required to undertake excavation activities. Accordingly, a response to this comment, to the extent that it is focused on NRC consideration of the impacts of excavation as an impact of the issuance of the LWA, construction permit, or combined license, is unnecessary. As discussed elsewhere in this document, the impacts of preconstruction activities performed by the ESP holder, construction permit, or combined license applicant must be described by the applicant in its environmental report, and must be considered in the cumulative impacts analysis.

Under the final LWA rule, the NRC's evaluation of site suitability must be made when it issues a construction permit or combined license, unless the applicant seeks, either as part of an LWA or in advance of the issuance of the construction permit or combined license under subpart F of part 2, an early decision on site suitability and/or the environmental impacts of construction and operation.

Comment: Has the NRC discussed these changes with key stakeholders like EPA, CEQ, and FERC? What do they think of this change? The commenter states that this is a major shift by the NRC away from its NEPA responsibilities, and believes that other agencies may have real problems with it beyond the basic NEPA issues. For example, will FERC commence a review for transmission lines if the power company hasn't submitted an application to the NRC to build the plant for which it's needed? Similarly, will the Corps of Engineers issue Section 404 permits to damage wetlands and dredge if there's no request to build a plant yet? Has anybody talked to them? (Kugler 5)

NRC Response: The NRC sought comments on the proposed rule from four Federal agencies who have historically been interested in NRC construction licensing from an environmental standpoint. Advance copies of the proposed rule as approved by the Commission were provided to the CEQ, the EPA, FERC, and the U.S. Department of the Interior, FWS, and copies of the proposed rule as published in the **Federal Register** were electronically transmitted to cognizant individuals in these agencies on the date of publication of the proposed rule in the **Federal Register** (ADAMS Accession Nos. ML062840445, ML062910051, and ML062910049). Additional telephone calls were made to describe the proposed rule and to answer any questions from these agency officials. As discussed earlier in this document, the NRC has received comments from the EPA, which has no objection to the change. NRC was advised by telephone that CEQ had no objection to the supplemental proposed LWA rule. The NRC has been advised by FERC that it ordinarily would not review transmission line routings for lines commencing at nuclear power facilities. The NRC believes that it has made reasonable efforts to obtain input from other cognizant Federal agencies, and none appear to share the concerns of the commenter. No change from the supplemental proposed LWA rule has been made as the result of this comment.

Comment: How does this change affect the current early site permit applicants? The commenter states that, for example, Exelon and Dominion submitted redress plans for all of the impacts of construction they'd be allowed to carry out before receiving a license to build and operate a plant. The petitioner also believes Southern submitted redress plans. Future applicants won't have to do this. What happens to the Exelon and Dominion redress plans? Do they get out of them now? If so, how does NRC explain that to all of the folks involved in those reviews who relied on the NRC's representations that a redress plan was required (*e.g.*, the public, Federal and State environmental regulatory agencies)? What happens to Southern, which is early in its review? (Kugler 6)

NRC Response: The final rule does not affect the NRC staff's approval of a full-scope redress plan to support LWA activities under the former LWA provisions in §§ 50.10 and 52.17. The three applicants for ESP which are currently before the NRC are required to meet the NRC's requirements in effect at the time of the application, with respect to the content of the application. If the final rule is adopted before ESPs are issued to the current ESP applicants, then the applicant may (but is *not* required to seek to revise its redress plan and seek NRC approval of a (narrowed) redress plan that meets the requirements of the final LWA rule. In such a case, the NRC would advise other Federal and State agencies of the change in NRC's regulatory requirements and any change in the scope of the approved redress plan which may be requested by the ESP applicant. Alternatively, upon issuance of the ESP, the ESP holder may request an amendment to its ESP, consistent with the recently-adopted revisions to 10 CFR part 52, to seek NRC approval of a (narrowed) redress plan which is consistent with the requirements of the final LWA rule. In such an event, the NRC would—as part of its routine procedures—consult with relevant Federal agencies. No change from the supplemental proposed LWA rule was made as a result of this comment.

Comment: Section 51.49(a)(2) should be revised to delete the requirement for an LWA applicant to state the need for an LWA. (Progress Energy 5)

NRC Response: The NRC disagrees with the commenter's proposal. An EIS should state the purpose and need for a proposed action. 10 CFR part 51, appendix A, paragraph 4; 40 CFR 1502.13. Inasmuch as the NRC is acting on a private entity's request in a licensing action, the purpose and need should be, in the first instance, determined by the applicant and be adopted by the NRC. No change was made to the final rule as a result of this comment.

Comment: Sections 51.20(b)(1) and (5), and 51.76(b) and (e) should be revised to allow the NRC staff the option of preparing and issuing an

environmental assessment (EA) if the environmental report shows no significant environmental impacts associated with LWA activities. (Progress Energy 6, 7, 8)

NRC Response: The NRC disagrees with the commenter's proposal. In preparing the supplementary proposed rule, the NRC considered the approach recommended by the commenter. However, the NRC rejected proposing such an approach because it would increase the perception of Federal segmentation, without any significant countervailing benefits, in terms of resources or time necessary to complete the NEPA process. Furthermore, the tiering concept, under CEQ regulations, involves sequential EISs rather than an EA followed by an EIS. The NRC believes that it would not be prudent to pursue a new approach to NEPA compliance, which may result in legal instability in an area of critical interest to industry stakeholders. The commenter presented no information in favor of its proposal. Accordingly, in the absence of new information suggesting that the Commission's initial determination should be revisited, the Commission declines to adopt the commenter's proposal. No change was made to the final rule as a result of this comment.

6. LWA Application Process

Comment: The commenter states that the NRC expects over 15 applications for COLs in the next 3 years or so. Perhaps it can staff up to meet the challenge of preparing those 15 EISs. But can it possibly handle 30? If most or all of the COL applicants choose to submit an LWA application too, which would seem likely, the NRC staff will have to prepare two EISs for each site. Has the NRC considered the resource implications? (And if an applicant chooses to go the ESP route for some reason, there will be three EISs.) (Kugler 7)

NRC Response: The commenter appears to believe that, under a revised LWA rule, the overall resources expended by the NRC in preparing EISs would increase over the current regulatory regime in a time frame that would exacerbate any problems that may be caused by limited NRC staff resources. The NRC disagrees with the commenter. The final LWA rule merely governs the timing of the NRC's environmental review of the overall action of licensing the construction and operation of a nuclear power plant, consistent with NEPA.

Taking the specific example identified by the commenter of a combined license applicant, who both seeks an LWA and references an ESP, it is possible—as the commenter correctly points out—that three EISs may be prepared in the worst case of a less than complete ESP EIS. However, the final LWA rule does not require the NRC staff to prepare entirely new, full-scope EISs at either the LWA or the combined license issuance stages. Instead, the EIS at the LWA stage would be limited to considering the environmental impacts of LWA activities only (assuming that the LWA ER is limited to providing information on the environmental impacts of LWA activities). This is consistent with NRC and CEQ regulations that allow incorporation by reference. Preparation of an LWA EIS limited to those subjects would not be redundant of the ESP EIS, inasmuch as the impacts of construction under this scenario were not addressed in the ESP EIS. Accordingly, there is no unnecessary expenditure of NRC resources attributable to anything in the LWA rule. When the combined license supplemental EIS is prepared, that EIS will be limited to considering new and significant information related to matters concerning construction and operation of the facility which was not addressed in the ESP EIS, unless the matter was discussed in the LWA EIS. In that limited case, the nature and description of the LWA construction impacts are deemed to be resolved, and these impacts would be considered in the overall balancing and decisionmaking on issuance of a combined license without the need to re-examine the nature and description of those LWA impacts. Again, the final LWA rule avoids redundant NRC review to the maximum extent practicable, inasmuch as the combined license EIS relies upon the determinations regarding the nature and impacts of construction and operation which were made at both the ESP and LWA stages. The overall scope of the NRC environmental review is not changed; it is merely the timing of the review for individual issues that is affected by the final LWA rule.

In sum, the NRC does not agree with the commenter that the LWA rule will, as the consequence of its provisions, result in an adverse impact upon the amount and timing of expenditure of NRC resources that cannot be managed in an effective manner. No change from the supplemental proposed LWA rule was made in response to this comment.

Comment: One commenter states that it appears that this new process will require major changes to NRC guidance documents such as RGs and the environmental standard review plan. Almost everything related to the impacts of construction will have to be completely rewritten. Can this be done before the first applicant uses the new rule? (Kugler 8)

NRC Response: The NRC agrees with the commenter that changes to the NRC RGs and the environmental standard review plan will be necessary to provide complete guidance to potential applicants and the NRC review staff with respect to implementation of the new LWA process in the final LWA rule. However, the NRC does not agree with the commenter's implicit assertion that the guidance must be finalized before the first applicant (or several applicants) can use the new LWA process in an effective manner. The NRC has, in many other instances, adopted rules containing substantial changes to its technical and regulatory requirements applicable to nuclear power reactors. Although the NRC does not wish to understate the challenge of implementing new rules, it is confident that the NRC working level technical staff, under careful and timely oversight by NRC staff management, will be able to implement the final LWA rule in a timely, consistent, and effective manner.

Comment: One commenter states that the supplemental proposed rule does not appear to allow an applicant to use both a phased LWA process and the hearing process for early partial decision on site suitability issues, thereby allowing an applicant who wishes to apply for an LWA to also submit the environmental information under § 2.101(a)(5) and proceed with an accelerated hearing on the full scope of environmental matters. The Commission should adopt changes in §§ 50.10(c)(2) and 2.101(a)(5) to allow an applicant to use both processes simultaneously. (NEI 5; Unistar 1)

NRC Response: The NRC believes that the commenter misunderstood the provisions of the supplemental proposed rule. The NRC's intent is that:

- Applicants may submit a two-part (phased) application for an LWA in advance of the application for the underlying combined license or construction permit, *see* § 2.101(a)(9).
- The environmental information submitted in the LWA portion of the application may either be limited to the LWA activities requested, or the full scope of construction and operation impacts, *see* § 51.49(b) and (f).
- An LWA applicant may seek an early decision on siting and environmental matters. If the LWA is submitted in advance of the underlying construction permit or combined license application, the procedures in 10 CFR part 2, subpart F, §§ 2.641 through 2.649 apply. If the LWA is submitted as part of (or after) the construction permit or

combined license application, then the procedures in subpart F, §§ 2.601 through 2.629 would apply because this is the ordinary procedure for obtaining an early decision on siting and environmental matters under the existing provisions of subpart F.

The NRC does not believe the specific language changes to the proposed rule described by the commenter are necessary to accomplish these three objectives. Accordingly, the Commission declines to adopt the changes proposed by the commenter, and no change from the supplemental proposed LWA rule was made in response to this comment.

Comment: One commenter proposed that the timing provisions in 10 CFR 2.101(a)(5), requiring that each part of a two-part combined license application be submitted within 6 months of each other, should be revised to be consistent with 10 CFR 2.101(a)(9) of the supplemental proposed rule, which permits the LWA application to be submitted up to 12 months in advance of the underlying combined license or construction permit. The commenter believes that additional conforming changes should be made to implement this concept, including changes in § 50.10(c)(2). (Unistar 2) Another commenter made the same proposal, but separately suggested that the overall time between parts of applications be lengthened to 18 months. (NEI 6)

NRC Response: The NRC agrees with the commenters that the timing provisions should be consistent. Furthermore, the NRC agrees with the second commenter (NEI) that the overall time between parts of applications may be lengthened to 18 months. The 6 month limitation in former § 2.101(a)(5) for two-part applications was set many years ago and reflected internal NRC administrative considerations, including maximizing efficiency and ensuring continuity of review oversight. The 12-month limitation between submission of the LWA application and the underlying combined license or construction permit application, as proposed in the supplemental proposed LWA rule, was based upon the same considerations, as well as environmental/NEPA considerations. The NRC did not want the time between the initial submission of LWA environmental information and the subsequent consideration of the overall environmental impacts to be lengthened to the point that there would be a substantial likelihood of new and significant information that would require updating. A 12-month limitation was established as a reasonable limitation. No consideration was given to having a consistent limitation in both existing paragraph (a)(5) and proposed paragraph (a)(9).

However, after further consideration based upon public comments, the NRC concludes that the 6-month limitation in paragraph (a)(5) and the proposed 12-month limitation in paragraph (a)(9) are unduly restrictive. The NRC believes that administrative efficiency can be maintained with longer time periods between parts of applications, in view of modern information technology, NRC's restructuring of the licensing process in part 52, the NRC's recent adoption of changes to part 2, subpart D and part 52, appendix N, and the NRC's projected use of design-centered reviews. In addition, the NRC understands, in response to informal inquiries with EPA, that 18 months is well within the time period considered by EPA to be acceptable for referencing a previously-prepared EIS without updating. For these reasons, the Commission is adopting an 18-month limitation in paragraphs (a)(5) and (a)(9) of § 2.101.

7. Other Topics

Comment: The NRC should include a ''grandfathering'' provision in the final rule to make clear that the final rule does not require any change to ESP applications filed before the effective date of the rule, such as supplementing the application to require a showing of technical qualifications. The NRC should also clarify that the final rule would not reduce or limit the authority that such applicants would be entitled to receive upon issuance of their ESPs under the current regulations (*e.g.*, perform construction of non-safety-related SSCs). (NEI 4, Dominion 1)

NRC Response: The NRC agrees with the commenters that the final LWA rule does not require any change to ESP applications filed before the effective date of the rule. Upon further consideration, the NRC has decided to include a ''grandfathering'' provision in the final rule which will provide that ESP applications which are under consideration as of the effective date of the final LWA rule, which include a request to conduct § 50.10(e)(1) activities, need not comply with the ''content of application'' requirements in the final rule.

The NRC does not agree with the commenter's view that the final rule and/or the SOC for the final rule should clarify that the current ESP applicants should be provided with the authority to conduct LWA activities under the former provisions of § 50.10(e)(1), that is, not be bound by the final LWA rule's provisions. The final LWA rule does allow excavation without an LWA. However, the NRC continues to believe that pile driving and other subsurface preparation should be considered construction, inasmuch as none of the comments received addressed this matter or brought information to the NRC's attention that suggests that the NRC's regulatory basis for its position should be reconsidered (the public comments received only addressed excavation *per se,* and did not mention pile driving or other subsurface preparation). In addition, as discussed elsewhere in this SOC, the NRC has redefined and limited the SSCs whose construction requires an LWA, construction permit, or combined license. Thus, the NRC believes that the current ESP applicants will have sufficient authority and flexibility under the final rule, without any grandfathering of the LWA provisions. Furthermore, regulatory stability from the standpoint of backfitting is not relevant, inasmuch as it has been the Commission's longstanding position that backfitting does not protect an applicant from changes to regulatory requirements.

Comment: The commenter states that proposed § 50.10(c)(3)(i) requires the LWA application to: (1) Describe the design and construction information otherwise required to be submitted for a combined license, but limited to the portions of the facility that are within the scope of the limited work authorization; and (2) Demonstrate compliance with ''technically relevant Commission requirements in 10 CFR Chapter I'' applicable to the design of those portions of the facility within the scope of the limited work authorization, is unduly vague. If specific technical requirements are deemed applicable, they should be justified and identified in the rule. (Dominion 3)

NRC Response: The NRC disagrees with the commenter that the language of § 50.10(c)(3)(i) (§ 50.10(d)(3)(i) in the final LWA rule) is unnecessarily vague, or that it would be practical for the rule language to specify the technical requirements which are deemed applicable. The technical requirements that are applicable will depend upon the scope and nature of LWA activities requested. Furthermore, this regulatory requirement is modeled on the provisions of former §§ 50.10(e)(2), (e)(3)(i), and (e)(3)(ii), for which the NRC and the nuclear power industry has had decades of experience. The commenter did not present either alternative language that would address its concern with vagueness, or otherwise present a list of NRC technical requirements that should be specified as applicable. The original commenter whose submission led to this

rulemaking did not identify this aspect of the former rule as presenting a problem which should be addressed as part of the reformulated rule. To modify the rule language to include a list of technically relevant requirements would likely require renoticing of this aspect of the rule for public comment, which would delay issuance of the rule with little benefit, given the 30+ years of experience in implementing analogous rule language in the former versions of § 50.10. Accordingly, the Commission declines to adopt the commenter's proposal, and no change from the supplemental proposed LWA rule was made in response to this comment.

