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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

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2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, September 11, 2007
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2604

RIN 3209–AA37

Technical Amendments to Office of Government Ethics Freedom of Information Act Regulation: Designations Under E.O. 13392 and Updates to Contact Numbers and Addition of E-Mail Address

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendments.

SUMMARY: The Office of Government Ethics is amending its Freedom of Information Act (FOIA) regulation to indicate certain designations under Executive Order 13392 on FOIA improvement and to provide updated OGE contact numbers and an E-mail address for FOIA requests.

DATES: *Effective Date:* August 28, 2007.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Senior Associate General Counsel, Office of Government Ethics, telephone: 202–482–9245; TDD: 202–482–9293; FAX: 202–482–9237.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is amending its FOIA regulation to indicate certain designations under Executive Order 13392 of December 14, 2005 on Improving Agency Disclosure of Information, to update telephone and contact numbers, and to add OGE's e-mail address for FOIA requesters who want to send their requests electronically.

Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d), as Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking, opportunity for public comment and 30-day delay in effectiveness as to these amendments. The notice, comment and delayed effective date provisions are being waived because these technical FOIA regulation amendments concern matters of agency organization, practice and procedure.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it only technically amends designation and contact portions of OGE's FOIA rules.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this amendatory rulemaking does not contain information collection requirements that require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this amendatory rulemaking is a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives and Government Accountability Office in accordance with that law when the rule is transmitted to the Office of the Federal Register for publication.

Executive Order 12866

In promulgating these technical amendments, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments have not been reviewed by the Office of Management and Budget under that Executive order, since they are not deemed "significant" thereunder.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2604

Administrative practice and procedure, Archives and records, Confidential business information, Conflict of interests, Freedom of information, Government employees.

Approved: August 21, 2007.

Robert I. Cusick,

Director, Office of Government Ethics.

■ Accordingly, the Office of Government Ethics, pursuant to its authority under the Ethics in Government Act and the Freedom of Information Act, is amending 5 CFR part 2604 as follows:

PART 2604—FREEDOM OF INFORMATION ACT RULES AND SCHEDULE OF FEES FOR THE PRODUCTION OF PUBLIC FINANCIAL DISCLOSURE REPORTS

■ 1. The authority citation for part 2604 is revised to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 13392, 70 FR 75373, 3 CFR, 2005 Comp., p. 216.

■ 2. Section 2604.103 is amended by adding in alphabetical order definitions for "Chief FOIA Officer," "FOIA Requester Service Center," and "FOIA Public Liaison" to read as follows:

§ 2604.103 Definitions.

* * * * *

Chief FOIA Officer means the OGE official, the OGE Deputy General Counsel, designated under E.O. 13392 to provide oversight of all of OGE's FOIA program operations.

* * * * *

FOIA Public Liaison means the OGE official, the OGE FOIA Officer, designated under E.O. 13392 to review upon request any concerns of FOIA requesters about the service received from OGE's FOIA Requester Service

Center and to address any other FOIA-related inquiries.

FOIA Requester Service Center means the OGE unit designated under E.O. 13392 to answer any questions requesters have about the status of OGE's processing of their FOIA requests. The Center may be contacted at telephone number: 202–482–9210 (TDD: 202–482–9293).

* * * * *

§ 2604.201 [Amended]

■ 3. Section 2604.201(a)(1) is amended by removing the phrase "telephone at 202–208–8000 or FAX 202–208–8037," in the second sentence and adding in its place the phrase "telephone: 202–482–9300, TDD: 202–482–9293, or FAX: 202–482–9237,".

§ 2604.301 [Amended]

■ 4. In § 2604.301(a), the first sentence is amended by:

■ A. Removing the phrase "telephone, 202–208–8000, or FAX, 202–208–8037," and adding in its place the phrase "telephone: 202–482–9300, TDD: 202–482–9293, or FAX: 202–482–9237,"; and

■ B. By adding between the ZIP Code "20005–3917" and the word "or" the phrase ", by E-mail: *usoge@oge.gov,*".

§ 2604.602 [Amended]

■ 5. Section 2604.602(b) is amended by adding between the words "guidance" and "and" the phrase ", including regarding Executive Order 13392 (Improving Agency Disclosure of Information),".

[FR Doc. E7–16940 Filed 8–27–07; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. AMS–FV–07–0030; FV07–916/917–4 FIR]

Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule eliminating grade, size, maturity, pack, container and inspection requirements for all California nectarines and peaches except those packed in containers labeled "California Well Matured" or "CA WELL MAT." This rule also continues in effect seasonal adjustments to the handling requirements applicable to well matured fruit and the removal of certain handler reporting requirements that are deemed no longer necessary. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). This rule reduces handler costs while enabling handlers to continue to meet the demands of their buyers.

EFFECTIVE DATE: September 27, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Garcia, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906; or E-mail: *Jennifer.Garcia3@usda.gov* or *Kurt.Kimmel@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW.. STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order Nos. 916 and 917, both as amended (7 CFR parts 916 and 917), regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule continues in effect the provisions of an interim final rule action that: (1) Eliminated grade, size, maturity, pack, container and inspection requirements for all California nectarines and peaches except those packed in containers labeled "California Well Matured" or "CA WELL MAT;" (2) made seasonal adjustments to the handling requirements applicable to California Well Matured fruit; and (3) removed certain handler reporting requirements that are deemed no longer necessary.

These changes allow industry handlers to reduce costs and provide them greater flexibility in meeting buyer preferences. Also, adjustments are made in light of the newly implemented California State marketing program.

Sections 916.52 and 917.41 of the orders provide authority for handling regulations for fresh California nectarines and peaches. The regulations may include grade, size, maturity, quality, pack, and container requirements. The orders also provide that whenever such requirements are in effect, the fruit subject to such regulation must be inspected by the Federal or Federal-State Inspection Service (FSIS) and certified as meeting the applicable requirements.

The nectarine order has been in effect since 1939, and the peach program has been in effect since 1958. The orders have been used over the years to establish a quality control program that includes minimum grades, sizes, and maturity standards. That program has helped improve the quality of product moving from the farm to market, and has helped growers and handlers more effectively market their crops. Additionally, the orders have been used to ensure that only satisfactory quality nectarines and peaches reach the consumer. This has helped increase and maintain market demand over the years.

Sections 916.53 and 917.42 authorize the modification, suspension, or termination of regulations issued under 916.52 and 917.41, respectively. Changes in regulations have been implemented to reflect changes in

industry operating practices and to solve marketing problems as they arise. The committees, which are responsible for local administration of the orders, meet whenever needed, but at least annually, to discuss the orders and the various regulations in effect and to determine if, or what, changes may be necessary to reflect industry needs. As a result, regulatory changes have been made numerous times over the years to address industry changes and to improve program operations.

The industry has struggled to reduce costs in recent years. In its efforts to reduce costs, the industry considered adopting audit-based inspection programs in lieu of traditional inspection programs. Ultimately, the industry determined that these programs would not presently provide sufficient savings to the industry. More recently, the industry considered replacing the existing Federal marketing orders with programs under the State of California that would not require Federal or Federal-State inspection of nectarines and peaches. In 2006, at the request of the industry, the California Department of Food and Agriculture promulgated a State program authorizing voluntary inspections for the nectarine and peach industry.

Beginning with the 2007 season, under the State program, all fruit must meet at least a modified U.S. No.1 grade and be "mature" as defined in the United States Standards for Grades of Nectarines (7 CFR 51.3145 through 51.3160) and United States Standards for Grades of Peaches (7 CFR 51.1210 through 51.1223) (hereinafter referred to as the "Standards"). Inspection costs under the program are minimal because inspection is not mandatory. The industry has also shifted its data collection and promotional activities over to the State program.

The industry subsequently discussed removing all handling regulations under the Federal orders. This would have also resulted in the elimination of all inspection requirements and expenses under the Federal orders. However, the industry believes that buyers value the committees' "CA WELL MAT" mark as an indicator of high quality and may be willing to pay a premium price for fruit marked as such. The "CA WELL MAT" certification mark is owned by the California Tree Fruit Agreement, the management organization of the Peach Commodity Committee (PCC), which also manages the Nectarine Administrative Committee (NAC). Accordingly, the committees decided to maintain all Federal marketing order handling requirements, including inspection and certification requirements, for "California well matured" fruit. The committees, thus, recommended revising the handling regulations to cover only nectarines and peaches packed in containers marked "CA WELL MAT" or "California Well Matured."

The term "well matured" is defined in the orders' rules and regulations, and has been used for many years by the industry to describe a level of maturity higher than the definition of "mature" in the Standards. The FSIS has been providing certification that these products meet the definition. Containers of nectarines and peaches bearing the certification mark must meet all of the requirements entailed in the definition of "well matured." Thus, nectarines and peaches must continue to meet the grade and size requirements set forth in the orders' rules and regulations.

The committees met on February 9, 2007, and unanimously recommended that the handling requirements be revised for the 2007 season, which began in April. The committees recommended a crop estimate of 19,000,000 containers of nectarines and 20,000,000 containers of peaches at their May 1, 2007, meetings.

Container and Pack Requirements

Sections 916.52 and 917.41 of the orders authorize the establishment of pack and container requirements for nectarines and peaches, respectively. Such requirements appear in §§ 916.115, 916.350, 917.150 and 917.442 of the orders' rules and regulations.

Prior to implementation of the interim final rule, §§ 916.115 and 917.150 required that all containers of nectarines and peaches, respectively, be stamped with an FSIS lot stamp number showing that such fruit has been inspected. Since only nectarines and peaches marked "CA WELL MAT" or "California Well Matured" are subject to inspection requirements beginning in the 2007 season, §§ 916.115 and 917.150 were revised to specify that lot stamping is only required on containers so marked.

This rule also continues in effect a revision to paragraph (a)(3) of §§ 916.350 and 917.442 to remove references to "U.S. Mature" and "US MAT" container markings. These references are no longer needed since only fruit packed in containers marked "CA WELL MAT" or "California Well Matured" are subject to handling regulations under the orders this season.

Sections 916.350 and 917.442 also establish weight-count standards for packed containers of nectarines and peaches, respectively. These regulations define a maximum number of nectarines or peaches in a sample when such fruit, which may be packed in tray-packed containers, is converted to volume-filled containers. The regulations also specify how the containers must be marked. In paragraph (a)(8) of § 916.350 and (a)(9) of § 917.442, weight marking requirements are established for nectarines and peaches packed in volume-filled Euro style containers.

According to the committees, some retailers have requested handlers to supply volume-filled Euro containers with a net weight that is equal to the weight of tray-packed Euro containers. By eliminating the net weight requirement for volume-filled Euro containers, handlers are allowed to increase or decrease the amount of fruit in the container to match the net weight of fruit in a tray-packed Euro container, thus giving them more flexibility when marketing their fruit.

Grade and Quality Requirements

Sections 916.52 and 917.41 of the orders authorize the establishment of grade and quality requirements for nectarines and peaches, respectively. Prior to the interim final rule, nectarines and peaches were subject to a modified U.S. No. 1 grade requirement. Handlers were also able to pack to "CA Utility" quality standards, subject to container labeling requirements. The committees recommended continued use of these grade and quality requirements.

However, they recommended that these requirements only be applied to nectarines and peaches packed in containers marked "CA WELL MAT" or "California Well Matured." This rule continues in effect revisions to paragraph (a) of §§ 916.356 and 917.459 to specify such requirements only for containers of nectarines and peaches marked "CA WELL MAT" or "California Well Matured" during the 2007 and subsequent seasons.

These changes allow industry handlers to reduce inspection costs by removing inspection and certification requirements on containers not marked "CA WELL MAT" and provide them greater flexibility in meeting buyer preferences.

This rule also continues in effect revisions of paragraph (a)(1) of § 916.356 to add an additional tolerance for Peento-type nectarines. Peento-type nectarines, also known as donut® nectarines due to their flattened shape, are prone to growth cracks, which emanate from the blossom end of the fruit. The committees believe that this is a minor defect that does not affect the edibility of the fruit. Thus, this action makes more Peento-type nectarines available to consumers without

materially impacting the overall quality of the fruit.

Maturity Requirements

Sections 916.52 and 917.41 of the orders also authorize the establishment of maturity requirements for nectarines and peaches, respectively. The minimum maturity level currently specified for nectarines and peaches is "mature" as defined in the Standards. The regulations also define a higher level of maturity ("well-matured") that can be used at the option of handlers.

For most varieties, "well-matured" determinations for nectarines and peaches are made using maturity guides (e.g., color chips) along with other maturity tests as may be applied by inspectors. These maturity guides are reviewed each year by the FSIS to determine whether they need to be changed, based upon the most recent information available on the individual characteristics of each nectarine and peach variety.

These maturity guides appear in Table 1 in paragraphs (a)(1)(iv) of §§ 916.356 and 917.459, for nectarines and peaches, respectively. Seasonal adjustments being made to the maturity guide are described below.

Nectarines: Requirements for "well-matured" nectarines are specified in § 916.356 of the order's rules and regulations. This rule revises Table 1 of paragraph (a)(1)(iv) of § 916.356 to add maturity guides for four varieties of nectarines. Specifically, the FSIS recommended adding maturity guides for the Larry's Red, September Bright, and WF 1 varieties to be regulated at the J maturity guide, and for the Prima Diamond VII variety to be regulated at the L maturity guide.

Peaches: Requirements for "well-matured" peaches are specified in § 917.459 of the order's rules and regulations. This rule revises Table 1 of paragraph (a)(1)(iv) of § 917.459 to add maturity guides for 11 peach varieties. Specifically, the FSIS recommended adding maturity guides for the Super Chief and Sweet Crest varieties to be regulated at the H maturity guide; the Junelicious variety to be regulated at the I maturity guide; the Burpeachfourteen (Spring Flame® 20), Henry III, Sharise, Sierra Rich, Sweet Blaze and Sweet Kay varieties to be regulated at the J maturity guide; and the Bright Princess and Summer Fling varieties to be regulated at the L maturity guide.

The committees recommended these maturity guide requirements based on the FSIS's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the "well-matured" level of maturity for nectarine and peach varieties in production.

Size Requirements

Both orders provide authority (in §§ 916.52 and 917.41) to establish size requirements. Size regulations encourage producers to leave fruit on the tree longer, which improves both size and maturity of the fruit. Acceptable fruit size provides greater consumer satisfaction and promotes repeat purchases, thereby increasing returns to producers and handlers. In addition, increased fruit size results in increased numbers of packed containers of nectarines and peaches per acre, which is also a benefit to producers and handlers.

Several years ago the committees recommended revisions to allow handlers of late season nectarine and peach varieties to pack smaller sized fruit as long as the fruit was "well matured." This rule continues in effect revisions to the size regulations in paragraphs (a)(6)(i), (a)(6)(ii), (a)(9)(i), and (a)(9)(ii) of § 916.356 and paragraphs (a)(6)(i) and (a)(6)(ii) to remove size options since only containers marked "CA WELL MAT" or "California Well Matured" are subject to the size regulations under the orders.

Varieties recommended for specific size regulations have been reviewed and such recommendations are based on the specific characteristics of each variety. The committees conduct studies each season on the range of sizes attained by the regulated varieties and those varieties with the potential to become regulated, and determine whether revisions to the size requirements are appropriate.

Nectarines: Section 916.356 of the order's rules and regulations specifies minimum size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule continues in effect revisions to paragraphs (a)(3), (a)(4), and (a)(6) of § 916.356 to establish variety-specific minimum size requirements for 14 varieties of nectarines that were produced in commercially significant quantities of more than 10,000 containers for the first time during the 2006 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Burnectfive (Spring Flare® 21) variety of nectarines, recommended for regulation at a minimum size 96. Studies of the size ranges attained by the Burnectfive (Spring Flare® 21) variety revealed that 100 percent of the containers met the minimum size of 96 during the 2005 and 2006 seasons. Sizes ranged from size 50 to size 96, with 5.8 percent of the fruit in the 50 sizes, 15.7 percent of the packages in the 60 sizes, 28.6 percent in the 70 sizes, 34.1 percent in the 80 sizes, and 16.8 percent in the 90 sizes.

A review of other varieties with the same harvesting period indicated that the Burnectfive (Spring Flare® 21) variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to handle the variety confirmed this information regarding minimum size and harvesting period. Thus, the recommendation to place the Burnectfive (Spring Flare® 21) variety in the variety-specific minimum size regulation at a minimum size 96 was appropriate. This recommendation results from size studies conducted by the committees over a two-year period.

Historical data such as this provides the committee with the information necessary to recommend the appropriate sizes at which to regulate various nectarine varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both NAC and subcommittee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, paragraph (a)(3) of § 916.356 is revised to include the Burnectfive (Spring Flare® 21) variety; paragraph (a)(4) of § 916.356 was revised to include the Burnecttwelve (Sweet Flare® 21), Early Pearl, and Rose Bright varieties; and paragraph (a)(6) of § 916.356 was revised to include the August Bright, Burnectseventeen (Summer Flare® 32), Candy Pearl, Grand Candy, Honey Diva, Larry's Red, Prima Diamond VII, Spring Pearl™, Sugarine, and Zephyr nectarine varieties.

Peaches: Section 917.459 of the order's rules and regulations specifies minimum size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). This rule continues to revise paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) of § 917.459 to establish variety-specific minimum size requirements for 11 peach varieties that were produced in commercially significant quantities of more than 10,000 containers for the first time during the 2006 season. This rule also continues to remove the variety-specific minimum size 16 requirements for seven varieties of peaches whose

shipments fell below 5,000 containers during the 2006 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements was the May Snow variety of peaches, which was recommended for regulation at a minimum size 88. Studies conducted by the committees on the size ranges attained by the May Snow variety revealed that 97.8 percent of the containers met the minimum size of 88 during the 2005 and 2006 seasons. The sizes ranged from size 40 to size 88, with 11.6 percent of the containers meeting the size 40, 19.2 percent meeting the size 50, 45.7 percent meeting the size 60, 15.1 percent meeting the size 70, 3.4 percent meeting the size 80, 2.3 percent meeting the size 84, and 0.5 percent meeting the size 88 in the 2006 season.

A review of other varieties with the same harvesting period indicated that the May Snow variety was also comparable to those varieties in its size ranges for that time period. Discussions between the committees and handlers known to pack the variety confirmed this information regarding minimum size and the harvesting period. Thus, the recommendation to place the May Snow variety in the variety-specific minimum size regulation at a minimum size 88 is appropriate.

Historical data such as this provides the committee with the information necessary to recommend the appropriate sizes at which to regulate various peach varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at committee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, paragraph (a)(2) of § 917.459 was revised to include the Snow Angel peach variety; paragraph (a)(3) of § 917.459 was revised to include the May Snow peach variety; paragraph (a)(4) of § 917.459 was revised to include the May Saturn (Early Saturn) peach variety; paragraph (a)(5) of § 917.459 was revised to include the Candy Red, Raspberry, and Sugar Jewel peach varieties; and paragraph (a)(6) of § 917.459 was revised to include the Burpeachfifteen (Summer Flame® 34), Burpeachsixteen, Burpeachtwenty (Summer Flame®), Galaxy, and Snow Magic peach varieties.

Section (a)(4) is reserved for any varieties which will be regulated at a size 84. The May Saturn (Early Saturn) variety, as noted above, is regulated at size 84 under (a)(4).

This rule revises paragraph (a)(5) of § 917.459 to remove the May Sun and Snow Prince peach varieties and paragraph (a)(6) of § 917.459 to remove the 24–SB, Crimson Queen, Jupiter, Red Giant, and Spring Gem peach varieties from the variety-specific minimum size requirements because less than 5,000 containers of each of these varieties was produced during the 2006 season.

Peach varieties removed from the peach variety-specific minimum size requirements are subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

The committees recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these nectarine and peach varieties, and the consumer acceptance levels for various fruit sizes. This rule is designed to establish minimum size requirements for fresh nectarines and peaches consistent with expected crop and market conditions.

Reporting Requirements

Sections 916.60 and 917.50 of the orders authorize the establishment of reporting requirements for nectarines and peaches, respectively. Prior to the interim rule, under 19 sections 916.160, 917.178, and 917.179, handlers are required to file certain reports pertaining to daily packouts, annual shipments, and shipment destinations. The collection and dissemination of statistical information has been a valuable component of the programs, as it provides growers and handlers with information which enhances their decision-making ability.

However, as a State marketing program has recently been implemented for the California peach and nectarine industries, which includes the collection and dissemination of statistical information, there is no longer a need to require these handler reports under the orders. Therefore, at their February 9, 2007, meetings, the committees recommended removing current handler reporting requirements, beginning with the 2007 season. The committees have implemented a memorandum of understanding to share information with the new State marketing order, so information collected by the State program can be utilized by the committees.

This rule continues in effect revisions removing reporting requirements in § 916.160 for nectarines and §§ 917.178 and 917.179 for peaches. This action reduces handler costs under the orders.

This rule reflects the need to revise the handling and reporting requirements for California nectarines and peaches. This rule is intended primarily to reduce costs and should therefore have a beneficial impact on producers, handlers, and consumers of fresh California nectarines and peaches. This rule is also intended to maintain the perceived value of the "California well matured" certification mark by maintaining current grade, size, quality, pack, container and inspection requirements on fruit packed and labeled as "California Well Matured" or "CA WELL MAT."

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Industry Information

There are approximately 175 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 676 producers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those whose annual receipts are less than $6,500,000. Small agricultural producers are defined by the SBA as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities.

The committees' staff has estimated that there are fewer than 26 handlers in the industry who would not be considered small entities. For the 2006 season, the committees' staff estimated that the average handler price received was $9.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 722,223 containers to have annual receipts of $6,500,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2006 season, the committees' staff estimates

that small handlers represent approximately 85 percent of all the handlers within the industry.

