UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

SECRETARY

January 30, 2006

COMMISSION VOTING RECORD

DECISION ITEM: SECY-05-0203

TITLE: REVISED PROPOSED RULE TO UPDATE 10 CFR PART 52, "LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS"

The Commission (with Chairman Diaz and Commissioners Merrifield, Jaczko, and Lyons agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of January 30, 2006. Commissioner McGaffigan disapproved the proposed rule.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:
1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
OGC
EDO
PDR

VOTING SUMMARY - SECY-05-0203

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X				X	12/20/05
COMR. McGAFFIGAN		X			X	1/9/06
COMR. MERRIFIELD	X				X	1/05/06
COMR. JACZKO	X				X	12/21/05
COMR. LYONS	X				X	1/4/06

COMMENT RESOLUTION

In their vote sheets, Chairman Diaz and Commissioners Merrifield, Jaczko, and Lyons approved the subject paper and provided some additional comments. Commissioner McGaffigan disapproved the proposed rule. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on January 30, 2006.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: CHAIRMAN DIAZ

SUBJECT: **SECY-05-0203 - REVISED PROPOSED RULE TO UPDATE 10 CFR PART 52, "LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS"**

Approved w/comments & edits xx Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

See attached.

SIGNATURE

Dec 2, 05

DATE

Entered on "STARS" Yes ✓ No ___

Chairman Diaz's Comments on SECY-05-0203
Revised Proposed Rule to Update 10 CFR Part 52

I appreciate the staff's hard work on this rulemaking to prepare for the new reactor licensing reviews. I believe it is important that we use what we have learned from our past reviews, experience, and interactions with our stakeholders and make changes, where appropriate, to allow for more effective, efficient, and transparent techno-legal reviews in the future. The proposed improvements to the regulations will add predictability to the Part 52 licensing process, which is now of particular importance considering the growing number of expected applications. The revised proposed rule will contribute to the clarity and predictability of Part 52. I support moving forward with it expeditiously. Issues resolved herein by rulemaking will not have to be addressed on a case-by-case basis during staff reviews of applications

To ensure that this rulemaking is completed in time to support the review of expected combined license applications, the EDO and OGC should give high priority to complete this activity on schedule. The staff should be directed to provide the proposed final rule to the Commission no later than September 2006. To support this schedule, the staff may provide a proposed final rule to the Commission without review by the Advisory Committee on Reactor Safeguards or the Committee to Review Generic Requirements. The staff should also evaluate options to accelerate the schedule further and inform the Commission offices early of actions needed to support this endeavor. Concurrently, the EDO and OGC must ensure that the 10 CFR Part 73 security rulemakings are completed on schedule or earlier. Therefore, a strict plan and resources are to be established and managed to the set timetables for both the security and Part 52 rulemakings.

I approve the staff's recommendation to issue the proposed rule and associated Federal Register Notice subject to the following comments and attached edits.

- The proposed rule would require a COL application referencing an ESP to include an update to the EP information provided in the referenced ESP. According to the draft rule, new information which materially changes the Commission's determination on EP matters or results in modification of existing terms and conditions of the ESP would be subject to litigation in the COL proceeding. However, other alternatives exist for handling updates of EP information. These could include an update to the ESP application some time prior to submission of a COL application. Such an update could be used by the staff to amend the ESP, as necessary, in a way that is transparent, includes earlier public involvement, and brings issues to closure earlier (and in the context of the ESP). Such an approach would keep the two processes, including potential litigation on the ESP and COL, separate and more aligned with the original intent of the licensing process in Part 52. The staff should solicit stakeholder comments on this and other potential alternatives that contribute to predictable flexibility in the process for updating the EP information in the ESP.

- The proposed rule would require the environmental report for a COL application referencing an ESP to include any new and significant information on the site or design to the extent that the information differs from, or is in addition to, the information discussed in the ESP EIS. This information would be subject to litigation in the COL proceeding. The staff does not define "new and significant". In parallel with the issuance of the proposed rule, the staff should develop guidance to clarify the type of information addressed by this standard. The staff should also discuss in the Federal Register Notice an alternative that would involve an

update to environmental information similar to the alternative discussed above with respect to EP. The staff should solicit stakeholder comments on this and other potential alternatives that contribute to predictable flexibility in the process for updating the environmental information in the ESP.

- The scope and methods of a PRA to be submitted should be addressed in guidance documents, not the regulations.

- The staff should update the regulatory analysis to include the estimates of costs and benefits of providing a mandatory hearing for issuance of a manufacturing license.

- The staff should revise 10 CFR 2.340 [initial decision in contested proceedings; immediate effectiveness of initial decision directing issuance of a CP or OL] to address (1) issuance of an ESP; (2) issuance of a COL; and (3) issuance of a finding pursuant to 10 CFR 52.103.

- The staff should include in 10 CFR 52.70(a) requirements for COL applications to contain information demonstrating how the applicant will comply with 10 CFR 50.62 [ATWS requirements] and 10 CFR 50.68 [criticality accident requirements].

- The staff should revise 10 CFR 50.62(d) [ATWS implementation schedule requirements] to make it applicable only to licenses issued before the effective date of the final Part 52 rule.

Chairman Diaz's edits to the Federal Register Notice

VIII. Voluntary Consensus Standards
IX. Environmental Impact - Categorical Exclusion
X. Paperwork Reduction Act Statement
XI. Regulatory Analysis
XII. Regulatory Flexibility Certification
XIII. Backfit Analysis

I. Background.

A. Development of Proposed Rule.

On July 3, 2003 (68 FR 40026), the NRC published a proposed rulemaking that would clarify and/or correct miscellaneous parts of the NRC's regulations; update 10 CFR part 52 in its entirety; and incorporate stakeholder comments. The NRC is issuing a revised proposed rule that rewrites part 52, makes changes throughout the Commission's regulations to ensure that all licensing processes in part 52 are addressed, and clarifies the applicability of various requirements to each of the processes in part 52 (i.e., early site permit, standard design approval, standard design certification, combined license, and manufacturing license). This proposed rule withdraws and supersedes the July 3, 2003 proposed rule.

The NRC issued 10 CFR part 52 on April 18, 1989 (54 FR 15372), to reform the NRC's licensing process for future nuclear power plants. The rule added alternative licensing processes in 10 CFR part 52 for early site permits, 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 ~~resolved~~ safety and environmental issues early in licensing proceedings and were intended to enhance the safety and reliability of nuclear power plants through standardization. Subsequently, the NRC certified three nuclear power plant designs under part B of 10 CFR part 52–the U.S. Advanced Boiling Water Reactor (ABWR) (62 FR 25800; May 12, 1997), the System 80+ (62 FR 27840; May 21, 1997), and the

AP600 (64 FR 72002; December 23, 1999) designs and codified these designs in Appendices A, B, and C of 10 CFR part 52, respectively.

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 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 comment 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.

B. Publication of Revised Proposed Rule.

~~Following the close of the public comment period on~~ the July 2003 ~~proposed rule, A~~ number of factors led the NRC to question whether ~~that~~ proposed rule would meet the NRC's objective of improving the effectiveness of its processes for licensing future nuclear power plants. First, public comments identified several concerns about whether the proposed rule adequately addressed the relationship between part 50 and part 52, and whether it clearly specified the applicable regulatory requirements for each of the licensing and approval processes in part 52. In addition, as a result of the NRC staff's review of the first three early site permit applications, the staff gained additional insights into the early site permit process. The NRC also had the benefit of public meetings with external stakeholders on NRC staff guidance for the early site permit and combined license processes. 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 has decided to revise the July 2003 proposed rule and publish the revised proposed rule for public comment. As discussed in more detail in Section II, *Reorganization of Part 52 and Conforming Changes in the NRC's regulations*, this revised proposed rule contains a rewrite of part 52, as well as changes throughout the NRC's regulations, to ensure that all licensing and approval processes in part 52 are addressed, and to clarify the applicability of various requirements to each of the processes in part 52 (*i.e.*, early site permit, standard design approval, standard design certification, combined license, and manufacturing license). In light of the substantial rewrite of the July 2003 proposed rule, the expansion of the scope of the rulemaking, and the NRC's decision to publish the revised proposed rule for public comment, the NRC has decided that developing responses to comments received on the July 2003 proposed rule is not an effective use of agency resources. The NRC requests that commenters on the July 2003 proposed rule who believe that their earlier comments are not addressed in this proposed rule ~~(or are not adequately addressed)~~, resubmit their comments. The NRC will provide resolutions for comments received on the revised proposed rule in the statement of considerations for the final rule. The NRC will not be providing a comment resolution for all of the comments received on the original July 2003 proposed rule.

II. Reorganization of Part 52 and Conforming Changes in the NRC's Regulations.

Since the NRC first adopted 10 CFR part 52 in 1989, the NRC and its external stakeholders have identified a number of interrelated issues and concerns. One significant

concern is that the overall regulatory relationship between part 50 and part 52 is not always clear. It is often difficult to tell whether general regulatory provisions in part 50 apply to part 52. One example is whether the absence of an exemption provision in part 52 denotes the NRC's determination that exemptions from part 52 requirements are not available, or that these exemptions are controlled by § 50.12. A related problem is the current lack of specific delineation of the applicability of NRC requirements throughout 10 CFR Chapter 1 to the licensing and approval processes in part 52. For example, the indemnity and insurance provisions in part 140 were not revised to address their applicability to applicants for and holders of combined licenses under part C of part 52. Even where part 52 provisions referenced specific requirements in part 50, it was not always clear from the language of the part 50 requirement how that requirement applied to the part 52 processes. For example, § 52.47(a)(1)(i) provides that a standard design certification application must contain the "technical information which is required of applicants for construction permits and operating licenses by 10 CFR ... part 50 ... and which is technically relevant to the design and not site-specific."

The language does not explicitly identify the part 50 requirements that are "technically relevant to the design." Even where a specific regulation in part 50 is identified as a requirement, the language of the referenced regulation itself was not changed to reflect the specific requirements as applied to the part 52 processes. For example, § 52.79(b) provides that the application must contain the "technically relevant information required of applicants for an operating license required by 10 CFR 50.34." Other than the fact that this language shares the problem discussed earlier of what constitutes a "technically relevant" requirement, § 50.34(b) is based upon the two-step licensing process whereby certain important information is submitted at the construction permit stage, and then supplemented with more detailed information at the operating license stage. Thus, it could be asserted that certain information that must be submitted in the construction permit application, *e.g.*, the "principal design criteria

certification of advanced non-light-water designs (see Policy Statement at 51 FR 24646; July 8, 1986, and Section II of the final rule (54 FR 15372; April 18, 1989) on 10 CFR part 52), this revised proposed rule would not require the use of a prototype plant for qualification testing. Rather, this proposed rule would provide that if a prototype plant is used to qualify an advanced reactor design, then additional requirements may be required for licensing the prototype plant to compensate for any uncertainties with the unproven safety features. Also, the prototype plant could be used for commercial operation. Finally, it would ~~make no sense~~ be inconsistent for the NRC to require qualification testing only for design certification applications (paper designs) and not require testing for applications to build and operate an actual nuclear power plant. Therefore, the NRC proposes to amend the current §§ 50.43, 52.47(b), 52.79, and appendix M to part 52 to implement its intent in adopting part 52 and its policy on advanced reactors that it is necessary to demonstrate the performance of new or innovative safety features through design qualification testing for all advanced nuclear reactor designs or plants (including reactors manufactured under a manufacturing license).

C. Proposed Changes to 10 CFR Part 52.

1. Use of Terms: *Site characteristics*, *Site parameters*, *Design characteristics*, and *Design parameters* in §§ 52.1, 52.17, 52.24, 52.39, 52.47, 52.54, 52.79, 52.93, 52.157, 52.158, 52.167, 52.171, and Appendices A, B, and C.

The NRC believes that 10 CFR part 52 should be modified to clarify the use of the terms, *site characteristics*, *site parameters*, *design characteristics*, and *design parameters*, to present the NRC's requirements governing applications for and issuance of early site permits,

Current § 50.50 sets forth the NRC's authority to include conditions and limitations in permits and licenses issued by the NRC under part 50. Similar language delineating the NRC's authority in this regard is also set forth in § 52.24 for early site permits, but is not included in part 52 with respect to either combined licenses or manufacturing licenses. There are two possible ways of addressing this omission: § 50.50 could be revised to refer to combined licenses and manufacturing licenses, or provisions analogous to § 50.50 could be added to the appropriate sections in part 52. Inasmuch as the NRC's inclusion of appropriate conditions in combined licenses is not a technical matter per se but rather a matter of regulatory authority, the most appropriate location for this provision appears to be in part 52. Inclusion of these provisions in appropriate portions of part 52 would be consistent with the ~~inclusion of an analogous~~ provision applicable to early site permits in § 52.24. Accordingly, the NRC proposes to add the language in §§ 52.97(d) for combined licenses, and 52.163 for manufacturing licenses, which are analogous to § 50.50.

3. General Provisions.

a. Section 52.0, *Scope; applicability of 10 CFR Chapter 1 provisions.*

The NRC proposes to redesignate current § 52.1, *Scope*, as § 52.0, *Scope; applicability of 10 CFR Chapter 1 provisions.* In proposed § 52.0, paragraph (a) consists of current § 52.1 on the scope of part 52, and paragraph (b) addresses the applicability of 10 CFR Chapter 1 provisions. Currently § 52.1 states that part 52 governs the issuance of early site permits, standard design certifications, and combined licenses for nuclear power facilities licensed under Section 103 or 104b of the Atomic Energy Act of 1954 (AEA), as amended (68 Stat. 919), and

Accordingly, the Commission proposes to add § 52.5, which is essentially identical with the current § 50.7, with the exception of the addition of a provision on coordination with the requirements in 10 CFR part 19.

The Commission proposes to add § 52.6, which is identical with the current § 50.9, to require that information provided to the Commission by a licensee, a holder of a standard design approval, and an applicant under part 52, and information required by statute or by the NRC's regulations, orders, or license conditions to be maintained by a licensee, holder of a standard design approval, and applicant under part 52 (including the applicant for a standard design certification under part 52 following Commission adoption of a final design certification rule) be complete and accurate in all material respects.

The Commission proposes to add § 52.7, which is essentially identical with current § 50.12, to address the procedure and criteria for obtaining an exemption from the requirements of part 52. Although part 50 contains a provision (§ 50.12) for obtaining specific exemptions, § 50.12 by its terms applies only to exemptions from part 50. Although it would be possible to revise § 50.12 so that its provisions apply to exemptions from part 52, this is inconsistent with the general regulatory structure of 10 CFR, wherein each part is treated as a separate and independent regulatory unit. The NRC notes that the exemption provisions in § 52.7 are generally applicable to part 52, and do not supercede or otherwise diminish more specific exemption provisions that are in part 52, for example the provisions of a specific design certification rule or § 52.63(b)(1) governing exemptions from one or more elements of a design certification rule. An applicant or licensee referencing a standard design certification rule who wishes to obtain an exemption ~~from one or more elements~~ with regard to design certification information must meet the criteria in the specific design certification rule or § 52.63(b)(1). If the applicant or licensee ~~is unable to demonstrate compliance with these criteria~~ seeks an exemption from, then it may request an exemption under the more encompassing other provisions of Subpart B or a particular design certification rule standard

other provision of a

authority of § 52.7. ~~However~~, the exemption request must then demonstrate compliance with the additional criteria in § 52.7.