Comment: The commenter states that the finding of technical qualifications should be limited to LWA activities applicable to safety-related activities, because there are no design, construction, or technical requirements in the NRC's rules applicable to non-safety-related construction work. (Dominion 4)

NRC Response: The NRC disagrees with the commenter's proposal, inasmuch as it is based on the longstanding industry misconception that the NRC's regulations in part 50 apply only to ''safety-related'' SSCs and activities relevant to those SSCs, as that term is defined in 10 CFR 50.2. This is not a correct understanding. For example, the general design criteria in 10 CFR part 50, appendix A, apply to SSCs ''important to safety; that is, structures, systems, and components that provide reasonable assurance that the facility can be operated without undue risk to the health and safety of the public.'' *Id.* (first introductory paragraph). There are numerous other regulations applicable to the design, construction, and operation of a nuclear power facility whose applicability extends beyond ''safety-related'' SSCs. It is consistent with Section 182.a of the AEA and the NRC's past practice that a technical qualifications finding be made as part of the finding necessary for NRC issuance of an LWA. Accordingly, the NRC declines to adopt the commenter's proposal, and no change from the supplemental proposed LWA rule was made in response to this comment.

Comment: The commenter states that the reference in § 50.10(d)(2) to § 52.17(c) should be changed to § 50.10(c)(3)(iii), inasmuch as the requirement for a redress plan has been removed from § 52.17(c) and relocated in § 50.19(c)(3)(iii). (Progress Energy 3)

NRC Response: The NRC agrees with the substance of this comment. Inasmuch as the proposed rule has been reorganized in the final rule, the final rule refers to the appropriate paragraph.

Comment: The commenter states that an LWA is not the functional equivalent of an ESP. There are significant differences between them, and the time and level of NRC staff effort necessary to conduct an LWA review should not be as great as for an ESP review. The NRC should clarify the differences between an LWA and ESP in the SOC for the final rule. (Areva 4)

NRC Response: NRC agrees with the commenter that there are some significant differences between an LWA review and an ESP. In particular, issuance of an LWA does not require the NRC to make a finding with respect to site suitability from either a safety or environmental standpoint (although the LWA applicant may, under §§ 2.101(a)(9), 52.17, and 51.49 of the final rule, submit an environmental report addressing the issues of alternative, obviously superior sites, and the impacts of construction and operation of the nuclear power plant, in which case the NRC would make a finding on all environmental matters, including alternative, obviously superior sites). The NRC has modified the section-by-section discussion of the SOC to make clearer the requirements for obtaining an LWA.

Comment: The commenter states that proposed §§ 51.76(e) and 51.49(e) are slightly inconsistent, in that the former refers to the LWA applicant's authority to incorporate by reference an earlier EIS prepared for the same site if a construction permit was issued but construction never commenced. By contrast, § 51.49(e) refers to the LWA applicant's environmental report to reference an earlier EIS prepared for the same site if a construction permit was issued but construction was never completed. The commenter also states that inasmuch as the NRC intended to adopt the more expansive concept embodied in § 51.49(e), the final rule should modify § 51.76(e) to be consistent to refer to construction not being ''completed.'' (NEI 3)

NRC Response: The NRC agrees, and the language of § 51.76(e) has been conformed in the final rule. In addition, conforming changes were made in the subtitles of §§ 51.49(e) and 51.76(e), and the relevant SOC discussion.

III. Discussion

A. History of the NRC's Concept of Construction and the LWA

Section 101 of the AEA prohibits the manufacture, production, or use of a commercial nuclear power reactor, except where the manufacture, production, or use is conducted under a license issued by the NRC. While construction of a nuclear power reactor is not mentioned in Section 101, Section 185 of the AEA requires that the NRC grant construction permits to applicants for licenses to construct or modify production or utilization facilities, if the applications for such permits are acceptable to the NRC. However, the term construction is not defined anywhere in the AEA or in the legislative history of the AEA.

To prevent the construction of production or utilization facilities before a construction permit is issued, the NRC proposed a regulatory definition of construction in 1960 (25 FR 1224; February 11, 1960). The definition of construction was adopted in a final rule that same year and codified in 10 CFR 50.10(b) (25 FR 8712; September 9, 1960). As promulgated, § 50.10(b) stated that no person shall begin the construction of a production or utilization facility on a site on which the facility is to be operated until a construction permit had been issued. Construction was defined in § 50.10(b) as including:

> * * * pouring the foundation for, or the installation of, any portion of the permanent facility on the site; but [not to] include: (1) Site exploration, site excavation, preparation of the site for construction of the facility and construction of roadways, railroad spurs, and transmission lines; (2) Procurement or manufacture of components of the facility; (3) Construction of non-nuclear facilities (such as turbogenerators and turbine buildings) and temporary buildings (such as construction equipment storage sheds) for use in connection with the construction of the facility; and (4) With respect to production or utilization facilities, other than testing facilities, required to be licensed pursuant to Section 104a or Section 104c of the Act, the construction of buildings which will be used for activities other than operation of a facility and which may also be used to house a facility. (For example, the construction of a college laboratory building with space for installation of a training reactor is not affected by this paragraph.) (25 FR 8712; September 9, 1960)

The definition of construction remained unchanged until 1968, when the driving of piles was specifically excluded from the definition (33 FR 2381; January 31, 1968). This change was implemented by amending § 50.10(b)(1) to read: ''Site exploration, site excavation, preparation of the site for construction of the reactor, *including the driving of piles*, and construction of roadways, railroad spurs, and transmission lines.'' The rationale for this change, as articulated in the proposed rule (32 FR 11278; August 3, 1967), seems to have been that the driving of piles was closely related to ''preparation of the site for

construction'' and that the performance of this type of site preparation activity would not affect the NRC's subsequent decision to grant or deny the construction permit. With the exception of the exclusion of the driving of piles from the definition of construction in 1968, the NRC's interpretation of the scope of activities requiring a construction permit *under the AEA* has remained largely unchanged.

However, following the enactment of the NEPA, as amended, the NRC adopted a major amendment to the definition of construction in § 50.10 (37 FR 5745; March 21, 1972). In that rulemaking, the NRC adopted a much more expansive concept of construction. Specifically, a new § 50.10(c) was adopted stating that no person shall effect ''commencement of construction'' of a production or utilization facility on the site on which the facility will be constructed until a construction permit has been issued. ''Commencement of construction'' was defined as:

> * * * any clearing of land, excavation, or other substantial action that would adversely affect the natural environment of a site and construction of non-nuclear facilities (such as turbogenerators and turbine buildings) for use in connection with the facility, but does not mean: (1) Changes desirable for the temporary use of the land for public recreational uses, necessary boring to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site or to the protection of environmental values; (2) Procurement or manufacture of components of the facility; and (3) With respect to production or utilization facilities, other than testing facilities, required to be licensed pursuant to Section 104a or Section 104c of the Act, the construction of buildings which will be used for activities other than operation of a facility and which may also be used to house a facility * * * (37 FR 5748; March 21, 1972)

The NRC explained that expansion of the NRC's permitting authority was:

> [C]onsistent with the direction of the Congress, as expressed in Section 102 of the NEPA, that, to the fullest extent possible, the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in that Act. Since site preparation constitutes a key point from the standpoint of environmental impact, in connection with the licensing of nuclear facilities and materials, these amendments will facilitate consideration and balancing of a broader range of realistic alternatives and provide a more significant mechanism for protecting the environment during the earlier stages of a project for which a facility or materials license is being sought. (37 FR 5746; March 21, 1972)

Thus, the NRC's interpretation of its responsibilities under NEPA, not the AEA, was the driving factor leading to its adoption of § 50.10(c).[3]

The NRC issued § 50.10(e) two (2) years after the expansion of the NRC's permitting authority resulting from the issuance of § 50.10(c) (39 FR 14506; April 24, 1974). This provision created the current LWA process, which was added to allow site preparation, excavation, and certain other onsite activities to proceed before issuance of a construction permit. Before the issuance of § 50.10(e), NRC permission to engage in site preparation activities before a construction permit was issued could only be obtained via an exemption issued under § 50.12. Section 50.10(e) allowed the NRC to authorize the commencement of both safety-related (known as ''LWA–2'' activities) and non-safety-related (known as ''LWA–1'' activities) onsite construction activities before issuance of a construction permit, if the NRC had completed a site suitability report and a final environmental impact statement (FEIS) on the issuance of the construction permit, and the presiding officer in the construction permit proceeding had made the requisite site suitability, environmental and, in the case of an LWA–2, safety-related findings.

B. NRC's Concept of Construction and the AEA

Industry stakeholders have stated that the business environment, today and in the foreseeable future, requires that new plant applicants minimize the time interval between a decision to proceed with the construction of a nuclear power plant and the start of commercial operation. To achieve that goal, these stakeholders have indicated that non-safety-related ''LWA–1'' activities would need to be initiated up to 2 years before the activities currently defined as ''construction'' in § 50.10(b). NEI believes that the current LWA approval process would constrain the nuclear industry's ability to use modern construction/management practices and needlessly add 18 months to estimated construction schedules for new plants that did not reference an early site permit with LWA authority.

[3] *See Carolina Power and Light Company* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), 7 AEC 939, 943 (June 11, 1974) (hereinafter *Shearon Harris*) (''The regulations were revised in 1972, not because of any requirements of the Atomic Energy Act, but rather to implement the precepts of NEPA which had then recently been enacted.''); *Kansas Gas and Electric Company* (Wolf Creek Nuclear Generating Station, Unit No. 1), 5 NRC 1, 5 (January 12, 1977) (explaining that NEPA led the AEC to amend its regulations in several respects, including the changes to § 50.10(c)).

Based upon the representations of the industry, the NRC agrees that the agency's regulatory processes should be revised and optimized to ensure that these stakeholder's needs are met, consistent with the NRC's statutory obligations and in a manner that is fair to all stakeholders. Accordingly, the NRC is adopting this LWA final rule which revises 10 CFR 50.10, and makes conforming changes in 10 CFR parts 2, 51, and 52. The LWA final rule narrows the scope of activities requiring permission from the NRC in the form of an LWA by eliminating the concept of ''commencement of construction'' formerly described in § 50.10(c) and the authorization formerly described in § 50.10(e)(1). Instead, under the final LWA rule, NRC authorization would only be required before undertaking activities that have a reasonable nexus to radiological health and safety and/or common defense and security for which regulatory oversight is necessary and/or most effective in ensuring reasonable assurance of adequate protection to public health and safety or common defense and security. While the NRC's redefinition of ''construction'' will result in fewer activities requiring NRC permission in the form of an LWA, construction permit, or combined license, it will also define certain activities (such as the driving of piles) that are currently excluded from the regulatory definition of construction given in § 50.10(b), as construction requiring such NRC review and approval.

The LWA final rule also provides an optional, phased application and approval procedure for construction permit and combined license applicants to obtain LWAs. An applicant may either submit its LWA application jointly with a complete construction permit or combined license application, or submit it in two parts, with the information relevant to issuance of an LWA submitted up to 18 months in advance of the remainder of the application addressing the underlying construction permit or combined license. Furthermore, under the LWA final rule, the NRC need not address the suitability of the site for the operation of a nuclear power plant before issuing an LWA. Site suitability will be addressed as part of the NRC's consideration of the underlying construction permit or combined license. Moreover, under the LWA final rule the applicant could seek a separate determination on site suitability issues under subpart F of 10 CFR part 2.

The phased approach in the final LWA rule also provides for an environmental review and approval

process for LWA requests which allows the NRC to grant an applicant permission to engage in LWA activities after completion of a limited EIS addressing those activities, but before completion of the comprehensive EIS addressing the underlying request for a construction permit or combined license. The final LWA rule also delineates the environmental review required in situations where the LWA activities are to be conducted at sites for which the NRC has previously prepared an EIS for the construction and operation of a nuclear power plant, and for which a construction permit was issued, but construction of the plant was never completed.

The NRC concludes that the LWA final rule is fully consistent with the NRC's radiological health and safety and common defense and security responsibilities under the AEA.[4] As previously mentioned, the term ''construction'' is not defined in the AEA or in the legislative history of the AEA. Instead of expressly defining the term in the AEA, Congress entrusted the agency with the responsibility of determining what activities constitute construction.[5] The NRC has determined that the site-preparation activities that would no longer be considered construction under this proposed rule do not have a reasonable nexus to radiological health and safety, or the common defense and security. Accordingly, the NRC concludes that its definition of the term, ''construction,'' is reasonable and complies with the AEA.

The NRC also concludes that issuance of the LWA in advance of a consideration of site suitability is reasonable and complies with the AEA. Any work under the LWA is done at the risk of the LWA holder.

C. NRC's LWA Rule Complies With NEPA

1. NRC's Concept of Construction is Consistent With the Legal Effect of NEPA

The definition of construction in the LWA final rule is consistent with the legal effect of NEPA. Section 50.10(c) was originally added to part 50 due to the interpretation that the enactment of NEPA, not a change in the powers given to the agency in the AEA, required the NRC to expand its permitting/licensing authority. However, subsequent judicial decisions have made it clear that NEPA is a procedural statute and does not expand the jurisdiction delegated to an agency by its organic statute.[6] Therefore, while NEPA may require the NRC to consider the environmental effects caused by the exercise of its permitting/licensing authority, the statute cannot be the source of the expansion of the NRC's authority to require construction permits, combined licenses, or other forms of permission for activities that are not reasonably related to radiological health and safety or protection of the common defense and security. Since NEPA cannot expand the NRC's permitting/licensing authority under the AEA, the elimination of the blanket inclusion of site preparation activities in the definition of construction under § 50.10(c) does not violate NEPA.

2. NRC's Concept of the ''Major Federal Action'' Is Consistent With NEPA Law

The AEA does not authorize the NRC to require an applicant to obtain permission before undertaking site preparation activities that do not implicate radiological health and safety or common defense and security. As a general matter, the NRC considers these activities to involve ''non-Federal action'' for the purposes of implementing its NEPA responsibilities. Generally, non-Federal actions are not subject to the requirements of NEPA.[7] Further, the NRC believes that these non-Federal site preparation activities would not generally be ''federalized'' if the NRC were to ultimately grant a combined license or construction permit. The grant of a construction permit or combined license by the NRC is not a legal condition precedent to these non-Federal, site preparation activities. While the NRC recognizes that there may be a ''but for'' causal relationship between certain non-Federal site preparation activities and the major Federal action of issuing a construction permit or combined license, such a ''but for'' causal relationship is not sufficient to require non-Federal, site preparation activities to be treated as Federal action for the purposes of NEPA.[8]

In addition, under the narrowed definition of construction in the LWA final rule, the NRC concludes that it does not have the ability or discretion to influence or control the non-Federal, site preparation activities to the extent that its influence or control would constitute practical or factual veto power over the non-Federal action. Further, the NRC does not believe that allowing the non-Federal, site preparation activities to be undertaken would restrict its consideration of alternative sites or the need to assess whether there is an ''obviously superior'' site. Specifically, while the NRC recognizes that narrowing the definition of construction may result in substantial changes to the physical properties of a site, many of the fundamental elements that enter into a determination of the existence of an ''obviously superior'' site would not be affected by the changes to those physical properties. For example, seismology would not be affected in any significant way by the non-Federal site preparation activities. However, while the effects caused by the non-Federal, site preparation activities would not be considered effects of the NRC's licensing action, the effects of the non-Federal activities would be considered during any subsequent ''cumulative impacts'' analysis. Specifically, the effects of the non-Federal activities will be considered in order to establish a baseline against which the incremental effect of the NRC's major Federal action (*i.e.*, issuing an LWA, construction permit, or combined license) would be measured. These incremental impacts may be additive or synergistic. To ensure that the NRC has sufficient information to perform the cumulative impacts analysis in a timely fashion, the final LWA rule includes a requirement, in § 51.45(c), for the environmental report submitted by an applicant for an ESP, construction permit, or combined license to include a description of impacts of the applicant's preconstruction activities at the proposed site (*i.e.*, the activities listed in paragraph (b)(1) through (8) in the definition of construction contained in § 51.4) that are necessary to support the construction and operation of the facility which is the subject of the LWA, construction permit, or combined license application, and an analysis of the cumulative impacts of the activities to be authorized by the LWA, construction permit, or combined license in light of the preconstruction impacts.