The committees' staff has also estimated that fewer than 68 producers in the industry would not be considered small entities. For the 2006 season, the committees estimated the average producer price received was $4.50 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 166,667 containers of nectarines and peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average producer price received during the 2006 season, the committees' staff estimates that small producers represent more than 90 percent of the producers within the industry.

With an average producer price of $4.50 per container or container equivalent, and a combined packout of nectarines and peaches of 36,388,996 containers, the value of the 2006 packout is estimated to be $163,750,482. Dividing this total estimated grower revenue figure by the estimated number of producers (676) yields an estimate of average revenue per producer of about $242,234 from the sales of peaches and nectarines.

Regulatory Revisions

Under authority provided in §§ 916.52 and 917.41 of the orders, grade, size, maturity, pack, and container marking requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis. The committees met on February 9, 2007, and unanimously recommended that these handling requirements be revised for the 2007 season. This final rule continues in effect the provisions of an interim final rule action that: (1) Eliminated grade, size, maturity, pack, container and inspection requirements for all California nectarines and peaches except those packed in containers labeled "California Well Matured" or "CA WELL MAT"; (2) makes seasonal adjustments to the handling requirements applicable to California Well Matured fruit; and (3) removes certain handler reporting requirements that are deemed no longer necessary.

Container and Pack Requirements—Discussions and Alternatives

Sections 916.350 and 917.442 establish container and pack requirements. The committees discussed removing all handling regulations under the Federal orders, including inspection requirements. However, the industry believes that buyers value the committees' "CA WELL MAT" mark as an indicator of high quality and may be willing to pay a premium price for fruit marked as such. Accordingly, they decided to maintain current grade, quality, maturity, size container, pack and inspection requirements for "well matured" fruit. The committees, thus, recommended revising the handling regulations to cover only nectarines and peaches packed in containers marked "CA WELL MAT" or "California Well Matured."

Lot Stamping Requirements—Discussions and Alternatives

Sections 916.115 and 917.150 establish lot stamping requirements. This rule continues in effect lot stamping requirements to require such markings only on containers labeled "CA WELL MAT" or "California Well Matured." An alternative would be to leave the existing lot stamping requirements unchanged, but the requirements would not be consistent with the other recommended changes and would result in unnecessary expenses for industry handlers. Based on this, the committees recommended revising lot stamping requirements to require such markings only on containers labeled "CA WELL MAT" or "California Well Matured."

Weight Marking Requirements—Discussions and Alternatives

Sections 916.350 and 917.442 also establish weight marking requirements for nectarines and peaches packed in Euro type volume-filled containers. These require each five down Euro container of loose-filled nectarines or peaches to be marked with the words "29 pounds net weight."

In the past, handlers' sales to their retail customers have been based on set net weights for most pack styles. With the changing marketing environment, some retailers want volume-filled pack styles that have the same net weight as tray pack styles, especially for the Euro type containers.

Handlers either respond to the requests of the retailers or risk losing business from those retailers. The committees agreed that weight markings are no longer necessary; and, in turn, at their February 9, 2007, meetings recommended eliminating the Euro type container weight marking requirement.

Without the weight marking requirements, nectarines and peaches packed in Euro style volume-filled containers can be packed to the buyers' preferences. The committees believe that the elimination of marking requirements will satisfy the stated needs of retailers and will open additional market opportunities for the industry.

Grade and Quality Requirements—Discussions and Alternatives

Sections 916.356 and 917.459 establish minimum grade and quality requirements. The NAC and PCC previously discussed removing all handling regulations under the orders in favor of regulations under the newly-promulgated State marketing order. However, the industry still wanted to retain quality standards for fruit marketed as "CA WELL MAT," a term which has value to buyers and the industry. One alternative the committees discussed was to allow handlers to use the mark under a licensing agreement with CTFA. Taking into account enforcement concerns, this approach was not considered feasible.

At their February 9, 2007, meetings, the committees recommended revising the grade and quality requirements to apply only to nectarines and peaches packed in containers marked "CA WELL MAT" or "California Well Matured" beginning with the 2007 season. This action ensures that fruit packed in containers marked "CA WELL MAT" or "California Well Matured" is inspected and meets applicable grade and quality requirements. For this reason, the committees unanimously recommended the revisions in this final rule and believe that they will help accomplish the goals of the industry.

Minimum Maturity and Size Requirements—Discussions and Alternatives

Sections 916.356 and 917.459 establish minimum fruit maturity levels. This rule continues in effect adjustments to the maturity requirements for several varieties of nectarines and peaches. Maturity requirements are based on measurements suggested by maturity guides (e.g., color chips), as reviewed and recommended by the FSIS annually to determine the appropriate guide for each nectarine and peach variety. These annual adjustments reflect refinements in measurements of the maturity characteristics of nectarines and peaches as observed during previous seasons' inspections. Adjustments in the guides utilized ensure acceptable fruit maturity and increased consumer satisfaction while benefiting nectarine and peach producers and handlers.

Sections 916.356 and 917.459 of the orders' rules and regulations also specify minimum sizes for various varieties of nectarines and peaches. This rule continues in effect adjustments to

the minimum sizes authorized for certain varieties of each commodity for the 2007 season. Minimum size regulations are put in place to encourage producers to leave fruit on the trees for a longer period of time, increasing both maturity and fruit size. Increased fruit size increases the number of packed containers per acre, and coupled with heightened maturity levels, also provides greater consumer satisfaction, which in turn fosters repeat purchases that benefit producers and handlers alike.

Annual adjustments to minimum sizes of nectarines and peaches, such as these, are recommended by NAC and PCC based upon historical data, producer and handler information regarding sizes attained by different varieties, and trends in consumer purchases.

An alternative to such action would include not establishing minimum size regulations for these new varieties. Such an action, however, would be a significant departure from the committees' past practices and represent a significant change in the regulations as they currently exist. For these reasons, this alternative was not recommended.

Sections 916.356 and 917.459 of the orders' rules and regulations also specify size requirements for handlers of late season nectarine and peach varieties wishing to pack smaller sized fruit as long as the fruit was "well matured." Since only containers marked "CA WELL MAT" or "California Well Matured" are subject to minimum size requirements, this rule also continues in effect revisions to the size regulations which remove these obsolete size options.

Reporting Requirements—Discussions and Alternatives

Sections 916.160 and 917.178 establish reporting requirements for nectarine and peach handlers, respectively. Similar reporting requirements have been established under the newly-implemented California State marketing program. Accordingly, collection of this information under the Federal orders is no longer necessary. The committees have implemented a memorandum of understanding to share information with the new State marketing order, so information collected by the State program can be utilized by the committees. An alternative would be to maintain the reporting requirements, but this would result in an unnecessary reporting burden. For this reason, the removal of reporting requirements was unanimously recommended by both committees.

The committees make recommendations regarding the revisions in handling and reporting requirements after considering all available information, including comments received by committee staff. At the meetings, the impact of and alternatives to these recommendations are deliberated. The committees consist of individual producers and handlers with many years of experience in the industry who are familiar with industry practices and trends. All committee meetings are open to the public and comments are widely solicited. In addition, minutes of all meetings are distributed to committee members and others who have requested them, and are also available on the committees' Web site, thereby increasing the availability of this critical information within the industry.

Regarding the impact of this action on the affected entities, each of the revisions is expected to generate financial benefits for producers and handlers through reduced costs and increased fruit sales. Both large and small entities are expected to benefit from the changes, and the costs of compliance are not expected to be significantly different between large and small entities.

This rule continues in effect revisions reducing reporting and recordkeeping requirements on both small and large nectarine and peach handlers regulated under the orders. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that were removed by the interim final rule were approved by the Office of Management and Budget (OMB), under OMB No. 0581–0189, Generic OMB Fruit Crops. Removal of the reporting requirements under Parts 916 and 917 is expected to reduce the reporting burden on small or large peach and nectarine handlers by 370 hours, and should further reduce industry expenses.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the committees' meetings are widely publicized throughout the nectarine and peach industry and all interested parties are encouraged to attend and participate in committee deliberations on all issues. These meetings are held annually in the fall, winter, and spring. During the February 9, 2007, meetings, all entities, large and small, were encouraged to express views on these issues.

An interim final rule concerning this action was published in the **Federal Register** on April 16, 2007 (72 FR 18847) . Copies of the rule were posted on the committees' Web site. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided a 60-day comment period which ended June 15, 2007. Two comments were received during the comment period in response to the rule.

The first commenter, representing the committees, agrees with a majority of the changes that were outlined in the interim final rule. The commenter stated that there was one discrepancy in regards to the reporting requirements. The commenter contends that the committees' intent was to have reporting requirements suspended, not removed, in case the committees recommend reinstating the Federal orders' reporting requirements in the future. The commenter contends that if the reporting requirements are removed, the current OMB approval on the committees' reporting forms will be eliminated.

The suspension of reporting requirements without a reactivation date is essentially equivalent to the removal of reporting requirements. The reinstatement process would not be shortened by retaining the regulations. USDA will work to ensure a timely reinstatement of the reporting requirements should the committees recommend using them in the future. Accordingly, no changes have been made to the rule based on this comment.

The second commenter contends that lowering industry quality standards will adversely affect the public in a number of ways.

However, previously mentioned, beginning with the 2007 season, under the new State program, all fruit must meet at least a modified U.S. No. 1 grade and be "mature" as defined in the Standards for nectarines and peaches. Under the Federal program, all marketing order handling requirements, including inspection and certification requirements, for "California well matured" fruit are maintained. The quality standards are not being lowered; rather they are being revised to give

handlers more cost-saving options. Accordingly, no changes have been made to the rule based on this comment.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (72 FR 18847, April 16, 2007) will tend to effectuate the declared policy of the Act. With regard to revision to the rules and regulations under the order and concerning those provisions that were removed or terminated, it is found that those provisions no longer tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

PARTS 916 and 917—[AMENDED]

■ Accordingly, the interim final rule amending 7 CFR parts 916 and 917 which was published at 72 FR 18847 on April 16, 2007, is adopted as a final rule without change.

Dated: August 21, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–4161 Filed 8–27–07; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Docket No. AMS–FV–07–0085; FV07–922–2 PR]

Apricots Grown in Designated Counties in Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Washington Apricot Marketing Committee (Committee) for the 2007–2008 and subsequent fiscal periods from $1.00 to $1.50 per ton for Washington apricots. The Committee is responsible for local administration of the marketing order regulating the handling of apricots grown in designated counties in Washington. Assessments upon handlers of apricots are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period for the marketing order began April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended or terminated.

EFFECTIVE DATE: August 29, 2007.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, OR 97204; Telephone: (503) 326–2724; Fax: (503) 326–7440; or E-mail: *Robert.Curry@usda.gov* or *GaryD.Olson@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; Fax: (202) 720–8938; or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 922 (7 CFR part 922), as amended, regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, apricot handlers in designated counties in Washington are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Washington apricots beginning April 1, 2007, and will continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2007–2008 and subsequent fiscal periods from $1.00 to $1.50 per ton for Washington apricots handled under the order.

The order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of apricots in designated counties in Washington. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2005–2006 and subsequent fiscal periods, the Committee recommended, and the USDA approved, an assessment rate of $1.00 per ton of apricots handled. This rate continues in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 24, 2007, and unanimously recommended 2007–2008 expenditures of $6,743. In comparison, the budgeted expenditures

for 2006–2007 were $6,400. In addition to the budget, the Committee recommended that the $1.00 per ton assessment rate approved for the 2005–2006 and subsequent fiscal periods be increased by $0.50 to $1.50 per ton of apricots handled. The Committee recommended the higher assessment rate to cover budgeted expenses while increasing its monetary reserve to a level commensurate with program objectives and requirements.

The major expenditures recommended by the Committee for the 2007–2008 fiscal period include $4,800 for management fees, $1,000 for Committee travel, $500 for the annual financial audit, and $100 for compliance. Budgeted expenses for these items in 2006–2007 were $4,800, $1,000, $600, and $100, respectively. The Committee added $343 to its budgeted expenses this year for equipment maintenance, insurance, bonds, and miscellaneous expenses.

The assessment rate recommended by the Committee was derived by dividing its anticipated expenses of $6,743 by the projected apricot crop of 5,400 tons. Applying the $1.50 per ton assessment rate to the Committee's 5,400 ton crop estimate should provide $8,100 in assessment income. Income derived from handler assessments should adequately cover budgeted expenses while adding approximately $1,357 to the $3,980 2006–2007 fiscal year-end reserve fund. As a consequence, the projected 2007–2008 fiscal year-end reserve balance of $5,337 should be within the maximum permitted by the order of approximately one fiscal period's operational expenses.

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of the Committee's meetings are available from the Committee or USDA. The Committee's meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate the Committee's recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2007–2008 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 300 apricot producers within the regulated production area and approximately 22 regulated handlers. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000.

The Washington Agricultural Statistics Service has prepared a report showing that the total 5,400 ton apricot utilization sold for an average of $1,150 per ton in 2006 with a total value of approximately $6,200,000. Based on the number of producers in the production area (300), the average annual producer revenue from the sale of apricots in 2006 can thus be estimated at approximately $20,700. In addition, based on information from the Committee and USDA's Market News Service, 2006 f.o.b. prices ranged from $15.00 to $20.00 per 24-pound loose-pack container, and from $16.00 to $18.00 for 2-layer tray-pack containers. During the 2006 season, approximately 3,728 tons of fresh apricots were packed. Of this total, about 1,569 tons were packed in loose-pack containers and about 2,159 tons were packed in tray-pack containers (weighing an average of about 20 pounds each). The total receipts for 2006 were less than $6,500,000. Thus, the majority of producers and handlers of Washington apricots may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2007–2008 and subsequent fiscal periods from $1.00 to $1.50 per ton for apricots handled under authority of the order. The Committee also unanimously recommended 2007–2008 expenditures of $6,743. With the 2007–2008 Washington apricot crop estimate of 5,400 tons, the Committee anticipates assessment income of $8,100. The Committee recommended the assessment rate increase to cover budgeted expenses and to increase the monetary reserve. With the $1.50 per ton assessment rate and the $6,743 budget of expenditures, the Committee should add about $1,357 to its monetary reserve. Thus, the Committee projects a reserve balance of approximately $5,337 on March 31, 2008. This amount is within the maximum permitted by the order of approximately one fiscal period's operational expenses.

The major expenditures recommended by the Committee for the 2007–2008 fiscal period include $4,800 for management fees, $1,000 for Committee travel, $500 for the annual financial audit, and $100 for compliance. Budgeted expenses for these items in 2006–2007 were $4,800, $1,000, $600, and $100, respectively. The Committee added $343 to its budgeted expenses this year for equipment maintenance, insurance, bonds, and miscellaneous expenses.

The Committee discussed alternatives to this assessment rate increase. Leaving the assessment at the $1.00 per ton rate was discussed, but not seriously considered since such a rate would have further eroded the Committee's reserves. Higher and lower rates were also considered but not recommended because the $1.50 rate not only meets the Committee's objectives for the 2007–2008 season, but also increases the reserve to a level commensurate with order provisions.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2007–2008 season could average about $1,000 per ton for fresh Washington apricots. Therefore, the estimated assessment revenue for the 2007–2008 fiscal period as a percentage of total producer revenue is 0.15 percent for Washington apricots.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the order.

The Committee's meeting was widely publicized throughout the Washington apricot industry and all interested persons were invited to attend and

participate in Committee deliberations on all issues. Like all Committee meetings, the May 24, 2007, meeting was a public meeting and all entities, both large and small, were able to express views on the budget and assessment rate issues.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Washington apricot handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Furthermore, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule regarding this action was published in the **Federal Register** on July 13, 2007 (72 FR 38496). Copies of the proposed rule were made available to industry members by the Committee, and by the USDA and the Office of the Federal Register through the Internet. A 10-day comment period ending July 23, 2007, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2007–2008 fiscal period began on April 1, 2007, and the order requires that the assessment rate for each fiscal period apply to all assessable apricots handled during such fiscal period; (2) the Washington apricot harvest and shipping season is currently under way; (3) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; (4) handlers are aware of this action, which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (5) a 10-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 922 is amended as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for 7 CFR part 922 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 922.235 is revised to read as follows:

§ 922.235 Assessment rate.

On or after April 1, 2007, an assessment rate of $1.50 per ton is established for the Washington Apricot Marketing Committee.

Dated: August 22, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–16971 Filed 8–27–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. AMS–FV–06–0214; FV07–959–1 FIR]

Onions Grown in South Texas; Change in Regulatory Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule revising the regulatory period for minimum grade, size, quality, and maturity requirements applicable to onions grown in South Texas under Marketing Order No. 959 (order). Prior to implementation of the interim final rule, the regulatory period for South Texas onions was March 1 through June 4 of each year. Changes in available varieties, growing seasons, and marketing opportunities over the years have resulted in a prolonged onion shipping season that now extends beyond June 4 into mid-July. This rule continues in effect the action that extended the regulatory period through July 15. The South Texas Onion Committee (Committee), which locally administers the order, unanimously recommended the change.

EFFECTIVE DATE: September 27, 2007.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, Texas Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (956) 682–2833, Fax: (956) 682–5942, or E-mail: *Belinda.Garza@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on

the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This action, which was unanimously recommended by the Committee, continues in effect the action that extended the regulatory period when minimum grade, size, quality, and maturity requirements apply to onions grown under the order in South Texas.

Under the terms of the order, fresh market shipments of onions grown in a 35-county production area in South Texas were, prior to implementation of the interim final rule, subject to handling regulations during the period March 1 through June 4 of each year. According to the Committee, changes in available varieties, growing seasons, and marketing opportunities over the years have resulted in a prolonged onion shipping season that extended beyond June 4 into mid-July. Because the previous regulatory period did not cover the production season completely, not all onion shipments occurring after June 4 were subject to order requirements.

According to USDA Market News data, 40 percent of South Texas onions shipped in 2005 from District 2, or roughly 11 percent of total shipments for the production area, occurred after June 4. In 2006, 30 percent of onions shipped from District 2, or approximately 10 percent of total shipments for the production area, were shipped after June 4.

Section 959.110 of the order's rules and regulations apportions the 35 counties between two onion-growing areas known as District 1, designated as the Coastal Bend-Lower Valley area, and District 2, designated as the Laredo-Winter Garden area. District 1 is comprised of the counties of Victoria, Calhoun, Goliad, Refugio, Bee, Live Oak, San Patricio, Aransas, Jim Wells, Nueces, Kleberg, Brooks, Kenedy, Duval, McMullen, Cameron, Hidalgo, Starr, and Willacy. District 2 includes the counties of Zapata, Webb, Jim Hogg, De Witt, Wilson, Atascosa, Karnes, Val Verde, Frio, Kinney, Uvalde, Medina, Maverick, Zavala, Dimmit, and LaSalle.

Section 959.52(b) of the order provides authority to limit the handling of any grade, size, quality, maturity, or pack of onions within the production area during any period. Section 959.322 outlines the regulatory requirements authorized under § 959.52(b). Such grade requirements are based on the U.S. Standards for Grades of Bermuda-Granex-Grano Type Onions (7 CFR part 51.3195–3212), or the U.S. Standards for Grades of Onions (Other than Bermuda-Granex-Grano and Creole Types) (7 CFR part 51.2830–2854).

Currently, these handling regulations provide that shipments may not exceed 20 percent defects of U.S. No. 1 grade. In percentage grade lots, tolerances for serious damage shall not exceed 10 percent including not more than 2 percent decay. Double the lot tolerance is permitted in individual packages in percentage grade lots. Applications of tolerances in U.S. onion standards apply to in-grade lots.

Minimum size requirements for different size designations are outlined in the regulations. Specifically, for white onions only, the minimum diameter is 1 inch to 2¼ inches maximum diameter. For other than white onions, the minimum diameter for repacker onions is 1¾ inches to 3 inches maximum with 60 percent or more 2 inches in diameter or larger, 2 to 3½ inches for medium, 3 inches or larger for jumbo or large onions, and 3¾ inches or larger for colossal.

The regulations further specify that tolerances for size in the U.S. onion standards shall apply except that for repacker and medium sizes, not more than 20 percent, by weight, of onions in any lot may be larger than the maximum diameter specified.

The previous South Texas regulatory period during which the aforementioned regulations were in effect ran from March 1 through June 4, annually. A final rule published on May 17, 1996 (61 FR 24877), established that regulatory period to promote the orderly marketing of onions.

Extending the end date of the regulatory period from June 4 to July 15 each year provides the consumer with quality onions for a longer period of time because the entire production area will be regulated throughout its shipping period. Normally, South Texas onion handlers continued to voluntarily request inspection of their onions after June 4 to ensure product quality past the previous regulatory period. Because the industry was already voluntarily having their onions inspected, the extension is not expected to negatively impact the industry and this change aligns order requirements with actual industry operations.

Collecting assessments for an additional five weeks provides the Committee with additional assessment revenue. Based on USDA Market News shipment 2005 data, an additional 1,086,600 fifty-pound equivalent cartons would have been assessed if the extended regulatory period had been in effect. At the current assessment rate of $0.02 per carton, this amount would have generated an additional $21,732 in assessment revenue. Similarly, Market News data for 2006 indicates that an additional 863,400 cartons would have been assessed between June 4 and July 15, and would have resulted in $17,268 of additional assessment revenue.

The additional revenue collected as a result of an extended regulatory period in 2007 allows the Committee to further promote onions and conduct more research projects, making it advantageous to the industry as well as the consumer. All producers will realize a better return for a quality pack through research and market development projects funded by the collection of assessments through July 15.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Small agricultural growers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms are defined as those with annual receipts of less than $6,500,000.