The NRC proposes to add § 52.8, which is essentially identical with the current § 50.31, to clarify the Commission's authority under Section 161.h of the AEA to combine NRC licenses, such as a special nuclear materials license under part 70 for the reactor fuel, with a combined license under part 52. Although § 50.31 contains a provision allowing a part 50 license, such as an operating license, to be combined with a part 52 license, such as an early site permit, § 50.31 does not address the Commission's authority to combine a part 52 license with a non-part 50 license.

The Commission proposes to add § 52.9, which is identical with § 50.53, to clarify that NRC licenses issued under part 52 do not authorize activities which are not under or within the jurisdiction of the United States; an example would be the construction of a nuclear power reactor outside the territorial jurisdiction of the United States which uses a design identical to that approved in a standard design certification rule in part 52.

The Commission proposes to add § 52.10 because there is no specific provision in part 52 that applies to part 52 processes the Commission's longstanding determination with respect to the lack of need for design features and other measures for protection of nuclear power plants against attacks by enemies of the United States, or the use of weapons deployed by United States defense activities. That determination, which was upheld by the U.S. Court of Appeals for the D.C. Circuit, *see Siegel v. Atomic Energy Commission*, 400 F.2d 778 (D.C. Cir 1968), is currently codified for part 50 facilities in § 50.13. Although it would be possible to revise § 50.13 so that its provisions apply to part 52 licenses, early site permits, standard design certifications, and standard design approvals, this is inconsistent with the overall regulatory pattern of 10 CFR, whereby each part is treated as a separate and independent

The title of § 52.17 would be revised to read, "Contents of applications; technical information," Section 52.17(a)(1) would be amended to state that the early site permit application should specify the range of facilities for which the applicant is requesting site approval (e.g., one, two, or three pressurized-water reactors). This new language, which is consistent with the language in paragraph 2 of current appendix Q to part 52, provides a clearer and more complete statement of the applicant's proposal with respect to the facilities which may be located under the early site permit. This facilitates NRC review, as well as providing adequate notice to potentially-affected members of the public and State and local governmental entities. The NRC assumes that an applicant for an early site permit may not know what type of nuclear plant ~~will~~ may be built at the site. Therefore, the application must specify the postulated design parameters for the range of reactor types, the numbers of reactors, etc., to increase the likelihood that approval of the site will resolve issues with respect to the actual plant or plants that the early site permit or construction permit applicant decides to build. In a letter dated November 13, 2001 (comment 27 on draft proposed rule text), NEI stated, "The proposed change is too limited. To address the required assessment of major SSCs [structures, systems, and components] that bear on radiological consequences and all items 52.17(a)(1)(i-viii), industry recommends a new § 52.17a.2." The NRC disagrees with NEI's proposal to have a separate provision for applicants who have not determined the type of plant that they plan to build at the proposed site. The NRC expects that applicants for an early site permit may not have decided on a particular type of nuclear power plant, therefore, § 52.17(a)(1) was revised to address this situation.

The NRC proposes to amend § 52.17(a)(1) to eliminate all references to § 50.34. The references to § 50.34(a)(12) and (b)(10) would be removed because these provisions require compliance with the earthquake engineering criteria in appendix S to part 50 and are not requirements for the content of an application. The reference to § 50.34(b)(6)(v), which

requires plans for coping with emergencies, would also be removed. All requirements related to emergency planning for early site permits are addressed in § 52.17(b). Finally, the reference to the radiological consequence evaluation factors identified in § 50.34(a)(1) would be removed and restated in § 52.17(a)(1). The NRC is proposing to modify the existing requirement for early site permit applications to describe the seismic, meterological hydrologic, and geologic characteristics of the proposed site to add that these descriptions must reflect appropriate consideration of the most severe of the natural phenomena that have been historically reported for the site and surrounding area and with sufficient margin for the limited accuracy, quantity, and time in which the historical data have been accumulated. This proposed addition is to ensure that future plants built at the site would be in compliance with General Design Criteria 2 from appendix A to part 50 which requires that structures, systems, and components important to safety be designed to withstand the effects of natural phenomena such as earthquakes, tornadoes, hurricanes, floods, tsunami, and seiches without loss of capability to perform their safety functions. The design bases for these structures, systems, and components are required to reflect appropriate consideration of the most severe of the natural phenomena that have been historically reported for the site and surrounding area, with sufficient margin for the limited accuracy, quantity, and time in which the historical data have been accumulated.

The NRC proposes to add several requirements to § 52.17(a)(1). A requirement would be added to § 52.17(a)(1)(xi) that applications for early site permits include information to demonstrate that adequate security plans and measures can be developed. This requirement is inherent in current § 52.17(a)(1) which states that site characteristics must comply with 10 CFR part 100. Section 100.21(f) states that site characteristics must be such that adequate security plans and measures can be developed. A new § 52.17(a)(1)(xii) would be added to require early site permit applications to include a description of the quality assurance program applied to site activities related to the future design, fabrication, construction, and testing of the

structures, systems, and components of a facility or facilities that may be constructed on the site. This proposed change was made for consistency with proposed changes to § 50.55 and appendix B to part 50. A discussion of these changes can be found in this section under the heading "Appendix B to Part 50."

Two additional requirements would be added § 52.17(a)(1) that are taken from § 50.34(b), and which the NRC believes are applicable to early site permit applicants. Section 52.17(a)(1)(xii) would require applicants proposing to site nuclear power plants on ~~sites~~ which already have one or more licensed units sites to include in its application an evaluation of the potential hazards of construction activities to the structures, systems, and components important to safety of operating units, as well as a description of the managerial and administrative controls to be used to provide assurance that the limiting conditions for operation of the existing units are not exceeded as a result of construction activities. This requirement currently exists for applicants for construction permits, operating licenses, and combined licenses. The NRC believes it should also be applicable to applicants for early site permits so that all applicable issues are included in the NRC's review of site suitability before a decision is made on issuance of an early site permit, including issues that affect units already operating on the site (if this matter is addressed and resolved in an early site permit, this matter would have finality and need not be addressed in a referencing combined license proceeding). Section 52.17(a)(1)(xiii) would require that early site permit applications include an evaluation of the site against the applicable sections of the Standard Review Plan revision in effect 6 months before the docket date of the application. This requirement currently exists for applicants for construction permits, operating licenses, design certifications, design approvals, combined licenses, and manufacturing licenses. The NRC believes it should also be applicable to applicants for early site permits because they are partial construction permits that can be referenced in applications for construction permits or combined licenses.

§52.17(a)(2).[2] With this clarification, the NRC does not believe that further changes to the language of §§ 52.17 and 52.18 are necessary.

The NRC would amend § 52.17(c) to clarify that if the applicant wants to request authorization to perform limited work activities, ~~*i.e.*, a limited work authorization (LWA),~~ at the site after receipt of the early site permit, the application must contain an identification and description of the specific activities that the applicant seeks authorization to perform. This request by the early site permit applicant would be separate from but not in addition to a request to perform LWA activities under 10 CFR 50.10(e)(1). The submittal of this descriptive information would enable the NRC staff to perform its review of the LWA request, consistent with past practice, to determine if the requested activities are acceptable under § 50.10(e)(1). If an applicant for a construction permit or combined license references an early site permit with authorization to perform LWA activities at the site and subsequently decides to request authorization to perform LWA activities beyond those authorized under § 52.24(c), those additional activities would have to be requested separately under § 50.10(e)(1).

d. Section 52.24, *Issuance of early site permit.*

The Commission proposes to amend § 52.24 to clarify the information that the NRC must include in the early site permit when it is issued. Section 52.24 would also be amended to be more consistent with the parallel provision in § 50.50, *Issuance of licenses and construction permits*, by requiring the NRC to ensure that there is reasonable assurance that the site is in

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[2]The NRC emphasizes that under § 52.17(a)(2), only the discussion of benefits (including need for power) of constructing and operating a nuclear power reactor (or reactors), and the discussion of alternative energy sources, may be deferred. The environmental report must always address the "environmental impacts of construction and operation of a reactor, or reactors, which have characteristics which fall within the postulated site parameters."

subpart M of part 2 for the conduct of any hearing) should apply to the transfer of an early site permit.

f. Section 52.37, *Reporting of defects and noncompliance; revocation, suspension, modification of permits for cause.*

Section 52.37 would be removed because this provision only contains a cross-reference to 10 CFR part 21 and § 50.100, and the NRC is proposing conforming changes to those requirements to account for requirements for early site permits.

g. Section 52.39, *Finality of early site determinations;* and *Section 52.93, Exemptions and variances.*

Section 52.39 would be revised to address the finality of an early site permit. While some of the proposed changes are conforming or clarifying, some proposed changes represent a change from the finality provisions in the current § 52.39. Paragraph (a)(2) of the current rule distinguishes among issues alleging that: (i) a "reactor does not fit within one or more of the site parameters," which are to be treated as valid contentions (paragraph (a)(2)(i)); (ii) a "site is not in compliance with the terms of an early site permit," which are to be subject to hearings under the provisions of the Administrative Procedures Act (paragraph (a)(2)(ii)); and (iii) the "terms and conditions of an early site permit should be modified," which are to be processed in accordance with 10 CFR 2.206(a)(2)(iii). With the benefit of hindsight and experience gained in reviewing the first three early site permit applications, the NRC believes that all issues concerning a referenced early site permit may be characterized as:

commences, as well as the current provision indicating that if a petition is granted, the Commission will issue an appropriate order which does not affect construction unless the Commission makes its order immediately effective.

The proposed rule would redesignate the current provision in § 52.39(b) allowing an applicant for a license referencing an early site permit to request a variance from one of more "elements" of the early site permit as § 52.39(d). The proposed rule would clarify what "elements" for which a variance may be sought by substituting the phrase, "site characteristic, design parameter, term, or condition." The Commission notes that the admission of a contention on a proposed variance, which is currently addressed in § 52.39(b), would now be addressed in § 52.39(c)(iii) of the proposed rule. Finally, the proposed rule would preclude the Commission from issuing a variance once a construction permit, operating license, or combined license referencing the early site permit is issued; any changes that would otherwise require a variance should instead be treated as an amendment to the combined license.

Finally, the Commission proposes to add a new paragraph (e) to the "finality" section in each subpart of part 52, including § 52.39, entitled "Information requests," which would delineate the restrictions on the NRC for information requests to the holder of the early site permit. This provision is analogous to the current provision on information requests in paragraph 8 of appendix O to parts 50 and 52, and is based upon the language of § 50.54(f). For early site permits, this proposed provision would be contained in § 52.39(d), and would require the NRC to evaluate each information request on the holder of an early site permit to determine that the burden imposed by the information request is justified in light of the potential safety significance of the issue to be addressed in the information request. The only exceptions would be for information requests seeking to verify compliance with the current licensing basis of the early site permit. If the request is from the NRC staff, the request would first have to be approved by the Executive Director for Operations (EDO) or his or her designee.

the current § 52.97(b). This clarification of the current language, which was a condensed version of the language in §§ 52.79(c) and 52.97(b), is intended to avoid any future misunderstandings.

The current § 52.47(b) (proposed § 52.47(c)) would be reorganized by separating the requirements on scope of design and modular configuration from the testing requirements. This is part of the NRC's goal to set forth the procedural requirements for the licensing processes in part 52 and the reactor safety requirements in part 50. As a result, the testing requirements would be relocated to § 50.43(e), and the requirements on scope of design and modular configuration would remain in the proposed § 52.47(c). Also, see the discussion on testing requirements for advanced nuclear reactors in Section B.1 of this document.

f. Section 52.54, *Issuance of standard design certification.*

Section 52.54 would be amended to be more consistent with the parallel provisions in §§ 50.50 and 50.57 by including requirements that, after conducting a rulemaking proceeding and receiving the report submitted by the ACRS, the Commission determines that there is reasonable assurance that the design conforms with the provisions of the AEA, and the Commission's regulations; that the applicant is technically qualified; and that issuance of the design certification will not be inimical to the common defense and security or to the health and safety of the public. In addition, a new § 52.54(a)(8) would be added to indicate that the NRC will not issue a design certification unless it finds that the design certification applicant has implemented the quality assurance program described in the safety analysis report. This requirement is being added to indicate the NRC's expectation that design certification applicants implement the QA program that is required to be included in their application under

rescind, or impose new requirements on the certification unless the change is: (1) necessary for compliance with Commission regulations applicable and in effect at the time the certification was issued; or (2) necessary to provide adequate protection of the public health and safety or common defense and security. The regulation does not appear to permit changes to the certification which reduce unnecessary regulatory burdens in circumstances where the change continues to maintain protection to public health and safety and common defense and security. An example of a change which may not be able to be made under the current § 52.63(a)(1) is a proposed change to the three design certification rules in appendices A, B, and C of part 52, to incorporate into the Tier 2 change process the revised change criteria in 10 CFR 50.59. Section 50.59 was revised in 1999 to provide new criteria for, *inter alia*, making changes to a facility, as described in the final safety analysis report, without prior NRC approval, to reduce unnecessary regulatory burden (64 FR 53582, October 4, 1999).

Section 52.63(a)(1) would include a new provision that explicitly allows the Commission to change the design certification rules in part 52 to make future changes to reduce unnecessary regulatory burden, incorporate the revised § 50.59 change criteria, or change the certification information if the change provides a reduction in regulatory burden and maintains protection to public health and safety and common defense and security. Maintaining protection generally embodies the same safety principles used by the NRC in applying risk-informed decision-making, e.g., ensuring that adequate protection is provided, applicable regulations are met, sufficient safety margins are maintained, defense-in-depth is maintained, and that any changes in risk are small and consistent with the Commission's Safety Goal Policy Statement (refer to NRC's Regulatory Guide 1.174). Changes to the design certification rules must be accomplished through rulemaking, with opportunity for public comment. Once a design certification rule is changed through rulemaking, under proposed § 52.63(a)(2), the provisions would apply to all future applications referencing the design certification rule as well

Commission codified these ITAAC requirements into Section IX of the regulations. The purpose of the requirement in proposed § 52.99(b) is to clarify that an applicant may proceed at its own risk with design and procurement activities subject to ITAAC, and that a licensee may proceed at its own risk with design, procurement, construction, and preoperational testing activities subject to an ITAAC, even though the NRC may not have found that any particular ITAAC has been met. Proposed § 52.99(c) would require the licensee to notify the NRC that the required inspections, tests, and analyses in the ITAAC have been completed and that the acceptance criteria have been met. For those inspections, tests, or analyses that are completed within 180 days before the scheduled date for initial loading of fuel, § 52.99(c) would require that the licensee notify the NRC within 10 days of the successful completion of ITAAC. This immediate notification is necessary to ensure the NRC has sufficient time to verify successful completion of the ITAAC prior to the licensee's scheduled date for fuel load. Section 52.99(d) would state the options that a licensee will have in the event that it is determined that any of the acceptance criteria in the ITAAC have not been met. Section 52.99(e) requires the NRC to ensure that the required inspections, tests, and analyses in the ITAAC are performed and also requires the NRC to publish, at appropriate intervals, notice in the *Federal Register* of the NRC staff's determination of the successful completion of inspections, tests, and analyses. Finally, § 52.103(h) states that ITAAC do not, by virtue of their inclusion in the combined license, constitute regulatory requirements after the licensee has received authorization to load fuel or for renewal of the license. However, subsequent modifications must comply with the design descriptions in the design control document unless the applicable requirements in the current § 52.97 (proposed § 52.98) and Section VIII of the design certification rules have been complied with.