3. NRC's Phased Approval Approach Is Not Illegal Segmentation Under NEPA

The phased application and approval of LWAs does not raise the concerns underlying the prohibition of segmentation under NEPA law. Generally, the NEPA segmentation

[4] *See State of New Hampshire* v. *Atomic Energy Commission,* 406 F.2d 170, 174–75 (1st Cir. 1969).

[5] *Shearon Harris,* 7 AEC 939.

[6] *See,e.g., Robertson* v. *Methow Valley Citizens Council,* 490 US 332, 350–52 (1989); *Natural Resources Defense Counsel* v. *U.S. Environmental Protection Agency,* 822 F.2d 104, 129 (D.C. Cir 1987); *Kitchen* v. *Federal Communications Commission,* 464 F.2d 801, 802 (D.C. Cir. 1972).

[7] *Save the Bay, Inc.,* v. *U.S. Army Corps of Engineers,* 610 F.2d 322, 326 (5th Cir. 1980).

[8] *See Landmark West!* v. *U.S. Postal Service,* 840 F. Supp. 994, 1006 (S.D.N.Y. 1993) (citing cases).

problem arises when the environmental impacts of projects are evaluated in a piecemeal fashion and, as a result, the comprehensive environmental impacts of the entire Federal action are never considered or are only considered after the agency has committed itself to continuation of the project. Another associated segmentation problem arises when pieces of a Federal action are evaluated separately and, as a result, none of the individual pieces are considered ''major Federal actions'' requiring an EIS.[9]

Neither of these segmentation concerns are presented by the approach embodied in the LWA final rule. First, under both LWA application options in the LWA final rule, the environmental effects associated with the LWA activities and the project as a whole (*i.e.*, issuance of a construction permit or combined license) would be evaluated in an EIS. Therefore, the segmentation problem of considering a project in phases, thereby avoiding completion of an EIS, is not an issue. In addition, all of the environmental impacts associated with the construction and operation of the proposed plant, *including the impacts associated with the LWA activities*, would be considered together, through incorporation by reference, in the EIS prepared on the construction permit or combined license application. This comprehensive consideration of environmental impacts would take place *before* the NRC is committed to issuing any construction permit or combined license. The fact that the NRC will not have prejudged the ultimate decision of whether to grant a construction permit or a combined license by issuing the LWA, coupled with the requirement that the site redress plan be implemented in the event that the permit or license is ultimately not issued, also ensures that issuance of the LWA would not foreclose reasonable alternatives.

In addition, the proposed application and approval process is consistent with the NRC's previously expressed position that NEPA does not, as a general matter, prohibit an agency from undertaking part of a project without a complete environmental analysis of the whole project.[10] The key factors used to support the Commission's position in *Clinch River* were: (1) That the site preparation activities in that case would not result in irreversible or irretrievable commitments to the remaining portions of the project, and (2) The environmental impacts of the site preparation activities allowed in that case were substantially redressable.[11]

These considerations are reflected in the provisions of the LWA final rule. Specifically, § 50.10(f) states that any activity undertaken pursuant to an LWA are entirely at the risk of the applicant, that the issuance of the LWA has no bearing on whether the construction permit or combined license should be issued, and that the EIS associated with the underlying request will not consider the sunk costs associated with the LWA activities. In addition, § 50.10(d)(3) requires an applicant requesting an LWA to submit a plan for redress of the activities permitted by the LWA, which would to be implemented in the event that the LWA holder is ultimately not issued a construction permit or combined license. The redress plan would achieve this objective by addressing impacts resulting from LWA activities (*e.g.*, pile driving, placement of permanent retaining walls in excavations, and construction of foundations for SSCs within the scope of the LWA final rule). Impacts associated with pre-LWA activities would not be addressed in the redress plan. Further, § 50.10(f) requires that the site redress plan be implemented within a reasonable time and that the redress of the site occur within 18 months of the Commission's final decision denying a construction permit or combined license.

It should be noted that while redress of site impacts may have the practical effect of mitigating some environmental impacts, the redress plan is not a substitute for a thorough evaluation of environmental impacts, or development of mitigation measures that may be necessary to provide relief from environmental impacts associated with the proposed LWA activities. The primary purpose of the site redress plan is to ensure that impacts associated with any LWA activities performed at the site will not prevent the site from being used for a permissible, non-nuclear alternative use. In this way, the redress plan helps to preserve the NRC's ability to objectively evaluate an application for a construction permit or combined license, despite the fact that LWA activities have been undertaken at the site.

In sum, the LWA final rule does not constitute unlawful segmentation in view of the provisions ensuring that the issuance of an LWA does not predispose or bias the NRC's decision on the underlying construction permit or combined license application.

D. Consideration of Activities as ''Construction''

1. Driving of Piles

A significant change proposed in the LWA supplemental proposed rule is the inclusion of the driving of piles for certain SSCs in the definition of construction that are not currently defined as construction in § 50.10(b). Although the driving of piles was not expressly included in the definition of ''construction'' contained in § 50.10(b) before the amendment of § 50.10(b)(1) in 1968, this activity was generally considered to be encompassed in the existing definition of construction at that time (*See* 33 FR 2381; January 31, 1968). The 1967 proposed rule suggested that the driving of piles be expressly excluded from the definition of construction because that activity ''is closely related to, and may be appropriately included in'' site preparation activities, which were not considered construction (32 FR 11278; August 3, 1967).[12] The rationale for non-inclusion of pile driving (and site preparation activities generally) in the definition of construction seems to have been that these activities would have no effect on the NRC's ultimate decision to grant or deny a construction permit, and that these activities were undertaken entirely at the applicant's risk. *See* 32 FR 11278; August 3, 1967.

The NRC does not believe that the exclusion of pile driving from the definition of construction should hinge on these factors. The Commission believes that the driving of piles for certain SSCs (as discussed separately below) has a reasonable nexus to radiological health and safety, and/or common defense and security and, therefore, is properly considered ''construction'' as that term is used in Section 185 of the AEA. In addition, the inclusion of these activities in the definition of construction (*i.e.*, requiring an LWA before they are undertaken), coupled with the phased approval process suggested in this supplemental proposed rule, would allow for early resolution of the safety issues associated with these activities. Early resolution of safety issues is consistent with the general rationale underlying the licensing and permitting processes provided in 10 CFR part 52. Accordingly, the final rule's definition of construction includes the driving of piles for certain SSCs.

[9] Daniel R. Mandelker, *NEPA Law and Litigation,* 9–25 (2nd ed. 2004).

[10] *See Tennessee Valley Authority* (Clinch River Breeder Reactor Plant), 16 NRC 412, 424 (August 17, 1982) (hereinafter *Clinch River*).

[11] *Id.*

[12] The proposed rule language was issued without modification in the final rule. (33 FR 2381; January 31, 1968.)

2. Excavation

The LWA supplemental proposed rule would have included excavation within the definition of construction. The inclusion of excavation within the ambit of construction was based upon two factors: (1) Excavation activities in the past have uncovered potentially adverse geologic, soil, and hydrological conditions not anticipated by the construction permit applicant, which have resulted in design changes; and (2) Excavation activities in the past have caused unanticipated damage to surrounding native rock, which had to be corrected by the construction permit holder. The NRC believed that, in these situations, these considerations provided the ''reasonable nexus to radiological health and safety and/or common defense and security'' necessary to include excavation in the definition of construction.

Upon consideration of stakeholder comments and further evaluation, the NRC has determined that it is not necessary to include excavation within the definition of construction, thus requiring some kind of NRC review and approval before undertaking excavation, to ensure public health and safety or common defense and security in the situations noted previously. With respect to geologic, soils, and hydrological matters, prior NRC review and approval of excavation is not necessary to ensure that any adverse geologic, soil, or hydrological conditions that result in the need for design changes or some other form of mitigation are considered in NRC's review of the associated LWA, construction permit, or combined license application. In the situation where a potential applicant performs excavation activities before submitting its LWA, construction permit, or combined license application, 10 CFR 52.6(a) requires that information provided to the Commission by an applicant for a license be complete and accurate in all material respects. In the situation where an applicant performs excavation activities after submitting its LWA, construction permit, or combined license application, 10 CFR 52.6(b) requires the applicant to notify the Commission of information identified by the applicant as having, for the regulated activity, a significant implication for public health and safety or common defense and security. The staff believes that 10 CFR 52.6 provides an equally-acceptable way of ensuring public health and safety if excavation is eliminated from the definition of construction for those limited situations where excavation activities uncover potentially adverse geologic, soil, and hydrological conditions not anticipated by the applicant, or if excavation activities cause unanticipated damage to the surrounding native rock. The LWA, construction permit, and combined license applicant, as applicable, would be responsible—as is currently the case—for adequately describing the geologic, soil, and hydrologic conditions of the site. The difference with the approach in this final rule is that the approved site description will, in many cases, be based upon actual knowledge of the conditions as revealed or confirmed by the excavation activities, and not only on reasonable assumptions based upon extrapolations from test borings and other indirect information. Therefore, in many cases, the actual foundation and structural design to be approved at the construction permit or combined license stage would be based upon actual geologic, soils, and hydrological information as revealed or confirmed by the excavation.

For these reasons, the Commission concludes that existing regulatory mechanisms provide reasonable assurance of public health and safety and common defense and security without imposition of the regulatory mechanism of prior NRC review and approval of excavation activities. Accordingly, the LWA final rule does not define excavation as being within the ambit of construction.

3. Temporary Structures and Activities in the Excavation

Construction, under the LWA final rule, includes the placement/installation of backfill, concrete, or permanent retaining walls within an excavation. These activities involve the placement/installation of permanent parts of the overall facility, and therefore are properly considered ''construction.'' By contrast, the placement/installation of temporary SSCs which will not become part of the final facility, and therefore are removed, should not be treated as ''construction,'' inasmuch as they have no ongoing nexus to radiological health and safety or common defense and security. Accordingly, activities in the excavation for SSCs within the scope of construction, such as the placement/installation of temporary drainage, erosion control, retaining walls, environmental mitigation, are not considered to be within the purview of ''construction,'' so long as these temporary items are removed from the excavation before fuel load. The NRC chose fuel loading as a convenient, well understood and clear event for delineating the time by which temporary SSCs must be removed from the excavation, in order for those temporary SSCs to be excluded from the definition of construction.

4. Construction SSCs

The LWA supplemental proposed rule revised the former definition of construction in 10 CFR 50.10(c) to include the onsite, in-place fabrication, erection, integration, or testing of any SSC required by the Commission's rules and regulations to be described in the site safety analysis report, preliminary safety analysis report, or final safety analysis report. This definition of construction included basically all SSCs of a facility, except for those SSCs that were specifically excluded by the proposed definition (*e.g.*, potable water systems). However, as stated in the supplemental proposed rule, the Commission has determined that construction should include all of the activities that have a reasonable nexus to radiological health and safety, or common defense and security.

Upon consideration of stakeholder comments and further evaluation, the NRC has determined that there may be some SSCs of a facility which are required to be described in the FSAR, but which do not have a reasonable nexus to radiological health and safety or the common defense and security. These SSCs are those which are required to be described in the FSAR to provide contextual information for understanding the overall design and operation of the facility, but which do not actually directly affect the radiological health and safety of the public or the common defense and security, and their indirect effect on such health and safety or common defense and security is so low as to be considered negligible. The determination of SSCs which do not have a reasonable nexus to radiological health and safety or common defense and security depends on the design of the facility. An example SSC is the administration building. However, an administration building that includes the technical support center would fall within the scope of SSCs covered by the definition of construction. In sum, the NRC has clarified and narrowed the scope of SSCs falling within the scope of construction to exclude those SSCs which have no reasonable nexus to radiological health and safety or common defense and security.

For the LWA final rule, the scope of SSCs falling within the definition of construction was derived from the scope of SSCs that are included in the program for monitoring the effectiveness of maintenance at nuclear power plants, as

defined in 10 CFR 50.65(b). This definition is well understood and there is good agreement on its implementation. The NRC has supplemented the definition in § 50.65(b) to include the SSCs that are necessary to comply with 10 CFR 50.48 and criterion 3 of 10 CFR part 50, appendix A, and the onsite emergency facilities, that is, technical support and operations support centers, that are necessary to comply with 10 CFR 50.47 and 10 CFR part 50, appendix E. These SSCs were added because they have a reasonable nexus to radiological health and safety. The SSCs that are necessary to comply with 10 CFR part 73 were added because they are required for the common defense and security.

E. Phased Application and Approval Process

Another significant change in this final rule is the modification of the procedure for obtaining LWA approval by implementing an optional phased application and approval process. Specifically, § 2.101(a)(9) allows applicants for construction permits and combined licenses the option of submitting either: (1) A complete application, or (2) a two-part application with part one including information required for the NRC to make a decision on the applicant's request to undertake LWA activities, and part two containing all other information required to obtain the underlying license or permit. The final rule allows the NRC to consider the environmental impacts attributable to the requested LWA activities separately, either as part of a comprehensive EIS in the case where a complete application is submitted, or in a separate EIS addressing only the LWA activities in the case of a two-part application. After consideration of the environmental impacts and the relevant safety-related issues associated with the LWA activities, the NRC may allow the applicant to undertake the LWA activities, even if the EIS on the underlying request (*i.e.*, construction permit or combined license) is not complete.

The NRC believes that this phased application and approval process is more efficient because it prevents unnecessary delay in nuclear power plant construction schedules. This delay would result if issuance of an LWA for safety-related activities were delayed until the final EIS and adjudicatory hearing on the entire underlying license application were complete. In addition, the final rule's application and approval process should result in the timely resolution of relevant safety and environmental issues at an earlier stage in the licensing process. As previously discussed, the NRC believes that these efficiencies can be gained without compromising the agency's NEPA responsibilities, as the phased approach presented in this supplemental proposed rule does not constitute illegal segmentation.

F. EIS Prepared, but Facility Construction Was Not Completed

The LWA final rule also addresses the situation where a request is made to perform LWA activities at a site for which an EIS has previously been prepared for the construction and operation of a nuclear power plant, and a construction permit has been issued, but construction of the plant was never completed. In this special situation, the final rule allows an applicant to reference the previous EIS in its environmental report, but requires that the applicant identify any new and significant information material to the matters required to be addressed in the proposed § 51.49(a). Further, in these special cases the final rule provides that the NRC will incorporate by reference the previous EIS when preparing its draft EIS on the LWA activities. The draft EIS on the LWA request is limited to the consideration of any new and significant information dealing with the environmental impacts of construction, relevant to the activities to be carried out under the LWA. Further, in a hearing on issuance of an LWA at such sites, the presiding officer is limited to determining whether there is new and significant information pertaining to the environmental impacts of the construction activities encompassed by the previous EIS that are analogous to the activities to be conducted under the LWA. The presiding officer would evaluate new and significant information in determining whether an LWA should be issued as proposed by either the Director of the Office of New Reactors or the Director of the Office of Nuclear Reactor Regulation, as applicable.

This provision is designed to gain efficiency by using existing EISs to evaluate the environmental impacts of activities to be performed under an LWA. The Commission believes that this practice is appropriate because the referenced environmental review will come in the form of an FEIS prepared by NRC staff for sites on which permission to construct a nuclear power plant was ultimately granted by the Commission. The Commission understands that the activities proposed in a current LWA request may be different from the activities proposed and analyzed in the previous FEIS referenced by an applicant and relied upon by NRC staff. However, it is the Commission's intent that if these differences result in significant changes to the environmental impacts caused by the LWA activities currently proposed by the applicant, then the differences should be considered ''new and significant information'' material to the environmental impacts that may reasonably be expected to result from the LWA activities. Therefore, these differences should be addressed in the applicant's environmental report, analyzed by the NRC staff in a supplement to the existing FEIS, and considered by the presiding officer.

Further, for the reasons previously discussed in Section C.3 of this document, the Commission does not believe that authorizing LWA activities before completion of the FEIS on the combined license or construction permit will have the effect of prejudging the license/permit, or foreclosing reasonable alternatives.

G. Commission Action on PRM–50–82

As discussed previously, the Commission is treating the May 25, 2006, comments of NEI on the March 2006 proposed part 52 rule as a petition for rulemaking, which has been designated PRM–50–82. The petition was effectively granted when the supplemental proposed LWA rule was published (71 FR 61330; October 17, 2006). With the adoption of this final LWA rule, the Commission has completed action on PRM–50–82.