There are approximately 114 producers of onions in the production area and approximately 38 handlers subject to regulation under the order.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 2005–06 marketing year, the industry's 38 handlers shipped onions produced on 17,694 acres with the average and median volume handled being 182,148 and 174,437 fifty-pound equivalents, respectively. In terms of production value, total revenues for the 38 handlers were estimated to be $44.2 million, with average and median revenues being $1.6 million and $1.12 million, respectively.

The South Texas onion industry is characterized by producers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of onions. Alternative crops provide an opportunity to utilize many of the same

facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that all of the 38 handlers regulated by the order would be considered small entities if only their onion revenues are considered. However, revenues from other productive enterprises would likely push a number of these handlers above the $6,500,000 annual receipt threshold. All of the 114 producers may be classified as small entities based on the SBA definition if only their revenue from onions is considered.

This rule continues in effect the action that extended the end date of the order's regulatory period from June 4 to July 15 of each year for Texas onions shipped to the fresh market. This action, which was unanimously recommended by the Committee, continues in effect the action that extended the regulatory period when minimum grade, size, quality, and maturity requirements apply to onions grown under the order. Authorization to implement such regulations is provided in § 959.52(b) of the order. Regulatory requirements authorized under this section are provided in § 959.322.

This action provides that fresh onion shipments from the entire South Texas onion production area will meet all order requirements from March 1 through July 15 of each year. Prior to implementation of the interim final rule, the regulations required that onions grown in the production area meet order requirements from March 1 through June 4 of each year.

According to the Committee, changes in available varieties, growing seasons, and marketing opportunities over the years have resulted in a prolonged onion shipping season that extended beyond June 4 into mid-July. Because the previous regulatory period did not cover the production season completely, not all onion shipments occurring after June 4 were subject to mandatory inspection under the order. Extending the regulatory period ensures that all South Texas onions will be inspected to order specifications.

Prior to implementation of the interim final rule, many South Texas onion handlers voluntarily requested inspection of their onions after June 4 to ensure product quality. Because the industry was already voluntarily having their onions inspected, the extension is not expected to negatively impact the industry and this change aligns order requirements with present day industry operations.

According to USDA Market News data, 40 percent of South Texas onions shipped in 2005 from District 2, or roughly 11 percent of total shipments for the production area, occurred after June 4. In 2006, 30 percent of onions shipped from District 2, or approximately 10 percent of total shipments for the production area, were shipped after June 4.

This action is also expected to support Committee promotional and research activities and benefit consumers. The Committee has indicated that collecting assessments for an additional five weeks will provide them with additional assessment revenue.

Based on USDA Market News shipment 2005 data, an additional 1,086,600 fifty-pound equivalent cartons would have been assessed if the extended regulatory period had then been in effect. At the current assessment rate of $0.02 per carton, this amount would have generated an additional $21,732 in assessment revenue. Similarly, Market News data for 2006 indicates that an additional 863,400 cartons would have been assessed between June 4 and July 15, 2006, and would have resulted in $17,268 of additional assessment revenue.

The additional revenue allows the Committee to further promote onions and conduct more research projects, making it advantageous to the industry as well as the consumer. All producers will realize a better return for a quality pack through research and market development projects funded by the collection of assessments through July 15.

The additional five weeks of assessment collection is not expected to significantly burden South Texas onion handlers. A burden calculation of the additional assessments that would have been collected in 2006 if the regulatory period had been in effect for that season indicates that the additional assessment payments by handlers would have equaled 0.039 percent of the total of 2006 production value [($17,268/$44.2 million) × 100 = 0.039]. Total 2006 revenues for the 38 handlers were estimated to be $44.2 million, with average and median revenues being $1.6 million and $1.12 million, respectively.

Extending the end date of the regulatory period from June 4 to July 15 each year will also provide the consumer with quality onions for a longer period of time because the entire production area will be regulated throughout its shipping period.

One alternative to this action would have been to not extend the regulatory period beyond the prior end date of June 4. However, the Committee believed that not extending the regulatory period would have resulted in a significant portion of the South Texas onion crop not being consistently regulated.

While most handlers were extending inspection beyond the June 4 regulatory deadline on a voluntary basis, such inspection was not required. By extending the regulatory period, such inspection became mandatory. Mandatory inspection ensures orderly marketing of all South Texas onions since all handlers and product will be required to fulfill the same inspection requirements and product standards under the order for the entire production period. Therefore, USDA determined that the end date of the regulatory period for South Texas onions should be extended from June 4 to July 15.

While this action will impose some additional costs on South Texas onion handlers and producers, the costs are expected to be minimal, and will be offset by the benefits of the action. The Committee believes that this modification benefits consumers, producers, and handlers. The benefits of this action are not expected to be disproportionately greater or lesser for small entities than for large entities.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Further, the Committee's meeting was widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. All Committee meetings were public meetings and all entities, both large and small, were able to express their views. Furthermore, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on May 7, 2007. Copies of the rule were mailed by the Committee's staff to all Committee members, onion handlers, and interested persons. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended July 6, 2007. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule continues in effect the action that extended the regulatory period under the South Texas onion marketing order.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (72 FR 25677, May 7, 2007) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 959

Onions, Marketing agreements, Reporting and recordkeeping requirements.

PART 959—ONIONS GROWN IN SOUTH TEXAS

Accordingly, the interim final rule amending 7 CFR part 959 which was published at 72 FR 25677 on May 7, 2007, is adopted as a final rule without change.

Dated: August 21, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–4162 Filed 8–27–07; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 13 and 110

RIN 3150—AH74

Use of Electronic Submissions in Agency Hearings

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to require the use of electronic submissions in all agency hearings, consistent with the existing practice for the high-level radioactive waste repository application (which is covered under a separate set of regulations). The amendments require the electronic transmission of electronic documents in submissions made to the NRC's adjudicatory boards. Although exceptions to these requirements are established to allow paper filings in limited circumstances, the NRC maintains a strong preference for fully electronic filing and service. The rule builds upon prior NRC rules and developments in the Federal courts regarding the use of electronic submissions.

DATES: *Effective date:* This final rule will become effective October 15, 2007.

Applicability date: This final rule will apply only to new proceedings noticed on or after that date. For any proceeding noticed before that effective date, filings may be submitted via the E-Filing system, but only after this rule's effective date and upon agreement of all participants and the presiding officer.

ADDRESSES: This final rule and any related documents are available on the NRC's interactive rulemaking Web site at *http://ruleforum.llnl.gov*. For information about the interactive rulemaking site, contact Carol Gallagher, telephone (301) 415–5905, e-mail *CAG@nrc.gov*. Publicly available NRC documents related to this final rule can also be viewed on public computers located at the NRC's Public Document Room (PDR), located at O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will make copies of documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room currently located at *http://www.nrc.gov/reading-rm/adams.html*.

From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1(800) 397–4209, (301) 415–4737, or by e-mail at *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Darani Reddick, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3841, e-mail *dmr1@nrc.gov*, or Steven Hamrick, Office of the General Counsel, telephone (301) 415–4106, e-mail *sch1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On December 16, 2005 (70 FR 74950), the NRC published a proposed rule, E-Filing, to require that submissions in any adjudicatory hearing governed by 10 CFR part 2, Subpart C, part 13, or part 110 be made electronically. NRC's Electronic Information Exchange (EIE), a component of the E-Filing system, permits users to make electronic submissions to the agency in a secure manner using digital signature technology to authenticate documents and validate the identity of the person submitting the information. Upon receipt of a transmission, the E-Filing system time-stamps documents transmitted to the NRC and sends the submitter an e-mail notice confirming receipt of the documents.

In crafting the rule, the NRC relied upon its past experience with electronic submissions and also examined Federal court practices. These experiences are derived from the "Electronic Maintenance and Submission of Information" final rule ("E-Rule"), issued October 10, 2003 (68 FR 58792), and the 10 CFR part 2, Subpart J procedures for electronic filing in high-level waste proceedings. The NRC also looked to the use of electronic filing by Federal courts. E-Filing adopts some technical and procedural provisions nearly verbatim from the E-Rule, 10 CFR part 2, Subpart J, and the procedures adopted by the Federal courts.

The E-Filing rule is accompanied by *Guidance for Electronic Submissions to the NRC* (Guidance), a guidance document that is currently available at *http://www.nrc.gov/site-help/e-submittals.html*. This guidance document consolidates previous guidance set forth for electronic submittal of information to the agency, and sets forth the technical standards for electronic transmission and for formatting electronic documents as well as instructions on how to obtain and use

the agency-provided digital identification (ID) certificate that a participant must have to submit or retrieve an electronic filing through the E-Filing system. These standards have not been included in the rule so that it will be easier and faster for the NRC to amend the Guidance, when warranted, to allow use of the most current technology. Information on accessing and using the E-Filing system is also available on the NRC Web site, *http://www.nrc.gov.*

II. Overview of the Final Rule

E-Filing represents a major revision to the NRC's methods of filing and service in adjudicatory proceedings governed by the Part 2, Subpart C and Part 13 requirements, and a minor revision to Part 110 requirements. The final rule is generally explained in section III of this document; section IV provides a section-by-section analysis of changes made from the proposed rule to the final rule. A thorough explanation of the concepts involved in E-Filing can be found in the proposed E-Filing rule (70 FR 74950; Dec. 16, 2005).

A. Conceptual Framework for Electronic Filing and Service

Filing and service involve the transfer of a document from one participant to the presiding officer, the other participants in the proceeding, and the Secretary of the Commission for inclusion in the official proceeding docket. Two types of electronic filing and service exist under E-Filing: fully electronic and partially electronic. Fully electronic filing and service involves the electronic transmission of an electronic document. Partially electronic filing and service entails the physical delivery or mailing of optical storage media (OSM) (such as a CD–ROM) containing an electronic document. While E-Filing permits partially electronic filing and service in cases where necessary, the rule generally calls for fully electronic filing (with certain exceptions permitted by the rule and further described in the Guidance).

B. Benefits of Electronic Filing and Service

The benefits of electronic filing and service originate from the use of electronic transmission and electronic documents. The electronic transmission of documents is more cost effective and faster than physical delivery of paper mail. While the added cost and delay of physically delivering or mailing one document may be small, the total cost and delay could be significant over the course of a proceeding with many filings and a large service list.

In addition, compared to paper documents, electronic documents save resources and increase efficiency. Electronic documents are less expensive to produce, store, transport, and retrieve than paper documents. Electronic documents also have text-searching capability, which allows users to review many documents quickly and find those sections that are relevant to their needs, along with text-capture capability, which enables users to transport entire passages from one document to another quickly. Finally, the filing of electronic documents in the appropriate and uniform format benefits the NRC because the agency already processes filings into electronic formats for storage as official agency records.

C. The E-Filing System

Under E-Filing, a participant wishing to file a document is required to convert the document into the appropriate electronic format and electronically transmit it via the agency's EIE to an electronic system monitored by the NRC, called the E-Filing system. The NRC established the E-Filing system, which can be accessed on the NRC's public E-Submittal Web site at *http://www.nrc.gov/site-help/e-submittals.html.* The system receives, stores, and distributes documents filed in proceedings covered by this final rule for which an electronic hearing docket has been established.

To electronically submit a filing, a participant with an agency-provided digital certificate completes the Adjudicatory Document Submittal form on the E-Submittal system web page and selects the appropriate proceeding docket from a provided drop-down list, which lists all dockets in which that person is a participant. In the case of all initial petitions to intervene or requests for hearings, the potential submitter will follow the instructions in the Notice of Opportunity for Hearing for the proposed licensing activity or as stated on the NRC Web page for obtaining a digital certificate. In essence, the stated process will require the potential submitter of an initial document in a proceeding to contact the NRC Office of the Secretary (SECY) and obtain authorization to apply for a digital certificate. At that time, the initial filing submitter must identify for SECY the matter in which it wants to file an intervention petition or hearing request, including the licensing docket involved and the **Federal Register** notice, if any, that provides an opportunity for hearing. After SECY is contacted and authorizes obtaining a digital certificate, SECY will establish a docket to receive the intervention petition or other initial filing and any responses thereto filed using the E-Submittal form. If an initial filing submitter already has a digital ID certificate, he or she must still contact SECY so that it can establish a docket to receive the initial filing. Upon being authorized to obtain a digital certificate, the first time submitter, following the procedures on the E-Submittal Web site, will then select the appropriate docket for filing the submission. SECY will also establish a service list that will include those who are identified for service in the Notice of Opportunity for a Hearing.

Thereafter, the participant attaches, signs using the agency-provided digital ID certificate, and transmits the document. For a filing submitted under an order of the presiding officer that prevents the disclosure of certain information except to certain individuals (a protective order) the submitter selects the participants to be served electronically from the electronic distribution list, which is a list of the Atomic Safety and Licensing Board members and other individuals involved in the proceeding as participants or party representatives. For a public filing, the submitter may view the list of participants to be served electronically but cannot alter the list. The transmission process can be performed either by the participant signing the document or another authorized individual, such as a secretary or clerk.

The E-Filing system serves all the persons selected by the submitter (or pre-selected in the case of a public filing) to receive service by sending an e-mail notifying them that a document has been filed and providing them with a temporary link from which they can view and save the document until it is made permanently available though the Publicly Available Record System (PARS) or the Electronic Hearing Docket (EHD). This e-mail constitutes service of the document upon the participants to whom it was sent. Finally, the E-Filing system will send an electronic acknowledgment to the filer, which is an e-mail that confirms receipt of the filing and reports that an e-mail has been sent to the selected persons on the electronic distribution list.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available during normal business hours. The help line number is 1 (800) 397–4209 or locally, (301) 415–4737.

D. Electronic Hearing Dockets

The EHD is a database that houses a visual presentation of the docket for a particular proceeding and a link to all the filings in that proceeding. The EHD can be accessed through the "Electronic Reading Room" link on the NRC homepage. After an electronic docket has been established, SECY will inform the participants of the docket's existence. SECY will maintain that docket and all publicly available filings will be accessible from the electronic hearing docket site.

Although the electronic hearing docket established by SECY after the initial intervention petition or hearing request will bear the licensing docket number under which the proceeding was designated in the **Federal Register** notice, after a presiding officer is assigned to the proceeding, SECY will replace the licensing docket number with a proceeding docket number. The proceeding docket number will be exactly the same numerical digits as the licensing docket number, except that a two- or three-letter suffix is added to differentiate between multiple hearings involving the same facility. SECY will inform the participants of the modified proceeding docket number and will instruct them to use the proceeding docket number rather than the licensing docket number when accessing documents.

E. Digital ID Certificates

To access the E-Filing system, a participant must obtain a digital ID certificate from the NRC, which will be supplied at no cost. A digital ID certificate is a unique file downloaded onto a participant's computer that identifies the participant to the E-Filing system. A digital ID verifies the participant's identity for the E-Filing system when making an electronic filing, and enables the participant to digitally sign documents submitted to the system. Digital ID certificates are linked to the e-mail address submitted by the individual when applying for a certificate. Therefore, if a participant changes his or her e-mail address, he or she must apply for a new certificate.

A participant must request a digital ID certificate from the NRC before submitting its first electronic filing with the NRC. If the participant is an organization, the digital ID is assigned to a participant representative, rather than the organization. The notices of opportunity for hearing that the NRC publishes in the **Federal Register** will remind potential participants of the requirement to obtain a digital ID certificate. After contacting SECY to obtain authorization for a digital ID, a participant should apply for a digital ID on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A participant will be able to seek assistance in obtaining a digital ID certificate through the "Contact Us" link on the "Electronic Submittals" page located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or through the NRC technical help line. After a digital ID certificate is assigned, that ID will provide the participant with access to all the E-Filing proceedings to which it is a participant; therefore, only one digital ID certificate with the appropriate level of access certification is required per participant regardless of the number of proceedings in which that participant is involved. The NRC reserves the right to revoke a digital ID certificate if it is being abused. An individual or organization who anticipates participation in NRC proceedings is encouraged to request a digital ID certificate prior to publication of a notice of opportunity for hearing.

In addition to digital ID certificates assigned to individuals, Group digital ID certificates may be assigned to firms or other organizations. Group digital ID certificates, which can be downloaded onto several computers, allow multiple individuals who do not have an individual digital ID certificate to be served with a filing to the E-Filing system, thus permitting those individuals to retrieve documents filed in the proceeding. Because Group digital ID certificates are assigned to entities, the Group digital ID certificate does not have an electronic signature associated with it and, thus, cannot be used to electronically sign filings submitted to the E-Filing system. Thus, at least one representative of the group must obtain an individual digital ID certificate to be able to file electronically. Further, group digital ID certificates cannot be used to receive filings subject to a protective order because only those who have signed a non-disclosure agreement will receive these filings. Participants or their representatives who have signed non-disclosure agreements must obtain individual digital ID certificates to be served with filings subject to a protective order.

F. Electronic Distribution List

Each proceeding with an electronic docket will have a distribution (electronic service) list, which includes the presiding officer, as well as all of the participants (such as the intervenor(s), applicant/licensee, interested government participant(s), and NRC staff) taking part electronically in that specific proceeding. Upon receiving an initial filing from a participant, SECY will add the participant to the electronic distribution list, thereby providing the participant notification of and access to documents that will be filed in the proceeding and enabling the participant to electronically file and serve the presiding officer and others on the distribution list. Participants may retrieve documents filed more than 14 days previously from the EHD Web site.

G. Certificates of Service and Service List

E-filing requires that submitters attach a certificate of service, including a service list, to their filings to inform the recipients of the entities who received the filing and how they were served. This procedure is particularly important for protective order filings because the E-Filing system will not automatically select a list of the entities to receive the filing. That responsibility will be left to the submitter to perform under the requirements of the protective order governing filings and restrictions pertaining to service of protected filings on recipients identified in the order or related disclosure agreements. Also, the electronic distribution list may not be an all-inclusive list of the participants in the proceeding because it will not include any participants permitted to file and be served by paper.

H. Signatures

10 CFR 2.304(d) provides that all electronic documents must be signed with the assigned digital ID certificate of a participant or a participant's representative or attorney. It also allows for additional signatures by participant representatives or attorneys using a typed designation, as discussed below. The document, however, does not need to be electronically signed and electronically submitted by the same person with the same digital ID certificate. For example, an attorney or participant's representative may electronically sign a document using his or her digital ID certificate, but a secretary may *submit* the document, using his or her own digital ID certificate.

The Commission considers documents that have been electronically signed following the procedures outlined below to be the equivalent of traditional signed paper documents. To sign a filing with a digital ID certificate, § 2.304(d)(1)(i) requires that a signature block be added to the electronic document before it is submitted. The signature block will consist of the phrase "Signed (electronically) by,"

followed by the signer's name and the capacity in which the person is signing. It will also contain the date of signature and the signer's postal address, phone number, and e-mail address. The participant will not need to sign a paper document. The digital signature will be added at the time of submittal to the E-Filing system by the participant clicking on the "Click to Digitally Sign Documents" button.

If additional signatures are added to an electronic document, these signatures must be added using a typed "Executed in Accord with 10 CFR 2.304(d)" designation. To execute a pleading or other submitted document with a typed-in "Executed in Accord with 10 CFR 2.304(d)" designation, the participant would add a signature block, as described above, for the additional signatories and type in the phrase "Executed in Accord with 10 CFR 2.304(d)" on the signature line of the signature blocks for each added signer. As section 2.304(d)(1) indicates, a person executing a pleading or other similar document submitted by a participant using this designation is making a representation that the document has been subscribed in the capacity specified with full authority, that he or she has read it and knows the contents, that to the best of his or her knowledge, information, and belief the statements made in it are true, and that it is not interposed for delay. The Commission also considers documents that have been signed following this procedure to be the equivalent of traditional signed paper documents. Therefore, in a change from the proposed rule, the Commission will not require participants to retain paper copies of handwritten signatures. The NRC staff could also use this method for providing additional signatures, but would type in "/RA/," meaning "Record Approved," which is the agency's current method of signing digitally stored documents.

Documents signed under oath or affirmation, such as affidavits, should be executed in the form specified in 28 U.S.C. 1746 and signed with the "Executed in Accord with 10 CFR 2.304(d)" designation as well, which § 2.304(d) now would specify is, in accord with 28 U.S.C. 1746, a representation that, under penalty of perjury, the document is true and correct to the best of that individual's knowledge and belief. The guidance document provides further explanation of signing documents under oath or affirmation.

I. Electronic Transmission

Under E-Filing, participants should convert their documents into the appropriate electronic formats detailed by the Guidance and electronically transmit these documents to the presiding officer, the other participants, and SECY. The Guidance sets technical standards for filing and service under the rule and defines the file sizes and formats for electronic transmissions. By putting the technical provisions in the Guidance, the Commission is able to update the electronic transmission standards to keep pace with technology and the changing needs of the NRC and the participants in its adjudication without additional rulemaking. Exemptions to the electronic transmission requirement are discussed below. (See section II.K. of this document).

J. Electronic Document Requirements

Because the E-Filing system can accept documents only in specified electronic formats, E-Filing has specific electronic document standards that are enumerated in the *Guidance for Electronic Submissions to the NRC* ("Guidance"), which is available on the NRC Web site, *http://www.nrc.gov*. This guidance document replaces all previous agency guidance on electronic submittals to the agency, including *Appendix A: Guidance for Electronic Submissions to the Commission* (which accompanied the E-Rule), *Guidance for Submission of Electronic Documents Under 10 CFR Part 2, Subpart J* (which applies to the high-level waste repository proceeding), and the *E-Filing/E-Submittal Proposed Guidance*. For the foreseeable future, the only technically compatible formats are certain types of portable document format (PDF) file formats. In addition, individual submissions cannot exceed 50 megabytes (approximately 5000 pages of text), which the NRC considers the current upper limit for practical Internet transmissions.