In a letter dated April 3, 2001 (item 23), NEI requested that the NRC "consider incorporating DCR general provisions into Subpart C as appropriate." The NRC has decided to

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August 8, 1985) and Nuclear Power Plant Standardization (52 FR 34884; September 15, 1987). However, this proposal would not require applicants for standard design approvals to submit ITAACs because FDAs may be referenced in applications for construction permits or operating licenses under 10 CFR part 50, and the verification process used for part 50 applications does not use ITAAC. In addition, this proposal ~~wouldn't~~ would not require applicants to consider severe accident mitigation design alternatives.

A new § 52.139, which specifies the standards that will be used to review applications for standard design approvals and new §§ 52.145 and 52.147, which specify the finality and duration of standard design approvals consistent with other subparts would be added. In a letter dated November 13, 2001, NEI commented that "Industry recommends FDAs be valid for 15 years." The NRC agrees with the industry's recommendation. The Commission has decided that the duration of standard design approvals should correspond to the duration of design certifications, inasmuch as both standard design approvals and design certifications constitute approvals of nuclear power plants designs, and the period of effectiveness of the approval from a technical standpoint is not a function of whether the approval is granted by the NRC staff or the Commission.

9. Subpart F, Manufacturing Licenses.

The following discussion explains the requirements in subpart F generically and covers §§ 52.151, 52.153, 52.155, 52.156, 52.157, 52.159, 52.161, 52.163, 52.165, 52.167, 52.169, 52.171, 52.173, 52.175, 52.177, 52.179, and 52.181.

Appendix M of part 52 currently sets forth the NRC's requirements governing manufacturing licenses. Appendix M of part 52, which was first adopted by the NRC in 1973,

amendment for a departure from Tier 2 information. Paragraph VI.B.6 describes how issues are resolved when the applicant or licensee departs from the Tier 2 information on the basis of paragraph VIII.B.5, which waives the requirement to ~~get~~ obtain NRC approval. Thus, once a matter (e.g., an exemption in the case of paragraph VI.B.4) is addressed for a specific plant referencing a design certification rule, the adequacy of that matter *for that plant* would not ordinarily be subject to challenge in any subsequent proceeding or action (such as an enforcement action) listed in the introductory portion of paragraph IV.B, but there would not be any issue resolution on that subject matter for *any other plant*. Unfortunately, the three design certification rules use the phrase "but only for that proceeding," which may lead to the erroneous conclusion that issue resolution exists only in the proceeding in which the matter was approved and/or adjudicated, and not in all subsequent proceedings for that plant.

In letters dated November 12, 2001, and November 13, 2001, respectively, General Electric Company and Westinghouse Electric Company reiterated earlier recommendations the two companies had made that Sections VI.B.4 and 5 of the design certification rules state that exemptions and license amendments have finality "but only for that plant." For the reasons previously discussed, the NRC proposes to substitute the phrase "but only for that plant," to clarify that issue resolution on a matter applies in subsequent proceedings for that plant.

Each of the design certification rules in appendices A, B, and C to part 52 includes a Section VIII on change processes. These processes apply to changes depending upon the category of design information affected. For plant-specific Tier 2 information, the change process established in the rule mirrors, in large part, that in the former 10 CFR 50.59. The proposed rule would amend paragraph VIII.B.5 of the design certification rules to conform the terminology in the § 50.59-like change process to that used in the current § 50.59. This amendment deletes references to unreviewed safety question and safety evaluation, and conforms the evaluation criteria concerning when prior NRC approval is needed. Also, a

the NRC has decided to maintain this dichotomy. Conditions applicable to part 52 processes which are either licenses or prerequisites to licenses, and do not address activities analogous to construction for which a construction permit license is required under the AEA, are proposed to be addressed in § 50.54. By contrast, conditions applicable to part 52 processes which address construction activities, or activities analogous to construction for which a construction permit license is required under the AEA, are proposed to be covered in § 50.55. Combined licenses represent a special case, inasmuch as they address both construction and operation. The NRC proposes to address combined licenses by placing the conditions applicable to construction in §50.55, which would indicate that these conditions are applicable until the date that the NRC authorizes fuel load and operation under § 52.103. Conditions which are applicable during operation would be set forth in § 50.54, and indicate that these conditions are applicable on the date that the NRC authorizes fuel load and operation under § 52.103.

The introductory paragraph of § 50.54 would be revised to refer to combined licenses, and to exclude manufacturing licenses from its provisions. Section 50.54(a)(1) would be revised to indicate that the quality assurance (QA) requirements applicable to operation, as described in a combined license holder's SAR, become effective 30 days before the scheduled date for the initial loading of fuel.

The NRC proposes to revise § 50.54(i-1) to indicate its applicability to combined licenses. Specifically, § 50.54(i-1) would require that within three months after the date that the Commission makes the finding under § 52.103(g) for a combined license, the licensee shall have in effect an operator requalification Program that must, as a minimum, meet the requirements of § 55.59(c) of this chapter.

The NRC proposes to add § 50.54(gg). These revisions are discussed with related requirements in section III.D.4.f of this *Federal Register* document, "Section 50.47, Emergency

plans, Section 50.54(gg), and appendix E to part 50, Emergency planning and preparedness for production and utilization facilities."

Although the NRC generally views § 50.55 as the appropriate section in part 50 for specifying the conditions applicable to construction permits and part 52 processes analogous to construction permits, the NRC does not believe that all of the conditions in § 50.55 should apply equally to all of the part 52 processes. Accordingly, the introductory text to § 50.55 would be revised to specify which paragraphs apply to a construction permit, early site permit, combined license, and manufacturing license.

Sections 50.55(a) and (b) would be revised to require a combined license and manufacturing license to state the earliest and latest dates for completion of construction or modification, and to provide for forfeiture of the combined license or manufacturing license if construction, manufacture, or modification is not completed by the stated date. In the case of a manufacturing license, the license would be required to state the earliest and latest date of manufacture for each reactor. The NRC believes that Section 185.a of the AEA requires that a construction permit state the earliest and latest date for completion of construction, and applies to a combined license because a combined license includes the authority granted under a construction permit. The NRC believes that the 1992 amendment of Section 185.b of the AEA addressing combined licenses did not supercede and render nugatory the provisions of § 50.54a. The NRC believes that the provisions of Section 185 of the AEA do not apply to a manufacturing license, inasmuch as a manufacturing license is not, *per se*, a construction permit. Nonetheless, because a manufacturing license authorizes activities which are analogous to those in a construction permit, it makes sense from a regulatory standpoint to treat manufacturing licenses similar to construction permits.

Section 50.55(c) makes the conditions in § 50.54 also apply to construction permits, unless otherwise modified. The NRC proposes to retain this paragraph and add a reference to

combined licenses. Manufacturing licenses would not be referenced, because there does not appear to be any regulatory need to apply any of the conditions in § 50.54 to manufacturing licenses.

Section 50.55(e) addresses the obligation of holders of construction permits and their contractors and subcontractors, to report defects constituting a substantial safety hazard. These requirements, which implement Section 206 of the ERA, as amended, are comparable to the requirements for licensees in 10 CFR part 21. As discussed with respect to the NRC's proposed changes to part 21, the NRC proposes to retain the current regulatory structure, whereby persons and entities engaged in activities constituting construction (and their contractors and subcontractors) are subject to § 50.55(e), and persons and licensees who are authorized to operate a nuclear power plant (and their contractors and subcontractors) are subject to part 21. Inasmuch as a combined license under part 52 authorizes both construction and operation, a combined license holder would be subject to the reporting requirements in § 50.55(e) from the date of issuance of the combined license until the Commission makes the finding under § 52.103. Thereafter, the combined license holder would be governed by the reporting requirements in part 21. The manufacture of a nuclear power reactor under a manufacturing license is the functional equivalent of construction (albeit limited to the reactor as opposed to the entire facility in the case of a construction permit or combined license). Accordingly, the NRC's view is that the holder of a manufacturing license should be subject to reporting under § 50.55(e). Standard design approvals under proposed subpart E (current appendix M to part 52) and design certifications under subpart B of part 52 are not directly associated with construction, and the NRC believes that their reporting should be addressed under part 21. Accordingly, the NRC proposes to revise § 50.55(e)(1) to provide that the reporting requirements in § 50.55(e) apply to a holder for a combined license (until the NRC makes the finding under § 52.103(g)), and a manufacturing license under part 52. As discussed below in

for nuclear power plants, and as those standards are technically relevant to the design proposed for the facility. Although current appendix O to part 52 does not explicitly require applicants for design approvals to comply with the requirements of § 50.55a, the NRC is proposing to require design approval holders to comply with § 50.55a because the NRC believes that the requirements for a design approval should be the same as the requirements for design certification, given that the reviews performed by the NRC staff for the two products are essentially identical. Finally, current appendix M to part 52, section M.1, states that the provisions in part 50 applicable to construction permits apply in context, with respect to matters of radiological health and safety, environmental protection, and the common defense and security, to manufacturing licenses. Therefore, the NRC proposes to modify § 50.55a to state that each combined license for a utilization facility is subject to the conditions in § 50.55a, but is only subject to the conditions in §§ 50.55a(f) and (g) after the NRC makes the finding under § 52.103. The proposed modifications to § 50.55a also state that each manufacturing license, design approval, and design certification application is subject to the conditions in §§ 50.55a(a), (b)(1), (b)(4), (c), (d), (e), (f)(3), and (g)(3), which are the provisions related to nuclear power facility design.

j. Section 50.59, *Changes, tests, and experiments.*

This section presents a change process for information contained in the FSAR. Section 50.59(b) would be revised to clarify that this change process is applicable to holders of operating licenses issued under part 50 and combined licenses issued under part 52. If the combined license references a design certification rule, then the information in the design control document is controlled by the change process in the ~~respective~~ applicable design certification rule.

a. Section 50.90, ***Application for amendment of license or construction permit;*** Section 50.91, ***Notice for public comment; State consultation; and*** Section 50.92, ***Issuance of amendment.***

Sections 50.90, 50.91, and 50.92 govern the procedures and criteria for NRC consideration and issuance of amendments to licenses and construction permits. The regulations do not clearly address early site permits, combined licenses or manufacturing licenses. Accordingly, the NRC proposes to make a number of changes in these regulations.

Section 50.90 provides that applicants for amendment of a license or construction permit must file their application with the NRC as described in § 50.4, following the form prescribed for the original application. Although the term, *license*, as proposed to be amended in § 50.2 would include combined licenses, manufacturing licenses, and early site permits under part 52, § 50.92 would be revised to explicitly refer to these part 52 licenses to eliminate any confusion with respect to the applicability of this section to part 52 licenses. A similar change is made in the introductory paragraph of § 50.91.

Sections 50.92 and 50.91(a)(4) implement the Commission's authority under Section 189 of the AEA to dispense with the advance publication of a *Federal Register* document requesting a hearing with respect to license amendments, and to make operating license and combined license amendments immediately effective upon issuance, if the NRC finds that the amendment involves no significant hazards consideration. The NRC proposes to amend § 50.92(c) to clarify that, consistent with Section 189 of the AEA, the NRC may make a no significant hazards ~~finding~~ consideration determination for amendments of combined licenses and manufacturing licenses under part 52. Combined licenses are explicitly mentioned in Section 189.a.(2)(A) of the AEA with respect to immediate effectiveness following a Commission determination of a no

The definitions of *contested proceeding*, *license*, and *licensee*, would be revised in part 2 by adding conforming references, as appropriate, to the licensing processes in part 52. The revised definition of *contested proceeding* would clarify that contested proceedings include those involving permits, such as early site permits and construction permits. The revised definition of *license*, would ensure that early site permits and construction permits, as well as part 52 combined licenses and manufacturing licenses, are considered to be licenses for purposes of part 2. Similarly, the definition of *licensee* would be revised to ensure that holders of early site permits and construction permits, as well as combined licenses and manufacturing licenses, are considered to be licensees for purposes of part 2.

3. Section 2.100, *Scope of Part*.

This section would be revised by adding conforming references to issuance of a standard design approval under subpart E of part 52.

4. Section 2.101, *Filing of Application.*

This section is revised by adding conforming references to combined licenses, early site permits and standard design approvals. The Commission notes that the former language of § 2.101 already applied to combined licenses, as well as early site permits, inasmuch as they are both licences. Nonetheless, as discussed in the discussion on § 2.4, the definitions of "license" and "licensee" have been revised to explicitly refer to early site permits.

5. Section 2.102, *Administrative review of application.*

Section 2.390(a) contains the Commission's general rule that NRC records and documents regarding a license, permit or order shall ordinarily be made available to the public, unless one or more provisions in § 2.390 apply. This section would be revised to make clear that § 2.390 also applies to NRC records and documents regarding standard design approvals under part 52.

14. Section 2.500, *Scope of subpart.*

This section would be revised by adding a conforming reference to subpart F of part 52 on manufacturing licenses.

15. Section 2.501, *Notice of hearing on application under subpart F of part 52 for a license to manufacture nuclear power reactors.*

This section would be revised by adding a conforming reference to subpart F of part 52 on manufacturing licenses. In addition, paragraph (b) of this section would be revised by removing the detailed requirements governing the content of the notice of hearing published in the Federal Register, and instead referencing proposed § 2.104(f). As previously discussed, the Commission proposes to consolidate in § 2.104, the requirements governing the content of a notice of hearing with respect to all part 52 processes.

16. Sections 2.502, 2.503 and 2.504 are removed and reserved.

management. The Commission also believes, based upon its experience, that administrative provisions ordinarily applied in the context of licensing (e.g., docketing and acceptance review, denial of application for failure to supply information), should also be available for application as appropriate in its determination of design certification applications.