IV. Section-by-Section Analysis

Part 2—Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders

Section 2.101, Filing of Application

Section 2.101 is revised by adding a new paragraph (a)(9), which provides that an applicant for a construction permit or combined license may submit a request for an LWA either as part of a complete application under paragraphs (a)(1) through (4), or in two parts under this paragraph (*i.e.*, a ''phased LWA application''). If the LWA application is submitted as part of a complete construction permit or combined license application, the application must include the information required by § 50.10(d)(3).

If the application is a phased LWA application, the first part must contain the information required by § 50.10(d)(3) on the LWA, as well as the general information required of all production and utilization facility applicants under § 50.33(a) through (f). The second part of the application must

contain the remaining information otherwise required to be filed in a complete application under § 2.101(a)(1) thorough (4). However, the applicant would have the further option of submitting part two in additional subparts in accordance with § 2.101(a–1). The second part (or the first subpart of multiple subparts under § 2.101(a–1)) must be filed no later than 18 months after the filing of part one. Part two of the application (or the first subpart of any additional subparts submitted in accordance with § 2.101(a–1)) must be submitted no later than 18 months after submission of part one of the application.

An applicant for an ESP may *not* submit its LWA application in advance of the underlying ESP application, and therefore is not permitted to use the procedures of subpart F of part 2, or submit its application in two parts under § 2.101(a)(9). Similarly, the holder of an ESP is not permitted to use the procedures of subpart F of part 2, nor to submit its ESP amendment application for LWA authority in two parts under § 2.101(a)(9).

Section 2.102, Administrative Review of Application

Paragraph (a) of § 2.102 is revised by adding an LWA to the list of docketed applications for which the NRC staff must establish a schedule for review of the application.

Section 2.104, Notice of Hearing

The introductory text of paragraph (a) is revised to add LWAs to the list of application types for which the Commission must issue a hearing notice. In addition, paragraph (c)(1) is revised to require the relevant NRC Staff Director to transmit a copy of the notice of hearing for an application for an LWA to state and local officials. In many cases, this is a formality, inasmuch as pre-application interactions between the NRC and the potential LWA applicant will result in informal contacts with those state and local officials.

Subpart F

The title of subpart F is revised to reflect the broader scope of matters covered under this section, as described under § 2.600.

Section 2.600, Scope of Subpart

The statement of scope in § 2.600 is revised to reflect the new set of procedures for phased LWA applications in proposed §§ 2.641 through 2.649. A new paragraph (d) is added to refer to §§ 2.641 through 2.649 as containing the applicable procedures for phased construction permit and combined license applications which also request LWA authority.

Section 2.606, Partial Decision on Site Suitability Issues

Paragraph (a) of § 2.606, which provides that an LWA may not be issued without completion of the ''full review'' required by NEPA, is revised to remove the reference to an LWA, because LWAs are now covered in §§ 2.641 through 2.649.

Section 2.641, Filing Fees

Section 2.641, which is comparable to current § 2.602, provides that a phased LWA application must be accompanied by the applicable filing fees in § 50.30(e) and part 170 of this chapter.

Section 2.643, Acceptance and Docketing of Application for Limited Work Authorization

Section 2.643, which is comparable to current § 2.603, describes the acceptance and docketing requirements for phased LWA applications, and the requirement for publication in the **Federal Register** of a notice of docketing. Paragraph (a) provides that each part of the application, when first received, will be treated as a tendered application and assessed for sufficiency. If the submitted part of the application is determined to be incomplete, the relevant Director will inform the applicant. The determination of completeness will generally be made in 30 days, barring unusual circumstances.

Under paragraph (b), the Director will docket part one of the application only if that part is ''complete.'' The NRC would use the existing guidelines and practices for determining the completeness of applications under this section, as are used in determining completeness under § 2.101. Upon docketing, the Director will assign a docket number that will be used throughout the entire proceeding (including that part of the proceeding on part two of the application).

Under paragraph (c), the Director will make the designated distributions to the Governor of the State in which the nuclear power plant will be located, and publish a notice of docketing in the **Federal Register**. Often in practice, the notice of hearing required by the AEA is included in the notice of docketing, but as with existing applications, this will remain a matter of discretion by the NRC, who will determine the most efficient course of action in this regard.

Paragraph (d) provides that part two of the application will be docketed, as with part one, when it is determined to be complete. The Commission reiterates that ''part two'' could be submitted in several subparts if the applicant chose to take advantage of the provisions of § 2.101(a–1), which provides for submission of applications in three parts.

Finally, under paragraph (e), the Director is required to publish a second notice of docketing in the **Federal Register** for part two of the application. As with the notice of docketing for part one, the notice of docketing for part two may also include a notice of hearing on the second part of the application.

The NRC notes that nothing in § 2.101(a)(9), or any part of subpart F of part 2, requires that the hearing on part one of the application be completed and an initial decision issued by the presiding officer, before part two of the application is filed.

Section 2.645, Notice of Hearing

Section 2.645, which is comparable to current § 2.604, sets forth the content of the notice of hearing for each of the two parts of the proceeding. Paragraph (a) provides that the notice of hearing for part one specify that the hearing will relate only to consideration of the matters related to § 50.33(a) through (f), and the LWA issues under review. Although not explicitly stated in this paragraph, interested persons who seek to intervene in the hearing on part one of the application must file a petition to intervene in accordance with the notice of hearing, and § 2.309.

Under paragraph (b), a supplementary notice of hearing will be published in the **Federal Register** when part two of the application is docketed. This provides a second opportunity for interested persons to file petitions to intervene with respect to the matters relevant to part two of the application. These petitions must be filed within the time specified in the notice of hearing, and must meet the applicable requirements of subpart C of part 2, including the contention requirements in § 2.309.

Paragraph (c) addresses continued participation in a phased application involving a request for advance consideration for an LWA. The provisions of paragraph (c) differ somewhat from the existing procedures in § 2.604 applicable to phased applications which do not involve LWAs, in that the Commission has decided not to allow a party admitted in part one of the proceeding, who did not withdraw or was not otherwise dismissed, to automatically continue as a party in phase two of the proceeding. Instead, each party who wishes to participate in the second phase must submit a second petition to intervene in accordance with § 2.309. The petition

need not, however, address the interest and standing requirements in § 2.309(d). The petition must be filed within the time provided by the supplementary notice of hearing published in the **Federal Register** for part two of the application.

Paragraph (d) makes clear that a non-timely petition for intervention filed under paragraph (b) (incorrectly referred to as paragraph (c) in the supplemental proposed rule) must meet the factors in both 2.309(c)(1)(i) through (iv), as well as 2.309(d). This is no different than non-timely petitions for intervention filed in ordinary, non-phased proceedings.

As noted in the *Section-by-Section Analysis* in this document for § 2.643, nothing in § 2.101(a)(9) or subpart F of part 2 requires that the hearing on part one of the application be completed and an initial decision issued by the presiding officer, before part two of the application is filed. Thus, there may be simultaneous hearings on parts one and two of the application. However, as reflected in paragraph (e), the Commission's intent is that the membership of the Atomic Safety and Licensing Board designated for hearings under part one be the same as for the hearings under part two, to the extent practical and consistent with timely completion of each hearing.

Section 2.647 [Reserved]

This section is reserved for future use by the Commission.

Section 2.649, Partial Decisions on Limited Work Authorization

Section 2.649, which is comparable to § 2.606, denotes the provisions in subparts C and G to part 2 relative to issues such as oral arguments, immediate effectiveness of the presiding officer's initial decision, and petitions for Commission review, that apply to partial initial decisions on an LWA rendered in accordance with this subpart. This section also states that the LWA may not be issued without completion of the environmental review required for LWAs under subpart A of part 51. Finally, this section provides that the time for the Commission to exercise its review and *sua sponte* authority is the same time provided for in part 2 with respect to a final decision on issuance of a construction permit or combined license.

Part 50—Domestic Licensing of Production and Utilization Facilities

50.10, License Required; Limited Work Authorization

Paragraph (a), which is derived from former § 50.10(b), sets forth a new definition of ''construction'' for purposes of this section (the same definition is also used in part 51, *see* 10 CFR 51.4). The definition of construction has been substantially modified from the definition in former § 50.10(b) in both structure and content, and supersedes the definition of construction in former § 50.10(c). The new definition is divided into two parts, with the first specifying the activities deemed to constitute ''construction,'' and the second part specifying activities which are excluded from the definition.

Under the new definition, excavation is excluded from construction. Excavation includes the removal of any soil, rock, gravel, or other material below the final ground elevation to the final parent material. Thus, all these excavation activities may be conducted without an LWA, construction permit, or combined license. However, the placement of permanent, non-structural dewatering materials, mudmats and/or engineered backfill which are placed in advance of the placement of the foundation and associated permanent retaining walls for SSCs within the scope of the definition of construction are not excavation activities, but instead fall within the scope of construction. Any person or entity that conducts excavation, however, should be aware that the NRC expects any subsequent LWA, construction permit, or combined license application to accurately document and address the conditions exposed by excavation, to ensure that the NRC will have an adequate basis for evaluating the relevant portions of the LWA, construction permit, or combined license application.

Whereas former § 50.10(b) allowed the driving of piles for the facility without NRC approval, the LWA final rule does not permit driving of piles for SSCs described in the definition of construction, unless NRC permission is obtained in the form of an LWA, construction permit, or combined license. The ''driving of piles'' not related to ensuring the structural stability or integrity of any SSC within the scope of the definition of construction does not fall within the definition of construction in this paragraph, and therefore may be accomplished without an LWA, construction permit, or combined license. For example, piles driven to support the erection of a bridge for a temporary or permanent access road would not be considered ''construction'' under this section and may be performed without an LWA, construction permit, or combined license.

The SSCs which are within the scope of the definition of construction, and which have a reasonable nexus to radiological health and safety or common defense and security are set forth in paragraph (a)(1). This definition was derived from the scope of SSCs that are included in the program for monitoring the effectiveness of maintenance at nuclear power plants under 10 CFR 50.65, and supplemented with SSCs that are needed for fire protection, security, and onsite emergency facilities. There may be some SSCs of a facility which do not have a reasonable nexus to radiological health and safety or common defense and security. The determination of the SSCs that do not have a reasonable nexus to radiological health and safety or common defense and security will be dependent upon the design of the facility. An example SSC that would not be within the scope of construction is a cooling tower that is used to cool the turbine condenser. However, a cooling system that is used for both safety and non-safety functions would fall within the definition of construction.

Construction, as defined in this paragraph includes installation of the foundation, including soil compaction; the installation of permanent drainage systems and geofabric; the placement of backfill, concrete (*e.g.*, ''mudmats'') or other materials which will not be removed before placement of the foundation of a structure; the placement and compaction of a subbase; the installation of reinforcing bars to be incorporated into the foundation of the structure; the erection of concrete forms for the foundations that will remain in-place permanently (even if non-structural); and placement of concrete or other material constituting the foundation of any SSC within scope of the definition of construction. Foundation installation activities will require an LWA, construction permit, or combined license. The term ''permanent'' in this context, includes anything that will exist in its final, in-place plant location after fuel load. By contrast, the term, ''temporary,'' means anything that will be removed from the excavation before fuel load.

Construction also includes the ''onsite, in-place,'' fabrication, erection, integration, or testing activities for any in-scope SSC. The term, ''onsite, in place, fabrication, erection, integration or testing'' is intended to describe the historical process of constructing a nuclear power plant in its final, onsite plant location, where components or modules are integrated into the final, in-plant location. The definition is intended to exclude persons from

having to obtain an LWA, construction permit, or combined license, to fabricate, assemble, and test components and modules in a shop building, warehouse, or laydown area located onsite. However, the installation or integration of that SSC into its final plant location would require either a construction permit or combined license. The NRC notes that under § 50.10(a)(2)(ix), construction does not include manufacturing of a nuclear power reactor under subpart F of part 52, even if the manufacturing is accomplished onsite, so long as the manufacturing is not done in-place, at the final (permanent) plant location on the site.

Paragraph (b), which is derived from former § 50.10(a), prohibits any person within the United States from transferring or receiving in interstate commerce, manufacturing, producing, transferring, acquiring, possessing, or using any production or utilization facility except as authorized by a license issued by the Commission, or as provided in § 50.11.

Paragraph (c), which is substantially modified from the former § 50.10(b), prohibits any person from beginning the ''construction'' of a production or utilization facility on a site on which the facility is to be operated until that person has been issued a construction permit, a combined license under part 52, or an LWA under paragraph (d) of this section.

Paragraph (d), which is substantially modified from the former § 50.10(e), addresses the need for, nature and contents of an application for an LWA. Paragraph (d)(1) allows the Commission to issue an LWA in advance of a construction permit or combined license, authorizing the holder to perform certain delineated construction requirements.

Paragraph (d)(2) provides that an LWA application may be submitted as:

—Part of a complete application for a construction permit or combined license under § 2.101(a)(1) through (4).
—Part one of a phased application under § 2.101(a)(9).
—Part of a complete application for an ESP under § 2.101(a)(1) through (4).
—An amendment to an already issued ESP.

Paragraph (d)(3) establishes the requirements for the content of an LWA application. The application must include a safety analysis report, an environmental report, and a redress plan. The safety analysis report, which may be a stand-alone document or incorporated into the construction permit or combined license application's preliminary or FSAR, as applicable, must describe the LWA activities that the applicant seeks to perform, provide the final design for the structures to be constructed under the LWA and a safety analysis for those portions of the structure, and provide a safety analysis of the design demonstrating that the activities will be conducted in accordance with applicable Commission safety requirements.

The environmental report must meet the requirements of 10 CFR 51.49, which is discussed in more detail in the *Section-by-Section Analysis* in this document for that provision.

The redress plan must describe the activities that would be implemented by the LWA holder, should construction be terminated by the holder, the LWA is revoked by the NRC, or upon effectiveness of the Commission's final decision denying the associated operating license application or the underlying combined license application, as applicable. The primary purpose of the redress plan is to address the placement of piles and ensure removal of the foundation, which are the only activities which may be accomplished under an LWA. Redress of site impacts resulting from pre-LWA activities will not be required under the redress plan. In addition, while redress of LWA impacts may have the practical effect of mitigating some environmental impacts, the redress plan is not a substitute for a thorough evaluation of environmental impacts, or development of mitigation measures that may be necessary to provide relief from environmental impacts associated with the proposed LWA activities.

Paragraph (e) generally addresses the requirements associated with issuance of an LWA. Paragraph (e)(1) sets forth the requirements for the appropriate Director to issue an LWA under this section. The Director may issue an LWA only after making the appropriate findings on: (1) Necessary technical qualifications, and the matter of foreign ownership or control relevant to the information required by § 50.33(a) through (f), as mandated by Sections 103.d. and 182.a. of the AEA; (2) Making the necessary findings on public health and safety and common defense and security with respect to the activities to be carried out under the LWA; (3) NRC staff issuance of a final EIS on the LWA in accordance with the applicable requirements of part 51; and (4) The presiding officer finding on the environmental issues relevant to the LWA in accordance with the applicable requirements of part 51, and a finding on the safety issues relevant to the LWA.

Paragraph (e)(2) requires that the LWA specify the activities that the holder is authorized to perform, consistent with the LWA application and as modified based upon the NRC's review. In addition, each LWA will be issued with a condition requiring implementation of the redress plan if the LWA holder terminates construction, the LWA is revoked, or upon effectiveness of the Commission's final decision denying the associated operating license application or the underlying combined license application, as applicable. As discussed in the analysis of paragraph (e), this condition survives the merging of the LWA into the underlying construction permit, ESP, or combined license.

Paragraph (f), which is also derived from former § 50.10(e), addresses the legal effect of an issued LWA. Paragraph (f)(1) provides that any activities undertaken under an LWA shall be entirely at the risk of the applicant and, with exception of the matters determined under paragraph (d)(3)(ii) and (iii), the issuance of the LWA shall have no bearing on the issuance of a construction permit or combined license with respect to the requirements of the AEA, and rules, regulations, or orders issued under the AEA. Thus, this paragraph states that the EIS for a construction permit or combined license application for which an LWA was previously issued will not address, and the presiding officer will not consider, the sunk costs of the holder of the LWA in determining the proposed action (*i.e.*, issuance of the construction permit or combined license).

New paragraph (g) requires the LWA holder to begin implementation of the redress plan in a reasonable time, and complete the redress no later than 18 months after termination of construction by the holder, revocation of the LWA, or upon effectiveness of the Commission's final decision denying the associated operating license application, or the underlying construction permit or the combined license application, as applicable.