The Guidance creates three categories of documents: simple, large, and complex. Simple documents are documents filed in a PDF format and transmittable to the E-Filing system in a single transmission.

Large documents, meaning documents exceeding 50 megabytes, are also filed in a PDF format. The Guidance currently recommends that these large documents should be segmented into smaller files that meet the 50 megabyte limit and then transmitted to the E-Filing system, which reunites the files as a package. Document size limits provided in the Guidance are subject to change, to keep pace with the most current technology. Participants are also asked to physically deliver to all the participants in the proceeding OSMs containing the large document, in its entirety, in a unified form that could be used as a reference copy.

Complex documents are those that (1) are not entirely in an acceptable PDF format; (2) contain Classified National Security Information or Safeguards Information; or (3) exceed the 50 megabyte limit and cannot be segmented. The Guidance asks participants to electronically submit to the E-Filing system the sections of a complex document that are in PDF, do not contain Classified National Security Information or Safeguards Information, and can be segmented into less than 50 megabytes. The Guidance also asks participants to deliver the entire complex document on an OSM to all authorized participants in the proceeding.

As was previously noted, the Guidance recognizes that only certain forms of PDF are technically compatible with the NRC E-Filing system. As part of the development of the NRC E-Filing system, the NRC chose PDF formats over other formats based on the following considerations:

(1) The format is a type that can be entered as an official agency record;

(2) The format behaves consistently over a broad range of operating systems and platforms (meaning pagination remains identical regardless of the printer used);

(3) The format can be easily accessed by most users;

(4) The format is one to which other document formats can be easily converted;

(5) The format supports images, text, and other types of documentary material that can be useful in a hearings context; and

(6) The format has text-searching and text-capture capabilities.

PDF has all of these features. Further, the National Archives has identified certain PDF versions as acceptable for transfer of permanent records to the archives.

K. Exemptions From the Electronic Filing and Service Requirements

In recent years, almost all participants in NRC adjudications have been filing and serving documents via e-mail in addition to submitting paper copies, which are generally regarded as the "official" versions of the documents. This use of e-mail submissions exists because a vast majority of the participants in NRC proceedings have ready access to computers, word-

processing programs, and the Internet. This has led the NRC to conclude that almost all participants are ready to take the next step and move to a fully electronic environment. The NRC recognizes that implementing a rule governing electronic submission could entail initial costs for some persons because participants would need ready access to a computer with word-processing software, software that will save/render documents in PDF format, and the Internet. However, the participants are expected to recoup these expenses through cost savings in labor, copying, and mailing paper documents to multiple participants.

(1) Good Cause Required for Exemption From Electronic Filing

Despite these advantages, the NRC recognizes that some individuals may conclude that they are not able to file electronically for a variety of reasons. The NRC, therefore, will allow exemptions from the E-Filing rule for certain participants in appropriate circumstances. To participate using traditional paper filing and service, a participant must request an exemption from the electronic filing requirement and should submit a request for authorization from the presiding officer with its first filing in the proceeding. "Good cause" for such an exemption would depend on the participant's circumstances and could include such matters as: disability, lack of readily-available Internet access, or the cost of purchasing the necessary equipment or software. The presiding officer will determine if a participant has demonstrated good cause on a case-by-case basis.

If, after submitting its first filing electronically, a participant wishes to request an exemption, the participant will, in addition to the requisite showing of good cause, have to show that granting the exemption late is in the interest of fairness. A participant may meet this standard by demonstrating an unforeseen change in circumstances that makes filing via the E-Filing system especially onerous. Until the presiding officer rules on the request, the participant must continue to file electronically.

E-Filing provides exemptions from the requirement to send the filing to the E-Filing system electronically as well as from the requirement to submit documents in computer file format. These are discussed below.

(2) Electronic Transmission Exemption

A participant willing to submit a document formatted in PDF, but capable only of delivering the PDF document via OSM, can request an exemption from electronic transmission over the Internet to the E-Filing system. This participant's filings would be exempt from the requirement of being sent to the E-Filing system.

(3) Electronic Document Exemption

A participant can also request an exemption from the requirement to file documents formatted in PDF as well as the electronic transmission requirement through the E-Filing system. This participant would physically file and serve paper documents on the presiding officer and other participants in a manner determined by the presiding officer. In return, the presiding officer, other participants and SECY would physically serve paper documents on a participant who has been granted this exemption.

Although these exemptions are available for participants in NRC proceedings, the NRC believes that the cost savings from electronic filing generally will exceed electronic filing associated equipment/software/Internet access procurement costs and, thus, encourages potential participants to move to electronic filing and service, whenever possible, rather than seeking an exemption. When a participant is granted either a document exemption or a transmission exemption, E-Filing permits a mixed service proceeding, which is discussed in the next section.

L. Mixed Service Proceedings and Computation of Time

The Commission recognizes the possibility that there could be a proceeding in which a participant will receive an exemption permitting the participant to file and serve paper copies, while the other participants will file and serve documents electronically. As mentioned previously, if an exemption from electronic filing and formatting is granted, the NRC prefers mixed service proceedings to traditional proceedings that rely solely on paper. Mixed service proceedings are those in which some, but not all, of the participants file and serve by the same non-electronic method. For example, rather than requiring that all participants physically serve and file paper documents when one participant to the proceeding is granted an electronic documents exemption, mixed service proceedings allow the exempted participant to file, serve, and be served physically, while the rest of the participants file and serve each other electronically according to the standards in the Guidance. Standards concerning timeliness and the number of days for service will be established by the presiding officer who grants the electronic filing exemption on a case-by-case basis as fairness and efficiency considerations dictate. However, § 2.306(c) specifies that documents served in person or by expedited mail must be served by 5:00 p.m. Eastern Time and a document served through the E-Filing system must be served by 11:59 p.m. Eastern Time.

M. Completeness of Electronic Filings

Under § 2.302(d)(1), filing by electronic transmission is considered complete "when the filer performs the last act that it must perform to transmit a document, in its entirety, electronically." For electronic transmissions, the "last act" would occur when the participant hits the "submit/transmission" or "send" button. The language in § 2.302(d)(1) and the meaning of "last act" are taken from the Advisory Committee Notes to the 2002 amendments to Rule 25(c)(4) of the Federal Rules of Appellate Procedure, which covers service requirements. The NRC adopted the "last act" standard for several reasons. First, the "last act" standard, which penalizes a party only for events within its control, is fair. Upon selecting the send or transmit button, a participant relinquishes all control over a document and cannot be certain when the document will be received by the NRC's system. Making completeness of filing dependent upon receipt of the transmission would subject participants to the vagaries of electronic transmission, which may include such problems as the filer's Internet connection being slower on the day of filing, the filer's Internet service disconnecting during transmission, or the filer's connection to the E-Filing system server failing to connect because the allotted time for connection expired.

Second, the "last act" standard conceptually coincides with the standard for filing by mail, when a filing is considered complete upon depositing the document, in its entirety, in a mailbox. In effect, the "last act" of depositing the document in the mailbox is equivalent to hitting the "submit/transmission" or "send" button.

N. Completeness of Filing When Multiple Filing Methods Are Required

When two or more methods of filing are permitted in a mixed proceeding, § 2.302(d)(4) indicates that filing is complete when all the methods of filing used are complete. For example, if a participant needs to make a filing consisting of three electronic documents, one of which is entirely Classified National Security

Information, the filer is to submit the two non-classified documents by electronic transfer and all three documents on an OSM. If the participant mails the OSM on Monday and performs the electronic transfer on Tuesday, filing would be complete Tuesday. Although the OSM mailed Monday would contain the entire filing, a filing would not be complete until all required filing methods have been completed.

O. Retrieving Documents Filed in a Proceeding

Upon receiving an electronic filing, the E-Filing system will send an e-mail notification to all persons on the electronic distribution list. The e-mail will notify those on the list that a filing has been made in the proceeding and will provide a link to the document that will stay active for 14 days. Each person with access via an individual or Group digital ID certificate can click on the link to access the document for viewing and/or saving in PDF compatible software and can save the document to his or her own computer. Thereafter, to re-open the document, the person need only access it from his or her own computer. Alternatively, once it is processed into the agency's ADAMS system (usually within 72 hours of submission), a person can access a publicly available document by logging onto the EHD located in the Electronic Reading Room, which is available at *http://www.nrc.gov/reading-rm.html*. The EHD is a publicly available Web site; no digital ID certificate is required to retrieve documents from the EHD. A link to the EHD will be available on the NRC Web site.

P. Effective Date of the Rule

This rule will become effective on October 15, 2007. Although this rule is legally applicable only to proceedings noticed after October 15, 2007, participants in ongoing proceedings may follow the rule upon agreement of all participants and the presiding officer, but may submit documents via the E-Filing system only after the effective date of this rule. The NRC encourages participants in ongoing proceedings to follow the rule.

III. Comments on the Proposed Rule

The NRC held a public meeting on January 10, 2006, to discuss and receive comments on the proposed rule and to demonstrate electronic filings. The NRC also received written comments on the proposed E-Filing rule, which were due to the agency by March 1, 2006. The NRC received comments on various areas of the proposed rule, including comments on technical aspects of electronic filing contained in the proposed E-Filing Guidance. The following summarizes the comments either verbalized at the public meeting or submitted to the NRC in writing and the agency's responses. Suggested editorial changes have been reflected in the final rule and are not individually responded to below. No commenter opposed the proposal to require electronic filing or asserted that they would seek an exemption from the presiding officer if they were seeking to participate in a proceeding in which the rule was applicable.

A. Comments on the Proposed E-Filing Process

Comment. Is the E-Filing rule satisfied when a participant files by attaching the document to electronic mail?

Response. No. The rule requires that filings in adjudicatory proceedings must be submitted by attaching a document to the Adjudicatory Docket Submission Form on the E-Submittal Web page. Therefore, a document attached to an e-mail will not be accepted as a properly submitted filing unless otherwise provided by order of the presiding officer.

Comment. What exactly is being certified when the certificate of service is submitted to the E-Filing system? Is there a way to verify that the filing will be served on the people on the service list?

Response. Certifying an electronic certificate of service has the same effect as certifying a paper copy certificate of service. The E-Filing system automatically generates the service list for particular proceedings and allows the participant to review the service list before submitting a filing. For public filings, participants will be able to review the service list but not change those people designated to be served with the filing. For filings subject to a protective order, participants can review the service list and must designate those who should be served with the filing. In either instance, however, as noted previously, a service list identical to the traditional paper service list (i.e., listing those persons or entities served) should also be included as part of the electronic filing or submission.

Comment. When attaching declarations or affidavits signed under oath and affirmation to a filing, must the person signing the affidavit also electronically sign the filing?

Response. No. An oath or affirmation document should conclude with a statement to this effect:

"I declare under penalty of perjury that the foregoing is true and correct. Executed on [date]."

As the Guidance indicates, because the E-Filing system only accommodates execution by one digital signatory for an affiant whose declaration is included with a pleading or other document submitted by a participant, participant's representative, or counsel, "Executed in Accord with 10 CFR 2.304(d)" would be typed on the signature line of the signature block of the oath or affirmation document to be electronically submitted. Execution of an oath or affirmation document in this manner will be considered the equivalent of a traditional signed copy.

Comment. Will there be a help desk to answer questions on E-Filings?

Response. Yes, assistance will be available through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling NRC technical support, which is available during normal business hours. The help line number is 1 (800) 397–4209 or locally, (301) 415–4737.

Comment. Does the E-filing rule contain provisions for filing proprietary information?

Response. Although the rule itself does not address handling of proprietary information for electronic filing, the Guidance accompanying the rule does. The guidance document provides that sensitive information that is not Safeguards or Classified National Security Information may be filed electronically to the E-Filing system under the system's protective order file regime. Each sensitive document should be clearly marked, and the cover letter should indicate the sensitivity of each document. Once transmitted to the E-Filing system, sensitive documents will be protected by being placed in specific folders in the Electronic Hearing Docket (EHD) that permit access only to those participants who have been authorized to receive and review the sensitive material.

Comment. The Guidance contemplates filing Classified National Security Information on an OSM. However, neither the rule nor the Guidance provides an exemption for paper filing of classified documents. What if the participant submitting the filing has the appropriate security clearance to possess the classified information, but does not have an NRC-approved classified computer system to process the information on electronic media?

Response. The presiding officer in each proceeding will issue an order, as

necessary, that will establish the procedures for the preparation, submission, and service of documents containing classified information. Accordingly, participants who cannot provide electronic versions of documents containing classified information should bring this issue to the attention of the presiding officer at the appropriate time.

Comment. How will documents filed under protective order be accessed through the EHD? Once accessed through the EHD, may these documents be printed?.

Response. Those seeking to file and access protective order file materials will be required to obtain a digital ID certificate from the agency. The EHD will recognize a participant's digital ID certificate as one that may have access to documents filed under protective order. Once in the EHD, a secure login screen will appear only to those who may access documents filed under a particular protective order, prompting the participant to enter a login ID and password. With the exception of NRC employees, who because of their responsibility under NRC regulations not to disclose proprietary or other sensitive information covered by a protective order generally are not asked to sign non-disclosure agreements required by protective orders, SECY will give the password only to those participants who have signed the non-disclosure agreement required by the protective order in that particular case. After the login ID and password are verified by the EHD system, the participant may access documents filed under the protective order by which that participant has been granted access.

Participants who have been granted an exemption from electronic filing and, therefore, do not have digital certificates, but who have signed a non-disclosure agreement required by a protective order, may be granted access to protective order filings on the EHD on a case-by-case basis in accordance with procedures specified by the protective order. Documents under protective order may be printed from EHD, but must be controlled as specified by the terms of the governing protective order.

Comment. Is there a specified alternative method of filing that should be used if the E-Filing system is unavailable due to technical issues?

Response. Neither the rule nor the guidance document addresses alternative methods for filing if the E-Filing system is unavailable. Instead, the presiding officer in each proceeding will issue an order that specifies a backup method for filing if the E-Filing system is unavailable.

Comment. When changing to a new computer, must the participant re-register for a digital certificate?

Response. Not necessarily. Digital ID certificates can be downloaded and saved on a disk or memory stick so that when switching to a different computer, the participant may import it off of the disk or memory stick onto the new computer. However, digital ID certificates are linked to a participant's e-mail address. If a participant's e-mail address changes, the participant must apply for a new digital certificate.

Comment. What is the need for group digital ID certificates, and how would individuals belonging to a group ID be notified of a filing by the E-Filing system?

Response. Group IDs may be assigned to law firms or other organizations and can be downloaded onto several computers. This allows multiple individuals who do not have an individual digital ID certificate to be served with a filing to the E-Filing system and permits those individuals to retrieve documents filed in the proceeding. Notification of the filing would be sent to the e-mail address associated with the Group ID, which generally would be a central mailbox that the individuals belonging to the Group ID would be able to access.

Comment. Proposed § 2.306(b)(3) would give additional time to all participants in a proceeding when multiple service methods are used. The additional time would be computed based on the service method used to deliver the entire document. There could be a circumstance where not all participants receive the "entire" document. For example, if part of the document is proprietary information under protective order and is filed on a CD–ROM, a participant who has not signed the protective order would not be served with that CD–ROM; thus, the participant would not receive the "entire" document.

Response. Because a participant who has not signed the protective order is not entitled to see the proprietary information, it is not clear why, for service purposes, this participant has not received the "entire" document after a version containing all the nonproprietary portions of the document has been provided (if such a version can be provided appropriately). The agency believes that this scenario would be a rare occurrence. Therefore, the presiding officer will have discretion to set forth, on a case-by-case basis, the calculation of additional time when a participant may not be entitled to receive an entire filing served by multiple methods. This section of the final rule has been revised to provide for this possibility.

Comment. Section 2.306(b)(5) of the proposed rule would add a day to the response time for a document hand-delivered after 5:00 p.m. but not for a document served by the E-Filing system at midnight. The same additional day should be provided for any responses hand-served or served by the E-Filing system after 5:00 p.m.

Response. The agency has reconsidered the computation of time set forth in §§ 2.306(b)(5), 13.27(c)(5) and 110.90(c)(5) of the proposed rule. The agency has decided that, for fairness and efficiency, the computation of time will begin the following day after the document is served, unless the presiding officer in that proceeding determines otherwise.

For example, if a pleading is served on Monday, regardless of the time of day or method of service, the number of days to respond will be calculated beginning on Tuesday. Sections 2.306(c), 13.27(d) and 110.90(d) of the final rule have been revised to eliminate the computation of time method set forth in the proposed rule. This aspect of the final rule also represents a change from current practice, which allows an extra day for documents received electronically after 5:00 p.m.

These sections of the final rule also now specify that if a document is served by the E-Filing system or by electronic mail, it must be served by 11:59 p.m. Eastern Time of the day it is due in order to be considered timely. The reason for this change is that the E-Filing system requires periodic maintenance that is generally scheduled after midnight Eastern Time on weekdays and results in the system being temporarily unavailable. To ensure that electronic submittals are not impacted by these post-midnight maintenance outages, the NRC is mandating an 11:59 p.m. Eastern Time filing deadline. If a document is served in person or by expedited service, the final rule mandates that it must be served by 5 p.m. Eastern Time of the day it is due in order to be considered timely. .

Comment. Section 2.306(b)(5) of the proposed rule also appears to afford "all participants" an additional day even if only one participant is served by hand delivery after 5 p.m. This appears to be impractical because it would be difficult for one participant to know that another participant had been hand-served after 5 p.m., thus affording all participants one additional day. .

Response. The final rule has been revised to specify that, to be considered timely, a document must be hand-

served by 5 p.m. Eastern Time, or served by the E-Filing system by 11:59 p.m. Eastern Time. As discussed above, redesignated § 2.306(c) of the final rule has revised the computation of time method outlined in the proposed rule so that it will begin the day after a document is served. This will eliminate any ambiguity as to whether, depending on the time a document has been served, the participants will be afforded an additional day.

Comment. The proposed rule uses the term "participant" but does not define this term. "Participant" should be defined in § 2.4.

Response. The definition of "Participant" has been added to § 2.4 of the final rule.

Comment. How will the E-Filing rule affect the use of the Digital Document Management System (DDMS) in agency proceedings?

Response. The E-Filing rule will not affect the DDMS. The DDMS is the Atomic Safety and Licensing Board Panel's hearing management support system that combines web-based hearing and document management with electronic evidence presentation, real-time transcription, and digital recording to provide users with continual electronic access to searchable evidentiary material and video transcripts, and a means to present most evidence in an electronic fashion. In the near future, the DDMS will be used by the Pre-License Application Presiding Officer Board in the high level-waste repository licensing proceeding as well as in other proceedings.

B. Comments on the Guidance Document Accompanying the Proposed Rule

Comment. Must electronically-filed documents be in a certain PDF format?

Response. Yes. The Guidance enumerates the specific electronic document standards to be used for electronic filings. Currently, the only acceptable formats are certain types of PDFs and certain other formats used for spreadsheets, when necessary.

Comment. The naming conventions set forth in the Guidance could result in the loss of a file's interactive features. The Guidance should allow exceptions or dual submittals to allow use of the original file naming convention, and should also allow submittal of nested folders because some of the features rely on unchanged relative path files.

Response. The naming conventions in the Guidance are intended to allow the NRC's profiling process to be more efficient because it alerts the agency's Document Processing Center staff to the order in which the electronically submitted files should be arranged. This allows for easier viewing and use because files in a package will already be arranged in the correct sequential order. Therefore, participants should follow the naming conventions in the Guidance. Further, participants should not file dual submissions to the E-Filing system using different file naming conventions. If the NRC naming convention causes the loss of an interactive file feature, the participant should consider providing the necessary participants with, for example, courtesy CD–ROM copies of the document, using the original file naming convention.

Comment. Using an Adobe Acrobat® digital signature allows documents to be internally authenticated. Participants should be allowed to add certain digital security features in order to prevent unwanted changes to a PDF document.

Response. The agency currently rejects and will continue to reject all electronically-submitted files that contain security protections. The NRC must maintain full access and use of the files. Allowing participants to add certain digital security features would impede this function. Participants can rely on the NRC's internal security and archival processes to ensure that the integrity of submitted materials is maintained.

Comment. The proposed guidance indicates no preference for the auto-rotate setting, and should be revised to allow auto-rotate setting of "Collectively by File" or "individually." This would optimize a PDF file for screen viewing in the case when a file contains text pages oriented in portrait layout and table pages oriented in landscape layout.

Response. The distiller settings for auto-rotate should be set to "off" as reflected in the Guidance. The NRC relies on participants to correctly rotate pages before they are submitted in order to avoid the possibility of errors attributed to the auto-correct function.

IV. Section-by-Section Analysis of Substantive Changes

Significant changes to certain sections in 10 CFR parts 2, 13, and 110 were explained in detail in the proposed E-Filing rule (*see,* 70 FR 74950; Dec. 16, 2005). Therefore, the section below will only address changes made following publication of the proposed rule. These changes were made primarily in response to public comments and agency reconsideration.

A. Section 2.302—Filing of Documents

When Filings Are Complete

Section 2.302(d)(1) of the final rule clarifies that the last act to transmit a document electronically means that it is the last act required to transmit the entire document.

B. Section 2.304—Formal Requirements for Documents; Signatures; Acceptance for Filing

1. Signatures

Section 2.304(d)(1) of the final rule has been revised to change the method for providing additional signatures, that is, signatures other than that of the person who is required to sign electronically using a digital ID certificate. Although the proposed rule included descriptions of signing electronic documents by digital ID certificate and by the "Original signed by" designation, the agency recognized that this provision needed clarification on the appropriate usage of the different signature methods. All electronic documents submitted via the E-Filing system must be electronically signed using a digital ID certificate. The document must include a typed signature block with the phrase "Signed (electronically) by" designating the individual who signs the document using his or her digital ID certificate. Additional signatures may be added to the document and to any attached affidavit or other similar attachment, which should be executed as instructed by the form specified in 28 U.S.C. 1746, by typing the "Executed in Accord with 10 CFR 2.304(d)" designation on the signature line. The Commission considers these typed-in designations to be official signatures under § 2.304(d)(1). Participants are no longer required to retain paper copies of these additional signatures in keeping with the paperwork reduction goal of this rule.