For these reasons, the Commission proposes to revise § 2.800 to address standard design certifications. Section 2.800 would be revised to delineate which provisions of subpart H are applicable to all petitions for rulemaking, and which provisions are applicable only to initial applications for design certification and applications for amendments to existing design certification rules filed by the original applicant (or successors in interest). The title of § 2.800 would be revised to reflect the additional function of this section. Sections 2.811 through 2.819 would be added to address initial applications for design certification as well as applications for amendments to existing design certifications filed by the original applicant (or successors in interest), and are based upon §§ 2.101, 2.107, and 2.109. Petitions for amendment of existing design certification, which are filed by third parties other than the original application for that design certification (or successor in interest), would be treated as an amending petition for rulemaking under the provisions of §§ 2.801-2810.

18. Section 2.801, *Initiation of rulemaking.*

A conforming change is proposed for § 2.801 to refer to applications for standard design certification rulemaking.

19. Section 2.811, *Filing of standard design certification application; required copies.*

power plant. Because the NRC's regulatory scheme relies upon the proper design, manufacture, siting, and/or construction of a production or utilization facility; discrimination against an employee at any of these stages could have significant adverse public health and safety or common defense and security implications and effects. One would therefore expect that part 19 would apply to such non-operational activities. Finally, part 19 applies only to a "licensee" and activities authorized by a "license," *see*, e.g., §§ 19.1, 19.2, 19.11, 19.20, 19.32, and does not extend to part 52's non-licensing regulatory approvals, i.e., standard design approvals and standard design certifications. Inasmuch as these non-licensing activities regulated under part 52 are not different in kind from the licensing which are currently subject to part 19 requirements, the NRC concludes that they should also be subject to the requirements in part 19.

Accordingly, the NRC proposes to amend various provisions in part 19 to ensure that its provisions extend to applicants for and holders of part 50 construction permits, and combined licenses, early site permits and manufacturing licenses under part 52. In addition, the NRC proposes to extend part 19 to cover applicants for and holders of standard design approvals and standard design certifications. The NRC believes that its regulatory authority under Section 211 and Section 401 of the 1974 ERA are much broader than the current scope of part 19. The anti-discrimination proscriptions in Section 211 of the ERA apply to any "employer," which the NRC regards as including non-licensee entities otherwise regulated by the NRC, such as applicants for and holders of standard design approvals, and applicants for standard design certifications.[4] The provisions in Section 401of the ERA, prohibiting sex

[4]The Commission believes that the use of the term, "includes," in paragraph (a)(2) of Section 211 of the 1974 ERA was not intended to be an exclusive list of the persons and entities subject to the anti-discrimination provisions in that section. The House Report on H.R. 776, which was adopted by Congress as the Energy Policy Act of 1992, states:

> [Title V] also broadens the coverage of existing whistle blower

10 CFR part 20 applies to persons licensed by the NRC to receive, possess, use, transfer, or dispose of byproduct, source, or special nuclear material or to operate a production or utilization facility. Accordingly, § 20.1002 would be revised by adding a conforming reference to part 52, which sets forth a process for licensing a utilization facility.

2. Section 20.1401, *General provisions and scope.*

This section on decommissioning of facilities would be revised to add a conforming reference to facilities licensed under 10 CFR part 52.

3. Section 20.2203, *Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the constraints or limits.*

Sections 20.2203(c) and (d) would be revised to add a reference to holders of combined licenses to the procedures on submitting reports.

J. Proposed Changes to 10 CFR Part 21.

Part 21 implements the reporting requirements in Section 206 of the ERA. The proposed part 52 rule published in 2003 set forth the NRC's proposals as to how Section 206 reporting and, therefore, part 21 applicability should be extended to early site permits, standard design certifications, and combined licenses. However, the proposed rule did not address Section 206 reporting requirements with respect to standard design approvals or manufacturing licenses. Moreover, the NRC's proposals were developed without the benefit of the NRC's

§ 52.103(g) for a combined license. Part 21 would be revised to explicitly apply to the remaining part 52 processes, i.e., early site permits, standard design approvals, and standard design certifications. Table A-1 provides a summary of the NRC's proposed applicability of part 21 and § 50.55(e) to each of the various approvals under part 52. The NRC requests comments on whether the existing division between part 21 and § 50.55(e) should be maintained, or whether the substantive requirements of § 50.55(e) should be incorporated into part 21, with § 50.55(e) (and/or perhaps another regulation in part 50) setting forth a cross-reference to part 21. Note that one of the ~~principle~~ principal differences between part 21 and § 50.55(e) is that § 50.55(e)(1)(iii)(C) requires reporting of QA breakdowns in addition to defects and failures to comply associated with substantial safety hazards. The other is that the requirement governing commercial grade dedication is only found in part 21.

Reporting requirements for early site permits.

If the early site permit holder becomes aware of a significant safety concern with respect to its site (e.g., that the specified site parameter for seismic acceleration is less than the projected acceleration due to new information), the concern should be reported to the NRC so that it may be considered in the review of any future application referencing the early site permit. This reporting attains special importance given the NRC's proposal not to impose an updating requirement for early site permit information other than that related to emergency preparedness. In order for the applicant for an early site permit to have the capability to report to the NRC any known significant safety concerns with respect to its site, or any safety concerns of which it may subsequently become aware (i.e., to be able to report any defects or failures to comply associated with substantial safety hazards under part 21) the early site permit

A standard design approval does not authorize construction of a nuclear power plant; it merely constitutes the NRC staff 's approval of the design of a nuclear power reactor (or major portion thereof). Therefore, the NRC proposes that the requirements implementing Section 206 of the ERA, which are applicable to standard design approvals, be placed in part 21, as opposed to § 50.55(e).

Reporting requirements for standard design certification regulations.

A standard design certification represents the NRC's approval by rulemaking of an acceptable nuclear power reactor design, which may then be referenced in a subsequent combined license or manufacturing license application. Consistent with the first principle, the Commission proposes to impose Section 206 of the ERA reporting requirements on applicants for design certifications, including applicants whose designs are certified in a final design certification rulemaking. As with a standard design approval, a design certification does not actually authorize construction. Accordingly, the NRC proposes to revise §§ 21.3, 21.21, 21.51, and 21.61 to explicitly refer to an applicant for a standard design certification, rather than to revise § 50.55(e).

Some industry stakeholders have asserted that because there is no "holder" or licensee, the NRC is without authority under Section 206 of the ERA to impose part 21 and/or § 50.55(e) evaluation and reporting requirements on applicants for standard design certification. The NRC disagrees with this assertion. The statute by its terms does not limit its reach to licensees; rather, the statute applies to any individual or responsible officer of a firm "constructing, owning, operating, or supplying the components of any facility or activity which is licensed or otherwise regulated ...." The NRC believes that an applicant for a standard design certification, by submitting its application, is constructively "supplying" a "component" (the nuclear power

all the part 52 processes. Under the proposed rule, the NRC's requirements implementing Section 206 of the ERA would apply throughout the regulatory life of the combined license, i.e., from docketing of the application until termination of the combined license.

To maintain the current division between § 50.55(e) and part 21 with respect to NRC requirements implementing Section 206 of the ERA, the NRC proposes to revise § 50.55(e) to make its provisions applicable to each holder of a combined license under part 52 before the effective date of the NRC's authorization of fuel load and operation under § 52.103, and to revise part 21 to clarify that its provisions apply to each holder of a combined license on the effective date of the Commission's authorization under § 52.103.

Reporting requirements for manufacturing licenses.

Under proposed ~~Part~~ Subpart F of part 52, a manufacturing license would constitute both the NRC's approval of a final nuclear power reactor design, as well as approval to manufacture one or more reactors in accordance with approved programs and procedures. The manufactured reactors would then be transported offsite and incorporate nuclear power facilities by holders of combined licenses - who may be different entities than the holder of a manufacturing license. Given the possibility that the manufacturing license holder is different from the combined license holder whose facility uses the manufacturing license, the NRC believes that the combined license holder using the manufactured reactor must be kept informed of any significant issue with design or manufacture of the reactor, to ensure that they evaluate the significance of these matters for their facility and undertake any necessary action to assure public health and safety and common defense and security. Furthermore, unlike a standard design certification, the financial resources necessary to obtain a manufacturing license will, as a practical matter, result in manufacturing beginning immediately after issuance of the

certification are to be addressed in the environmental impact statement (EIS) for the combined license. This is practical inasmuch as the full scope and details of the benefits and environmental impacts of constructing and operating a nuclear power reactor using the design approved in the design certification are most likely known at the time when the design certification is proposed to be used in a specific nuclear power facility at a particular site; this rationale will remain the same for all future design certifications. The NRC proposes to revise part 51 to eliminate the need for the NRC to make repetitive findings of no significant environmental impact for future design certifications and amendments to design certifications.

Second, the NRC proposes to require that SAMDAs be addressed at the design certification stage. SAMDAs are alternative *design* features for preventing and mitigating severe accidents, which may be considered for incorporation into the proposed design; the SAMDA analysis is that element of the SAMDA analysis dealing with design and hardware issues. At the design certification stage, the NRC's review is directed at determining if there are any cost beneficial SAMDAs that should be incorporated into the design, and if it is likely that future design changes would be identified and determined to be cost-justified in the future based on cost/benefit considerations. It is most cost effective to incorporate SAMDAs into the design at the design certification stage. Retrofitting a SAMDA into a design certification once site-specific design and engineering for a nuclear power facility has been conducted would increase the cost of implementing a SAMDA. The retrofitting costs continue to increase in ensuing stages of facility construction and operation. For these reasons, the NRC believes that environmental assessments for design certifications should address SAMDAs. However, under the current provisions of part 51, both the environmental information submitted by the design certification applicant, and the environmental assessment prepared by the NRC, are directed either at determining whether an EIS must be prepared, or that a FONSI is justified. Accordingly, the

the site characteristics for the combined license site fall within the site parameters specified in the manufacturing license environmental assessment. This section also would state that the environmental report need not address the environmental impacts associated with manufacturing the reactor under the manufacturing license.

Finally, § 51.75(c)(3) would be added to indicate that if the combined license application proposed to use a manufactured reactor and the site characteristics of the combined license's site fall within the site parameters specified in the manufacturing license environmental assessment,[9] then the combined license EIS must incorporate by reference the manufacturing license environmental assessment. As in the case where the combined license application references a design certification, § 52.75(c)(3) requires the combined license EIS to summarize the findings and conclusions of the environmental assessment with respect to SAMDAs. Finally, § 51.75(c)(3) would explicitly provide that the combined license EIS will not address the environmental impacts of manufacturing the reactor under the manufacturing license.

NEPA obligations associated with § 52.103(g) findings on ITAAC.

Currently, neither part 51 nor subpart C of part 52 explicitly addresses whether an environmental finding under NEPA is needed in connection with an NRC finding under § 52.103(g) that combined license ITAAC have been met. Nor does part 51 or subpart C of part 52 explicitly address whether contentions on environmental matters may be admitted in a hearing under § 52.103(b). The NRC never intended to make an environmental finding in

[9]Analogous to design certifications, it is possible that an applicant for a manufacturing license may have chosen to specify site parameters for the manufacturing license safety review under § 52.79 which differ from the site parameters specified in the environmental report for its design. If the combined license application proposes to use such a manufactured reactor, then the combined license applicant must demonstrate that the two differing sets of site parameters are met, in order for the full division of issue finality provisions in § 52.171 to apply in the combined license proceeding.

connection with the § 52.103(g) finding on ITAAC, and the NRC does not believe that NEPA requires such a finding. The § 52.103(g) finding that ITAAC have been met is not a "major Federal action significantly affecting the environment." The major Federal action occurs when the NRC issues the combined license, which includes the authority to operate the nuclear power plant - subject to an NRC finding of successful completion of ITAAC. This is the reason why the environmental impacts of operation under the combined license are evaluated and considered by the NRC in determining whether to issue the combined license even under the current provisions of part 52, *see* § 52.89. By contrast, the scope and nature of the NRC finding that ITAAC have been met is constrained by the ITAAC itself (indeed, the NRC has always recognized the possibility that ITAAC could be written such that the "inspections and tests" exception in Section 554(a)(3) of the APA could be invoked to preclude the need to provide an opportunity for hearing on § 52.103(g) findings). The safety consequences of operation are not considered when making the § 52.103(g) findings; these issues are addressed by the NRC in determining whether to issue the combined license in the first place. Therefore, the NRC does not view the § 52.103(g) finding as constituting a "major Federal action," and makes no environmental findings in connection with that finding. It, therefore, follows that no contentions on environmental matters should be admitted in any hearing under § 52.103(b).

Accordingly, the NRC proposes adding § 51.108 to clarify that: (1) the Commission will not make any environmental findings in connection with the finding under § 52.103(g); and (2) contentions on any environmental matters, including the adequacy of the combined license EIS and any referenced environmental assessment, may not be admitted into any § 52.103(b) hearing on compliance with ITAAC. Those issues are essentially challenges to the continuing validity of the combined license or any referenced design certification, early site permit, or manufacturing license. Accordingly, these challenges should be raised with the Commission

using relevant Commission-established processes for requesting Commission action. A challenge on environmental grounds with respect to the combined license, early site permit, or manufacturing license must be filed under the provisions of § 2.206. A challenge to an existing design certification on environmental grounds must be filed as a petition for rulemaking to modify the existing design certification under subpart H of part 2.

More specific changes to individual sections in part 51 are discussed below.

Section 51.20, *Criteria for and identification of licensing and regulatory actions requiring environmental impact statements.*

Section 51.20(b) would be revised to identify the part 52 licensing processes that require an environmental impact statement or a supplement to an environmental impact statement. Specifically, § 51.20(b)(1) would be revised to indicate that issuance of an early site permit requires an EIS. Section 51.20(b)(2) would be revised to indicate that issuance of a combined license requires an EIS. Also, paragraph (b)(6) would be removed and reserved because, under the Commission's proposed revision to the requirements for manufacturing licenses, only an environmental assessment is required at this stage.

Section 51.22, *Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.*

Section 51.22(c) would be revised to identify part 52 licensing processes that are eligible for categorical exclusion or otherwise ~~don't~~ do not require environmental review.

connection with the amendment of a combined license authorizing decommissioning activities or with the issuance, amendment, or renewal of a license to store spent fuel at a nuclear power reactor after expiration of the combined license, and that the supplement may incorporate by reference any information contained in the final environmental impact statement for the combined license or in the records of decision prepared in accordance with an early site permit or combined license. Finally, § 51.95(d) would be revised to indicate that, unless otherwise required by the Commission, the provisions of § 51.23(b), a supplemental environmental impact statement for the post combined license stage will address the environmental impacts of spent fuel storage only for the term of the license, amendment, or renewal applied for.