Part 51—Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions

Section 51.4, Definitions

Section 51.4 is revised by adding a new definition of ''construction.'' This makes applicable throughout part 51 the definition of construction in proposed § 50.10(a), and has the effect of excluding from an EIS for any ESP, construction permit, combined license,

or an LWA, any discussion, evaluation or consideration of the environmental impacts or benefits associated with non-construction activities as set forth in § 50.10(a). This also removes the need for the NRC decision maker, including a presiding officer, to make a NEPA finding with respect to the environmental impacts or benefits associated with those non-construction activities.

Section 51.17, Information Collection Requirements; OMB Approval

Paragraph (b) is revised by adding a reference to a new § 51.49, which requires submission of an environmental report by LWA applicants. While § 51.49 contains a new information collection requirement, this will not result in a net increase in the burden placed on LWA applicants because the information required under this new section was formerly required to be submitted by these applicants as part of a complete environmental report for the underlying ESP, construction permit or combined license under § 51.50. The primary effect of this final rule would be to allow delayed submission of most of the environmental information to the time that the underlying construction permit or combined license application and environmental report is submitted. Thus, the environmental report submitted under § 51.49 at the LWA stage would, in most cases, be limited in scope to address environmental impacts of LWA activities only.

Section 51.45, Environmental Report

Paragraph (c) is revised by adding a new requirement requiring environmental reports for ESP, construction permits, and combined licenses to include a description of impacts of the applicant's pre-construction activities at the proposed site (*i.e.*, the activities listed in paragraph (b)(1) through (8) in the definition of construction contained in § 51.4) that are necessary to support the construction and operation of the facility which is the subject of the LWA, construction permit, or combined license application, and an analysis of the cumulative impacts of the activities to be authorized by the LWA, construction permit, or combined license in light of the preconstruction impacts.

Section 51.49, Environmental Report-Limited Work Authorization

A new § 51.49 is added to part 51. This new section requires the applicant for an LWA to submit an environmental report containing certain specified information. Both paragraph (a), which applies to an applicant requesting an LWA as part of a complete application, and paragraph (b), which applies to an applicant submitting its application in two parts under § 2.101(a)(9), requires the applicant to submit an environmental report which describes: (1) The activities proposed to be conducted under the LWA; (2) The need to conduct those LWA activities in advance of the main action; (3) A description of the environmental impacts that may reasonably be expected to result from the conduct of the requested LWA activities; (4) The mitigation measures to be implemented to achieve the level of environmental impacts described; and (5) A discussion of the reasons for rejecting other mitigation measures that could be used to further reduce environmental impacts. Regardless of whether an LWA applicant submits an application in two parts, or seeks early consideration and decision on site suitability and environmental siting matters, the environmental report for the LWA should address any impacts attributable to activities for which NRC approval is not required (*i.e.,* the activities excluded from the definition of construction in § 50.12(a)).

Paragraph (c) describes the contents of the environmental report when the request for the LWA is submitted as part of an ESP application. There is no opportunity for an ESP holder to submit its application in two parts, with the LWA information submitted in advance of the main ESP application.

Paragraph (d) describes the contents of the environmental report when the LWA request is submitted by an ESP holder. In this situation, the environmental report need only contain information on the LWA activities and their environmental impact, and would not include the general information required by § 51.50(b).

Paragraph (e) establishes a limited exception from the information required by paragraphs (a) and (b) to be submitted in an environmental report. For those situations where the LWA is to be conducted at a site for which the Commission previously prepared an EIS for the construction and operation of a nuclear power plant, the construction permit was issued, but the construction of the plant was never completed, then the applicant's environmental report may incorporate by reference the earlier EIS. However, in the event of incorporation by reference, the environmental report must identify whether there is new and significant information relative to the matters required to be addressed in the environmental report with respect to the environmental impacts of the requested LWA activities, as specified in paragraphs (a) or (b). In addition, analogous to the requirement in § 51.50(c)(1)(iv) of the 2007 final part 52 rule, the environmental report must include a description of the process for identifying new and significant information. The applicant should have a reasonable process for identifying new and significant information that may have a bearing on the earlier NRC conclusion, and should document the results of this process in an auditable form. Documentation related to the applicant's search for new information and its determination about the significance of that new information should be maintained in an auditable form by the applicant. The NRC staff will verify that the applicant's process for identifying new and significant information is effective.

Paragraph (f) requires, for any application containing an LWA request, that the environmental report must separately evaluate the environmental impacts and proposed alternatives to the activities proposed to be conducted under the LWA. However, at the option of the applicant, the environmental report may also include the information required by § 51.50 to be submitted in the environmental report for the construction permit or combined license application. In those situations, the ''integrated'' environmental report would separately address the total impacts of constructing (including the LWA activities) and operating the proposed facility. This will allow the NRC to prepare in parallel the EIS for the LWA activities and a supplemental EIS for the underlying construction permit or operating license, or a complete EIS at the LWA stage.

Section 51.71, Draft Environmental Impact Statement—Contents

Section 51.71 is revised by redesignating the current paragraph (e) as paragraph (f), and a new paragraph (e) is added to re-emphasize that the draft EIS for the underlying construction permit or combined license will not address or consider the sunk costs associated with the LWA. Paragraph (e) is consistent with § 50.10(f) and new § 51.103(a)(6).

Section 51.76, Draft Environmental Impact Statement—Limited Work Authorization

Section 51.76 is a new section governing the NRC's preparation of a draft EIS to support a decision on an LWA. The internal organization of § 51.76 parallels that of § 51.49.

Paragraph (a) addresses the EIS to be prepared in connection with a complete application for a construction permit or combined license. This section allows the NRC to prepare at the time of the LWA application either an EIS limited to LWA activities (to be followed by a supplemental EIS on the underlying construction permit or combined license), or a single, complete EIS for the construction permit or combined license. The NRC notes that this paragraph addresses the situation where the application for the construction permit or combined license is complete and includes the request and necessary information for an LWA. Paragraph (b), by contrast, addresses the situation where the LWA request is submitted in advance of the complete application for the construction permit or combined license.

Paragraph (b) applies to an EIS prepared in support of a phased LWA under § 2.101(a)(9). In this situation, if the environmental report submitted in part one is limited to the LWA activities, then the NRC will prepare an EIS limited to the LWA activities. Once part two of the application is received, which includes the environmental report required by § 51.50, the NRC will prepare a supplemental EIS for the construction permit or combined license in accordance with § 51.71, and § 51.75(a) or (c), as applicable. By contrast, if the environmental report submitted in part one is a complete environmental report required by § 51.50, then the NRC will prepare at the LWA phase a single, complete EIS for the construction permit or combined license in accordance with § 51.71, and § 51.75(a) or (c), as applicable.

Paragraph (c) applies to an EIS prepared for issuance of an ESP which will also include an LWA. The EIS will address the scope of matters required to be addressed under § 51.75(d), which depends upon the matters which the applicant chooses to address in its environmental report, as well as the environmental impacts of conducting the LWA activities requested.

Paragraph (d) addresses the situation where an ESP holder (as opposed to an applicant) requests an LWA. In this situation, siting and many of the environmental issues have been addressed and resolved in the EIS supporting issuance of the ESP. This paragraph provides for the NRC to prepare a supplemental EIS, addressing the impacts of conducting LWA activities (including any new and significant information that would change the NRC's prior conclusion with respect to those construction activities which would actually be conducted earlier under the LWA instead of referencing a construction permit or combined license), and the adequacy of the proposed redress plan. Other than this updating, the supplemental EIS will not present any updated information on the matters resolved in the ESP EIS.

Paragraph (e) addresses the nature of the EIS prepared for an LWA requested for a site that was approved by the NRC and a construction permit issued, but construction of the nuclear power plant was not completed. In these cases, the EIS will incorporate by reference the earlier EIS, address whether there is any significant new information with respect to the environmental impacts of construction relevant to the scope of activities to be performed under the LWA, and evaluate this type of information in accordance with § 51.71 in determining if the LWA should be issued, or issued with appropriate conditions.

Paragraph (f) indicates that in all cases, the EIS must separately address the impacts of and proposed alternatives to the activities to be conducted under the LWA, to ensure that there are specific environmental findings addressing LWA activities for purposes of transparency of the final NRC NEPA findings and decision on the LWA request. However, this paragraph also makes clear that if the applicant's environmental report contains the comprehensive information necessary to address construction and operation impacts for the proposed facility, as is allowed under 10 CFR 2.101, then the EIS must similarly address those impacts, including the costs and benefits of the underlying proposed action.

Section 51.103, Record of Decision—General

Section 51.103 is revised by adding a new paragraph (a)(6), which specifies that in a construction permit or combined license proceeding where an LWA was previously issued, the Commission's decision on the construction permit or combined license application will not address or consider the sunk costs associated with the LWA. This provision, which is consistent with §§ 50.10(f) and 51.71(e), is intended to ensure that the Commission's decision whether to issue the construction permit or combined license is not biased in favor of issuance in evaluating the environmental impacts and benefits of the construction permit or combined license, and thereby avoid NEPA segmentation claims.

Section 51.104, NRC Proceeding Using Public Hearings; Consideration of Environmental Impact Statement

Section 51.104 is revised by adding a new paragraph (c) specifying that in an LWA proceeding, a party may only take a position and offer evidence on the aspects of the proposed action within the scope of NEPA and this subpart which are within the scope of that party's admitted contention. This paragraph also specifies that, in the LWA phase of the proceeding, the presiding officer will decide the matters in controversy among the parties, *viz.,* the contentions related to the adequacy of the EIS prepared for the LWA. The scope of the EIS will, in turn, depend upon whether the LWA applicant chooses to submit an environmental report limited to LWA impacts, or whether the LWA applicant chooses to submit a more comprehensive environmental report as permitted under 10 CFR 2.101 *and* seeks an early decision on siting matters under subpart F of 10 CFR part 2.

Section 51.105, Public Hearings In Proceedings for Issuance of Construction Permits or Early Site Permits; Limited Work Authorizations

The title of this section is revised to add a reference to LWAs, reflecting the expanded scope of matters addressed in this section. Second, a new paragraph (c) is added to specify the determinations which must be made by the presiding officer in an LWA hearing associated with either a construction permit or early site permit. Under this new paragraph, the presiding officer would:

—Determine whether the requirements of Section 102(2)(A), (C), and (E) of NEPA have been met with respect to the activities to be conducted under the LWA.

—Independently consider the balance among conflicting factors with respect to the LWA.

—Determine whether the applicant's proposed redress plan is reasonably expected, from a technical standpoint, to redress activities conducted under the LWA, should LWA activities be terminated by the holder or the LWA be revoked by the NRC, or upon effectiveness of the Commission's final decision denying the associated construction permit or combined license application, as applicable.

—In an uncontested proceeding, determine whether the NRC's NEPA review has been adequate.

—In a contested proceeding, determine whether the LWA should be issued in

accordance with the regulations in part 51.

Section 51.107, Public hearings in proceedings for issuance of combined licenses; limited work authorizations

Section 51.107 is revised in two respects. The title of this section is revised to add a reference to LWAs, reflecting the expanded scope of matters addressed in this section. Finally, a new paragraph (d) is also added to specify the determinations which must be made by the presiding officer in an LWA hearing associated with a combined license. This paragraph is essentially the same as § 51.105(c).

Part 52—Licenses, Certifications, and Approvals for Nuclear Power Plants

Section 52.1, Definitions

A new definition of LWA is added which would be defined as the authorization provided under § 50.10(d). The NRC notes that an applicant of an ESP who requests authority to perform the activities permitted by § 50.10(d), would not, if the request were granted, receive an LWA separate from its ESP. Instead, the ESP itself would authorize the activities permitted by § 50.10(d). This regulatory approach is consistent with the current language of §§ 52.17(c) and 52.25(b). However once an ESP is issued, the holder could apply for permission to conduct LWA activities under § 52.27 in the form of an amendment to the ESP.

Section 52.17, Contents of Applications; Technical Information

Paragraph (c) of § 52.17 is revised by removing the proposed language with respect to LWAs, and specifying that if the applicant wishes to obtain an LWA, then the information required by § 50.10(d)(3) must be included in the site safety analysis report. This paragraph also makes clear that for early site applications which were submitted before the effective date of the final LWA rule, the new requirements in § 52.17(c) do not apply and their applications need only meet the requirements in former § 52.17(c).

Section 52.24, Issuance of Early Site Permit

Paragraph (c) is revised to state that an ESP must specify the activities under § 50.10 that the permit holder is authorized to perform.

Section 52.27, Limited Work Authorization After Issuance of Early Site Permit

Section 52.27 is redesignated as § 52.26, and a new § 52.27 is added. The new § 52.27 allows an ESP holder to request an LWA in accordance with § 50.10—a matter which was not clear under the former provisions of part 52.

Section 52.80, Content of Applications; Additional Technical Information

Paragraph (b) is revised to state that a combined license application that does not request an LWA must include an environmental report prepared in accordance with § 51.50(c), and that a combined license application that does request an LWA must include an environmental report prepared in accordance with §§ 51.49 and 51.50(c).

Paragraph (c) is revised to require that a combined license application containing a request for an LWA must contain the information otherwise required by 10 CFR 50.10.

Section 52.91, Authorization To Conduct Limited Work Authorization Activities

The heading for § 52.91 is revised. Section 52.91 is revised to reflect the elimination of ''LWA–1'' and ''LWA–2'' in former § 50.10(e). Under paragraph (a) of § 52.91, an applicant for a combined license may undertake LWA activities only if it: (1) References an ESP which includes LWA authority; or (2) the combined license applicant applies for and is granted LWA authority under § 50.10. Paragraph (b) requires the combined license applicant who begins construction under an LWA, to implement the LWA redress plan if the underlying combined license application is withdrawn by the applicant or denied by the NRC.

Section 52.99, Inspection During Construction

Paragraph (a) is revised to replace the reference to 10 CFR 50.10(b) with a reference to 10 CFR 50.10(a).

Part 100—Reactor Site Criteria

Section 100.23, Geologic and Seismic Siting Criteria

Paragraph (b) is revised to reflect the revisions in 10 CFR 50.10 that redefine what is considered ''construction.'' This paragraph formerly stated that the investigations required in 10 CFR 100.23(c) are within the scope of investigations permitted by former 10 CFR 50.10(c)(1). This sentence has been revised to state that the investigations required in 10 CFR 100.23(c) are not considered ''construction'' as defined in 10 CFR 50.10(a).

V. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods as indicated.

Public Document Room (PDR). The NRC PDR is located at 11555 Rockville Pike, Rockville, Maryland. *http://www.nrc.gov/reading-rm/contact-pdr.html.*

The NRC staff contact. Geary Mizuno, Mail Stop O–15D21, Washington, DC 20555–0001; telephone number 301–415–1639.

Document	PDR	Web	ADAMS No.	NRC staff
2006/05/25—Comment (4) submitted by Nuclear Energy Institute, Adrian P. Heymer on Proposed Rules.	X	X	ML061510471	.....
SECY–98–282, Part 52 Rulemaking Plan	.....	.....	ML032801416	.....
Staff Requirements—SECY–98–282—Part 52 Rulemaking Plan	.....	.....	ML032801439	.....
Draft Regulatory Analysis	X	X	ML062750434	X
Final Regulatory Analysis	X	X	ML071870012	X
Regulatory History Index for October 17, 2006 Supplemental Proposed Rule	.....	X	ML070240575	X

VI. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement States Programs,'' approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this rule is classified as compatibility ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or provisions of Title 10 of the Code of Federal Regulations, and although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative

procedure laws, but does not confer regulatory authority on the State.

VII. 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 using such a standard is inconsistent with applicable law or is otherwise impractical. In this rule, the NRC is: (1) Redefining the scope of activities constituting ''construction'' for which NRC approval is required; (2) redefining the scope of activities constituting construction which the NRC may approve in an LWA granted in advance of the issuance of a construction permit or combined license, or which may be conducted by a holder of an ESP; and (3) revising the NRC's procedures for granting LWAs. This rulemaking does not establish standards or substantive requirements with which all applicants and licensees must comply. For these reasons, the Commission concludes that this action does not constitute the establishment that contains generally applicable standards.