2. Pre-Filed Exhibits and Testimony

Currently, when parties submit pre-filed testimony and exhibits electronically via e-mail, they often submit all of these documents as one large file. For optimal use in the agency's EHD and DDMS, SECY and the Atomic Safety and Licensing Board Panel must then separate the single file into individual files so that the written testimony of each witness/witness panel constitutes one file. The same is true for each of the evidentiary exhibits. Although the presiding officer could issue orders requiring parties to submit these documents as individual files, it is more efficient generically to set forth this requirement in the rules. Therefore, the final rule adds a new paragraph (g) to the end of § 2.304. This provision requires that when written testimony or evidentiary exhibits are filed via the E-

Filing system in advance of a hearing, the written testimony of each individual/panel and each exhibit must be submitted as a separate electronic file. This provision does not apply to exhibits filed at earlier stages of a proceeding, such as exhibits attached to a motion, that are not expected to become part of the evidentiary record of the proceeding.

C. Section 2.305—Service of Documents; Methods; Proof

Method of Service Accompanying a Filing

The provisions in section 2.305(c)(4)–(5) have been combined in the final rule into § 2.305(c)(4). Proposed § 2.305(c)(4) would have required a certificate of service to accompany any document served upon participants. Proposed § 2.305(c)(5) would have required the certificate of service to state the name and address of persons served, as well as the date and method of service. These requirements remain in the final rule but have been combined into one provision for clarity and brevity.

D. Section 2.306—Time Computation

The changes made to § 2.306 of the final rule are threefold.

1. How Mixed Service Proceedings and Multiple Service Methods Affect the Number of Additional Days Granted for Responding to the Service of a Notice or Other Document

First, § 2.306(b)(3) of the final rule gives the presiding officer discretion to set forth the calculation of additional time in the rare circumstance that a participant may not be entitled to receive an entire filing served by multiple methods (e.g., when part of the filing is public and part is encompassed by a protective order to which the participant is not a party). This change is being made in response to a comment on the proposed rule received by the agency, as discussed previously in this document. Second, the agency reconsidered the computation of time set forth in the proposed rule. Section 2.306(b)(5) has been redesignated as § 2.306(c) and no longer provides that an extra response day will be added for documents served after a certain time. Under the final rule, the computation of time will begin the following day after a pleading is served with no day added, unless the presiding officer determines otherwise. The agency changed the approach from that in the proposed rule for simplicity and fairness.

2. Timely Service

An additional change to this section is in § 2.306(c) of the final rule, which now sets a specific deadline for timely filings. A document served in person or by expedited service must be served by 5:00 p.m. Eastern Time of the day it is due. This deadline was implied in the proposed rule but not specifically stated, so its applicability has been clarified in the final rule. A document served by the E-Filing system or by electronic mail must be served by 11:59 p.m. Eastern Time of the day it is due. This change is necessary to accommodate overnight maintenance periods when the E-Filing system will be inoperable.

E. Part 13—Program Fraud Civil Remedies

1. Section 13.2 Definitions

Revised § 13.2 of the final rule adopts the definitions added to § 2.4.

2. Section 13.26 Filing and Service of Papers

Section 13.26(a)(6) of the proposed rule regarding signatures has not been adopted because a new § 13.26(b) that adopts the wording of § 2.304(d) has been added to the final rule. Sections 13.26(b) and (c) of the proposed rule become §§ 13.26(c) and (d) in the final rule. Section 13.26(a)(7) of the proposed rule regarding certificates of service has not been adopted because § 13.26(c)(4) contains a similar provision. The change to § 13.26(a)(6) in the final rule (§ 13.26(a)(8) in the proposed rule) conforms the filing and service requirements of Part 13 to those in § 2.302(d)(1).

3. Section 13.27 Computation of Time

Revised §§ 13.27(c)(3) and (c)(5) of the final rule adopt the wording of §§ 2.306(b)(3) and (b)(5).

F. Part 110—Public Participation Procedures Concerning Export and Import of Nuclear Equipment and Materials License Applications

1. Section 110.89 Filing and Service

The changes to § 110.89 allow for, but do not require E-Filing, and provide a reference to §§ 2.302 and 2.305 for participants who choose to file electronically. The changes also remove telegraph as a method of service.

2. Section 110.90 Computation of Time

The changes to § 110.90 of the final rule adopt the wording of § 2.306(b) for participants who choose to file electronically. The changes also provide a new § 110.90(d) that conforms to new § 2.306(c).

3. Section 110.103 Acceptance of Hearing Documents

New § 110.103(c) of the final rule references § 2.304 for participants who choose to file electronically. The previous subsection 110.103(c) has been redesignated § 110.103(d).

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed by voluntary, private sector, consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. This rule establishes requirements and standards for the submission of filings to an electronic docket in hearings under 10 CFR part 2 Subpart C. Through this rulemaking, the agency is implementing the requirement in the Government Paperwork Elimination Act, Pub. L. 105–277 (44 U.S.C. 3504, note), that Federal agencies allow electronic submissions of information where practicable; therefore, this rule does not constitute the establishment of a Government-unique standard as defined in Office of Management and Budget (OMB) Circular A–199 (1998).

VI. Environmental Impact: Categorical Exclusion

This rule amends the filing and service procedures in 10 CFR part 2, Subpart C and makes conforming changes to other parts of Title 10 and, therefore, qualifies as an action eligible for the categorical exclusion from environmental review under 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

VII. Paperwork Reduction Act Statement

This rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VIII. Regulatory Analysis

A regulatory analysis has not been prepared for this rule. The amendments below will neither impose new, nor relax existing, safety requirements and, thus, do not call for the sort of safety/cost analysis described in the agency's regulatory analysis guidelines in NUREG/BR–0058. Further, the NRC is required by the Government Paperwork Elimination Act, Pub. L. 105–277 (44 U.S.C. 3504, note), to allow electronic

submissions when practicable. The rule states the requirements for electronic filing and service in NRC adjudicatory proceedings, except those conducted on a high-level radioactive waste repository application. The Commission, while strongly preferring that participants file and serve their documents electronically, nonetheless permits participants to submit paper filings if the participants establish good cause for doing so. Preparation of an analysis of costs and benefits, therefore, would not enhance the NRC's decision-making process.

The NRC believes that this rule reduces the current filing costs of persons who participate in agency adjudications. Currently, most submissions to the Commission are electronically mailed with a conforming paper copy to follow. This rule eliminates the need to mail the paper copy. Because virtually all of the participants in NRC hearings electronically mail filings, they already have most, if not all, of the requisite equipment. Also, the cost of the additional equipment and software is minimal in relation to the savings expected from eliminating the expenses of copying and postage. Although a participant may need to purchase a program that converts documents to PDF format for approximately $500 each, the savings in copying and postage costs could be hundreds, if not thousands, of dollars.

IX. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. It is possible that some poorly funded entities seeking to intervene would be adversely affected by this rule, but their number is likely to be small and the final rules provide for exemptions from the electronic filing requirements for good cause. In this regard, the NRC received no comments raising implementation cost issues. This rule applies in the context of Commission adjudicatory proceedings concerning nuclear reactors or nuclear materials. Reactor licensees are large organizations that do not fall within the definition of a small business found in the Small Business Regulatory Enforcement Fairness Act of 1996, 15 U.S.C. 632, within the small business standards set forth in 13 CFR part 121, or within the size standards adopted by the NRC (10 CFR 2.810). Based upon the historically low number of requests for hearings involving materials licensees, it is not expected that this rule would have any significant economic impact on a substantial number of small businesses.

X. Backfit Analysis

The NRC has determined that the backfit rule does not apply to this rule because these amendments modify the procedures to be used in NRC adjudicatory proceedings, and do not involve any provisions that would impose backfits as defined in 10 CFR 50.109, 70.76, 72.62, and 76.76. Therefore, a backfit analysis has not been prepared for this final rule.

XI. Congressional Review Act

The NRC has determined that this is not a major rule under the Congressional Review Act, and the Office of Management and Budget has confirmed this determination.

List of Subjects

10 CFR Part 1

Organization and function (Government agencies).

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 13

Claims, Fraud, Organization and function (Government agencies), Penalties.

10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Government Paperwork Elimination Act; and 5 U.S.C. 552 and 553; the NRC has adopted the following amendments to 10 CFR parts 1, 2, 13, and 110.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

■ 1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553, Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

■ 2. In § 1.5, the introductory text of paragraph (a) is revised to read as follows:

§ 1.5 Location of principal offices and Regional Offices.

(a) The principal NRC offices are located in the Washington, DC, area. Facilities for the service of process and documents are maintained in the State of Maryland at 11555 Rockville Pike, Rockville, Maryland 20852–2738. The agency's official mailing address is U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The locations of NRC offices in the Washington, DC, area are as follows:

* * * * *

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

■ 3. The authority citation for part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871).

Sections 2.102, 2.103, 2.104, 2.105, 2.321 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201(b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Subpart C also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Section 2.301 also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.712, also issued under 5 U.S.C. 557. Section 2.340 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.390 also issued under sec. 103, 68 Stat. 936,

as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154).

Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart N also 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. Section 2.4 is amended by adding the definitions of *Digital ID certificate, Electronic acknowledgment, Electronic Hearing Docket, E-Filing System, Guidance for Electronic Submissions to the NRC, Optical Storage Medium,* and *Participant* in alphabetical order:

§ 2.4 Definitions.

* * * * *

Digital ID certificate means a file stored on a participant's computer that contains the participant's name, e-mail address, and participant's digital signature, proves the participant's identity when filing documents and serving participants electronically through the E-Filing system, and contains public keys, which allow for the encryption and decryption of documents so that the documents can be securely transferred over the Internet.

* * * * *

Electronic acknowledgment means a communication transmitted electronically from the E-Filing system to the submitter confirming receipt of electronic filing and service.

Electronic Hearing Docket means the publicly available Web site which houses a visual presentation of the docket and a link to its files.

E-Filing System means an electronic system that receives, stores, and distributes documents filed in proceedings for which an electronic hearing docket has been established.

* * * * *

Guidance for Electronic Submissions to the NRC means the document issued by the Commission that sets forth the transmission methods and formatting standards for filing and service under E-Filing. The document can be obtained by visiting the NRC's Web site at *http://www.nrc.gov.*

* * * * *

Optical Storage Media means any physical computer component that meets E-Filing Guidance standards for storing, saving, and accessing electronic documents.

* * * * *

Participant means an individual or organization that has petitioned to intervene in a proceeding or requested a hearing but that has not yet been granted party status by an Atomic Safety and Licensing Board or other presiding officer. Participant also means a party to a proceeding and any interested State, local governmental body, or affected Federally-recognized Indian Tribe that seeks to participate in a proceeding under § 2.315(b). For the purpose of service of documents, the NRC staff is considered a participant even if not participating as a party.

* * * * *

■ 5. Section 2.302 is revised to read as follows:

§ 2.302 Filing of documents.

(a) Documents filed in Commission adjudicatory proceedings subject to this part shall be electronically transmitted through the E-Filing system, unless the Commission or presiding officer grants an exemption permitting an alternative filing method or unless the filing falls within the scope of paragraph (g)(1) of this section.

(b) Upon an order from the Commission or presiding officer permitting alternative filing methods, or as otherwise set forth in Guidance for Electronic Submissions to the NRC, documents may be filed by:

(1) First-class mail: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff; or

(2) Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff.

(c) All documents offered for filing must be accompanied by a certificate of service stating the names and addresses of the persons served as well as the manner and date of service.

(d) Filing is considered complete:

(1) By electronic transmission when the filer performs the last act that it must perform to transmit a document, in its entirety, electronically;

(2) By first-class mail as of the time of deposit in the mail;

(3) By courier, express mail, or expedited delivery service upon depositing the document with the provider of the service; or

(4) If a filing must be submitted by two or more methods, such as a filing that the Guidance for Electronic Submission to the NRC indicates should be transmitted electronically as well as physically delivered or mailed on optical storage media, the filing is complete when all methods of filing have been completed.

(e) For filings by electronic transmission, the filer must make a good faith effort to successfully transmit the entire filing. Notwithstanding paragraph (d) of this section, a filing will not be considered complete if the filer knows or has reason to know that the entire filing has not been successfully transmitted.

(f) Digital ID Certificates.

(1) Through digital ID certificates, the NRC permits participants in the proceeding to access the E-Filing system to file documents, serve other participants, and retrieve documents in the proceeding.

(2) Any participant or participant representative that does not have a digital ID certificate shall request one from the NRC before that participant or representative intends to make its first electronic filing to the E-Filing system. A participant or representative may apply for a digital ID certificate on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

(3) Group ID Certificate. A participant wishing to obtain a digital ID certificate valid for several persons may obtain a group digital ID certificate. A Group ID cannot be used to file documents. The Group ID provides access to the E-Filing system for the individuals specifically identified in the group's application to retrieve documents recently received by the system. The Group ID also enables a group of people, all of whom may not have individual digital ID certificates, to be notified when a filing has been made in a particular proceeding.

(g) Filing Method Requirements.

(1) *Electronic filing.* Unless otherwise provided by order, all filings must be made as electronic submissions in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html.* If a filing contains sections of information or electronic formats that may not be transmitted electronically for security or other reasons, the portions not containing those sections will be transmitted electronically to the E-Filing system. In addition, optical storage media (OSM) containing the entire filing must be physically delivered or mailed. In such cases, the submitter does not need to apply to the Commission or presiding officer for an exemption to deviate from

the requirements in paragraph (g)(1) of this section.

(2) *Electronic transmission exemption.* Upon a finding of good cause, the Commission or presiding officer can grant an exemption from electronic transmission requirements found in paragraph (g)(1) of this section to a participant who is filing electronic documents. The exempt participant is permitted to file electronic documents by physically delivering or mailing an OSM containing the documents. A participant granted this exemption would still be required to meet the electronic formatting requirement in paragraph (g)(1) of this section.

(3) *Electronic document exemption.* Upon a finding of good cause, the Commission or presiding officer can exempt a participant from both the electronic (computer file) formatting and electronic transmission requirements in paragraph (g)(1) of this section. A participant granted such an exemption can file paper documents either in person or by courier, express mail, some other expedited delivery service, or first-class mail, as ordered by the Commission or presiding officer.

(4) *Requesting an exemption.* A filer seeking an exemption under paragraphs (g)(2) or (g)(3) of this section must submit the exemption request with its first filing in the proceeding. In the request, a filer must show good cause as to why it cannot file electronically. The filer may not change its formats or delivery methods for filing until a ruling on the exemption request is issued. Exemption requests under paragraphs (g)(2) or (g)(3) of this section sought after the first filing in the proceeding will be granted only if the requestor shows that the interests of fairness so require.

■ 6. Section 2.304 is revised to read as follows:

§ 2.304 Formal requirements for documents; signatures; acceptance for filing.

(a) *Docket numbers and titles.* Each document filed in an adjudication to which a docket number has been assigned must contain a caption setting forth the docket number and the title of the proceeding and a description of the document (e.g., motion to quash subpoena).

(b) *Paper documents.* In addition to the requirements in this part, paper documents must be stapled or bound on the left side; typewritten, printed, or otherwise reproduced in permanent form on good unglazed paper of standard letterhead size; signed in ink by the participant, its authorized representative, or an attorney having authority with respect to it; and filed with an original and two conforming copies.

(c) *Format.* Each page in a document must begin not less than one inch from the top, with side and bottom margins of not less than one inch. Text must be double-spaced, except that quotations may be single-spaced and indented. The requirements of this paragraph do not apply to original documents, or admissible copies, offered as exhibits, or to specifically prepared exhibits.

(d) *Signatures.* The original of each document must be signed by the participant or its authorized representative, or by an attorney having authority with respect to it. The document must state the capacity of the person signing; his or her address, phone number, and e-mail address; and the date of signature. The signature of a person signing a pleading or other similar document submitted by a participant is a representation that the document has been subscribed in the capacity specified with full authority, that he or she has read it and knows the contents, that to the best of his or her knowledge, information, and belief the statements made in it are true, and that it is not interposed for delay. The signature of a person signing an affidavit or similar document, which should be submitted in accord with the form outlined in 28 U.S.C. 1746, is a representation that, under penalty of perjury, the document is true and correct to the best of that individual's knowledge and belief. If a document is not signed, or is signed with intent to defeat the purpose of this section, it may be struck.

(1) An electronic document must be signed using a participant's or a participant representative's digital ID certificate. Additional signatures can be added to the electronic document, including to any affidavits that accompany the document, by a typed-in designation that indicates the signer understands and acknowledges that he or she is assenting to the representations in paragraph (d) of this section.

(i) When signing an electronic document using a digital ID certificate, the signature page for the electronic document should contain a typed signature block that includes the phrase "Signed (electronically) by" typed onto the signature line; the name and the capacity of the person signing; the person's address, phone number, and e-mail address; and the date of signature.

(ii) If additional individuals need to sign an electronic document, including any affidavits that accompany the document, such individuals must sign by inserting a typed signature block in the electronic document that includes the phrase "Executed in Accord with 10 CFR 2.304(d)" or its equivalent typed on the signature line as well as the name and the capacity of the person signing; the person's address, phone number, and e-mail address; and the date of signature to the extent any of these items are different from the information provided for the digital ID certificate signer.

(2) Paper documents must be signed in ink.

(e) *Designation for service.* The first document filed by any participant in a proceeding must designate the name and address of a person on whom service may be made. This document must also designate the e-mail address, if any, of the person on whom service may be made.

(f) *Acceptance for filing.* Any document that fails to conform to the requirements of this section may be refused acceptance for filing by the Secretary or the presiding officer and may be returned with an indication of the reason for nonacceptance. Any document that is not accepted for filing will not be entered on the Commission's docket.

(g) *Pre-filed written testimony and exhibits.* In any instance in which a participant submits electronically through the E-Filing system written testimony or hearing exhibits in advance of a hearing, the written testimony of each individual witness or witness panel and each individual exhibit shall be submitted as an individual electronic file.

■ 7. Section 2.305 is revised to read as follows:

§ 2.305 Service of documents; methods; proof.

(a) *Service of documents by the Commission.* Except for subpoenas, the Commission shall serve all orders, decisions, notices, and other documents to all participants, by the same delivery method those participants use to file and accept service.

(b) *Who may be served.* Any document required to be served upon a participant shall be served upon that person or upon the representative designated by the participant or by law to receive service of documents. When a participant has appeared by attorney, service shall be made upon the attorney of record.

(c) *Method of service accompanying a filing.* Service must be made electronically to the E-Filing system. Upon an order from the Commission or presiding officer permitting alternative filing methods under § 2.302(g)(4),

service may be made by personal delivery, courier, expedited delivery service, or by first-class, express, certified or registered mail. As to each participant that cannot serve electronically, the Commission or presiding officer shall require service by the most expeditious means permitted under this paragraph that are available to the participant, unless the Commission or presiding officer finds that this requirement would impose undue burden or expense on the participant.

(1) Unless otherwise provided in this section, a participant will serve documents on the other participants by the same method by which those participants filed.

(2) A participant granted an exemption under § 2.302(g)(2) will serve the presiding officer and the participants in the proceeding that filed electronically by physically delivering or mailing optical storage media containing the electronic document.

(3) A participant granted an exemption under § 2.302(g)(3) will serve the presiding officer and the other participants in the proceeding by physically delivering or mailing a paper copy.

(4) To provide proof of service, any paper served upon participants to the proceeding as may be required by law, rule, or order of the presiding officer must be accompanied by a signed certificate of service stating the names and addresses of the persons served as well as the method and date of service.

(d) *Method of service not accompanying a filing.* Service of demonstrative evidence, e.g., maps and other physical evidence, may be made by first-class mail in all cases, unless the presiding officer directs otherwise or the participant desires to serve by a faster method. In instances when service of a document, such as a discovery document under § 2.336, will not accompany a filing with the agency, the participant may use any reasonable method of service to which the recipient agrees.

(e) *Service on the Secretary.* (1) All motions, briefs, pleadings, and other documents must be served on the Secretary of the Commission by the same or equivalent method, such as by electronic transmission or first-class mail, that they are served upon the presiding officer, so that the Secretary will receive the filing at approximately the same time that it is received by the presiding officer to which the filing is directed.

(2) When pleadings are personally delivered to a presiding officer conducting proceedings outside the Washington, DC area, service on the Secretary may be accomplished electronically to the E-Filing system, as well as by courier, express mail, or expedited delivery service.

(3) Service of demonstrative evidence (e.g., maps and other physical exhibits) on the Secretary of the Commission may be made by first-class mail in all cases, unless the presiding officer directs otherwise or the participant desires to serve by a faster method. All pre-filed testimony and exhibits shall be served on the Secretary of the Commission by the same or equivalent method that it is served upon the presiding officer to the proceedings, i.e., electronically to the E-Filing system, personal delivery or courier, express mail, or expedited delivery service.

(4) The addresses for the Secretary are:

(i) Internet: The E-Filing system at *http://www.nrc.gov.*

(ii) First-class mail: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff; and

(iii) Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemakings and Adjudications Staff.

(f) *When service is complete.* Service upon a participant is complete:

(1) By the E-Filing system, when filing electronically to the E-Filing system is considered complete under § 2.302(d).