Section 51.105, *Public hearings in proceedings for issuance of construction permits or early site permits.*

The section heading and § 51.105(a) would be revised to indicate that the requirements for presiding officers in public hearings on construction permits also apply to public hearings on early site permits. In addition, § 51.105(b) would be added to indicate that the presiding officer in an early site permit hearing shall not admit contentions concerning the benefits assessment (e.g., need for power), or alternative energy sources if the applicant did not address those issues in the early site permit application. In accordance with § 52.17, applicants are not required to address the benefits assessment (e.g., need for power) or alternative energy sources at the early site permit stage.

Section 51.105a, *Public hearings in proceedings for issuance of manufacturing licenses.*

7. Section 54.37, *Additional records and recordkeeping requirements.*

Section 54.37(a) would be revised to include a conforming reference to a renewed combined license.

O. Proposed Changes to 10 CFR Part 55.

Part 55 establishes the NRC's requirements for licensing of operators of utilization facilities in accordance with the statutory requirements in Section 202 of the ERA. Currently, the provisions in part 55 refer only to utilization facilities licensed under part 50, and therefore, do not address utilization facilities licensed for operation under a combined license issued under subpart C of part 52. Section 202 of the ERA, however, does not limit its mandate to operators of facilities licensed under part 50; the statutory requirement would also appear to apply to operators of facilities licensed under part 52 (i.e., combined licenses under subpart C of part 52).

Accordingly, §§ 55.1 and 55.2 would be revised by adding a reference to part 52. This would clarify that operators of nuclear power reactors licensed under a part 52 combined license or renewed under part 54 must first obtain an operator's license under part 55. In addition, the conforming changes would clarify that these operators, as well as holders of combined licenses issued under part 52 or renewed under part 54, are subject to the requirements in part 55 (e.g., Part E of part 55, *Written Examinations and Operating Tests*, set forth requirements which are directed, for the most part, at the holders of operating licenses for utilization facilities).

P. Proposed Changes to 10 CFR Part 72.

intended to include individuals and entities who are subject to the regulatory authority of the Commission, including applicants for standard design approvals and standard design certifications under part 52. For the same reasons, the Commission proposes to revise § 95.39 to use the phrase, "NRC license, certificate, or standard design approval or standard design certification under part 52."

T. Proposed Changes to 10 CFR Part 140.

Part 140 addresses the NRC requirements applicable to nuclear reactor licensees with respect to financial protection and indemnity agreements to implement Section 170 of the AEA, commonly referred to as the Price-Anderson Act. In general, the indemnification and financial protection requirements in part 140 become applicable when a holder of a 10 CFR part 50 construction permit who also possesses a materials license under 10 CFR part 70 brings fuel onto the site. However, part 140 currently does not address the indemnification and financial protection requirements of combined license holders. Accordingly, various sections in part 140 are being revised to address combined licenses under part 52.

The NRC does not believe that part 140 must be revised to address any part 52 licensing process other than a combined license. Neither an early site permit nor a manufacturing license authorizes the possession or use of nuclear fuel or other nuclear materials, and the NRC would not issue these licenses with a materials license under part 70. The NRC also believes that part 140 need not be revised to address standard design approvals or standard design certifications, because neither of these processes authorizes the possession or use of nuclear fuel or other nuclear materials.

U. Proposed Changes to 10 CFR Part 170.

performed and the acceptance criteria met, the facility has been constructed and will operate in conformity with the license, the provisions of the Atomic Energy Act, and the NRC's regulations, insofar as they relate to the major features under review.

The NRC believes that, under such a proposal, the level of finality associated with each major feature that the Commission found acceptable would be equivalent, for that individual major feature, to the level of finality associated with a reasonable assurance finding by the NRC for a complete and integrated plan, including ITAAC, at the early site permit stage.

3. As indicated in Section III, *Discussion of Substantive Changes,* the NRC is proposing to remove Appendix Q to part 52 entirely from part 52 and retain it in part 50. Currently, Appendix Q to part 52 provides for NRC staff issuance of a staff site report on site suitability issues with respect to a specific site, for which a person (most likely a potential applicant for a construction permit or combined license) seeks the NRC staff views. The NRC is also interested in stakeholder feedback on whether the early site review process in Appendix Q to part 52 should be removed in its entirety from the NRC's regulations. One possible reason for removing the early site review process in its entirety is that potential nuclear power plant applicants would use the early site permit process in subpart B of part 52, rather than the early site review process as it currently exists in appendix Q to parts 50 and 52. Also, in cases where a combined license applicant was interested in seeking NRC staff review of selected site suitability issues (as appendix Q to part 52 was designed for), the applicant could request a pre-application review of these issues. The use of pre-application reviews for selected issues has been successfully used by applicants for design certification. The NRC is especially interested in the views of potential applicants for nuclear power plant construction permits and combined licenses as to whether there is any value in retaining the early site review process.

4. Under subpart F of part 52 of the proposed rule, the NRC proposes to require approval of, and extend finality to, the final design for a reactor to be manufactured under a

with the FCC and FAA models, the NRC would issue a manufacturing license only after a prototype of the reactor had been constructed and tested to demonstrate that all performance requirements (i.e., compliance with NRC requirements and manufacturer's specifications) can be met by the design to be approved for manufacture.

The NRC requests public comment on whether the manufacturing license process in proposed subpart F of part 52 should be further modified to provide an option for NRC approval of the manufacturing, and if so, which model of regulatory oversight, i.e., the combined license ITAAC model or the FCC/FAA approval model, should be used by the NRC. The NRC also seeks public comment on whether an opportunity for hearing is required by the AEA in connection with a NRC determination that the ITAAC have been successfully completed.

5. Currently, part 52 allows an applicant for a construction permit to reference either an early site permit under subpart A of part 52 or a design certification under subpart B of part 52. Specifically, § 52.11 states that ~~Part~~ Subpart A of part 52 sets out the requirements and procedures applicable to NRC issuance of early site permits for approval of a site or sites for one or more nuclear power facilities separate from the filing of an application for a construction permit or combined license for such a facility. Similarly, § 52.41 states that subpart B of part 52 sets out the requirements and procedures applicable to NRC issuance of regulations granting standard design certification for nuclear power facilities separate from the filing of an application for a construction permit or combined license for the facility. However, the current regulations in 10 CFR part 50 that address the application for and granting of construction permits do not make any reference to a construction permit applicant's ability to reference either an early site permit or a design certification. Also, the NRC has not developed any guidance on how the construction permit process would incorporate an early site permit or design certification, nor has the nuclear power industry made any proposals for the development of industry guidance on this subject. The NRC has not received any information from potential applicants stating an

Comments to OMB on the information collections or on the above issues should be submitted by (insert date 30 days after publication in the Federal Register). Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

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.

XI. Regulatory Analysis.

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis can be viewed in NRC's ADAMS system, Accession Number ML052840320. The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

XII. Regulatory Flexibility Certification.

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

issued under 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).

4. In § 2.1, paragraphs (c) and (d) are revised and a new paragraph (e) is added to read as follows:

§ 2.1 Scope.

* * * **

(c) Imposing civil penalties under section 234 of the Act;

(d) Rulemaking under the Act and the Administrative Procedures Act; and

(e) Standard design approvals under part 52 of this chapter.

5. In § 2.4, the definitions of *contested proceeding*, *license* and *licensee* are revised to read as follows:

§ 2.4 Definitions.

* * * **

Contested proceeding means –

(1) A proceeding in which there is a controversy between the NRC staff and the applicant for a license or permit concerning the issuance of the license or permit or any of the terms or conditions thereof;

(2) A proceeding in which the NRC is imposing a civil penalty or other enforcement action, and the subject of the civil penalty or enforcement action; and

(3) A proceeding in which a petition for leave to intervene in opposition to an application for a license or permit has been granted or is pending before the Commission.

* * * **

technical adequacy as well as completeness, the notice shall be issued as soon as practicable after the application has been tendered. The notice will state:

* * * **

(d) In the case of an application for an early site permit under subpart A of part 52, the notice will, except as the Commission determines otherwise, state, in implementation of paragraph (a)(3) of this section:

(1) If the proceeding is a contested proceeding, the presiding officer will consider the following issues:

(i) Whether applicable standards and requirements of the Act and the Commission's regulations have been met;

(ii) Whether any required notifications to other agencies or bodies have been duly made;

(iii) If the applicant requests authorization to perform the activities under § 52.17(c), whether there is reasonable assurance that the proposed site is a suitable location for a reactor of the general size and type described in the application from the standpoint of radiological health and safety considerations under the Act and regulations issued by the Commission.

(iv) Whether there is reasonable assurance that the site is in conformity with the provisions of the Act, and the Commission's regulations;

(v) Whether the applicant is technically qualified to engage in any activities authorized;

(vi) Whether ~~the~~ any proposed inspections, tests, analyses and acceptance criteria, including any on emergency planning, are necessary and sufficient within the scope of the early site permit to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Act, and the Commission's regulations;

be manufactured will be located and operated. Except as the Commission determines otherwise, the notice of hearing will state:

(1) If the proceeding is a contested proceeding, the presiding officer will consider the following issues:

(i) Whether applicable standards and requirements of the Act and the Commission's regulations have been met;

(ii) Whether there is reasonable assurance that the reactor(s) will be manufactured, and can be transported, incorporated into a nuclear power plant, and operated in conformity with the manufacturing license, the provisions of the Act, and the Commission's regulations;

(iii) Whether the proposed reactor(s) to be manufactured can be incorporated into a nuclear power plant at sites having characteristics that fall within the site parameters postulated for the design of the manufactured reactor(s) without undue risk to the health and safety of the public;

(iv) Whether the applicant is technically qualified to design and manufacture the proposed nuclear power reactor(s);

(v) Whether the proposed inspections, tests, analyses, and acceptance criteria are necessary and sufficient, within the scope of the manufacturing license, to provide reasonable assurance that the reactor has been manufactured and will be operated in conformity with the license, the provisions of the Act, and the Commission's regulations;

(vi) Whether the issuance of a license for manufacture of the reactor(s) will be inimical to the common defense and security or to the health and safety of the public; and

(vii) Whether, in accordance with the requirements of subpart F of part 52 and subpart A of part 51, the license should be issued as proposed.

(2) If the proceeding is not a contested proceeding, the presiding officer will determine, without conducting a de *novo* evaluation of the application, whether:

(i) The application and the record of the proceeding contain sufficient information, and the review of the application by the NRC staff has been adequate to support affirmative findings on paragraphs (f)(1)(i) through (v), and (vii) of this section proposed to be made and a negative finding on paragraph (f)(1)(vi) of this section; and

(ii) The review conducted under part 51 of this chapter under NEPA has been adequate.

(3) Regardless of whether the proceeding is contested or uncontested, the presiding officer will, in accordance with subpart A of part 51:

(i) Determine whether the requirements of section 102(2) (A), (C), and (E) of the National Environmental Policy Act and subpart A of part 51 of this chapter have been complied with in the proceeding;

(ii) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determine the appropriate action to be taken; and

(iii) Determine whether the manufacturing license should be issued, denied or appropriately conditioned to protect environmental values.

(4) The place of hearing on an application for a manufacturing license will be ~~Bethesda~~, Rockville Maryland, or such other location as the Commission deems appropriate.

(g)-(k) **RESERVED**

(l) In an application for a construction permit or an operating license for a facility 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 to consider the antitrust aspects of the application, the notice of hearing will, unless the Commission determines otherwise, state:

(1) A time of the hearing, which will be as soon as practicable after the receipt of the Attorney General's advice and compliance with sections 105 and 189a of the Act and this part;

(4) An amendment to an operating license, combined license or manufacturing license for a facility licensed under §§ 50.21(b) or 50.22 of this chapter, or for a testing facility, as follows:

* * * **

(12) An amendment to an early site permit issued under subpart A of part 52 of this chapter, as follows:

(i) If the early site permit does not provide authority to conduct the activities allowed under § 50.10(e)(1) of this chapter, the amendment will involve no significant hazards consideration, and though the NRC will provide notice of opportunity for a hearing under this section, it may make the amendment immediately effective and grant a hearing thereafter; and

(ii) If the early site permit provides authority to conduct the activities allowed under § 50.10(e)(1) and the Commission determines under §§ 50.58 and 50.91 of this chapter that an emergency situation exists or that exigent circumstances exist and that the amendment involves no significant hazards consideration, it will provide notice of opportunity for a hearing under § 2.106 of this chapter (if a hearing is requested, which will be held after issuance of the amendment).

(b)* * *

(3) For a notice of intended operation under § 52.103(a) of this chapter, the following information:

(i) The identification of the NRC action as making the finding required under § 52.103(g) of this chapter;

(ii) The manner in which copies of the safety analysis may be obtained and examined;

(iii) A finding that the application for the license or amendment complies with the requirements of the Act and this chapter, including successful completion of all inspections, tests, analyses, and acceptance criteria; and

Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information. If the communication is on paper, the signed original must be sent.

(b) *Form of application.* Each original of an application and an amendment of an application must meet the requirements in § 2.813.

(c) *Capability to provide additional copies.* The applicant shall maintain the capability to generate additional copies of the general information and the safety analysis report, or part thereof or amendment thereto, for subsequent distribution in accordance with the written instructions of the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as appropriate.

(d) *Public hearing copy.* In any hearing conducted under subpart O of this part for a design certification rulemaking, the applicant must make a copy of the updated application available at the public hearing for the use of any other parties to the proceeding, and shall certify that the updated copies of the application contain the current contents of the application submitted in accordance with the requirements of this part.

(e) *Pre-application consultation.* A prospective applicant for a standard design certification may consult with the NRC before filing an application by writing to the ~~Director,~~ Chief, New Reactor Licensing Branch ~~New, Research and Test Reactors Program,~~ U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, with respect to the subject matters listed in § 2.802(a)(1)(i) through (iii) of this chapter. A prospective petitioner also may telephone the Rules and Directives Branch on (301) 415-7163, or toll free on (800) 368-5642, or send e-mail to NRCREP@nrc.gov on these subject matters. In addition, a prospective applicant may confer informally with the NRC staff BEFORE filing an application for a standard design certification, and the limitations in § 2.802(a)(2) do not apply.

(b) The withdrawal of an application does not authorize the removal of any document from the files of the Commission.

§ 2.819 Denial of application for failure to supply information.

(a) The Commission may deny an application for a standard design certification if an applicant fails to respond to a request for additional information within 30 days from the date of the request, or within such other time as may be specified.

(b) If the Commission denies an application because the applicant has failed to respond in a timely fashion to a request for additional information, the NRC will publish in the *Federal Register* a notice of denial and will notify the applicant with a simple statement of the grounds of denial. If a notice of receipt of application, advance notice of proposed rulemaking, or notice of proposed rulemaking for a standard design certification was published on the NRC Web site, then the notice of action on the ~~withdrawal~~ denial will also be published on the NRC Web site.