VIII. Environmental Impact—Categorical Exclusion

The NRC has determined that the changes made in this rule fall within the types of actions described in categorical exclusions described in 10 CFR 51.22(c)(1) and (c)(3). Specifically, the conforming changes made to 10 CFR part 2 qualify for the categorical exclusion described in § 51.22(c)(1). The changes to parts 50, 51, and 52 that describe procedures for filing and reviewing applications for LWAs qualify for the categorical exclusion described in § 51.22(c)(3)(i). All other changes qualify for the categorical exclusion described in § 51.22(c)(3)(iv).[13] Therefore, neither an EIS nor an EA has been prepared for this rule.

[13] Although the industry's request came in the form of a comment on the proposed part 52 rule (71 FR 12782; March 13, 2006), the comment letter stated; ''To the extent the NRC determines that these LWA issues cannot be addressed in the current rulemaking, we ask that the Commission initiate an expedited rulemaking.'' The NRC has determined that the changes suggested by the industry in Comment 4 (docketed on May 30, 2006) could not be incorporated into the final part 52 rule without re-noticing. Therefore, the Commission has decided to treat the comments submitted by the industry as a petition for expedited rulemaking and published a supplemental proposed rule for public comment. The NRC determined that Comment 4 meets the sufficiency requirements described in 10 CFR 2.802(c), and that it was appropriate to seek public comment on the petition by publishing the supplemental proposed rule developed in response to the petition, as allowed under 10 CFR 2.802(e).

IX. Paperwork Reduction Act Statement

This final rule amends information collection requirements contained in (10 CFR parts 50, 51, and 52 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval numbers 3150–0011, 3150–0021, and 3150–0151 and the changes contain new or amended information collection requirements. Existing requirements were approved by the Office of Management and Budget, approval number(s) 3150–0011, 3150–0021, and 3150–0151.

The net burden to the public for the information collections in 10 CFR parts 50, 51, and 52 is estimated to average zero hours per response, as burden is being shifted from part 52 to part 50, and within sections of part 51. The burden to the public for the information collections in 10 CFR part 50 is estimated to average 1,900 hours per response and the burden for the information collections in 10 CFR part 52 is estimated to average a reduction of 1,900 hours per response, resulting in no change in burden. The burden to the public for the information collections in 10 CFR part 51 is estimated to result in no change in burden, as information collection requirements are shifted from one section to another. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Records and FOIA/Privacy Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011, 3150–0021, 3150–0151; 10 CFR parts 50, 51, and 52), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

X. Regulatory Analysis

The NRC has prepared a regulatory analysis for this rule. The analysis examines the costs and benefits of the alternatives considered by the Commission. Availability of the regulatory analysis is provided in Section V of this document.

XI. Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing of nuclear power plants. The companies that will apply for an approval, certification, permit, site report, or license in accordance with the regulations in this rule 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).

XII. Backfit Analysis

The NRC has determined that the backfit rule does not require the NRC to prepare a backfit analysis for this rulemaking, because the rulemaking does not contain any provisions that would impose backfitting as defined in the backfit rule, 10 CFR 50.109.

There are no current holders of construction permits or combined licenses for nuclear power plants that would be protected by the backfitting restrictions in § 50.109. To the extent that the rulemaking revises the LWA requirements for future ESPs, construction permits, or combined licenses for nuclear power plants, these revisions do not constitute backfits because they are prospective in nature and the backfit rule was not intended to apply to every NRC action which substantially changes the expectations of future applicants. With respect to the ESPs issued by the NRC prior to adoption of the final LWA rule, the rule does not represent backfitting for several reasons. The ESPs issued prior to the effective date of the final rule were granted authority to conduct activities identified in former § 50.10(e)(1), commonly referred to as an LWA–1 activities. Under the final rule, NRC review and approval is not required before applicants can commence these activities. In practical effect, the final rule moots the LWA authority granted in the applicable ESPs. Therefore, the final LWA rule has no applicability to these ESP holders with respect to their already-complete ESP application

process. Finally, the ESP holders are free to seek additional authority under their ESP in accordance with the final LWA rules provisions; in this respect, the current LWA holders are treated no differently than future ESP holders who do not seek LWA authority in their initial ESP application. For these reasons, the NRC concludes that the final LWA rule does not constitute backfitting.

XIII. Congressional Review Act

Under the Congressional Review 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 of OMB.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, 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.

10 CFR Part 51

Administrative practice and procedure, Environmental Impact Statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

10 CFR Part 100

Nuclear power plants and reactors, Reactor siting criteria.

■ For the reasons set forth 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. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2, 50, 51, 52 and 100.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

■ 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; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

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. 10143(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, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 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. 161b, 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). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(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 2.390 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). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–550, 84 Stat. 1473 (42 U.S.C. 2135).

■ 2. In § 2.101, paragraphs (a)(1), (a)(2), (a)(3) introductory text, (a)(4), and (a)(5) are revised, paragraphs (a)(6) through (a)(8) are reserved, and paragraph (a)(9) is added to read as follows:

§ 2.101 Filing of application.

(a)(1) An application for a limited work authorization (LWA), a permit, a license, a license transfer, a license amendment, a license renewal, or a standard design approval, shall be filed with the Director of New Reactors, Director of Nuclear Reactor Regulation, or Director of Nuclear Material Safety and Safeguards, as prescribed by the applicable provisions of this chapter. A prospective applicant may confer informally with the NRC staff before filing an application.

(2) Each application for a license for a facility or for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee will be assigned a docket number. However, to allow a determination as to whether an application for a limited work authorization, construction permit, operating license, early site permit, standard design approval, combined license, or manufacturing license for a production or utilization facility is complete and acceptable for docketing, it will be initially treated as a tendered application. A copy of the tendered application will be available for public inspection at the NRC Web site, *http://www.nrc.gov,* and/or at the NRC PDR. Generally, the determination on acceptability for docketing will be made within a period of 30 days. However, in selected applications, the Commission may decide to determine acceptability based on the technical adequacy of the application as well as its completeness. In these cases, the Commission, under § 2.104(a), will direct that the notice of hearing be issued as soon as practicable after the application has been tendered, and the determination of acceptability will be made generally within a period of 60 days. For docketing and other requirements for applications under part 61 of this chapter, see paragraph (g) of this section.

(3) If the Director of New Reactors, Director of Nuclear Reactor Regulation, or Director of Nuclear Material Safety and Safeguards, as appropriate, determines that a tendered application for a limited work authorization, construction permit, operating license, early site permit, standard design approval, combined license, or manufacturing license for a production or utilization facility, and/or any environmental report required under subpart A of part 51 of this chapter, or part thereof as provided in paragraphs (a)(5), (a)(9), or (a-1) of this section are complete and acceptable for docketing, a docket number will be assigned to the application or part thereof, and the applicant will be notified of the determination. With respect to the tendered application and/or environmental report or part thereof that

is acceptable for docketing, the applicant will be requested to:

* * * * *

(4) The tendered application for a limited work authorization, construction permit, operating license, early site permit, standard design approval, combined license, or manufacturing license for a production or utilization facility will be formally docketed upon receipt by the Director of New Reactors, Director of Nuclear Reactor Regulation, or Director of Nuclear Material Safety and Safeguards, as appropriate, of the required additional copies. Distribution of the additional copies shall be deemed to be complete as of the time the copies are deposited in the mail or with a carrier prepaid for delivery to the designated addresses. The date of docketing shall be the date when the required copies are received by the Director of New Reactors, Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate. Within 10 days after docketing, the applicant shall submit to the Director of New Reactors, Director of Nuclear Reactor Regulation, or Director of Nuclear Material Safety and Safeguards, as appropriate, an affidavit that distribution of the additional copies to Federal, State, and local officials has been completed in accordance with the requirements of this chapter and written instructions furnished to the applicant by the Director of New Reactors, Director of Nuclear Reactor Regulation, or Director of Nuclear Material Safety and Safeguards, as appropriate. Amendments to the application and environmental report shall be filed and distributed, and an affidavit shall be furnished to the Director of New Reactors, Director of Nuclear Reactor Regulation, or Director of Nuclear Material Safety and Safeguards, as appropriate, in the same manner as for the initial application and environmental report. If it is determined that all or any part of the tendered application and/or environmental report is incomplete and therefore not acceptable for processing, the applicant will be informed of this determination, and the respects in which the document is deficient.

(5) An applicant for a construction permit under part 50 of this chapter or a combined license under part 52 of this chapter for a production or utilization facility which is subject to § 51.20(b) of this chapter, and is of the type specified in § 50.21(b)(2) or (3) or § 50.22 of this chapter or is a testing facility may submit the information required of applicants by part 50 or part 52 of this chapter in two parts. One part shall be accompanied by the information required by § 50.30(f) of this chapter, or § 52.80(b) of this chapter, as applicable. The other part shall include any information required by § 50.34(a) and, if applicable, § 50.34a of this chapter, or §§ 52.79 and 52.80(a), as applicable. One part may precede or follow other parts by no longer than 18 months. If it is determined that either of the parts as described previously is incomplete and not acceptable for processing, the Director of New Reactors, Director of Nuclear Reactor Regulation, or Director of Nuclear Material Safety and Safeguards, as appropriate, will inform the applicant of this determination and the respects in which the document is deficient. A determination of completeness will generally be made within a period of 30 days. Whichever part is filed first shall also include the fee required by §§ 50.30(e) and 170.21 of this chapter and the information required by §§ 50.33, 50.34(a)(1) or 52.79(a)(1), as applicable, and § 50.37 of this chapter. The Director of New Reactors, Director Nuclear Reactor Regulation, or Director of Nuclear Material Safety and Safeguards, as appropriate, will accept for docketing an application for a construction permit under part 50 of this chapter or a combined license under part 52 of this chapter for a production or utilization facility which is subject to § 51.20(b) of this chapter, and is of the type specified in § 50.21(b)(2) or (3) or § 50.22 of this chapter or is a testing facility where one part of the application as described previously is complete and conforms to the requirements of part 50 or part 52 of this chapter, as applicable. The additional part will be docketed upon a determination that it is complete, by the Director of New Reactors, Director of Nuclear Reactor Regulation, or Director of Nuclear Material Safety and Safeguards, as appropriate.

(6)–(8) [Reserved]

(9) An applicant for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in § 50.21(b)(2) or (b)(3) or § 50.22 of this chapter, an applicant for or holder of an early site permit under part 52 of this chapter, or an applicant for a combined license under part 52 of this chapter, who seeks to conduct the activities authorized under § 50.10(d) of this chapter may submit a complete application under paragraphs (a)(1) through (a)(4) of this section which includes the information required by § 50.10(d) of this chapter. Alternatively, the applicant (other than an applicant for or holder of an early site permit) may submit its application in two parts:

(i) Part one must include the information required by § 50.33(a) through (f) of this chapter, and the information required by § 50.10(d)(2) and (d)(3) of this chapter.

(ii) Part two must include the remaining information required by the Commission's regulations in this chapter which was not submitted in part one, *provided, however,* that this information may be submitted in accordance with the applicable provisions of paragraph (a)(5) of this section, or, for a construction permit applicant, paragraph (a)(1) of this section. Part two of the application must be submitted no later than 18 months after submission of part one.

* * * * *

■ 3. In § 2.102, paragraph (a) is revised to read as follows:

§ 2.102 Administrative review of application.

(a) During review of an application by the NRC staff, an applicant may be required to supply additional information. The staff may request any one party to the proceeding to confer with the NRC staff informally. In the case of docketed application for a limited work authorization, construction permit, operating license, early site permit, standard design approval, combined license, or manufacturing license under this chapter, the NRC staff shall establish a schedule for its review of the application, specifying the key intermediate steps from the time of docketing until the completion of its review.

* * * * *

■ 4. In § 2.104, paragraph (a) and paragraph (c)(1) are revised to read as follows:

§ 2.104 Notice of hearing.

(a) In the case of an application on which a hearing is required by the Act or this chapter, or in which the Commission finds that a hearing is required in the public interest, the Secretary will issue a notice of hearing to be published in the **Federal Register**. The notice must be published at least 15 days, and in the case of an application concerning a limited work authorization, construction permit, early site permit, or combined license for a facility of the type described in §§ 50.21(b) or 50.22 of this chapter or a testing facility, at least 30 days, before

the date set for hearing in the notice.[1] In addition, in the case of an application for a limited work authorization, construction permit, early site permit, or combined license for a facility of the type described in § 50.22 of this chapter, or a testing facility, the notice must be issued as soon as practicable after the NRC has docketed the application. If the Commission decides, under § 2.101(a)(2), to determine the acceptability of the application based on its technical adequacy as well as completeness, the notice must be issued as soon as practicable after the application has been tendered.

* * * * *

(c)(1) The Secretary will transmit a notice of hearing on an application for a license for a production or utilization facility, including a limited work authorization, early site permit, combined license, but not for a manufacturing license, for a license for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee, for a license under part 61 of this chapter, for a construction authorization for a high-level waste repository at a geologic repository operations area under parts 60 or 63 of this chapter, for a license to receive and possess high-level radioactive waste at a geologic repository operations area under parts 60 or 63 of this chapter, and for a license under part 72 of this chapter to acquire, receive or possess spent fuel for the purpose of storage in an independent spent fuel storage installation (ISFSI) to the governor or other appropriate official of the State and to the chief executive of the municipality in which the facility is to be located or the activity is to be conducted or, if the facility is not to be located or the activity conducted within a municipality, to the chief executive of the county (or to the Tribal organization, if it is to be located or conducted within an Indian reservation).

* * * * *

■ 5. The heading of subpart F is revised to read as follows:

Subpart F—Additional Procedures Applicable to Early Partial Decisions on Site Suitability Issues in Connection With an Application for a Construction Permit or Combined License To Construct Certain Utilization Facilities; and Advance Issuance of Limited Work Authorizations

■ 6. In § 2.600, the introductory text is revised, and a new paragraph (d) is added to read as follows:

§ 2.600 Scope of subpart.

This subpart prescribes procedures applicable to licensing proceedings which involve an early submittal of site suitability information in accordance with § 2.101(a–1), and a hearing and early partial decision on issues of site suitability, in connection with an application for a permit to construct a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in § 50.21(b)(2) or (3) or § 50.22 of this chapter or is a testing facility. This subpart also prescribes procedures applicable to proceedings for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in § 50.21(b)(2) or (3) or § 50.22 of this chapter, or proceedings for a combined license under part 52 of this chapter, either of which includes a request to conduct the activities authorized under § 50.10(d) of part 50 of this chapter in advance of issuance of the construction permit or combined license, and submits an application in accordance with § 2.101(a)(9).

* * * * *

(d) The procedures in §§ 2.641 through 2.649 apply to phased applications for construction permits or combined licenses which request limited work authorizations to be issued in advance of issuance of the construction permit or combined license (*i.e.*, a phased application).

■ 7. In § 2.606, paragraph (a) is revised to read as follows:

§ 2.606 Partial decision on site suitability issues.

(a) The provisions of §§ 2.331, 2.339, 2.340(b), 2.343, 2.712, and 2.713 apply to any partial initial decision rendered in accordance with this subpart. Section 2.340(c) does not apply to any partial initial decision rendered in accordance with this subpart. No construction permit or combined license may be issued without completion of the full review required by Section 102(2) of the NEPA, as amended, and subpart A of part 51 of this chapter. The authority of the Commission to review such a partial initial decision *sua sponte,* or to raise *sua sponte* an issue that has not been raised by the parties, will be exercised within the same time as in the case of a full decision relating to the issuance of a construction permit or combined license.

* * * * *

■ 8. Following § 2.629, an undesignated center heading and §§ 2.641, 2.643, 2.645, and 2.649 are added and § 2.647 is reserved to read as follows:

Phased Applications Involving Limited Work Authorizations

Sec.
2.641 Filing fees.
2.643 Acceptance and docketing of application for limited work authorization.
2.645 Notice of hearing.
2.647 [Reserved]
2.649 Partial decisions on limited work authorization.

§ 2.641 Filing fees.

Each application which contains a request for limited work authorization under the procedures of § 2.101(a)(9) and this subpart shall be accompanied by any fee required by § 50.30(e) and part 170 of this chapter.

§ 2.643 Acceptance and docketing of application for limited work authorization.

(a) Each part of an application submitted in accordance with § 2.101(a)(9) will be initially treated as a tendered application. If it is determined that any one of the parts as described in § 2.101(a)(9) is incomplete and not acceptable for processing, the Director of New Reactors or the Director of Nuclear Reactor Regulation will inform the applicant of this determination and the respects in which the document is deficient. A determination of completeness will generally be made within a period of 30 days.