(2) By personal delivery, upon handing the document to the person, or leaving it at his or her office with that person's clerk or other person in charge or, if there is no one in charge, leaving it in a conspicuous place in the office, or if the office is closed or the person to be served has no office, leaving it at his or her usual place of residence with some person of suitable age and discretion then residing there;

(3) By mail, upon deposit in the United States mail, properly stamped and addressed;

(4) By expedited service, upon depositing the document with the provider of the expedited service; or

(5) When service cannot be effected by a method provided by paragraphs (f)(1)–(4) of this section, by any other method authorized by law.

(6) When two or more methods of service are required, service is considered complete when service by each method is complete under paragraphs (f)(1)–(4) of this section.

(g) *Service on the NRC staff.*

(1) Service shall be made upon the NRC staff of all documents required to be filed with participants and the presiding officer in all proceedings, including those proceedings where the NRC staff informs the presiding officer of its determination not to participate as a party. Service upon the NRC staff shall be by the same or equivalent method as service upon the Office of the Secretary and the presiding officer, e.g., electronically, personal delivery or courier, express mail, or expedited delivery service.

(2) If the NRC staff decides not to participate as a party in a proceeding, it shall, in its notification to the presiding officer and participants of its determination not to participate, designate a person and address for service of documents.

■ 8. Section 2.306 is revised to read as follows:

§ 2.306 Computation of time.

(a) In computing any period of time, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday or Sunday, a Federal legal holiday at the place where the action or event is to occur, or a day upon which, because of an emergency closure of the Federal government in Washington, DC, NRC Headquarters does not open for business, in which event the period runs until the end of the next day that is not a Saturday, Sunday, Federal legal holiday, or emergency closure.

(b) Whenever a participant has the right or is required to do some act within a prescribed period after the service of a notice or other document upon him or her, no additional time is added to the prescribed period except in the following circumstances:

(1) If a notice or document is served upon a participant, by first-class mail only, three (3) calendar days will be added to the prescribed period for all the participants in the proceeding.

(2) If a notice or document is served upon a participant, by express mail or other expedited service only, two (2) calendar days will be added to the prescribed period for all the participants in the proceeding.

(3) If a document is to be served by multiple service methods, such as partially electronic and entirely on optical storage media, the additional number of days is computed according to the service method used to deliver the entire document, excluding courtesy copies, to all of the other participants in the proceeding. The presiding officer

may determine the calculation of additional days when a participant is not entitled to receive an entire filing served by multiple methods.

(4) In mixed service proceedings when all participants are not using the same filing and service method, the number of days for service will be determined by the presiding officer based on considerations of fairness and efficiency.

(c) To be considered timely, a document must be served:

(1) By 5 p.m. Eastern Time for a document served in person or by expedited service; and

(2) By 11:59 p.m. Eastern Time for a document served by the E-Filing system.

■ 9. In § 2.346, the introductory text is revised to read as follows:

§ 2.346 Authority of the Secretary.

When briefs, motions or other documents are submitted to the Commission itself, as opposed to officers who have been delegated authority to act for the Commission, the Secretary or the Assistant Secretary is authorized to:

* * * * *

■ 10. In § 2.390, paragraph (b)(1)(iii) is revised to read as follows:

§ 2.390 Public inspections, exemptions, requests for withholding.

* * * * *

(b) * * *

(1) * * *

(iii) In addition, an affidavit accompanying a withholding request based on paragraph (a)(4) of this section must contain a full statement of the reason for claiming the information should be withheld from public disclosure. This statement must address with specificity the considerations listed in paragraph (b)(4) of this section. In the case of an affidavit submitted by a company, the affidavit shall be executed by an officer or upper-level management official who has been specifically delegated the function of reviewing the information sought to be withheld and authorized to apply for its withholding on behalf of the company. The affidavit shall be executed by the owner of the information, even though the information sought to be withheld is submitted to the Commission by another person. The application and affidavit shall be submitted at the time of filing the information sought to be withheld. The information sought to be withheld shall be incorporated, as far as possible, into a separate document. The affiant must designate with appropriate markings information submitted in the affidavit as a trade secret, or confidential or privileged commercial or financial information within the meaning of § 9.17(a)(4) of this chapter, and such information shall be subject to disclosure only in accordance with the provisions of § 9.19 of this chapter.

* * * * *

■ 11. In § 2.808, the introductory text is revised to read as follows:

§ 2.808 Authority of the Secretary to rule on procedural matters.

When briefs, motions or other documents listed herein are submitted to the Commission itself, as opposed to officers who have been delegated authority to act for the Commission, the Secretary or the Assistant Secretary is authorized to:

* * * * *

PART 13—PROGRAM FRAUD CIVIL REMEDIES

■ 12. The authority citation for part 13 is revised to read as follows:

Authority: Public Law 99–509, secs. 6101–6104, 100 Stat. 1874 (31 U.S.C. 3801–3812); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Sections 13.13 (a) and (b) also issued under section Pub. L. 101–410, 104 Stat. 890, as amended by section 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note).

■ 13. Section 13.2 is amended by adding the definitions of *Digital ID certificate, Electronic acknowledgment, Electronic Hearing Docket, E-Filing System, Guidance for Electronic Submissions to the NRC, Optical Storage Medium,* and *Participant* in alphabetical order:

§ 13.2 Definitions.

* * * * *

Digital ID certificate means a file stored on a participant's computer that contains the participant's name, e-mail address, and participant's digital signature, proves the participant's identity when filing documents and serving participants electronically through the E-Filing system, and contains public keys, which allow for the encryption and decryption of documents so that the documents can be securely transferred over the Internet.

Electronic acknowledgment means a communication transmitted electronically from the E-Filing system to the submitter confirming receipt of electronic filing and service.

Electronic Hearing Docket means the publicly available Web site which houses a visual presentation of the docket and a link to its files.

E-Filing System means an electronic system that receives, stores, and distributes documents filed in proceedings for which an electronic hearing docket has been established.

* * * * *

Guidance for Electronic Submissions to the NRC means the document issued by the Commission that sets forth the transmission methods and formatting standards for filing and service under E-Filing. The document can be obtained by visiting the NRC's Web site at *http://www.nrc.gov.*

* * * * *

Optical Storage Media means any physical computer component that meets E-Filing Guidance standards for storing, saving, and accessing electronic documents.

Participant means an individual or organization that has petitioned to intervene in a proceeding or requested a hearing but that has not yet been granted party status by an Atomic Safety and Licensing Board or other presiding officer. Participant also means a party to a proceeding and any interested State, local governmental body, or affected Federally-recognized Indian Tribe that seeks to participate in a proceeding in accordance with § 2.315(b). For the purpose of service of documents, the NRC staff is considered a participant even if not participating as a party.

* * * * *

■ 14. In § 13.9, paragraph (a) is revised to read as follows:

§ 13.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within thirty (30) days of service of the complaint. Service of an answer shall be made by electronically delivering a copy to the reviewing official in accordance with § 13.26. An answer shall be deemed a request for hearing.

* * * * *

■ 15. Section 13.26 is revised to read as follows:

§ 13.26 Filing and service of papers.

(a) *Filing.* (1) Unless otherwise provided by order, all filings must be made as electronic submissions in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions may be found in the E-Filing Guidance and on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html.* If a filing contains sections of information or electronic formats that may not be transmitted electronically for security or other reasons, portions not containing those

sections will be transmitted electronically to the E-Filing system. In addition, optical storage media (OSM) containing the entire filing must be physically delivered or mailed. In such cases, the submitter does not need to apply to the Commission for an exemption to deviate from the requirements in paragraph (a) of this section.

(2) Electronic transmission exemption. The ALJ may relieve a participant who is filing electronic documents of the transmission requirements in paragraph (a) of this section. Such a participant will file electronic documents by physically delivering or mailing an OSM containing the documents. The electronic formatting requirement in paragraph (a) of this section must be met.

(3) Electronic document exemption. The ALJ may relieve a participant of both the electronic (computer file) formatting and transmission requirements in paragraph (a)(1) of this section. Such a participant will file paper documents physically or by mail to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Filing by mail is complete upon deposit in the mail.

(4) Requesting an exemption. A participant seeking an exemption under paragraphs (a)(2) or (a)(3) of this section must submit the exemption request with its first filing in the proceeding. In the request, the requestor must show good cause as to why it cannot file electronically. The filer may not change its formats and delivery methods for filing until a ruling on the exemption request is issued. Exemption requests submitted after the first filing in the proceeding will be granted only if the requestor shows that the interests of fairness so require.

(5) Every pleading and document filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the presiding officer, and a designation of the document (*e.g.*, motion to quash subpoena).

(6) Filing is complete when the filer performs the last act that it must perform to submit a document, such as hitting the send/submit/transmit button for an electronic transmission or depositing the document, in its entirety, in a mailbox.

(b) *Signatures.* The original of each document must be signed by the participant or its authorized representative, or by an attorney having authority with respect to it. The document must state the capacity of the person signing; his or her address, phone number, and e-mail address; and the date of signature. The signature of a person signing a pleading or other similar document submitted by a participant is a representation that the document has been subscribed in the capacity specified with full authority, that he or she has read it and knows the contents, that to the best of his or her knowledge, information, and belief the statements made in it are true, and that it is not interposed for delay. The signature of a person signing an affidavit or similar document, which should be submitted in accord with the form outlined in 28 U.S.C. 1746, is a representation that, under penalty of perjury, the document is true and correct to the best of that individual's knowledge and belief. If a document is not signed, or is signed with intent to defeat the purpose of this section, it may be struck.

(1) An electronic document must be signed using a participant's or a participant representative's digital ID certificate. Additional signatures can be added to the electronic document, including to any affidavits that accompany the document, by a typed-in designation that indicates the signer understands and acknowledges that he or she is assenting to the representations in paragraph (d) of this section.

(i) When signing an electronic document using a digital ID certificate, the signature page for the electronic document should contain a typed signature block that includes the phrase "Signed (electronically) by" typed onto the signature line; the name and the capacity of the person signing; the person's address, phone number, and e-mail address; and the date of signature.

(ii) If additional individuals need to sign an electronic document, including any affidavits that accompany the document, these individuals must sign by inserting a typed signature block in the electronic document that includes the phrase "Executed in Accord with 10 CFR 2.304(d)" or its equivalent typed on the signature line as well as the name and the capacity of the person signing; the person's address, phone number, and e-mail address; and the date of signature to the extent any of these items are different from the information provided for the digital ID certificate signer.

(2) Paper documents must be signed in ink.

(c) *Service.* A participant filing a document with the ALJ shall at the time of filing, serve a copy of such document on every other participant. Service upon any participant of any document other than those required to be served as prescribed in § 13.8 shall be made electronically to the E-Filing system. When a participant is represented by a representative, service shall be made upon such representative in lieu of the actual participant. Upon an order from the ALJ permitting alternative filing methods under paragraphs (a)(2) or (a)(3) of this section, service may be made by physical delivery or mail. As to each participant that cannot serve electronically, the ALJ shall require service by the most expeditious means permitted under this paragraph that are available to the participant, unless the ALJ finds that this requirement would impose undue burden or expense on the participant.

(1) Unless otherwise provided in this paragraph, a participant will serve documents on the other participants by the same method that those participants filed.

(2) A participant granted an exemption under paragraph (a)(2) of this section will serve the participants in the proceeding that filed electronically by physically delivering or mailing an OSM containing the electronic document.

(3) A participant granted an exemption under paragraph (a)(3) will serve the other participants in the proceeding by physically delivering or mailing a paper copy.

(4) A certificate of service stating the names and addresses of the persons served as well as the method and date of service must accompany any paper served upon participants to the proceeding.

(5) Proof of service, which states the name and address of the person served as well as the method and date of service, may be made as required by law, by rule, or by order of the Commission.

■ 16. Section 13.27 is revised to read as follows:

§ 13.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday or Sunday, a Federal legal holiday at the place where the action or event is to occur, or a day on which, because of emergency closure of the federal government in Washington, DC, NRC Headquarters does not open for business, in which event it includes the next day that is not a Saturday, Sunday, holiday or emergency closure.

(b) When the period of time allowed is less than seven (7) days, intermediate

Saturdays, Sundays, Federal legal holidays, and emergency closures shall be excluded from the computation.

(c) Whenever an action is required within a prescribed period by a document served pursuant to § 13.26, no additional time is added to the prescribed period except in the following circumstances:

(1) If a notice or document is served upon a participant, by first-class mail only, three (3) calendar days will be added to the prescribed period for all the participants in the proceeding.

(2) If a notice or document is served upon a participant, by express mail or other expedited service only, two (2) calendar days will be added to the prescribed period for all the participants in the proceeding.

(3) If a document is to be served by multiple service methods, such as partially electronic and entirely on an OSM, the additional number of days is computed according to the service method used to deliver the entire document, excluding courtesy copies, to all of the other participants in the proceeding. The presiding officer may determine the calculation of additional days when a participant is not entitled to receive an entire filing served by multiple methods.

(4) In mixed service proceedings where all participants are not using the same filing and service method, the number of days for service will be determined by the presiding officer based on considerations of fairness and efficiency. The same number of additional days will be added to the prescribed period for all the participants in the proceeding with the number of days being determined by the slowest method of service being used in the proceeding.

(d) To be considered timely, a document must be served:

(1) By 5 p.m. Eastern Time for a document served in person or by expedited service; and

(2) By 11:59 p.m. Eastern Time for a document served by the E-Filing system.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

■ 17. The authority citation for part 110 continues to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 134, 161, 170H., 181, 182, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2160d., 2201, 2210h., 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 5, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d, 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130–110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42(a)(9) also issued under sec. 903, Pub. L. 102–496 (42 U.S.C. 2151 *et seq.*).

■ 18. Section 110.89 is revised to read as follows:

§ 110.89 Filing and service.

(a) Hearing requests, intervention petitions, answers, replies and accompanying documents must be filed with the Commission by delivery or by mail to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff or via the E-Filing system, following the procedure set forth in 10 CFR 2.302. Filing by mail is complete upon deposit in the mail. Filing via the E-Filing system is completed by following the requirements described in 10 CFR 2.302(d).

(b) All filing and Commission notices and orders must be served upon the applicant; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Executive Secretary, Department of State, Washington, DC 20520; and participants if any. Hearing requests, intervention petitions, and answers and replies must be served by the person filing those pleadings.

(c) Service is completed by:

(1) Delivering the paper to the person; or leaving it in his office with someone in charge; or, if there is no one in charge, leaving it in a conspicuous place in the office; or, if he has no office or it is closed, leaving it at his usual place of residence with some occupant of suitable age and discretion;

(2) Following the requirements for E-Filing in 10 CFR 2.305;

(3) Depositing it in the United States mail, express mail, or expedited delivery service, properly stamped and addressed; or

(4) Any other manner authorized by law, when service cannot be made as provided in paragraphs (c)(1) through (3) of this section.

(d) Proof of service, stating the name and address of the person served and the manner and date of service, shall be shown, and may be made by:

(1) Written acknowledgment of the person served or an authorized representative;

(2) The certificate or affidavit of the person making the service; or

(3) Following the requirements for E-Filing in 10 CFR 2.305.

(e) The Commission may make special provisions for service when circumstances warrant.

■ 19. Section 110.90 is revised to read as follows:

§ 110.90 Computation of time.

(a) In computing any period of time, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday or Sunday, a Federal legal holiday at the place where the action or event is to occur, or a day upon which, because of an emergency closure of the Federal government in Washington, DC, NRC Headquarters does not open for business, in which event the period runs until the end of the next day that is not a Saturday, Sunday, holiday, or emergency closure.

(b) In time periods of less than seven (7) days, intermediate Saturdays, Sundays, Federal legal holidays, and emergency closures are not counted.

(c) Whenever an action is required within a prescribed period by a document served under § 110.89 of this part, no additional time is added to the prescribed period except as set forth in 10 CFR 2.306(b).

(d) To be considered timely, a document must be served:

(1) By 5 p.m. Eastern Time for a document served in person or by expedited service; and

(2) By 11:59 p.m. Eastern Time for a document served by the E-Filing system.

■ 20. Section 110.103 is revised to read as follows:

§ 110.103 Acceptance of hearing documents.

(a) Each document filed or issued must be clearly legible and bear the docket number, license application number, and hearing title.

(b) Each document shall be filed in one original and signed by the participant or their authorized representative, with their address and date of signature indicated. The signature is a representation that the document is submitted with full authority, the signer knows its contents, and that, to the best of his knowledge, the statements made in it are true.

(c) Filings submitted using the E-filing system must follow the requirements outlined in 10 CFR 2.304.

(d) A document not meeting the requirements of this section may be returned with an explanation for nonacceptance and, if so, will not be docketed.

Dated at Rockville, Maryland, this 21st day of August, 2007.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. E7–16898 Filed 8–27–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28300; Directorate Identifier 2006–NM–292–AD; Amendment 39–15173; AD 2007–17–15]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

The Chromic Acid Anodising (CAA) Lead Fleet Program was established in 1989 to observe corrosion/debonding behaviour of CAA-treated panels. CAA lead fleet includes the inspection of lap joints, circumferential joints, stringers and doublers on selected aircraft.

The findings in combination with analytical corrosion investigations have been analysed by the TC (type certificate) holder and an appropriate inspection program for debonding has been developed.

This airworthiness directive requires inspection of the concerned areas to detect any corrosion and/or debonding which could affect the structural integrity. * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective October 2, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 2, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 29, 2007 (72 FR 29449). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

The Chromic Acid Anodising (CAA) Lead Fleet Program was established in 1989 to observe corrosion/debonding behaviour of CAA-treated panels. CAA lead fleet includes the inspection of lap joints, circumferential joints, stringers and doublers on selected aircraft.

The findings in combination with analytical corrosion investigations have been analysed by the TC (type certificate) holder and an appropriate inspection program for debonding has been developed.

This airworthiness directive requires inspection of the concerned areas [including repetitive inspections of certain areas] to detect any corrosion and/or debonding which could affect the structural integrity. * * *

If any discrepancies are found, repair and follow-up actions (additional inspections for debonding and corrosion depth) are required.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

Based on the service information, we estimate that this AD affects about 12 products of U.S. registry. We also estimate that it takes 102 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the AD on U.S. operators to be $97,920, or $8,160 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2007–17–15 Airbus: Amendment 39–15173. Docket No. FAA–2007–28300; Directorate Identifier 2006–NM–292–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 2, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 series aircraft, certificated in any category, manufacturing serial numbers (MSN) 0105 through 0107, 0116, 0117, 0121, 0123 through 0126, 0128, 0129, 0133 through 0141, 0146 through 0152, 0154 through 0157, 0160, 0163, 0170, 0173, 0175 through 0177, and 0180 through 0183.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

The Chromic Acid Anodising (CAA) Lead Fleet Program was established in 1989 to observe corrosion/debonding behaviour of CAA-treated panels. CAA lead fleet includes the inspection of lap joints, circumferential joints, stringers and doublers on selected aircraft.

The findings in combination with analytical corrosion investigations have been analysed by the TC (type certificate) holder and an appropriate inspection program for debonding has been developed.

This airworthiness directive requires inspection of the concerned areas [including repetitive inspections of certain areas] to detect any corrosion and/or debonding which could affect the structural integrity.* * *

If any discrepancies are found, repair and follow-up actions (additional inspections for debonding and corrosion depth) are required.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Except as provided by paragraphs (f)(2), (f)(3), and (f)(4) of this AD: Do the initial and repetitive inspections (including follow-up actions), as applicable; and do all applicable repairs; of the areas specified in paragraphs (f)(1)(i), (f)(1)(ii), (f)(1)(iii), and (f)(1)(iv) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–0378, dated September 4, 2006, and within the timescales specified in paragraph 1.E.(2), the Accomplishment Instructions, and the figures of the service bulletin.

(i) The bonded doubler in the longitudinal lap joint area between frame (FR)18 and FR80 (configurations 01 and 02 inspect FR18 through FR40; configuration 03 inspects FR18 through FR80).

(ii) The bonded wing doublers between stringer (STGR)22 LH/RH (left-hand/right-hand) and STGR43 LH/RH for debonding (configuration 01 of the service bulletin only).

(iii) The bonded doublers in the circumferential joint area between FR26 and FR80 (configurations 01 and 02 inspect FR26 through FR40; configuration 03 inspects FR26 through FR80).

(iv) The bonded doublers in the manhole area between FR23 RH and FR24 RH and between FR38.1 RH and FR38.2 RH.

(2) Where paragraph 1.E.(2) of Airbus Service Bulletin A300–53–0378, dated September 4, 2006, specifies a grace period from CN (Consigne de Navigabilité) issuance, this AD requires a grace period relative to the effective date of this AD.

(3) Where paragraph 1.E.(2) of Airbus Service Bulletin A300–53–0378, dated September 4, 2006, specifies a threshold, this AD requires that the inspections be done within the specified threshold relative to the first flight of the airplane.

(4) Where the Accomplishment Instructions and figures of Airbus Service Bulletin A300–53–0378, dated September 4, 2006, specify that inspections be done "yearly," this AD requires those inspections to be done at intervals not to exceed 1 year.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2006–0369, dated December 12, 2006; and Airbus Service Bulletin A300–53–0378, dated September 4, 2006, for related information.

Material Incorporated by Reference

(i) You must use Airbus Service Bulletin A300–53–0378, dated September 4, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 14, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–16672 Filed 8–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28358; Directorate Identifier 2007–NM–019–AD; Amendment 39–15172; AD 2007–17–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A321 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> Some operators have reported wheel corrosion, mainly under the heat-shield overlap area. In some cases a circular crack initiated from a corrosion pit. When the crack is initiated under the bead seat, it does not lead to tire pressure loss, and can cause a flange separation as experienced by few operators.