PART 10 - CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR NATIONAL SECURITY INFORMATION OR AN EMPLOYMENT CLEARANCE

26. The authority citation for Part 10 continues to read as follows:

AUTHORITY: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10450, 3 CFR parts 1949-1953 COMP., p. 936, as amended; E.O. 10865, 3 CFR 1959-1963 COMP., p. 398, as amended; 3 CFR Table 4; E.O. 12968, 3 CFR 1995 COM., p. 396.

27. In § 10.1, paragraphs (a)(1) and (a)(2) are revised and paragraph (a)(3) is added to read as follows:

43. In § 21.2, paragraphs (a), (b), and (c) are revised to read as follows:

§ 21.2 Scope.

(a) The regulations in this part apply, except as specifically provided otherwise, in parts 31, 34, 35, 39, 40, 60, 61, 63, 70, or part 72 of this chapter, to:

(1) Each individual, partnership, corporation, or other entity applying for or holding a license or permit under the regulations in this chapter to possess, use, or transfer within the United States source material, byproduct material, special nuclear material, and/or spent fuel and high-level radioactive waste, or to construct, manufacture, possess, own, operate, or transfer within the United States, any production or utilization facility or independent spent fuel storage installation (ISFSI) or monitored retrievable storage installation (MRS); and each director and responsible officer of such a licensee;

(2) Each individual, corporation, partnership, or other entity doing business within the United States, and each director and responsible officer of such an organization, that constructs a production or utilization facility licensed for the manufacture, construction, or operation under parts 50 or 52 of this chapter, an ISFSI for the storage of spent fuel licensed under part 72 of this chapter, an MRS for the storage of spent fuel or high-level radioactive waste under part 72 of this chapter, or a geologic repository for the disposal of high-level radioactive waste under part 60 or 63 of this chapter; or supplies basic components for a facility or activity licensed, other than for export, under parts 30, 40, 50, 52, 60, 61, 63, 70, 71, or part 72 of this chapter;

(3) Each individual, corporation, partnership, or other entity doing business within the United States, and each director and responsible officer of such an organization, applying for a design certification rule under part 52 of this chapter; or supplying basic components with respect to that design certification, and each individual, corporation, partnership, or other entity doing business within the United States, and each director and responsible officer of such an organization, whose application for design certification has been granted under part 52 of this

(ii) A basic component that is within his or her organization's responsibility and is supplied for a facility or an activity within the United States that is subject to the licensing, design certification, or regulatory approval requirements under parts 30, 40, 50, 52, 60, 61, 63, 70, 71, or 72 of this chapter.

* * * * *

(4)* * *

(vi) In the case of a basic component which contains a defect or fails to comply, the number and location of these components in use at, supplied for, being supplied for, or may be supplied for, manufactured, or being manufactured for one or more facilities or activities subject to the regulations in this part.

* * * * *

(ix) In the case of an early site permit, the entities to whom an early site permit was sold or transferred.

* * * * *

47. In § 21.51 paragraph (a)(4) is added and paragraph (b) is revised to read as follows:

§ 21.51 Maintenance and inspection of records.

(a)* * *

(4) Applicants for standard design certification under subpart C of part 52 of this chapter and others providing a design which is the subject of a design certification, during and following Commission adoption of a final design certification rule for that design, shall retain any notifications sent to purchasers and affected licensees for a minimum of 5 years after the date of the notification, and retain a record of the purchasers for 15 years after delivery of design which is the subject of the design certification rule or service associated with the design.

66. Section 50.37 is revised to read as follows:

§ 50.37 Agreement limiting access to Classified Information.

As part of its application and in any event before the receipt of Restricted Data or classified National Security Information or the issuance of a license, construction permit, early site permit, or standard design approval, or before the Commission has adopted a final standard design certification rule under part 52, the applicant shall agree in writing that it will not permit any individual to have access to any facility to possess Restricted Data or classified National Security Information until the individual and/or facility has been approved for access under the provisions of 10 CFR parts 25 and/or 95. The agreement of the applicant becomes part of the license, or construction permit, or standard design approval.

67. The undesignated center heading before § 50.40 is revised as follows:

Standards for Licenses, Certifications, and Regulatory Approvals

68. Section 50.40 is revised to read as follows:

§ 50.40 Common standards.

In determining that a construction permit or operating license in this part, or early site permit, combined license, or manufacturing license in part 52 of this chapter will be issued to an applicant, the Commission will be guided by the following considerations:

(a) Except for an early site permit or manufacturing license, the processes to be performed, the operating procedures, the facility and equipment, the use of the facility, and other technical specifications, or the proposals, in regard to any of the foregoing collectively provide reasonable assurance that the applicant will comply with the regulations in this chapter, including the regulations in part 20 of this chapter, and that the health and safety of the public will not be endangered.

describing the changes desired, and following as far as applicable, the form prescribed for original applications.

90. In § 50.91, the introductory text is revised to read as follows:

§ 50.91 Notice for public comment; State consultation.

The Commission will use the following procedures for an application requesting an amendment to an operating license under this part or a combined licensed under part 52 of this chapter for a facility licensed under §§ 50.21(b) or 50.22, or for a testing facility, except for amendments subject to hearings governed by 10 CFR part 2, subpart L. For amendments subject to 10 CFR part 2, subpart L, the following procedures will apply only to the extent specifically referenced in § 2.309(b) of this chapter, except that notice of opportunity for hearing must be published in the *Federal Register* at least 30 days before the requested amendment is issued by the Commission:

* * * * *

91. Section 50.92 paragraph (a), and the introductory text of paragraph (c) are revised to read as follows:

§ 50.92 Issuance of amendment.

(a) In determining whether an amendment to a license or construction permit will be issued to the applicant, the Commission will be guided by the considerations which govern the issuance of initial licenses or construction permits to the extent applicable and appropriate. If the application involves the material alteration of a licensed facility, a construction permit will be issued before the issuance of the amendment to the license, provided however, that if the application involves a material alteration to a nuclear power reactor manufactured under part 52 of this chapter before its installation at a site, or a combined license before the date that the

specifications (see paragraph B.3 of this section) to the Director of the Office of Nuclear Reactor Regulation.

3. The regulatory guide or other implementation document used by a licensee or applicant for an operating license under this part or a combined license under part 52 of this chapter to develop a performance-based leakage-testing program must be included, by general reference, in the plant technical specifications. The submittal for technical specification revisions must contain justification, including supporting analyses, if the licensee chooses to deviate from methods approved by the Commission and endorsed in a regulatory guide.

* * * * *

101. Appendix M to Part 50 is removed.

Appendix M to Part 50 [Removed and reserved]

102. Appendix O to Part 50 is removed.

Appendix O to Part 50 [Removed and reserved]

103. In Appendix S to Part 50, the first paragraph titled "General Information," Section I(a), and Section III are revised to read as follows:

Appendix S to Part 50—Earthquake Engineering Criteria for Nuclear Power Plants

General Information

This appendix applies to applicants for a construction permit or operating license under part 50, or a design certification, combined license, design approval, or manufacturing license under part 52 of this chapter, on or after January 10, 1997. However, for either an operating license applicant or holder whose construction permit was issued before January 10, 1997, the earthquake engineering criteria in Section VI of appendix A to 10 CFR part 100 continues to

(3) If the NRC staff director makes a determination to prepare and issue a draft environmental assessment for public review and comment before making a final determination on the manufacturing license application, the assessment will be marked, "Draft." The NRC notice of availability on the draft environmental assessment will include a request for comments which specifies where comments should be submitted and when the comment period expires. The notice will state that copies of the environmental assessment and any related environmental documents are available for public inspection and where inspections can be made. A copy of the final environmental assessment will be sent to the U.S. Environmental Protection Agency, the applicant, any party to a proceeding, each commenter, and any other Federal, State, and local agencies, and Indian tribes, State, regional, and metropolitan clearinghouses expressing an interest in the action. Additional copies will be made available in accordance with § 51.123.

(4) When a hearing is held under the regulations in part 2 of this chapter on the proposed issuance of the manufacturing license or amendment, the NRC staff director will prepare a final environmental assessment which may be subject to modification as a result of review and decision as appropriate to the nature and scope of the proceeding. The presiding officer will issue the final environmental assessment.

(5) Only a party admitted into the proceeding with respect to a contention on the environmental assessment may take a position and offer evidence on the matters within the scope of the environmental assessment.

→ or an entity participating in the proceeding pursuant to § 2.315(c),

111. In § 51.32, paragraph (b) is added to read as follows:

§ 51.32 Finding of no significant impact.

* * * * *

environmental report must include a plan for redress of the site that will achieve an environmentally stable and aesthetically acceptable site suitable for whatever non-nuclear use may conform with local zoning laws. For other than light-water-cooled nuclear power reactors, the environmental report shall contain the basis for evaluating the contribution of the environmental effects of fuel cycle activities for the nuclear power reactor. Each environmental report shall identify procedures for reporting and keeping records of environmental data, and any conditions and monitoring requirements for protecting the non-aquatic environment, proposed for possible inclusion in the license as environmental conditions in accordance with § 50.36b of this chapter.

(c) *Combined license stage.* Each applicant for a combined license covered by § 51.20 shall submit with its application a separate document, entitled "Applicant's Environmental Report–Combined License Stage." Each environmental report shall contain the information specified in §§ 51.45, 51.51 and 51.52; for other than light-water-cooled nuclear power reactors, the environmental report shall contain the basis for evaluating the contribution of the environmental effects of fuel cycle activities for the nuclear power reactor. Each environmental report shall identify procedures for reporting and keeping records of environmental data, and any conditions and monitoring requirements for protecting the non-aquatic environment, proposed for possible inclusion in the license as environmental conditions in accordance with § 50.36b of this chapter. The combined license environmental report may reference information contained in a final environmental document previously prepared by the NRC staff.

(1) *Application referencing an early site permit.* The applicant must have a reasonable process for identifying any new and significant information regarding the NRC's conclusions in the early site permit environmental impact statement. If the combined license application references an early site permit, then the "Applicant's Environmental Report–Combined License Stage" need not contain information or analyses submitted to the Commission in "Applicant's

site permits filed under this part are governed by the procedures contained in subparts C, G, and L of 10 CFR part 2, as applicable.

§ 52.23 Referral to the Advisory Committee on Reactor Safeguards (ACRS).

The Commission shall refer a copy of the application for an early site permit to the ACRS. The ACRS shall report on those portions of the application which concern safety.

§ 52.24 Issuance of early site permit.

(a) After conducting a hearing under § 52.21 and receiving the report to be submitted by the ACRS under § 52.23, the Commission may issue an early site permit, in the form the Commission deems appropriate, if the Commission finds that:

(1) An application for an early site permit meets the applicable standards and requirements of the Act and the Commission's regulations;

(2) Notifications, if any, to other agencies or bodies have been duly made;

(3) There is reasonable assurance that the site is in conformity with the provisions of the Act, and the Commission's regulations;

(4) The applicant is technically qualified to engage in any activities authorized;

(5) ~~The~~ Any proposed inspections, tests, analyses and acceptance criteria, including any on emergency planning, are necessary and sufficient, within the scope of the early site permit, to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Act, and the Commission's regulations;

(6) Issuance of the permit will not be inimical to the common defense and security or to the health and safety of the public;

(7) Any significant adverse environmental impact resulting from activities requested under § 52.17(c) can be redressed; and

(8) The findings required by subpart A of 10 CFR part 51 have been made.

(15) A description of the program for monitoring the effectiveness of maintenance necessary to meet the requirements of § 50.65 of this chapter;

(16) The information with respect to the design of equipment to maintain control over radioactive materials in gaseous and liquid effluents produced during normal reactor operations, as described in § 50.34a(d) of this chapter;

(17) The information with respect to compliance with technically relevant positions of the Three Mile Island requirements in § 50.34(f) of this chapter, with the exception of §§ 50.34(f)(1)(xii), (f)(2)(ix), and (f)(3)(v);

(18) If the applicant seeks to use risk-informed treatment of SSCs in accordance with §50.69 of this chapter, the information required by § 50.69(b)(2) of this chapter;

(19) Information necessary to demonstrate that the SSCs important to safety comply with the earthquake engineering criteria in 10 CFR part 50, appendix S;

(20) Proposed technical resolutions of those unresolved safety issues and medium- and high-priority generic safety issues that are identified in the version of NUREG-0933 current on the date 6 months before application and that are technically relevant to the design;

(21) Emergency plans complying with the requirements of § 50.47 of this chapter, and 10 CFR part 50, appendix E;

(22)(i) All emergency plan certifications that have been obtained from the State and local governmental agencies with emergency planning responsibilities must state that:

(A) The proposed emergency plans are practicable;

(B) These agencies are committed to participating in any further development of the plans, including any required field demonstrations; and

(C) These agencies are committed to executing their responsibilities under the plans in the event of an emergency;

(iii) The withdrawals would not inhibit the ability of the licensee to complete funding of any shortfalls in the decommissioning trust needed to ensure the availability of funds to ultimately release the site and terminate the license.

(2) Initially, 3 percent of the generic amount specified in § 50.75 of this chapter may be used for decommissioning planning. For licensees that have submitted the certifications required under § 52.110(a) and commencing 90 days after the NRC has received the PSDAR, an additional 20 percent may be used. A site-specific decommissioning cost estimate must be submitted to the NRC before the licensee using any funding in excess of these amounts.

may use

(3) Within 2 years following permanent cessation of operations, if not already submitted, the licensee shall submit a site-specific decommissioning cost estimate.

(4) For decommissioning activities that delay completion of decommissioning by including a period of storage or surveillance, the licensee shall provide a means of adjusting cost estimates and associated funding levels over the storage or surveillance period.

(i) All power reactor licensees must submit an application for termination of license. The application for termination of license must be accompanied or preceded by a license termination plan to be submitted for NRC approval.

(1) The license termination plan must be a supplement to the FSAR or equivalent and must be submitted at least 2 years before termination of the license date.

(2) The license termination plan must include—

(i) A site characterization;

(ii) Identification of remaining dismantlement activities;

(iii) Plans for site remediation;

(iv) Detailed plans for the final radiation survey;

(v) A description of the end use of the site, if restricted;

(vi) An updated site-specific estimate of remaining decommissioning costs;

(a) A nuclear power reactor manufactured under a manufacturing license issued under this subpart may only be transported to and installed at a site for which either a construction permit under part 50 of this chapter or a combined license under subpart C of this part has been issued.

(b) Subpart B of this part governs the certification by rulemaking of the design of standard nuclear power facilities. Subpart E of this part governs the NRC staff review and approval of standard designs for a nuclear power facility. A manufacturing license applicant may reference a standard design certification, or a preliminary or final standard design approval in its application. These subparts may also be used independently of the provisions in this subpart.

§ 52.155 Filing of applications.

(a) Any person, except one excluded by 10 CFR 50.38, may file an application for a manufacturing license under this subpart with the Director of Nuclear Reactor Regulation.