(b) The Director will accept for docketing part one of an application for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in § 50.21(b)(2) or (3) or § 50.22 of this chapter or an application for a combined license where part one of the application as described in § 2.101(a)(9) is complete. Part one will not be considered complete unless it contains the information required by § 50.10(d)(3) of this chapter. Upon assignment of a docket number, the procedures in § 2.101(a)(3) and (4) relating to formal docketing and the submission and distribution of additional copies of the application must be followed.

[1] If the notice of hearing concerning an application for a limited work authorization, construction permit, early site permit, or combined license for a facility of the type described in §§ 50.21(b) or 50.22 of this chapter or a testing facility does not specify the time and place of initial hearing, a subsequent notice will be published in the **Federal Register** which will provide at least 30 days notice of the time and place of that hearing. After this notice is given, the presiding officer may reschedule the commencement of the initial hearing for a later date or reconvene a recessed hearing without again providing at least 30 days notice.

(c) If part one of the application is docketed, the Director will cause to be published in the **Federal Register** and send to the Governor or other appropriate official of the State in which the site is located, a notice of docketing of the application which states the purpose of the application, states the location of the proposed site, states that a notice of hearing will be published, and requests comments on the limited work authorization from Federal, State, and local agencies and interested persons. The notice will state that comments must be submitted to the NRC within 60 days or such other time as may be specified in the notice.

(d) Part two of the application will be docketed upon a determination by the Director that it is complete.

(e) If part two of the application is docketed, the Director will cause to be published in the **Federal Register** and sent to the Governor or other appropriate official of the State in which the site is located, a notice of docketing of part two of the application which states the purpose of the application, states that a notice of hearing will be published, and requests comments on the construction permit or combined license application, as applicable, from Federal, State, and local agencies and interested persons. The notice will state that comments must be submitted to the NRC within 60 days or such other time as may be specified in the notice.

§ 2.645 Notice of hearing.

(a) The notice of hearing on part one of the application must set forth the matters of fact and law to be considered, as required by § 2.104, which will be modified to state that the hearing will relate only to the matters related to § 50.33(a) through (f) of this chapter, and the limited work authorization.

(b) After docketing of part two of the application, as provided in §§ 2.101(a)(9) and 2.643(d), a supplementary notice of hearing will be published under § 2.104 with respect to the remaining unresolved issues in the proceeding within the scope of § 2.104. The supplementary notice of hearing will provide that any person whose interest may be affected by the proceeding and who desires to participate as a party in the resolution of the remaining issues shall, file a petition for leave to intervene within the time prescribed in the notice. The petition to intervene must meet the applicable requirements in subpart C of this part, including § 2.309. This supplementary notice will also provide appropriate opportunities for participation by a representative of an interested State under § 2.315(c) and for limited appearances under § 2.315(a).

(c) Any person who was permitted to intervene under the initial notice of hearing on the limited work authorization and who was not dismissed or did not withdraw as a party, may continue to participate as a party with respect to the remaining unresolved issues only if, within the time prescribed for filing of petitions for leave to intervene in the supplementary notice of hearing, that person files a petition for intervention which meets the applicable requirements in subpart C of this part, including § 2.309, *provided, however,* that the petition need not address § 2.309(d). However, a person who was granted discretionary intervention under § 2.309(e) must address in its petition the factors in § 2.309(e) as they apply to the supplementary hearing.

(d) A party who files a non-timely petition for intervention under paragraph (b) of this section to continue as a party may be dismissed from the proceeding, absent a determination that the party has made a substantial showing of good cause for failure to file on time, and with particular reference to the factors specified in §§ 2.309(c)(1)(i) through (iv) and 2.309(d). The notice will be ruled upon by the Commission or presiding officer designated to rule on petitions for leave to intervene.

(e) To the maximum extent practicable, the membership of the Atomic Safety and Licensing Board, or the individual presiding officer, as applicable, designated to preside in the proceeding on the remaining unresolved issues under the supplemental notice of hearing will be the same as the membership or individual designated to preside in the initial notice of hearing.

§ 2.647 [Reserved]

§ 2.649 Partial decisions on limited work authorization.

The provisions of §§ 2.331, 2.339, 2.340(b), 2.343, 2.712, and 2.713 apply to any partial initial decision rendered in accordance with this subpart. Section 2.340(c) does not apply to any partial initial decision rendered in accordance with this subpart. A limited work authorization may not be issued under 10 CFR 50.10(d) without completion of the review for limited work authorizations required by subpart A of part 51 of this chapter. The authority of the Commission to review such a partial initial decision *sua sponte,* or to raise *sua sponte* an issue that has not been raised by the parties, will be exercised within the same time as in the case of a full decision relating to the issuance of a construction permit or combined license.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 9. The authority citation 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. 444, 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); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841). 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). 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).

■ 10. Section 50.10 is revised to read as follows:

§ 50.10 License required; limited work authorization.

(a) *Definitions.* As used in this section, *construction* means the activities in paragraph (a)(1) of this section, and does not mean the activities in paragraph (a)(2) of this section.

(1) Activities constituting construction are the driving of piles, subsurface preparation, placement of backfill, concrete, or permanent retaining walls within an excavation, installation of foundations, or in-place assembly, erection, fabrication, or testing, which are for:

(i) Safety-related structures, systems, or components (SSCs) of a facility, as defined in 10 CFR 50.2;

(ii) SSCs relied upon to mitigate accidents or transients or used in plant emergency operating procedures;

(iii) SSCs whose failure could prevent safety-related SSCs from fulfilling their safety-related function;

(iv) SSCs whose failure could cause a reactor scram or actuation of a safety-related system;

(v) SSCs necessary to comply with 10 CFR part 73;

(vi) SSCs necessary to comply with 10 CFR 50.48 and criterion 3 of 10 CFR part 50, appendix A; and

(vii) Onsite emergency facilities, that is, technical support and operations support centers, necessary to comply with 10 CFR 50.47 and 10 CFR part 50, appendix E.

(2) Construction does not include:

(i) Changes for temporary use of the land for public recreational purposes;

(ii) Site exploration, including necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;

(iii) Preparation of a site for construction of a facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(iv) Erection of fences and other access control measures;

(v) Excavation;

(vi) Erection of support buildings (such as, construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings) for use in connection with the construction of the facility;

(vii) Building of service facilities, such as paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, and transmission lines;

(viii) Procurement or fabrication of components or portions of the proposed facility occurring at other than the final, in-place location at the facility;

(ix) Manufacture of a nuclear power reactor under a manufacturing license under subpart F of part 52 of this chapter to be installed at the proposed site and to be part of the proposed facility; or

(x) With respect to production or utilization facilities, other than testing facilities and nuclear power plants, required to be licensed under Section 104.a or Section 104.c of the Act, the erection of buildings which will be used for activities other than operation of a facility and which may also be used to house a facility (*e.g.*, the construction of a college laboratory building with space for installation of a training reactor).

(b) *Requirement for license.* Except as provided in § 50.11 of this chapter, no person within the United States shall transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, or use any production or utilization facility except as authorized by a license issued by the Commission.

(c) *Requirement for construction permit, early site permit authorizing limited work authorization activities, combined license, or limited work authorization.* No person may begin the construction of a production or utilization facility on a site on which the facility is to be operated until that person has been issued either a construction permit under this part, a combined license under part 52 of this chapter, an early site permit authorizing the activities under paragraph (d) of this section, or a limited work authorization under paragraph (d) of this section.

(d) *Request for limited work authorization.* (1) Any person to whom the Commission may otherwise issue either a license or permit under Sections 103, 104.b, or 185 of the Act for a facility of the type specified in §§ 50.21(b)(2), (b)(3), or 50.22 of this chapter, or a testing facility, may request a limited work authorization allowing that person to perform the driving of piles, subsurface preparation, placement of backfill, concrete, or permanent retaining walls within an excavation, installation of the foundation, including placement of concrete, any of which are for an SSC of the facility for which either a construction permit or combined license is otherwise required under paragraph (c) of this section.

(2) An application for a limited work authorization may be submitted as part of a complete application for a construction permit or combined license in accordance with 10 CFR 2.101(a)(1) through (a)(5), or as a partial application in accordance with 10 CFR 2.101(a)(9). An application for a limited work authorization must be submitted by an applicant for or holder of an early site permit as a complete application in accordance with 10 CFR 2.101(a)(1) through (a)(4).

(3) The application must include:

(i) A safety analysis report required by 10 CFR 50.34, 10 CFR 52.17 or 10 CFR 52.79 of this chapter, as applicable, a description of the activities requested to be performed, and the design and construction information otherwise required by the Commission's rules and regulations to be submitted for a construction permit or combined license, but limited to those portions of the facility that are within the scope of the limited work authorization. The safety analysis report must demonstrate that activities conducted under the limited work authorization will be conducted in compliance with the technically-relevant Commission requirements in 10 CFR Chapter I applicable to the design of those portions of the facility within the scope of the limited work authorization;

(ii) An environmental report in accordance with § 51.49 of this chapter; and

(iii) A plan for redress of activities performed under the limited work authorization, should limited work activities be terminated by the holder or the limited work authorization be revoked by the NRC, or upon effectiveness of the Commission's final decision denying the associated construction permit or combined license application, as applicable.

(e) *Issuance of limited work authorization.* (1) The Director of New Reactors or the Director of Nuclear Reactor Regulation may issue a limited work authorization only after:

(i) The NRC staff issues the final environmental impact statement for the limited work authorization in accordance with subpart A of part 51 of this chapter;

(ii) The presiding officer makes the finding in § 51.105(c) or § 51.107(d) of this chapter, as applicable;

(iii) The Director determines that the applicable standards and requirements of the Act, and the Commission's regulations applicable to the activities to be conducted under the limited work authorization, have been met. The applicant is technically qualified to engage in the activities authorized. Issuance of the limited work authorization will provide reasonable assurance of adequate protection to public health and safety and will not be inimical to the common defense and security; and

(iv) The presiding officer finds that there are no unresolved safety issues relating to the activities to be conducted under the limited work authorization that would constitute good cause for withholding the authorization.

(2) Each limited work authorization will specify the activities that the holder is authorized to perform.

(f) *Effect of limited work authorization.* Any activities undertaken under a limited work authorization are entirely at the risk of the applicant and, except as to the matters determined under paragraph (e)(1) of this section, the issuance of the limited work authorization has no bearing on the issuance of a construction permit or combined license with respect to the requirements of the Act, and rules, regulations, or orders issued under the Act. The environmental impact statement for a

construction permit or combined license application for which a limited work authorization was previously issued will not address, and the presiding officer will not consider, the sunk costs of the holder of limited work authorization in determining the proposed action (*i.e.*, issuance of the construction permit or combined license).

(g) *Implementation of redress plan.* If construction is terminated by the holder, the underlying application is withdrawn by the applicant or denied by the NRC, or the limited work authorization is revoked by the NRC, then the holder must begin implementation of the redress plan in a reasonable time. The holder must also complete the redress of the site no later than 18 months after termination of construction, revocation of the limited work authorization, or upon effectiveness of the Commission's final decision denying the associated construction permit application or the underlying combined license application, as applicable.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

■ 11. The authority citation for part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

■ 12. In § 51.4, a new definition of ''construction'' is added to read as follows:

§ 51.4 Definitions.

* * * * *

Construction means the activities in paragraph (1) of this definition, and does not mean the activities in paragraph (2) of this definition.

(1) Activities constituting construction are the driving of piles, subsurface preparation, placement of backfill, concrete, or permanent retaining walls within an excavation, installation of foundations, or in-place assembly, erection, fabrication, or testing, which are for:

(i) Safety-related structures, systems, or components (SSCs) of a facility, as defined in 10 CFR 50.2;

(ii) SSCs relied upon to mitigate accidents or transients or used in plant emergency operating procedures;

(iii) SSCs whose failure could prevent safety-related SSCs from fulfilling their safety-related function;

(iv) SSCs whose failure could cause a reactor scram or actuation of a safety-related system;

(v) SSCs necessary to comply with 10 CFR part 73;

(vi) SSCs necessary to comply with 10 CFR 50.48 and criterion 3 of 10 CFR part 50, appendix A; and

(vii) Onsite emergency facilities (*i.e.*, technical support and operations support centers), necessary to comply with 10 CFR 50.47 and 10 CFR part 50, appendix E.

(2) Construction does not include:

(i) Changes for temporary use of the land for public recreational purposes;

(ii) Site exploration, including necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;

(iii) Preparation of a site for construction of a facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(iv) Erection of fences and other access control measures;

(v) Excavation;

(vi) Erection of support buildings (such as, construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings) for use in connection with the construction of the facility;

(vii) Building of service facilities, such as paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, transmission lines;

(viii) Procurement or fabrication of components or portions of the proposed facility occurring at other than the final, in-place location at the facility;

(ix) Manufacture of a nuclear power reactor under a manufacturing license under subpart F of part 52 of this chapter to be installed at the proposed site and to be part of the proposed facility; or

(x) With respect to production or utilization facilities, other than testing facilities and nuclear power plants, required to be licensed under Section 104.a or Section 104.c of the Act, the erection of buildings which will be used for activities other than operation of a facility and which may also be used to house a facility (*e.g.*, the construction of a college laboratory building with space for installation of a training reactor).

* * * * *

■ 13. In § 51.17, paragraph (b) is revised to read as follows:

§ 51.17 Information collection requirements; OMB approval.

* * * * *

(b) The approved information collection requirements in this part appear in §§ 51.6, 51.16, 51.41, 51.45, 51.49, 51.50, 51.51, 51.52, 51.53, 51.54, 51.55, 51.58, 51.60, 51.61, 51.62, 51.66, 51.68, and 51.69.

■ 14. In § 51.45, paragraph (c) is revised to read as follows:

§ 51.45 Environmental report.

* * * * *

(c) *Analysis.* The environmental report must include an analysis that considers and balances the environmental effects of the proposed action, the environmental impacts of alternatives to the proposed action, and alternatives available for reducing or avoiding adverse environmental effects. An environmental report prepared at the early site permit stage under § 51.50(b), construction permit stage under § 51.50(a), or combined license stage under § 51.50(c) must include a description of impacts of the preconstruction activities performed by the applicant (*i.e.*, those activities listed in paragraph (b)(1) through (b)(8) in the definition of construction contained in § 51.4) necessary to support the construction and operation of the facility which is the subject of the limited work authorization, construction permit, or combined license application. The environmental report must also contain an analysis of the cumulative impacts of the activities to be authorized by the limited work authorization, construction permit, or combined license in light of the preconstruction impacts described in the environmental report. Except for an environmental report prepared at the early site permit stage, or an environmental report prepared at the

license renewal stage under § 51.53(c), the analysis in the environmental report should also include consideration of the economic, technical, and other benefits and costs of the proposed action and its alternatives. Environmental reports prepared at the license renewal stage under § 51.53(c) need not discuss the economic or technical benefits and costs of either the proposed action or alternatives except if these benefits and costs are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. In addition, environmental reports prepared under § 51.53(c) need not discuss issues not related to the environmental effects of the proposed action and its alternatives. The analyses for environmental reports shall, to the fullest extent practicable, quantify the various factors considered. To the extent that there are important qualitative considerations or factors that cannot be quantified, those considerations or factors shall be discussed in qualitative terms. The environmental report should contain sufficient data to aid the Commission in its development of an independent analysis.

* * * * *

■ 15. A new § 51.49 is added under the heading Environmental Reports-Production and Utilization Facilities to read as follows:

§ 51.49 Environmental report—limited work authorization.

(a) *Limited work authorization submitted as part of complete construction permit or combined license application.* Each applicant for a construction permit or combined license applying for a limited work authorization under § 50.10(d) of this chapter in a complete application under 10 CFR 2.101(a)(1) through (a)(4), shall submit with its application a separate document, entitled, ''Applicant's Environmental Report—Limited Work Authorization Stage,'' which is in addition to the environmental report required by § 51.50 of this part. Each environmental report must also contain the following information:

(1) A description of the activities proposed to be conducted under the limited work authorization;

(2) A statement of the need for the activities; and

(3) A description of the environmental impacts that may reasonably be expected to result from the activities, the mitigation measures that the applicant proposes to implement to achieve the level of environmental impacts described, and a discussion of the reasons for rejecting mitigation measures that could be employed by the applicant to further reduce environmental impacts.