This condition could result in separation of the wheel and consequent reduced controllability of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective October 2, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 2, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 6, 2007 (72 FR 31209). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Some operators have reported wheel corrosion, mainly under the heat-shield overlap area. In some cases a circular crack initiated from a corrosion pit. When the crack is initiated under the bead seat, it does not lead to tire pressure loss, and can cause a flange separation as experienced by few operators.

The unsafe condition could result in separation of the wheel and consequent reduced controllability of the airplane. The corrective action is inspecting the main landing gear (MLG) wheel assembly for discrepancies (corrosion, damage, cracks, and loose or missing heat shield spacers) and, if necessary, repair of the MLG wheel assembly. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

Based on the service information, we estimate that this AD affects about 34 products of U.S. registry. We also estimate that it takes about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the AD on U.S. operators to be $16,320, or $480 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2007–17–14 Airbus: Amendment 39–15172. Docket No. FAA–2007–28358; Directorate Identifier 2007–NM–019–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 2, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A321 series airplanes; all certified models; certificated in any category; equipped with Messier-Goodrich S.A. or Goodrich-Messier Inc., main landing gear (MLG) wheel assemblies having part number (P/N) C20500000 or P/N C20452000.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Some operators have reported wheel corrosion, mainly under the heat-shield overlap area. In some cases a circular crack initiated from a corrosion pit. When the crack is initiated under the bead seat, it does not lead to tire pressure loss, and can cause a flange separation as experienced by few operators.

This condition could result in separation of the wheel and consequent reduced controllability of the airplane. The corrective action is inspecting the MLG wheel assembly for discrepancies (corrosion, damage, cracks, and loose or missing heat shield spacers) and, if necessary, repair of the MLG wheel assembly.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) At the next scheduled tire change, but no later than 6 months after the effective date of this AD: Inspect the MLG wheel assembly for discrepancies (corrosion, damage, cracks, and loose or missing heat shield spacers) in accordance with the instructions of Messier-Bugatti Special Inspection Service Bulletin C20452–32–3254, Revision 2, dated September 5, 2006. Repeat the inspection thereafter at intervals not to exceed every tire change or 6 months, whichever is earlier.

(2) If any discrepancy is found: Before further flight, repair the MLG wheel assembly in accordance with the instructions of Messier-Bugatti Special Inspection Service Bulletin C20452–32–3254, Revision 2, dated September 5, 2006.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: The MCAI specifies an imprecise compliance time for inspecting the MLG wheel assembly—i.e., "at each tire change." This AD requires inspecting the MLG wheel assembly at the next scheduled tire change, but no later than 6 months after the effective date of the AD; and thereafter at intervals not to exceed every tire change or 6 months, whichever is earlier.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149. Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to EASA Airworthiness Directive 2006–0328, dated October 23, 2006; and Messier-Bugatti Special Inspection Service Bulletin C20452–32–3254, Revision 2, dated September 5, 2006, for related information.

Material Incorporated by Reference

(i) You must use Messier-Bugatti Special Inspection Service Bulletin C20452–32–3254, Revision 2, dated September 5, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Messier-Bugatti, 45 Avenue Victor Hugo—Bat. 227, Aubervilliers, France.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 14, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–16670 Filed 8–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24270; Directorate Identifier 2005–NM–200–AD; Amendment 39–15170; AD 2007–17–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 777 series airplanes. This AD requires, for the drive mechanism of the horizontal stabilizer, repetitive detailed inspections for discrepancies; repetitive lubrication of the ballnut and ballscrew; repetitive measurements of the freeplay between the ballnut and the ballscrew; and corrective action if necessary. This AD results from a report of extensive corrosion of a ballscrew in the drive mechanism of the horizontal stabilizer on a Boeing Model 757 airplane, which is similar in design to the ballscrew on Model 777 airplanes. We are issuing this AD to prevent an undetected failure of the primary load path for the ballscrew in the drive

mechanism of the horizontal stabilizer and subsequent wear and failure of the secondary load path, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

DATES: This AD becomes effective October 2, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 2, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6490; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Boeing Model 777 airplanes. That supplemental NPRM was published in the **Federal Register** on June 18, 2007 (72 FR 33411). That supplemental NPRM proposed to require, for the drive mechanism of the horizontal stabilizer, repetitive detailed inspections for discrepancies; repetitive lubrication of the ballnut and ballscrew; repetitive measurements of the freeplay between the ballnut and the ballscrew; and corrective action if necessary. That supplemental NPRM also proposed to add airplanes to the applicability of the proposed AD.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment received. The commenter, Boeing, supports the supplemental NPRM.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 596 airplanes of the affected design in the worldwide fleet. This AD affects about 203 airplanes of U.S. registry.

The required maintenance records check takes about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the maintenance records check for U.S. operators is $16,240, or $80 per airplane.

The required detailed inspection takes about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the inspection for U.S. operators is $16,240, or $80 per airplane, per inspection cycle.

The required freeplay measurement takes about 5 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the freeplay measurement for U.S. operators is $81,200, or $400 per airplane, per measurement cycle.

The required lubrication takes about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the lubrication for U.S. operators is $16,240, or $80 per airplane, per lubrication cycle.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2007–17–12 Boeing: Amendment 39–15170. Docket No. FAA–2006–24270; Directorate Identifier 2005–NM–200–AD.

Effective Date

(a) This AD becomes effective October 2, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 777 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of extensive corrosion of a ballscrew in the drive mechanism of the horizontal stabilizer on a Boeing Model 757 airplane, which is similar in design to the ballscrew on Model 777 airplanes. We are issuing this AD to prevent an undetected failure of the primary load path for the ballscrew in the drive mechanism of the horizontal stabilizer and subsequent wear and failure of the secondary load path, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Service Bulletin Reference

(f) The term "service bulletin," as used in this AD, means Boeing Alert Service Bulletin 777–27A0059, Revision 1, dated August 18, 2005.

Note 1: The service bulletin refers to the Boeing 777 Aircraft Maintenance Manual (AMM), Subjects 12–21–05, 27–41–13, and 29–11–00, as additional sources of service information for accomplishing the actions required by this AD.

Maintenance Records Check

(g) For airplanes that have received a certificate of airworthiness prior to the effective date of this AD: Within 180 days or 3,500 flight hours after the effective date of this AD, whichever occurs first, perform a maintenance records check or inspect to determine whether any horizontal stabilizer trim actuator has been replaced for any issue described in the service bulletin with a serviceable actuator that was not new or overhauled, and has not received a detailed inspection and freeplay measurement since the replacement.

Detailed Inspection

(h) Within the compliance times specified in paragraph (h)(1) or (h)(2) of this AD, as applicable: Perform a detailed inspection for discrepancies of the horizontal stabilizer trim actuator ballnut and ballscrew in accordance with Part 1 of the Accomplishment Instructions of the service bulletin. Repeat the detailed inspection thereafter at intervals not to exceed 3,500 flight hours or 12 months, whichever occurs first. If any discrepancy is found during any inspection required by this AD, before further flight, replace the actuator with a new or serviceable actuator in accordance with the Accomplishment Instructions of the service bulletin.

(1) For airplanes identified in paragraph (g) of this AD on which the actuator has not been replaced: Before the accumulation of 15,000 total flight hours, or within 18 months after the effective date of this AD, whichever occurs later.

(2) For airplanes identified in paragraph (g) of this AD on which the actuator has been replaced, and for airplanes having received a certificate of airworthiness after the effective date of this AD: Before the accumulation of 3,500 flight hours or within 24 months after the effective date of this AD, whichever occurs later.

Freeplay Measurement (Inspection)

(i) Within the compliance times specified in paragraph (i)(1) or (i)(2) of this AD, as applicable: Perform a freeplay measurement of the ballnut and ballscrew in accordance with Part 2 of the Accomplishment Instructions of the service bulletin. Repeat the freeplay measurement thereafter at intervals not to exceed 18,000 flight hours or 60 months, whichever occurs first. If the freeplay is found to exceed the limits specified in the service bulletin during any measurement required by this AD, before further flight, replace the actuator with a new or serviceable actuator in accordance with the Accomplishment Instructions of the service bulletin.

(1) For airplanes identified in paragraph (g) of this AD on which the actuator has not been replaced: Before the accumulation of 15,000 total flight hours, or within 18 months after the effective date of this AD, whichever occurs later.

(2) For airplanes identified in paragraph (g) of this AD on which the actuator has been replaced, and for airplanes having received a certificate of airworthiness after the effective date of this AD: Before the accumulation of 3,500 flight hours or within 24 months after the effective date of this AD, whichever occurs later.

Lubrication

(j) Within the compliance times specified in paragraph (j)(1) or (j)(2) of this AD, as applicable: Lubricate the ballnut and ballscrew in accordance with Part 3 of the Accomplishment Instructions of the service bulletin. Repeat the lubrication thereafter at intervals not to exceed 2,000 flight hours or 12 months, whichever occurs first.

(1) For airplanes identified in paragraph (g) of this AD on which the actuator has not been replaced: Before the accumulation of 15,000 total flight hours, or within 18 months after the effective date of this AD, whichever occurs later.

(2) For airplanes identified in paragraph (g) of this AD on which the actuator has been replaced, and for airplanes having received a certificate of airworthiness after the effective date of this AD: Before the accumulation of 3,500 flight hours or within 24 months after the effective date of this AD, whichever occurs later.

Credit for Using Original Issue of Service Bulletin

(k) Actions performed prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 777–27A0059, dated September 18, 2003, are considered acceptable for compliance with the corresponding actions of this AD.

Credit for Hard-Time Replacement of Actuator

(l) Any actuator overhauled within the compliance times specified in paragraphs (h), (i), and (j) of this AD or before the effective date of this AD—as part of a "hard-time" replacement program that includes removal of the stabilizer actuator from the airplane and overhaul of the stabilizer ballscrew in accordance with original equipment manufacturer component maintenance manual instructions—meets the intent of one detailed inspection, one freeplay inspection, and one lubrication of the stabilizer ballscrew. Therefore, any such actuator is considered acceptable for compliance with the initial accomplishment of the actions specified in paragraphs (h), (i), and (j) of this AD, and repetitions of those actions may be determined from the performance date of that overhaul.

Parts Installation

(m) As of the effective date of this AD, no person may install, on any airplane, a horizontal stabilizer trim actuator that is not new or overhauled, unless a detailed inspection, freeplay measurement, and lubrication of that actuator have been performed in accordance with paragraphs (h), (i), and (j) of this AD, as applicable.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(o) You must use Boeing Alert Service Bulletin 777–27A0059, Revision 1, dated August 18, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030,

or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 14, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–16419 Filed 8–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28257; Directorate Identifier 2007–NM–034–AD; Amendment 39–15171; AD 2007–17–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –200B, –200C, and –200F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 747–100, –200B, –200C, and –200F series airplanes. This AD requires performing repetitive inspections for cracks in the fuselage skin at the cutout of the bulk cargo door light, and corrective actions if necessary. This AD also provides terminating action for airplanes with a certain type of damage. This AD results from a report of a 2-inch crack through the fuselage skin and internal bonded doubler at the cutout of the bulk cargo door light. We are issuing this AD to detect and correct cracks in the fuselage skin at the cutout of the bulk cargo door light, which could result in reduced structural integrity of the fuselage at the bulk cargo door and consequent rapid decompression of the fuselage.

DATES: This AD becomes effective October 2, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 2, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 747–100, –200B, –200C, and –200F series airplanes. That NPRM was published in the **Federal Register** on May 24, 2007 (72 FR 29084). That NPRM proposed to require performing repetitive inspections for cracks in the fuselage skin at the cutout of the bulk cargo door light, and corrective actions if necessary. That NPRM also proposed to provide terminating action for airplanes with a certain type of damage.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment received. The commenter, Boeing, supports the NPRM.

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 65 airplanes of the affected design in the worldwide fleet. This AD affects about 36 airplanes of U.S. registry. The required actions take about 2 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $5,760, or $160 per airplane, per inspection cycle.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13

by adding the following new airworthiness directive (AD):

2007–17–13 Boeing: Amendment 39–15171. Docket No. FAA–2007–28257; Directorate Identifier 2007–NM–034–AD.

Effective Date

(a) This AD becomes effective October 2, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–100, –200B, –200C, and –200F series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747–53A2673, dated February 8, 2007.

Unsafe Condition

(d) This AD results from a report of a 2-inch crack through the fuselage skin and internal bonded doubler at the cutout of the bulk cargo door light. We are issuing this AD to detect and correct cracks in the fuselage skin at the cutout of the bulk cargo door light, which could result in reduced structural integrity of the fuselage at the bulk cargo door and consequent rapid decompression of the fuselage.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspections/Corrective Actions

(f) Before the accumulation of 20,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever is later: Perform a high frequency eddy current (HFEC) inspection for cracks in the fuselage skin at the cutout of the bulk cargo door light, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2673, dated February 8, 2007. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles.

(1) If no crack is found: Repeat the inspection required by paragraph (f) of this AD at the time specified.

(2) If any crack is found that is 2.0 inches or less in length from the edge of the light cutout forward lower corner: Before further flight, do all the corrective actions (including an additional HFEC inspection for cracks) in accordance with Part 2 of the Accomplishment Instructions of the service bulletin. Accomplishing the actions specified in Part 2 of the service bulletin ends the repetitive inspections required by paragraph (f) of this AD.

(3) If any crack is found during the inspection required by paragraph (f) of this AD that is more than 2.0 inches in total length from the edge of the light cutout forward lower corner, or is at a location other than the light cutout forward lower corner: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (g)(2) of this AD.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

(3) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(h) You must use Boeing Alert Service Bulletin 747–53A2673, dated February 8, 2007, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 14, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–16420 Filed 8–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28016; Directorate Identifier 2006–NM–227–AD; Amendment 39–15175; AD 2007–17–17]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 31, 31A, 35, 35A (C–21A), 36, 36A, 55, 55B, and 55C Airplanes, and Model 45 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Learjet Model 31, 31A, 35, 35A (C–21A), 36, 36A, 55, 55B, and 55C airplanes, and Model 45 airplanes. This AD requires inspecting for unsealed gaps on the pylon side of the engine firewall and cleaning/sealing any unsealed gap; and, for certain airplanes, inspecting for unsealed gaps of the pylon trailing edge and cleaning/sealing any gap. This AD results from a report that unsealed gaps (penetration points) of the engine firewall were discovered during production. We are issuing this AD to prevent penetration of flammable liquids or fire through the engine firewall into the engine pylon, which could lead to fire inside the airplane.

DATES: This AD becomes effective October 2, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of October 2, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

Contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: James Galstad, Aerospace Engineer, Mechanical Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Learjet Model 31, 31A, 35, 35A (C–21A), 36, 36A, 55, 55B, and 55C airplanes, and Model 45 airplanes. That NPRM was published in the **Federal Register** on April 26, 2007 (72 FR 20775). That NPRM proposed to require inspecting for unsealed gaps on the pylon side of the engine firewall and cleaning/sealing any unsealed gap; and, for certain airplanes, inspecting for unsealed gaps of the pylon trailing edge and cleaning/sealing any gap.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 1,243 airplanes of the affected design in the worldwide fleet. This AD affects about 945 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD, at an average labor rate of $80 per work hour. Parts and materials may be supplied from operator stores or procured locally.

ESTIMATED COSTS TO PERFORM INSPECTION AND MODIFICATIONS

Learjet airplane model	Work hours	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
31/31A	2	$160	173	$27,680
35/35A (C–21A)	2	160	507	81,120
36/36A	2	160	42	6,720
45	5	400	102	40,800
55/55B/55C	2	160	121	19,360

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2007–17–17 Learjet: Amendment 39–15175. Docket No. FAA–2007–28016; Directorate Identifier 2006–NM–227–AD.

Effective Date

(a) This AD becomes effective October 2, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Learjet Model 31, 31A, 35, 35A (C–21A), 36, 36A, 55, 55B, and 55C airplanes, and Model 45 airplanes; certificated in any category; as identified in the service information specified in Table 1 of this AD.

TABLE 1.—APPLICABLE SERVICE INFORMATION

Learjet airplane model	Service Bulletin	Revision level	Date
31/31A	Bombardier Service Bulletin 31–54–2	1	August 21, 2006.

TABLE 1.—APPLICABLE SERVICE INFORMATION—Continued

Learjet airplane model	Service Bulletin	Revision level	Date
45	Bombardier Service Bulletin 45–54–3	2	August 15, 2003.
35/35A (C–21A) and 36/36A	Learjet Service Bulletin 35/36–54–3	Original	March 16, 2001.
55/55B/55C	Learjet Service Bulletin 55–54–3	Original	March 16, 2001.

Unsafe Condition

(d) This AD results from a report that unsealed gaps (penetration points) of the engine firewall were discovered during production. We are issuing this AD to prevent penetration of flammable liquids or fire through the engine firewall into the engine pylon, which could lead to fire inside the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspecting, Cleaning, and Sealing of Gaps in Engine Firewall

(f) Within 12 months after the effective date of this AD, do the actions described in paragraphs (f)(1) and (f)(2) of this AD, in accordance with the applicable service information specified in Table 1 of this AD.

(1) For all airplanes: Inspect for unsealed gaps on the pylon side of the engine firewall and clean and seal any unsealed gap.

(2) For Learjet Model 45 airplanes only: Inspect the engine pylon trailing edge for unsealed gaps, and clean and seal any unsealed gap.

Credit for Actions Done Using Previous Service Information

(g) Actions accomplished before the effective date of this AD according to Learjet Service Bulletin 31–54–2, dated March 16, 2001; or Bombardier Service Bulletin 45–54–3, dated March 16, 2001; or Revision 1, dated December 12, 2001; as applicable; are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Wichita Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(i) You must use the service documents identified in Table 2 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. (For Bombardier Service Bulletin 45–54–3, Revision 2, dated August 15, 2003, only the first page of that document contains the correct revision date.) The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Service Bulletin	Revision level	Date
Bombardier Service Bulletin 31–54–2	1	August 21, 2006.
Bombardier Service Bulletin 45–54–3	2	August 15, 2003.
Learjet Service Bulletin 35/36–54–3	Original	March 16, 2001.
Learjet Service Bulletin 55–54–3	Original	March 16, 2001.

Issued in Renton, Washington, on August 14, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–16676 Filed 8–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–198–AD; Amendment 39–15176; AD 2007–17–18]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; Model DC–9–81 (MD–81), –82 (MD–82), –83 (MD–83), and –87 (MD–87) Airplanes; and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), –82 (MD–82), –83 (MD–83), and –87 (MD–87) airplanes; and Model MD–88 airplanes; that requires repetitive inspections and functional tests of the static port heater assemblies, and corrective actions if necessary. The actions specified by this AD are intended to prevent an electrical short of the static port heater from sparking and igniting the insulation blanket adjacent to the static port heater, which could result in smoke and/or fire in the cabin area. This action is intended to address the identified unsafe condition.

DATES: Effective October 2, 2007.

The incorporation by reference of a certain publication listed in the

regulations is approved by the Director of the Federal Register as of October 2, 2007.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), –82 (MD–82), –83 (MD–83), and –87 (MD–87) airplanes; and Model MD–88 airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on December 20, 2005 (70 FR 75430). That action proposed to require repetitive inspections and functional tests of the static port heater assemblies, repetitive inspections of the static port heaters and insulators, and corrective actions if necessary.

Actions Since Issuance of Supplemental NPRM

We proposed in paragraph (b)(2) of the supplemental NPRM to require repetitive inspections for proper installation of the static port heaters and insulation. This proposal was in response to a National Transportation Safety Board (NTSB) comment on the original NPRM. However, we have re-assessed the safety implications of the issue based on additional information that we received from Boeing. Although we understand the NTSB's concern, we have determined that the inspections in paragraph (b)(2) of the supplemental NPRM are not necessary to address the identified unsafe condition. We have revised paragraph (b) of this AD to remove the requirement to inspect for proper installation for the following reasons.

We have concluded that the incorrect stacking of the heater assembly does not contribute to the heater connector wire damage and is therefore not a safety concern.

We based our original decision to incorporate a one-time inspection for incorrect stacking into the original NPRM on the following statement made to the FAA in Boeing Letter C1–L4L–03–0700, dated June 3, 2003.

> Boeing's evaluation included Delta's recommendation to redesign the " * * * heater resistance wires * * *" or heater element to incorporate larger bend radii. The problems of excessive localized heating near the bend radii of the element encountered by Delta may be attributed to heaters that were assembled improperly due to the AMM error. Delta's statements in its report-indicate finding heater blankets improperly assembled. Boeing concurs with Delta that this assembly error would cause excessive heating and Boeing also believes this condition could lead to delamination or other damage in the bend radii areas.

Then, in the supplemental NPRM, we agreed with the NTSB recommendation to require repetitive inspections to address any incorrect stacking that might occur in the future.

After Boeing commented on the supplemental NPRM (see "Comments" section below), we contacted Boeing to clarify its comments. At the same time, in order to better understand the need for a repetitive inspection for proper installation as the NTSB recommended, we asked Boeing to provide us with additional information on the cause and effect of improper installation (incorrect stacking).

We specifically requested that Boeing clarify the definition of "excessive heating" and "other damage in the bend radii areas." Boeing confirmed that the bend radii area of the heater assembly is the internal heating element bend radii, within the laminated elastomer and is not the bend radii of the connector wire. Based on this statement, we concluded that the incorrect stacking of the heater as we understood before does not contribute to heater connector wire damage.

Our evaluation of the additional information has resulted in a better understanding of "excessive heating." We determined that improper stack-up of the static port heater might cause the heater assembly to run longer at the high wattage setting in order to heat the static plate to the proper temperature. The heater assembly circuit design limits the absolute temperature that the element can reach. Thus, the heater assembly cannot reach temperatures significantly higher than the intended operating temperatures. Additionally, the heater circuit design incorporates a 310°F thermal fuse. However, the additional duty time or cycles caused by the improper stack-up might accelerate the normal aging of the heater assembly. Based on the above information, our previous conclusion that "excessive heating" could damage the heater connector wire is incorrect.