(b) The application must comply with the applicable filing requirements of §§ 52.3 and 50.30 of this chapter.

(c) The fees associated with the filing and review of the application are set forth in 10 CFR part 170.

52.156 Contents of applications; general information.

The application must contain all of the information required by 10 CFR 50.33(a) through (d), (j), and 50.33a.

§ 52.157 Contents of applications; technical information in final safety analysis report.

The application must contain a final safety analysis report containing the information set forth below, with a level of design information sufficient to enable the Commission to judge the applicant's proposed means of assuring that the manufacturing conforms to the design and to

(3) A description of protection provided against pressurized thermal shock events, including projected values of the reference temperature for reactor vessel beltline materials as defined in §§ 50.60 and 50.61 of this chapter;

(4) The analyses and the descriptions of the equipment and systems required by § 50.44 of this chapter for combustible gas control;

(5) The coping analyses required, and any design features necessary to address station blackout, as described in § 50.63 of this chapter;

(6) The information on electric equipment important to safety that is required by 10 CFR 50.49(d);

(7) - (10) **[RESERVED]**

(11) The information with respect to the design of equipment to maintain control over radioactive materials in gaseous and liquid effluents produced during normal reactor operations, as described in § 50.34a(e) of this chapter;

(12) The information necessary to demonstrate compliance with any technically relevant portions of the Three Mile Island requirements set forth in § 50.34(f) of this chapter, except paragraphs (f)(1)(xii), (f)(2)(ix), and (f)(3)(v);

(13) If the applicant seeks to use risk-informed treatment of SSCs in accordance with §50.69 of this chapter, the information required by § 50.69(b)(2) of this chapter;

(14) The earthquake engineering criteria in appendix S to 10 CFR part 50;

(15) Information sufficient to demonstrate compliance with the applicable requirements regarding testing, analysis, and prototypes as set forth in § 50.43(e) of this chapter;

(16) The technical qualifications of the applicant to engage in the proposed activities in accordance with the regulations in this chapter;

(17) A description of the quality assurance program to be applied to the design and manufacture of the structures, systems, and components of the reactor. Appendix B to 10 CFR

reactor manufactured under this subpart is referenced or used, the Commission shall treat as resolved those matters resolved in the proceeding on the application for issuance or renewal of the manufacturing license, including the adequacy of design of the manufactured reactor, and ~~the environmental impacts of operation of the manufactured reactor.~~

(b)(1) The holder of a manufacturing license may not make changes to the design of the nuclear power reactor authorized to be manufactured without prior Commission approval. The request for a change to the design must be in the form of an application for a license amendment, and must meet the requirements of 10 CFR 50.90 through 50.92.

(2) An applicant or licensee who references or uses a nuclear power reactor manufactured under a manufacturing license under this subpart may request a variance from the design characteristics, site parameters, terms and conditions, or approved design of the manufactured reactor. The Commission may grant a request only if it determines that the variance will comply with the requirements of 10 CFR 50.12(a), and that the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption. The granting of a variance on request of an applicant must be subject to litigation in the same manner as other issues in the construction permit, operating license, or combined license hearing.

(c) Except for information requests seeking to verify compliance with the current licensing basis of either the manufacturing license or the manufactured reactor, information requests to the holder of a manufacturing license or an applicant or licensee using a manufactured reactor must be evaluated before issuance to ensure that the burden to be imposed on respondents is justified in view of the potential safety significance of the issue to be addressed in the requested information. Each evaluation performed by the NRC staff must be in accordance with 10 CFR 50.54(f) and must be approved by the Executive Director for Operations or his or her designee before issuance of the request.

§ 52.173 Duration of manufacturing license.

A manufacturing license issued under this subpart may be valid for not less than 5, nor more than 15 years from the date of issuance. A holder of a manufacturing license may not initiate the manufacture of a reactor less than 3 years before the expiration of the license even though a timely application for renewal has been filed with the NRC. Upon expiration of the manufacturing license, the manufacture of any uncompleted reactors must cease unless a timely application for renewal has been filed with the NRC.

§ 52.175 Transfer of manufacturing license.

A manufacturing license may be transferred in accordance with § 50.80 of this chapter.

§ 52.177 Application for renewal.

(a) Not less than 12 months, nor more than 5 years before the expiration of the manufacturing license, or any later renewal period, the holder of the manufacturing license may apply for a renewal of the license.

(b) The filing of an application for a renewed license must be in accordance with subpart A of 10 CFR part 2 and 10 CFR 52.3 and 50.30.

(c) A manufacturing license, either original or renewed, for which a timely application for renewal has been filed, remains in effect until the Commission has made a final determination on the renewal application, *provided, however*, that in accordance with § 52.173, the holder of a manufacturing license may not begin manufacture of a reactor less than 3 years before the expiration of the license.

(d) Any person whose interest may be affected by renewal of the permit may request a hearing on the application for renewal. The request for a hearing must comply with 10 CFR 2.309. If a hearing is granted, notice of the hearing will be published in accordance with 10 CFR ~~2.309~~ 2.104.

(j) [Reserved]

(k) Applying for or already has applied for review, under appendix Q to10 CFR part 50of a facility site before the submission of an application for a construction permit;

* * * * *

Dated at Rockville, Maryland, this day of , 2005.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Chairman Diaz's edits to the Regulatory Analysis

B. July 2003 Proposed Rulemaking

The NRC planned to revise 10 CFR Part 52 after the first standard design certification reviews. In SECY-98-282, "Part 52 Rulemaking Plan", dated December 4, 1998, the staff proposed to initiate a rulemaking to revise Part 52. ~~The NRC issued~~ a staff requirements memorandum on January 14, 1999, approving the NRC staff's plan for revising 10 CFR Part 52. After the issuance of SECY-00-0092, Combined License Review Process, dated April 20, 2000, stakeholders at public meetings raised other licensing issues with 10 CFR Part 52 Subparts A and C (early site permits and combined licenses, respectively). The NRC obtained considerable stakeholder comments on its planned action through three public meetings on the proposed rulemaking, and two postings of draft rule language on the NRC's rulemaking Website. On July 3, 2003, (68 FR 40026) the NRC published a proposed rule that would clarify and/or correct 10 CFR Parts 1, 2, 10, 19, 20, 21, 25, 26, 50, 51, 52 (including appendices A, B, and C), 54, 55, 72, 73, 140, 170, 171, and revise portions of 10 CFR Part 52, and incorporate shareholders comments.

3.0 Revised Proposed Rulemaking

Following the close of the public comment period on the July 2003 proposed rule, the NRC re-evaluated whether the proposed rule would meet the Commission's objective of improving the effectiveness of NRC's processes for licensing future nuclear power plants. First, public comments identified several concerns about whether the July 2003 proposed rule adequately addressed the relationship between Part 50 and Part 52 and clearly specified the applicable regulatory requirements for each of the licensing and approval processes in Part 52. In addition, during the public comment period and thereafter, the NRC gained additional insights about early site permits as a result of the NRC's review of the first three early site permit applications. The NRC also had the benefit of public meetings with external stakeholders on

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: CHAIRMAN DIAZ

SUBJECT: **SECY-05-0203 - REVISED PROPOSED RULE TO UPDATE 10 CFR PART 52, "LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS"**

Approved xx w/comments & edits Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

This vote supplements my previous vote on SECY-05-0203.

SIGNATURE

Dec 20, 05

DATE

Entered on "STARS" Yes ✓ No ___

Supplemental Vote by Chairman Diaz on SECY-05-0203

Upon further consideration of the staff's recommendation in SECY-05-0203, "Revised Proposed Rule to Update 10 CFR Part 52...", I believe that the proposed 10 CFR 52.63 language should be enhanced to allow the Commission to amend design certification rules (DCRs) to address generically any of the Design Acceptance Criteria (DAC). For example, 10 CFR 52.63(a)(1)(iii) could be expanded to allow the Commission to modify a DCR when such modification would improve the specificity, certainty, or clarity of a certified design codified by rule. This approach, combined with the stated desire of potential COL applicants to increase the level of standardization in their plant designs and COL applications, could increase NRC's efficiency in reviewing future applications referencing a certified design. As a result, I am supplementing my vote of December 2, 2005, to recommend that the staff include in the Federal Register notice a discussion of this potential enhancement to Part 52 and solicit comments on whether and, if so, how the NRC should revise the rule to allow the Commission to amend DCRs to address DAC generically when such an amendment would improve the specificity, certainty, or clarity of a certified design. The staff should also solicit comment on the extent to which backfit-like provisions should apply when amending a design certification rule for the reasons discussed above.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MCGAFFIGAN

SUBJECT: **SECY-05-0203 - REVISED PROPOSED RULE TO UPDATE 10 CFR PART 52, "LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS"**

Approved _____ Disapproved X Abstain _____

Not Participating _____

COMMENTS:

See attached comments.

Edward McGaffigan Jr.
SIGNATURE

January 9, 2006
DATE

Entered on "STARS" Yes X No ___

Commissioner McGaffigan's Comments on SECY-05-0203

I do not support going forward with this proposed revision to Part 52. As soon as I plowed through it over Veteran's Day weekend, I had grave doubts about many of its provisions.

I first sought to see whether much of what was necessary in a revised Part 52 could be accomplished by finalizing the Commission's earlier 2003 proposed rule, while staying faithful to the "logical outgrowth" test propounded in October 2005 by the D. C. Circuit Appeals Court, *Environmental Integrity Project v. EPA,* 425 F.3d 992 (D. C. Cir. 2005). I almost immediately faced staff obstinacy in providing the information necessary to make an informed choice. At one technical assistants' meeting a NRR manager stated that the staff had a proposal before the Commission and would do nothing to undermine it unless told by a majority of the Commission to do so. Eventually, with the assistance of my colleagues, the staff partially answered my question in a document submitted to the Commission on December 14, 2005. I was more persuaded by a letter submitted by NEI Senior Vice President Marvin Fertel the same day. But in light of Fertel's analysis, which fleshed out industry concerns first expressed at the November 21 Commission briefing, the Commission in its December 19 SRM asked the staff to explore the option of fast tracking a proposed rule with greatly reduced scope. The staff essentially dismissed that option in a December 27, 2005 memorandum which I immediately asked be publicly released since it was in response to a public SRM, discussed a publicly available letter from NEI, and was essentially an adjunct to this SECY paper. A majority of my colleagues (Chairman Diaz and Commissioners Merrifield and Lyons) denied that request until the Commission SRM on this paper is issued.

I believe that we are making a mistake, that we should have pared this rule down substantially before issuing it for comment. This is a 551 page rulemaking package, with a comparatively sparse 217 page Statements of Consideration followed by 334 pages of rule text. This package was put together in the staff's usual secretive process with no public interaction. Indeed, I did not even know that the staff had decided to jettison the 2003 Part 52 proposed rule until my return to the Commission in October 2005. In retrospect, I could have known if I had closely looked at the NRR Director's Quarterly Update which was available to my staff and me on July 29, 2004. But that is not a document other Commissioners or I routinely examine in detail. Had I known that this rulemaking would have to be reissued as a proposed rule, I would have urged that public meetings be conducted before the rule was presented to the Commission. This is something that we have routinely done on a variety of complex rules (e.g., Part 26, Part 70, Part 35, 50.59, 50.65(a)(4)) over the past decade. We do not do this in every case because of resource considerations, but it certainly makes sense on important rulemakings.

I would have thought that this approach might have seeped into staff thinking by the summer of 2004, but I would have been wrong. The staff will revert to form, unless directed to do otherwise by the Commission. Bowing to the staff's desire reflected in the December 27 memo, to remain within "its normal rulemaking process," is a prescription for rewarding staff obstinacy and endangering an important rulemaking. Nothing that I have advocated in this instance, or which the Commission has ordered the staff to undertake in previous instances, is outside the Administrative Procedure Act prescriptions for rulemaking. Indeed, they are enhancements to ensure that the Commission understands what the issues are in a proposed (or final) rule and that senior managers have an opportunity to manage issues before they are dumped on the Commission's doorstep.

My colleagues, perhaps reluctantly after being backed into a corner by the staff, have decided to go forward with this dump truck of a proposed rule hoping that, with public commenters' help, we can find the jewel box of needed Part 52 changes somewhere in the dump truck before the Commission issues a final rule. In light of the staff's December 27 memo and the staff's attempted dismissal of NEI's generic comments on the AP-1000 rule (discussed below), I do not have deep faith that the staff will (or even wants to) find the jewel box. The claim made by staff that much of this rule results from industry comments on the 2003 proposed rule is undermined by Mr. Fertel's December 14 letter and by the staff's Statements of Consideration on the AP-1000 rule. What the staff apparently meant to say was that this new proposed rule reflects industry comments in cases where the staff agrees with the comment, as interpreted by staff, and dismisses industry comments where the staff disagrees. In light of the D.C. Circuit's October 2005 decision, many of those comments may fail the "logical outgrowth" test, if submitted again, and, even if the Commission agreed with them, would then have to wait for the next Part 52 rulemaking.

I also warn my colleagues that the NRR staff told me in a November briefing that the staff positions taken in this proposed rule will guide their deliberations on revisions to the standard review plan and on the content of COL applications. Not paring this proposed rule now may simply propagate differences between the staff and stakeholders into other parallel processes, disrupting them as well. I do not regard this as a prescription for success in preparing for the deluge of COL applications.

Staff has also claimed that this proposed rule will help resolve issues that otherwise would arise and be resolved much less efficiently in hearings on multiple COL applications. This is conceivable, but does not reflect anything in the historical record. The focus of hearings on reactor license applications since NRC was created has almost exclusively been on environmental and emergency preparedness issues. Nothing in this proposed rulemaking helps resolve any issues in these areas generically. Indeed, as I will discuss shortly, one provision arguably would proliferate hearing issues for those holding early site permits. The area most needing generic resolution of issues, security, will be handled in two separate rulemakings: a large proposed rulemaking to be submitted to the Commission by May 28, 2006, and a smaller, but important rulemaking to implement the Commission's September 2005 SRM that hopefully will follow not long behind. If we don't complete those rulemakings before COL hearings are underway (and hopefully much sooner), we can expect an avalanche of security contentions in those hearings.

Since my colleagues have decided to let the staff issue the dump truck version of a proposed Part 52 rule, I would urge that they consider the following before doing so.

Measures to Speed Up the Rulemaking

I do not believe that the comment period on this 551 page rulemaking package should be reduced to 60 days as proposed by Commissioner Lyons. It may be true that the rule language has been available somewhere on our web site since late August 2005, but I can find no press release from that time frame pointing the public to it. It may also be true that the SECY paper has been available since mid-November but, aside from the industry, other stakeholders have presumably not focused on this matter. Arguably, given the complexity and importance of this

rulemaking, we should direct a 120-day comment period, which was used on the latest Part 26 proposed rule. In that case the staff had extensive stakeholder interaction before it was issued (and much of the rule was identical to a previous all-but-final rule).