(b) *Phased application for limited work authorization and construction permit or combined license.* If the construction permit or combined license application is filed in accordance with § 2.101(a)(9) of this chapter, then the environmental report for part one of the application may be limited to a discussion of the activities proposed to be conducted under the limited work authorization. If the scope of the environmental report for part one is so limited, then part two of the application must include the information required by § 51.50, as applicable.

(c) *Limited work authorization submitted as part of an early site permit application.* Each applicant for an early site permit under subpart A of part 52 of this chapter requesting a limited work authorization shall submit with its application the environmental report required by § 51.50(b). Each environmental report must contain the following information:

(1) A description of the activities proposed to be conducted under the limited work authorization;

(2) A statement of the need for the activities; and

(3) A description of the environmental impacts that may reasonably be expected to result from the activities, the mitigation measures that the applicant proposes to implement to achieve the level of environmental impacts described, and a discussion of the reasons for rejecting mitigation measures that could be employed by the applicant to further reduce environmental impacts.

(d) *Limited work authorization request submitted by early site permit holder.* Each holder of an early site permit requesting a limited work authorization shall submit with its application a document entitled, ''Applicant's Environmental Report—Limited Work Authorization under Early Site Permit,'' containing the following information:

(1) A description of the activities proposed to be conducted under the limited work authorization;

(2) A statement of the need for the activities;

(3) A description of the environmental impacts that may reasonably be expected to result from the activities, the mitigation measures that the applicant proposes to implement to achieve the level of environmental impacts described, and a discussion of the reasons for rejecting mitigation measures that could be employed by the applicant to further reduce environmental impacts; and

(4) Any new and significant information for issues related to the impacts of construction of the facility that were resolved in the early site permit proceeding with respect to the environmental impacts of the activities to be conducted under the limited work authorization.

(5) A description of the process used to identify new and significant information regarding NRC's conclusions in the early site permit environmental impact statement. The process must be a reasonable methodology for identifying this new and significant information.

(e) *Limited work authorization for a site where an environmental impact statement was prepared, but the facility construction was not completed.* If the limited work authorization is for activities to be conducted at a site for which the Commission has previously prepared an environmental impact statement for the construction and operation of a nuclear power plant, and a construction permit was issued but construction of the plant was never completed, then the applicant's environmental report may incorporate by reference the earlier environmental impact statement. In the event of such referencing, the environmental report must identify:

(1) Any new and significant information material to issues related to the impacts of construction of the facility that were resolved in the construction permit proceeding for the matters required to be addressed in paragraph (a) of this section; and

(2) A description of the process used to identify new and significant information regarding the NRC's conclusions in the construction permit environmental impact statement. The process must use a reasonable methodology for identifying this new and significant information.

(f) *Environmental Report.* An environmental report submitted in accordance with this section must separately evaluate the environmental impacts and proposed alternatives attributable to the activities proposed to be conducted under the limited work authorization. At the option of the applicant, the ''Applicant's Environmental Report—Limited Work Authorization Stage,'' may contain the information required to be submitted in the environmental report required under § 51.50, which addresses the impacts of construction and operation for the proposed facility (including the environmental impacts attributable to the limited work authorization), and

discusses the overall costs and benefits balancing for the proposed action.

■ 16. In § 51.71, paragraph (e) is redesignated as paragraph (f), and a new paragraph (e) is added to read as follows:

§ 51.71 Draft environmental impact statement—contents.

* * * * *

(e) *Effect of limited work authorization.* If a limited work authorization was issued either in connection with or subsequent to an early site permit, or in connection with a construction permit or combined license application, then the environmental impact statement for the construction permit or combined license application will not address or consider the sunk costs associated with the limited work authorization.

* * * * *

■ 17. Section 51.76 is added to read as follows:

§ 51.76 Draft environmental impact statement—limited work authorization.

The NRC will prepare a draft environmental impact statement relating to issuance of a limited work authorization in accordance with the procedures and measures described in §§ 51.70, 51.71, and 51.73, as further supplemented or modified in the following paragraphs.

(a) *Limited work authorization submitted as part of complete construction permit or combined license application.* If the application for a limited work authorization is submitted as part of a complete construction permit or combined license application, then the NRC may prepare a partial draft environmental impact statement. The analysis called for by § 51.71(d) must be limited to the activities proposed to be conducted under the limited work authorization. Alternatively, the NRC may prepare a complete draft environmental impact statement prepared in accordance with § 51.75(a) or (c), as applicable.

(b) *Phased application for limited work authorization under § 2.101(a)(9) of this chapter.* If the application for a limited work authorization is submitted in accordance with § 2.101(a)(9) of this chapter, then the draft environmental impact statement for part one of the application may be limited to consideration of the activities proposed to be conducted under the limited work authorization, and the proposed redress plan. However, if the environmental report contains the full set of information required to be submitted under § 51.50(a) or (c), then a draft environmental impact statement must be prepared in accordance with § 51.75(a) or (c), as applicable. Siting issues, including whether there is an obviously superior alternative site, or issues related to operation of the proposed nuclear power plant at the site, including need for power, may not be considered. After part two of the application is docketed, the NRC will prepare a draft supplement to the final environmental impact statement for part two of the application under § 51.72. No updating of the information contained in the final environmental impact statement prepared for part one is necessary in preparation of the supplemental environmental impact statement. The draft supplement must consider all environmental impacts associated with the prior issuance of the limited work authorization, but may not address or consider the sunk costs associated with the limited work authorization.

(c) *Limited work authorization submitted as part of an early site permit application.* If the application for a limited work authorization is submitted as part of an application for an early site permit, then the NRC will prepare an environmental impact statement in accordance with § 51.75(b). However, the analysis called for by § 51.71(d) must also address the activities proposed to be conducted under the limited work authorization.

(d) *Limited work authorization request submitted by an early site permit holder.* If the application for a limited work authorization is submitted by a holder of an early site permit, then the NRC will prepare a draft supplement to the environmental impact statement for the early site permit. The supplement is limited to consideration of the activities proposed to be conducted under the limited work authorization, the adequacy of the proposed redress plan, and whether there is new and significant information identified with respect to issues related to the impacts of construction of the facility that were resolved in the early site permit proceeding with respect to the environmental impacts of the activities to be conducted under the limited work authorization. No other updating of the information contained in the final environmental impact statement prepared for the early site permit is required.

(e) *Limited work authorization for a site where an environmental impact statement was prepared, but the facility construction was not completed.* If the limited work authorization is for activities to be conducted at a site for which the Commission has previously prepared an environmental impact statement for the construction and operation of a nuclear power plant, and a construction permit was issued but construction of the plant was not completed, then the draft environmental impact statement shall incorporate by reference the earlier environmental impact statement. The draft environmental impact statement must be limited to a consideration of whether there is significant new information with respect to the environmental impacts of construction, relevant to the activities to be conducted under the limited work authority, so that the conclusion of the referenced environmental impact statement on the impacts of construction would, when analyzed in accordance with § 51.71, lead to the conclusion that the limited work authorization should not be issued or should be issued with appropriate conditions.

(f) *Draft environmental impact statement.* A draft environmental impact statement prepared under this section must separately evaluate the environmental impacts and proposed alternatives attributable to the activities proposed to be conducted under the limited work authorization. However, if the ''Applicant's Environmental Report—Limited Work Authorization Stage,'' also contains the information required to be submitted in the environmental report required under § 51.50, then the environmental impact statement must address the impacts of construction and operation for the proposed facility (including the environmental impacts attributable to the limited work authorization), and discuss the overall costs and benefits balancing for the underlying proposed action, in accordance with § 51.71, and § 51.75(a) or (c), as applicable.

■ 18. In § 51.103, a new paragraph (a)(6) is added to read as follows:

§ 51.103 Record of decision—general.

(a) * * *

(6) In a construction permit or a combined license proceeding where a limited work authorization under 10 CFR 50.10 was issued, the Commission's decision on the construction permit or combined license application will not address or consider the sunk costs associated with the limited work authorization in determining the proposed action.

* * * * *

■ 19. In § 51.104, a new paragraph (c) is added to read as follows:

§ 51.104 NRC proceeding using public hearings; consideration of environmental impact statement.

* * * * *

(c) In any proceeding in which a limited work authorization is requested, unless the Commission orders otherwise, a party to the proceeding may take a position and offer evidence only on the aspects of the proposed action within the scope of NEPA and this subpart which are within the scope of that party's admitted contention, in accordance with the provisions of part 2 of this chapter applicable to the limited work authorization or in accordance with the terms of any notice of hearing applicable to the limited work authorization. In the proceeding, the presiding officer will decide all matters in controversy among the parties.

■ 20. The heading of § 51.105 is revised, and a new paragraph (c) is added to read as follows:

§ 51.105 Public hearings in proceedings for issuance of construction permits or early site permits; limited work authorizations.

* * * * *

(c)(1) In addition to complying with the applicable provisions of § 51.104, in any proceeding for the issuance of a construction permit for a nuclear power plant or an early site permit under part 52 of this chapter, where the applicant requests a limited work authorization under § 50.10(d) of this chapter, the presiding officer shall—

(i) Determine whether the requirements of Section 102(2)(A), (C), and (E) of NEPA and the regulations in the subpart have been met, with respect to the activities to be conducted under the limited work authorization;

(ii) Independently consider the balance among conflicting factors with respect to the limited work authorization which is contained in the record of the proceeding, with a view to determining the appropriate action to be taken;

(iii) Determine whether the redress plan will adequately redress the activities performed under the limited work authorization, should limited work activities be terminated by the holder or the limited work authorization be revoked by the NRC, or upon effectiveness of the Commission's final decision denying the associated construction permit or early site permit, as applicable;

(iv) In an uncontested proceeding, determine whether the NEPA review conducted by the NRC staff for the limited work authorization has been adequate; and

(v) In a contested proceeding, determine whether, in accordance with the regulations in this subpart, the limited work authorization should be issued as proposed.

(2) If the limited work authorization is for activities to be conducted at a site for which the Commission has previously prepared an environmental impact statement for the construction and operation of a nuclear power plant, and a construction permit was issued but construction of the plant was never completed, then in making the determinations in paragraph (c)(1) of this section, the presiding officer shall be limited to a consideration whether there is, with respect to construction activities encompassed by the environmental impact statement which are analogous to the activities to be conducted under the limited work authorization, new and significant information on the environmental impacts of those activities, such that the limited work authorization should not be issued as proposed.

(3) The presiding officer's determination in this paragraph shall be made in a partial initial decision to be issued separately from, and in advance of, the presiding officer's decision in paragraph (a) of this section.

■ 21. In § 51.107, the heading is revised, and a new paragraph (d) is added to read as follows:

§ 51.107 Public hearings in proceedings for issuance of combined licenses; limited work authorizations.

* * * * *

(d)(1) In any proceeding for the issuance of a combined license where the applicant requests a limited work authorization under § 50.10(d) of this chapter, the presiding officer, in addition to complying with any applicable provision of § 51.104, shall:

(i) Determine whether the requirements of Section 102(2)(A), (C), and (E) of NEPA and the regulations in this subpart have been met, with respect to the activities to be conducted under the limited work authorization;

(ii) Independently consider the balance among conflicting factors with respect to the limited work authorization which is contained in the record of the proceeding, with a view to determining the appropriate action to be taken;

(iii) Determine whether the redress plan will adequately redress the activities performed under the limited work authorization, should limited work activities be terminated by the holder or the limited work authorization be revoked by the NRC, or upon effectiveness of the Commission's final decision denying the combined license application;

(iv) In an uncontested proceeding, determine whether the NEPA review conducted by the NRC staff for the limited work authorization has been adequate; and

(v) In a contested proceeding, determine whether, in accordance with the regulations in this subpart, the limited work authorization should be issued as proposed by the Director of New Reactors or the Director of Nuclear Reactor Regulation, as applicable.

(2) If the limited work authorization is for activities to be conducted at a site for which the Commission has previously prepared an environmental impact statement for the construction and operation of a nuclear power plant, and a construction permit was issued but construction of the plant was never completed, then in making the determinations in paragraph (c)(1) of this section, the presiding officer shall be limited to a consideration whether there is, with respect to construction activities encompassed by the environmental impact statement which are analogous to the activities to be conducted under the limited work authorization, new and significant information on the environmental impacts of those activities, so that the limited work authorization should not be issued as proposed by the Director of New Reactors or the Director of Nuclear Reactor Regulation, as applicable.

(3) In making the determination required by this section, the presiding officer may not address or consider the sunk costs associated with the limited work authorization.

(4) The presiding officer's determination in this paragraph shall be made in a partial initial decision to be issued separately from, and in advance of, the presiding officer's decision in paragraph (a) of this section on the combined license.

PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

■ 22. The authority citation for part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 185, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2235, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 23. In § 52.1(a), the definition for ''*Limited work authorization*'' is added to read as follows:

§ 52.1 Definitions.

(a) * * *

Limited work authorization means the authorization provided by the Director of New Reactors or the Director of Nuclear Reactor Regulation under § 50.10 of this chapter.

* * * * *

■ 24. In § 52.17, paragraph (c) is revised to read as follows:

§ 52.17 Contents of applications; technical information.

* * * * *

(c) An applicant may request that a limited work authorization under 10 CFR 50.10 be issued in conjunction with the early site permit. The application must include the information otherwise required by 10 CFR 50.10(d)(3). Applications submitted before, and pending as of November 8, 2007, must include the information required by § 52.17(c) effective on the date of docketing.

■ 25. In § 52.24, paragraph (c) is revised to read as follows:

§ 52.24 Issuance of early site permit.

* * * * *

(c) The early site permit shall specify those 10 CFR 50.10 activities requested under § 52.17(c) that the permit holder is authorized to perform.

■ 26. Section 52.27 is redesignated as § 52.26, and a new § 52.27 is added to read as follows:

§ 52.27 Limited work authorization after issuance of early site permit.

A holder of an early site permit may request a limited work authorization in accordance with § 50.10 of this chapter.

■ 27. In § 52.80, paragraphs (b) and (c) are revised to read as follows:

§ 52.80 Contents of applications; additional technical information.

* * * * *

(b) An environmental report, either in accordance with 10 CFR 51.50(c) if a limited work authorization under 10 CFR 50.10 is not requested in conjunction with the combined license application, or in accordance with §§ 51.49 and 51.50(c) of this chapter if a limited work authorization is requested in conjunction with the combined license application.

(c) If the applicant wishes to request that a limited work authorization under 10 CFR 50.10 be issued before issuance of the combined license, the application must include the information otherwise required by 10 CFR 50.10, in accordance with either 10 CFR 2.101(a)(1) through (a)(4), or 10 CFR 2.101(a)(9).

■ 28. Section 52.91 is revised to read as follows:

§ 52.91 Authorization to conduct limited work authorization activities.

(a) If the application does not reference an early site permit which authorizes the holder to perform the activities under 10 CFR 50.10(d), the applicant may not perform those activities without obtaining the separate authorization required by 10 CFR 50.10(d). Authorization may be granted only after the presiding officer in the proceeding on the application has made the findings and determination required by 10 CFR 50.10(e), and the Director of New Reactors or the Director of Nuclear Reactor Regulation makes the determination required by 10 CFR 50.10(e).

(b) If, after an applicant has performed the activities permitted by paragraph (a) of this section, the application for the combined license is withdrawn or denied, then the applicant shall implement the approved site redress plan.

■ 29. In § 52.99, paragraph (a) is revised to read as follows:

§ 52.99 Inspection during construction.

(a) The licensee shall submit to the NRC, no later that 1 year after issuance of the combined license or at the start of construction as defined in 10 CFR 50.10(a), whichever is later, its schedule for completing the inspections, tests, or analyses in the ITAAC. The licensee shall submit updates to the ITAAC schedules every 6 months thereafter and, within 1 year of its scheduled date for initial loading of fuel, the licensee shall submit updates to the ITAAC schedule every 30 days until the final notification is provided to the NRC under paragraph (c)(1) of this section.

* * * * *

PART 100—REACTOR SITE CRITERIA

■ 30. The authority citation for part 100 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 68 Stat. 936, 937, 948, 953, as amended (42 U.S.C. 2133, 2134, 2201, 2232); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 31. In § 100.23, paragraph (b) is revised to read as follows:

§ 100.23 Geologic and seismic siting criteria.

* * * * *

(b) *Commencement of construction.* The investigations required in paragraph (c) of this section are not considered ''construction'' as defined in 10 CFR 50.10(a).

* * * * *

Dated at Rockville, Maryland, this 25th day of September 2007.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

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