I am also reluctant to decide now to forego ACRS review of the final rule. ACRS has a statutory role in reviewing COL applications. I believe that they could contribute to issue resolution on the final rule, not just in areas of particular expertise such as PRA quality.

I am more willing to give up CRGR review because backfit issues appear unlikely, given the subject of the rule. But that is also something we do not need to decide now.

I would point out that the staff has not obtained OMB clearance for the information collection requirements in the rule and that is likely to be a pacing element for approval of the final rule, as we recently discovered on the much less complex AP 1000 rule.

Proposed Section 51.50(c)(1)

The proposed rule would require that a COL application referencing an ESP include any 'new and significant' environmental information that differs from the information submitted in connection with the ESP. The 'new and significant' information would be subject to litigation in a COL proceeding and the question of whether there is 'new and significant' information would also be subject to litigation. I believe this is an incorrect approach and the staff should consider alternatives, such as the one suggested by the Chairman. Specifically, prior to submission of a COL application, the ESP could be updated, if necessary. Depending on the nature of the updated information, the ESP may need to be amended, which would carry with it an opportunity for hearing. However, this would serve to separate the ESP process from the COL proceeding.

Fertel letter

I wish to make it clear that the staff should ensure that any proposed rule submitted for comment must address the issues raised in the December 14 Fertel letter. Enclosure 2 (Conforming and Beneficial Changes in SECY 05-0203) of the letter lists seven "conforming changes" that apparently are not included in the proposed rule. The staff should solicit comments on NEI's seven conforming changes. This will ensure that, should the Commission choose to modify the staff's proposal, we may proceed to the final rule stage without having to renotice under the "logical outgrowth" test.

AP1000 Final Rule Comments

In the staff's recently submitted Final Rule on the AP1000 Design Certification (SECY-05-0227), NEI submitted several comments that the staff characterized as having general applicability to all of the DCRs, some of which repeated comments made on the 2003 proposed rule to amend Part 52. I believe the staff should ensure that the NEI comments made on the AP1000 Design Certification and on the 2003 rule that have general applicability are incorporated into this proposed rulemaking, so that we can solicit comments and incorporate them in the final rule without renoticing under the "logical outgrowth" test. In the Statements of Consideration for the Final Rule on AP1000, the staff improperly stated that "[i]t is unlikely that the Commission will

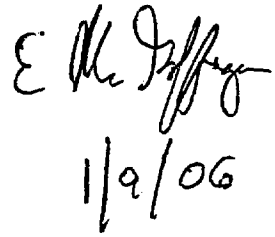
adopt NEI's proposed language for the other DCRs in the ongoing [P]art 52 rulemaking." I have an open mind on all such matters as do, I believe, all of my colleagues on the Commission. It should be noted that the Commission struck that language from the Statements of Consideration for the Final Rule on AP1000. The Commission will not tolerate such obvious prejudgment of issues by the staff.

PRAs

I have been a consistent and strong advocate on the need for high-quality PRAs. Indeed, the language in the proposed rule ("full scope", "all operating modes") is precisely what I have stated to be "the gold standard" that the nuclear industry should strive to achieve. However, I am fully aware that "a full scope all modes PRA" remains still beyond the current state of the art. Thus, the proposed Part 52 rule should be revised to delete the "full scope" and "all operating modes" requirements from the rule text. I hope this state of affairs will change, especially because the "Reactor Safety Study" (WASH-1400, the foundation on which all risk-informed regulation builds) turned 30 last year, will turn 80 before the first expected COL applicants' initial forty year licenses expire, and will reach the century mark should any of the first COL holders successfully renew their licenses.

Staff guidance documents should reflect the clear Commission expectation that the PRAs of COL applicants and holders should be and should remain state of the art. In fact, once "all scope all modes" PRAs become feasible, which I hope would be before the first COL licensees are operating in 2015, the staff should require such, revising Part 52, if necessary.

Additionally, the staff should revise the proposed rule to add a requirement that Part 52 licensees maintain the PRA as a living document throughout the life of the facility, perhaps modeling it after the existing UFSAR update requirements in Part 50 (i.e., 10 CFR 50.71(e)). This only makes sense since the NRC already requires FSARs, procedures, drawings, simulators, etc. be revised as necessary to maintain fidelity with the physical plant. This element is so important and basic in an era of risk-informed regulation that it should not be left to guidance documents.



1/9/06

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MERRIFIELD

SUBJECT: **SECY-05-0203 - REVISED PROPOSED RULE TO UPDATE 10 CFR PART 52, "LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS"**

Approved _✓_ Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

See attached comments

SIGNATURE

01/05/06

DATE

Entered on "STARS" Yes _X_ No ___

Commissioner Merrifield's Comments on SECY-05-0203, Revised Proposed Rule to update 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants"

I appreciate the effort the staff has made in this proposed rule to incorporate the lessons learned from recent experience in reviewing early site permit (ESP) applications, as well as addressing several concerns about the relationship between 10 CFR Part 50 and 10 CFR Part 52 that were raised in the comments on the 2003 proposed rule. While it is unfortunate that it has taken more than two years to get to this point, I believe that at the end of the day, the revised Part 52 will improve the effectiveness and efficiency of the licensing and certification process, not just for the first few applicants, but for the numerous potential applicants that are expected to make submittals to the NRC over the next several years.

As recently as a year ago, the Commission envisioned reviewing the next generation of nuclear power plant applications similar to the way we built our successful license renewal process, by reviewing one or two combined license (COL) applications under the existing Part 52 regulations, and incorporating lessons learned as we went along. However, actions by Congress, Wall Street investors, and the electric generating industry have made it clear that they desire to build new nuclear power plants to help meet the country's energy needs in the next decade. The NRC, while not an advocate of nuclear power, is responsible for regulating the safe use of nuclear materials, and we can best discharge that responsibility by performing impartial technical and legal reviews of any applications for new reactors in a timely fashion. In order to ensure that the NRC is ready to fulfill its technical and legal responsibility, NRR and OGC should provide the Commission with proposed staffing plans for the next four years, as well as proposed strategies for staff review of expected applications and support for COL hearings before the Atomic Safety and Licensing Board Panel.

With this increased interest in new reactors in mind, I approve the staff's recommendation to issue the proposed rule for comment as soon as practicable, subject to the additional comments below. Furthermore, the staff should make this rulemaking a high priority, expedite completion of the final rule, and submit it to the Commission within 10 months of the date of the SRM. In order to do so, the Commission will waive review by the Advisory Committee on Reactor Safeguards (ACRS) and the Committee to Review Generic Requirements (CRGR). Review by the ACRS is unnecessary in this case, because the proposed changes to Part 52 are process-oriented rather than technical in nature. Review by the CRGR is not needed because there is no backfit being imposed by the proposed Part 52 revisions. In addition, since the draft rule language has been posted on the NRC public website for several months already, I believe that a 75-day public comment period is ample, and no extension to the comment period should be needed. To facilitate stakeholder comments on the proposed rule, the staff should hold a public workshop as soon as practicable after the proposed rule is issued (within two to three weeks) to discuss the major proposed revisions and answer stakeholder questions.

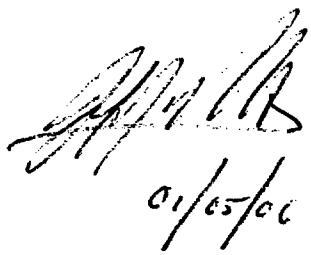
I want to stress that while I approve issuing the proposed rule at this time to keep the process moving along, I am not convinced that all of the revisions proposed by the staff are necessary. However, the primary purpose of the public comment period is to provide stakeholders a chance to express their views on the proposed revisions, or suggest alternative proposals, so that the Commission may consider those views and proposals before voting on the final rule. I believe there remains a lack of understanding regarding the meaning and intention of a variety of provisions proposed by the staff. The public workshop that the staff intends to conduct is an

ideal opportunity to provide clarification and convergence on these issues. While the staff has worked diligently and in good faith on the proposed rule, given its breadth, there certainly may be areas where we have overreached or where additional changes are warranted. For these reasons, I believe the staff should be open in its approach to the workshop and should seriously consider all comments and alternatives before preparing the final rule package.

I intend to thoroughly review the public comments, and the staff's resolution of those comments, when the final rule is submitted to the Commission for approval. I believe it is important to revise Part 52 in a timely manner so that we have a stable regulatory platform that is clearly understood by the staff and our stakeholders, as we prepare to review new reactor designs and new nuclear power plant license applications to help meet the future energy needs of the nation.

That said, I have identified two specific areas of concern that should be addressed when the staff prepares the final rule package. Is it necessary to impose 10 CFR Part 21 reporting requirements of defects and noncompliance on ESP or design certification applicants? Is it necessary to specify a full-scope PRA in the regulations (52.47 and 52.80), rather than leaving the details of the PRA scope and methodology to a regulatory guidance document?

In addition, the staff should include a question in the statement of considerations that seeks public comment on adding a provision to the rule that would require COL applicants to submit a detailed schedule for completion of ITAAC at a specific point in time prior to fuel load. Such a provision would significantly aid the NRC in making resources available in order to complete its inspection of ITAAC completion in a timely and efficient manner.



NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER JACZKO

SUBJECT: **SECY-05-0203 - REVISED PROPOSED RULE TO UPDATE 10 CFR PART 52, "LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS"**

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: See attached Comments

SIGNATURE

12/21/05

DATE

Entered on "STARS" Yes X No ___

Commissioner Jaczko's Comments on SECY-05-0203
Revised Proposed Rule to Update 10 CFR Part 52
"Licenses, Certifications, and Approvals for Nuclear Power Plants"

I approve the staff's recommendation to publish the proposed rule for public comment. It is unfortunate that the Commission finds itself in a position wherein undertaking a rule change of this magnitude may adversely impact the staff's ability to get its infrastructure in order to support the receipt of Combined License (COL) applications beginning in 2007 and stakeholders ability to have a clear understanding of the final regulatory framework.

Ultimately though, I believe that this rule change may lead to improvement in the effectiveness of NRC's processes for reviewing potential license applications. An improved infrastructure, beginning with the appropriate rules leads to greater transparency, improved efficiencies, and most importantly, provides the staff with appropriate tools to ensure adequate protection of public health and safety, promote the common defense and security, and to protect the environment.

The FY 2007 Planning, Budgeting, and Performance Management Process (PBPM) did not anticipate the volume of COL applications that we are now likely to receive in 2007-2008 timeframe. As presented to the Commission in the November 21, 2005 Commission meeting on new reactors, the number of potential COL applicants tripled between April 2005 and November 2005. From the prism of April 2005, putting a rule of this magnitude out at this time would have met all stakeholder needs to prepare for review of new reactor license applications. From a November 2005 prism, it appears to be a monumental undertaking.

The Commission has now had this proposed rule since November 3, 2005 and we have had much dialogue internally, with the staff, and with some stakeholders on the best way to proceed. We are already in a de-facto comment period as evidenced by the staff's and the Nuclear Energy Institute's (NEI) November 21, 2005 presentation before the Commission and NEI's subsequent 27 page letter of December 14, 2005, calling for a substantially scaled-back rule change. It is time to get this rule out in the public domain where all stakeholders can be involved in these discussions.

While I do believe at this time that the staff's proposed rule could improve the NRC's ability to ensure public health and safety and facilitate its ability to more efficiently and effectively review applications under Part 52, I am not necessarily committed to this proposed rule being the final rule. The proposed rule is not the important outcome. What is important is that we have a workable final rule in time to support the staff, the license applicants, and stakeholder needs. To achieve that objective we must get the comment process on the proposed rule started as soon as possible.

The best outcome is to complete rulemaking and provide all stakeholders with an improved framework to ensure the NRC mission is accomplished. We are best equipped to do that when we have the proper processes and infrastructure in place. Should the proposed rule prove unwieldy or other wise incapable of being in place in an acceptable timeframe, however, I am supportive of suspending the effort and using the existing Part 52 to process the first round of new applications.

In parallel with placing the proposed rule in the *Federal Register*, the staff should promptly arrange for a public workshop on the proposed rule and use the information from that workshop to inform its assessment of how to best meet all stakeholders needs through rulemaking as required by SRM M051121B of December 19, 2005. Publication of the proposed rule in the *Federal Register* should not delay the workshop.

12/21/05

Gregory B. Jaczko Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER LYONS

SUBJECT: **SECY-05-0203 - REVISED PROPOSED RULE TO UPDATE 10 CFR PART 52, "LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS"**

Approved X w/comments Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

Attached.

Peter B. Lyons
SIGNATURE

1/ 4 /06
DATE

Entered on "STARS" Yes √ No ___

Commissioner Lyons' Comments on SECY-05-0203

Revised Proposed Rule to Update 10 CFR Part 52

I approve the staff's recommendations in SECY-05-0203 subject to the comments below.

I acknowledge that the opposition from industry to moving forward with this proposed rule, as expressed during the Commission meeting on November 21, 2005, and in the December 14, 2005, letter from the Nuclear Energy Institute, stems from their stated desire for regulatory stability during the time period that the first COL applications are being prepared (starting in 2006) for their anticipated 2007-2008 submission dates. I also acknowledge that the staff's intent in moving forward with this proposed rule is to achieve greater regulatory clarity and stability in support of their expected reviews of the first COL applications (anticipating the first approvals in the 2010 time frame) and for the preparation and submittal of all future COL applications following issuance of the final rule. I find it interesting that "regulatory stability" thus provides the same basis for the opposing arguments. Although I appreciate both perspectives, I find the staff's view more compelling for long-term regulatory clarity and stability, and I further believe that the industry's concerns can be at least partly addressed by actions the Commission can direct. Furthermore, if we anticipate a progression of COL applications, there will never be a "perfect" time to revise these regulations.

In retrospect, this process should have been expedited sooner, since that would have better met the objectives of all parties. I share the responsibility for failing to push these revisions sooner. Given the current reality, however, my assessment is that a timely start to the process, as opposed to delay for further meetings, is the best course of action and assures completion as soon as possible.

I believe the Commission should direct or take the following actions:

Staff should hold a public workshop to discuss and receive public feedback on the proposed rule change early in the public comment period.

Staff should engage industry and public stakeholders to identify any generic regulatory process changes that could enhance the efficiency and effectiveness of preparation of COL applications in situations where a change to an applicable regulation may occur prior to completion of the staff's associated review.

The Commission should request an early determination from the ACRS as to whether there are any significant technical aspects of this proposed rule on which they might wish to comment. The CRGR backfit review should be waived.

The public comment period should be limited to 60 days, given that the proposed rule has been publically available since early November 2005 and, in part, has already benefitted from an initial round of public comments on the previously proposed rule change in 2003.

Finally, the due date for the final rule to be put before the Commission should be October 1, 2006, in order to establish an appropriately high priority among other rulemaking activities.

1/4/06

Peter B. Lyons Date