Furthermore, Boeing addressed the improper stack-up of the static port heater assembly in McDonnell Douglas All Operator Letter (AOL) 9–2186, dated August 15, 1991. The AOL notified the operators of an incorrect depiction of the heater/insulator installation in the DC–9 and MD–80 Airplane Maintenance Manuals (AMMs), which were also revised and corrected in 1991. We are aware of no subsequent reports of improper stack-up of the static port heater assembly.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Withdraw the Supplemental NPRM

Boeing requests that the supplemental NPRM be withdrawn. Boeing considers its comments on the original NPRM still valid and offers these comments on the supplemental NPRM as follows.

Boeing contends that the unsafe condition no longer exists. Boeing states that the unsafe condition was addressed by Boeing Alert Service Bulletin MD90–30A023, including Appendix, dated March 14, 2001 (for Model MD–90–30 airplanes), which was mandated by AD 2001–10–11, amendment 39–12237 (66 FR 28651, May 24, 2001), and by Boeing Alert Service Bulletin MD80–30A092, including Appendix, dated March 14, 2001 (for Model DC–9–81, –82, –83, and –87 airplanes, and Model MD–88 airplanes), which was mandated by AD 2001–10–10, amendment 39–12236 (66 FR 28643, May 24, 2001). Boeing states that those ADs require inspecting the wiring of the primary and alternate static port heaters, determining if the type of insulation blanket installed is metallized Mylar, and modifying the insulation blankets if necessary.

Boeing also states that a review of operators' reports indicates only two events resulted in smoke in the cabin, both on one operator's MD–88 airplanes, with one report stating a smoke smell was "evident." In response, Boeing issued the service bulletins described previously. Boeing notes that "in the

three years since the release of these service bulletins and the related ADs, no other static port heater smoke/fire events have been reported from the entire MD–80/90 fleet."

Boeing concludes that the unsafe condition no longer exists, and that the actions in the supplemental NPRM are purely an enhancement. Therefore, Boeing requests that the supplemental NPRM be withdrawn.

We do not agree with Boeing's request to withdraw the supplemental NPRM. Although no other static port heater smoke/fire events have been reported since all metallized Mylar insulation blankets were replaced with other insulation blankets such as Tedlar, the potential for arcing from an electrical short of the static port heater connector wire still exists.

As we previously stated, we requested clarification of this request to withdraw the supplemental NPRM in an ex parte communication with Boeing.

Boeing stated that it addressed the potential for fire by removing material known to ignite easily and propagate fire. Boeing concluded that the ignition source in the one event in 1999 was of extremely low energy. The residual risk created by the potential for the low energy arcing of the wire identified in the event does not, in itself, create an undue risk. However, Boeing acknowledges the FAA's intent to further reduce risk by requiring the actions specified in paragraph (b)(1) of the supplemental NPRM. Boeing recommends that operators perform a general visual inspection and the functional test (health check) in accordance with Boeing Service Bulletins MD90–30–026 (for MD–90–30 airplanes) and MD80–30–097 (for DC–9 airplanes).

Therefore, it is Boeing's position that incorporating the inspections/tests, specified in paragraph (b)(1) of the supplemental NPRM, into the applicable FAA-approved Maintenance Planning Document(s) is more appropriate.

In regard to the general visual inspection to verify stack-up specified in paragraph (b)(2) of the supplemental NPRM, Boeing stated that stack-up issues are not applicable to the alternate static port heater assembly. As stated previously, it is Boeing's assessment that improper stack-up of the primary static port assembly will not increase the potential for fire as described. Therefore, Boeing disagrees with the intent of paragraph (b)(2).

We concur with Boeing's recommendation that to further reduce risk, operators should perform a general visual inspection and functional test in accordance with Boeing Service Bulletin DC9–30–097, Revision 2, dated May 27, 2005. However, we do not agree that incorporation of the inspections/tests into the applicable FAA-approved Maintenance Planning Document(s) is more appropriate than issuance of this AD. We consider issuance of an AD necessary because ADs are the means to mandate accomplishment of procedures and adherence to specific compliance times.

We have determined, based on the above comments, that we will issue this AD with the requirement of repetitive inspections and the functional tests, as proposed, in accordance with Boeing Service Bulletin DC9–30–097, Revision 2, dated May 27, 2005, to identify and remove marginal static port heaters before they fail and generate sparks.

Based on the technical and economic information provided earlier, we do agree with Boeing that inspection of the heater and insulator for incorrect stacking is not necessary. We have revised paragraph (b) of this AD accordingly.

Request To Exclude AC (Alternating Current) Hi-Pot (High Potential) Test

NWA suggests that the AC hi-pot test specified in Boeing DC–9 Drawing SR09340158, Change A, dated May 19, 2005, is not necessary. Boeing Drawing SR09340158 is referenced as the appropriate source of service information for doing a functional test of the left or right primary or alternate static port assemblies in Boeing Service Bulletin DC9–30–097, Revision 2, dated May 27, 2005 (which is referenced as the appropriate source of service information for accomplishing the proposed actions in the supplemental NRPM). NWA states that the high voltage required for the AC hi-pot test can be destructive to the heater element, thermostat, and thermal fuse and is not representative of airplane operating conditions. NWA contends that the insulation resistance, resistance, and current measurements specified in the drawing are adequate in assessing the health of the static port heater blanket.

We do not agree. NWA did not provide data to substantiate any change to the functional tests specified in Boeing Drawing SR09340158. In addition, Boeing has confirmed that the AC hi-pot test is necessary and will not be destructive to the heater element, thermostat, and thermal fuse. We have not revised this AD in this regard. However, under the provisions of paragraph (e) of this AD, we may consider requests for approval of an alternative method of compliance if sufficient data are submitted to substantiate that such a method would provide an acceptable level of safety.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Explanation of Change to Costs Impact

After the supplemental NPRM was issued, we reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $65 per work hour to $80 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,836 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,125 airplanes of U.S. registry are affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the general visual inspection for wire damage and functional test, at an average labor rate of $80 per work hour. Based on these figures, the cost impact of the inspection for wire damage and functional test on U.S. operators is estimated to be $90,000, or $80 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2007–17–18 McDonnell Douglas: Amendment 39–15176. Docket 2003–NM–198–AD.

Applicability: McDonnell Douglas Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, DC–9–51, DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes, and Model MD–88 airplanes; certificated in any category; as identified in Boeing Service Bulletin DC9–30–097, Revision 2, dated May 27, 2005.

Compliance: Required as indicated, unless accomplished previously.

To prevent an electrical short of the static port heater from sparking and igniting the insulation blanket adjacent to the static port heater, which could result in smoke and/or fire in the cabin area, accomplish the following:

Service Bulletin References

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Boeing Service Bulletin DC9–30–097, Revision 2, dated May 27, 2005.

Inspection and Functional Test

(b) Within 18 months after the effective date of this AD, perform a general visual inspection of the left and right primary and alternate static port heater assemblies for wire damage; and perform a functional test of the left and right primary and alternate static port heater assemblies; in accordance with the service bulletin. Repeat the actions thereafter at intervals not to exceed 48 months.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation or assembly to detect obvious damage, failure or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normal available lighting conditions such as daylight, hangar lighting, flashlight or drop-light and may require removal or opening of access panels or doors. Stands, ladders or platforms may be required to gain proximity to the area being checked."

Wire Damage or Heater Failures

(c) If wire damage is found and/or the heater assembly fails the functional test during the general visual inspection and functional test required by paragraph (b) of this AD: Before further flight, replace the damaged or inoperative static port heater assembly with a new or serviceable static port heater assembly in accordance with the service bulletin.

Actions Accomplished In Accordance With Previous Issue of Service Bulletin

(d) Inspections, functional tests, and corrective actions accomplished before the effective date of this AD in accordance with Boeing Service Bulletin DC9–30–097, dated February 15, 2002; and Boeing Service Bulletin DC9–30–097, Revision 01, dated January 24, 2003; are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

(e)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, is authorized to approve alternative methods of compliance for this AD.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions must be done in accordance with Boeing Service Bulletin DC9–30–097, Revision 2, dated May 27, 2005. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of this service information, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). To inspect copies of this service information, go to the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or to the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(g) This amendment becomes effective on October 2, 2007.

Issued in Renton, Washington, on August 14, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–16673 Filed 8–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29071; Directorate Identifier 2007–NM–097–AD; Amendment 39–15183; AD 2007–18–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 737–300, –400, and –500 series airplanes. This AD requires an inspection of the seat locks and seat tracks of the flightcrew seats to ensure that the seats lock in position and to verify that lock nuts and bolts of adequate length are installed on the rear tracklock bracket, and corrective actions if necessary. This AD results from a report indicating that the captain's seat slid aft and jammed during taxi. We are issuing this AD to prevent uncommanded movement of the flightcrew seats during acceleration and take-off of the airplane, which could result in reduced controllability of the airplane.

DATES: This AD becomes effective September 12, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 12, 2007.

We must receive comments on this AD by October 29, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Patrick Gillespie, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6429; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We have received a report indicating that the captain's seat slid aft and jammed during taxi. A subsequent investigation found that two of the three screws attaching the rear tracklock bracket broke. The broken screws allowed excessive lateral movement and disengagement of the locking pin from the floor-mounted seat track. In addition, we have received some reports of loosened screws that attach the tracklock bracket to the rear cross member of the seat base. An incorrectly aligned seat track locking pin can cause the locking pin to not fully engage the seat track. These conditions, if not corrected, could result in uncommanded movement of the flightcrew seats during acceleration and take-off of the airplane, which could result in reduced controllability of the airplane.

Other Related Rulemaking

We previously issued AD 2004–04–03, amendment 39–13483 (69 FR 7565, February 18, 2004), applicable to certain Boeing Model 737–300, –400, and –500 series airplanes. (A correction of AD 2004–04–03 was published in the **Federal Register** on April 13, 2004 (69 FR 19313).) That AD requires a one-time general visual inspection of the seat locks and seat tracks of the flightcrew seats to ensure that the seats lock in position and to verify that lock nuts and bolts of adequate length are installed on the rear track lock bracket, and corrective action, if necessary.

Since issuance of AD 2004–03–03, we have determined that the same unsafe condition addressed in that AD may exist on certain additional Boeing Model 737–300, –400, and –500 series airplanes. Boeing has advised us that airplanes having variable numbers PS971 through PS978, PT187, and PT188 were omitted inadvertently from the effectivity of Boeing Alert Service Bulletin 737–25A1363, Revision 1, dated March 28, 2002 (referred to in the applicability of AD 2004–04–03 as the appropriate source of service information for identifying the affected airplanes). Therefore, these additional airplanes are also subject to the same unsafe condition addressed in AD 2004–03–03.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737–25A1363, Revision 2, dated May 2, 2006. Revision 2 was issued to add airplanes having variable numbers PS971 through PS978, PT187, and PT188, and to make editorial changes. The procedures for inspecting the seat locks and seat tracks of the flightcrew seats, and corrective actions if necessary, are essentially identical to those in Revision 1 of the service bulletin. No more work is necessary on airplanes changed as shown in Boeing Alert Service Bulletin 737–25A1363, dated November 5, 1998, or Revision 1, dated March 28, 2002. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

Boeing Alert Service Bulletin 737–25A1363 refers to IPECO Service Bulletin A001–25–47, Issue 2, dated July 31, 2002, as an additional source of service information for accomplishment of the inspection and rework.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design that may be registered in the U.S. at some time in the future. Therefore, we are issuing this AD to prevent uncommanded movement of the flightcrew seats during acceleration and take-off of the airplane, which could result in reduced controllability of the airplane. This AD requires accomplishing the actions specified in the service information described previously.

Costs of Compliance

None of the airplanes affected by this action are on the U.S. Register. All airplanes affected by this AD are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, we consider this AD necessary to ensure that the unsafe condition is addressed if any affected airplane is imported and placed on the U.S. Register in the future.

If an affected airplane is imported and placed on the U.S. Register in the future, the required actions would take between 1 and 3 work hours per airplane, at an average labor rate of $80 per work hour.

Based on these figures, the estimated cost of the AD would be between $80 and $240 per airplane.

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2007–29071; Directorate Identifier 2007–NM–097–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground level of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2007–18–03 Boeing: Amendment 39–15183. Docket No. FAA–2007–29071; Directorate Identifier 2007–NM–097–AD.

Effective Date

(a) This AD becomes effective September 12, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–300, –400, and –500 series airplanes, variable numbers PS971 through PS978, PT187, and PT188, certificated in any category.

Unsafe Condition

(d) This AD results from a report indicating that the captain's seat slid aft and jammed during taxi. We are issuing this AD to prevent uncommanded movement of the flightcrew seats during acceleration and take-off of the airplane, which could result in reduced controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection and Corrective Action

(f) Within 90 days after the effective date of this AD, do a one-time general visual inspection of the seat locks and seat tracks of the flightcrew seats to ensure that the seats lock in position and to verify that lock nuts and bolts of adequate length are installed on the rear tracklock bracket, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–25A1363, Revision 2, dated May 2, 2006.

(1) If the seat lock pin fully engages in all lock positions of the seat track, and the rear track lock bracket is correctly installed: No further action is required by this AD.

(2) If the seat lock pin does not fully engage in all positions of the seat track, before further flight, make sure the flightcrew seat operates correctly, in accordance with the service bulletin.

(3) If the lock nuts and bolts of adequate length are not installed on the rear tracklock bracket, before further flight, rework the flightcrew seat in accordance with the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands,

ladders, or platforms may be required to gain proximity to the area being checked."

Note 2: Boeing Alert Service Bulletin 737–25A1363, Revision 2, dated May 2, 2006, refers to IPECO Service Bulletin A001–25–47, Issue 2, dated July 31, 2002, as an additional source of service information for accomplishment of the inspection and rework required by paragraphs (f) and (f)(3) of this AD, respectively.

(g) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 737–25A1363, dated November 5, 1998; or Revision 1, dated March 28, 2002, is acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(i) You must use Boeing Alert Service Bulletin 737–25A1363, Revision 2, dated May 2, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, S.W., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 17, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–16909 Filed 8–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28353; Directorate Identifier 2007–NM–065–AD; Amendment 39–15174; AD 2007–17–16]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Galaxy Airplanes and Model Gulfstream 200 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During the manufacturing process of the Poppet Covers of the Pressurization Safety Valves, burrs that could damage the Valve Diaphragms were not removed. The damage may eventually cause faulty operation of the relief valves resulting in an unsafe condition when combined with additional failures. The serial numbers of the defective valves and the affected aircraft were identified.

The unsafe condition is damage and subsequent failure of the safety relief valves, which could result in rapid decompression of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective October 2, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 2, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 6, 2007 (72 FR 31204). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During the manufacturing process of the Poppet Covers of the Pressurization Safety Valves, burrs that could damage the Valve Diaphragms were not removed. The damage may eventually cause faulty operation of the relief valves resulting in an unsafe condition when combined with additional failures. The serial numbers of the defective valves and the affected aircraft were identified.

The unsafe condition is damage and subsequent failure of the safety relief valves, which could result in rapid decompression of the airplane. The corrective action includes replacing the pressurization safety valve, part number 103842–3. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

Based on the service information, we estimate that this AD affects about 7 products of U.S. registry. We also estimate that it takes about 10 work-hours per product to comply with the basic requirements of this AD. The

average labor rate is $80 per work-hour. Required parts cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the AD on U.S. operators to be $5,600, or $800 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2007–17–16 Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.): Amendment 39–15174. Docket No. FAA–2007–28353; Directorate Identifier 2007–NM–065–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 2, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Gulfstream Model Galaxy airplanes and Model Gulfstream 200 airplanes, serial numbers 101 through 104, 109, 110, and 118, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 21: Air Conditioning.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During the manufacturing process of the Poppet Covers of the Pressurization Safety Valves, burrs that could damage the Valve Diaphragms were not removed. The damage may eventually cause faulty operation of the relief valves resulting in an unsafe condition when combined with additional failures. The serial numbers of the defective valves and the affected aircraft were identified.

The unsafe condition is damage and subsequent failure of the safety relief valves, which could result in rapid decompression of the airplane. The corrective action includes replacing the pressurization safety valve, part number 103842–3.

Actions and Compliance

(f) Unless already done, do the following actions. Within 500 flight hours or 12 months after the effective date of this AD, whichever occurs first: Replace the pressurization safety valve, part number 103842–3, according to Gulfstream Service Bulletin 200–21–308, dated February 23, 2007.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Israeli Airworthiness Directive 21–07–01–01, dated February 20, 2007; and Gulfstream Service Bulletin 200–21–308, dated February 23, 2007; and Honeywell Service Bulletin 103842–21–4126, dated December 5, 2006; for related information.

Material Incorporated by Reference

(i) You must use Gulfstream Service Bulletin 200–21–308, dated February 23, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–25, Savannah, Georgia 31402–2206.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 14, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–16655 Filed 8–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28436 Directorate Identifier 2007–CE–055–AD; Amendment 39–15178; AD 2007–17–20]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited Model 750XL Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final Rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> To prevent cracks developing in the aileron spar adjacent to the inboard hinge attachment * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective October 2, 2007.

On October 2, 2007, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 6, 2007 (72 FR 36905). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> To prevent cracks developing in the aileron spar adjacent to the inboard hinge attachment accomplish the following:
>
> Remove both ailerons, inspect and modify the aileron spar at the inboard hinge attachment point in accordance with Pacific Aerospace Ltd Service Bulletin PACSB/XL/027.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between this AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 7 products of U.S. registry. We also estimate that it will take about 6 work-hours per product to comply with basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $864 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $9,408 or $1,344 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD Docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2007–17–20 Pacific Aerospace Limited: Amendment 39–15178; Docket No. FAA–2007–28436; Directorate Identifier 2007–CE–055–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 2, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to 750XL airplanes, serial numbers 101, 102, 104 through 120, and 122 through 129, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 27: Flight Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

To prevent cracks developing in the aileron spar adjacent to the inboard hinge attachment accomplish the following:

Remove both ailerons, inspect and modify the aileron spar at the inboard hinge attachment point in accordance with Pacific Aerospace Ltd Service Bulletin PACSB/XL/027.

Actions and Compliance

(f) Unless already done, within the next 6 months after October 2, 2007 (the effective date of this AD) or within the next 150 hours time-in-service after October 2, 2007 (the effective date of this AD), whichever occurs first, rework the left and right ailerons in accordance with Pacific Aerospace Ltd drawing number 11–03141/42, drawn March 26, 2007, as specified in Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/027, dated March 27, 2007.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA approved. Corrective actions are considered FAA approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Civil Aviation Authority of New Zealand AD DCA/750XL/13, effective date April 26, 2007; Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/027, dated March 27, 2007; and Pacific Aerospace Ltd drawing number 11–03141/42, drawn March 26, 2007, for related information.

Material Incorporated by Reference

(i) You must use Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/027, dated March 27, 2007; and Pacific Aerospace Ltd drawing number 11–03141/42, drawn March 26, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Pacific Aerospace Limited, Private Bag HN3027, Hamilton, New Zealand, telephone: +(64) 7–843–6144, fax: +(64) 7–843–6134, e-mail: *pacific@aerospace.co.nz.*

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on August 16, 2007.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–16652 Filed 8–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28158; Directorate Identifier 2007–NM–018–AD; Amendment 39–15168; AD 2007–17–10]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

It has been found cases in which the drain mast of the water and waste system does not meet the SFAR–88 (Special Federal Aviation Regulation No. 88) requirements. In case of fuel leakage or fuel vapor release, the proximity of this mast with the fuel tank may cause fuel ignition, leading to a possible tank explosion.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective October 2, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 2, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601

Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 16, 2007 (72 FR 27491). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> It has been found cases in which the drain mast of the water and waste system does not meet the SFAR–88 (Special Federal Aviation Regulation No. 88) requirements. In case of fuel leakage or fuel vapor release, the proximity of this mast with the fuel tank may cause fuel ignition, leading to a possible tank explosion.

The MCAI requires replacement of the water and waste system drain masts by new ones bearing a new part number (P/N). You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Request To Revise Applicability Statement

The airplane manufacturer, EMBRAER, requests that we change the proposed applicability statement from "This AD applies to EMBRAER Model EMB–135BJ airplanes, certificated in any category; except those that have previously accomplished EMBRAER Service Bulletin 145LEG–38–0015 or 145LEG–38–0020" to "This AD applies to EMBRAER Model EMB–135BJ airplanes, certificated in any category as listed in Embraer Service Bulletin 145LEG–38–0013, original issue, dated 24/Mar/2006; except those that have previously accomplished EMBRAER Service Bulletin 145LEG–38–0015 or 145LEG–38–0020." We infer that the manufacturer wants us to restrict our applicability statement to those airplanes with an affected drain mast installed.

We agree to revise the applicability statement of this AD. The service bulletin identifies only those airplanes that have an affected drain mast installed. We have revised paragraph (c) of this AD to clarify which airplanes are affected by this AD. We have coordinated this change with Agência Nacional de Aviação Civil (ANAC).

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 41 products of U.S. registry. We also estimate that it will take about 20 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $9,633 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $460,553, or $11,233 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2007–17–10 Empresa Brasileira de Aeronautica S.A. (EMBRAER):

Amendment 39–15168. Docket No. FAA–2007–28158; Directorate Identifier 2007–NM–018–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 2, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–135BJ airplanes, as identified in EMBRAER Service Bulletin 145LEG–38–0013, dated March 24, 2006, certificated in any category; except those that have previously accomplished EMBRAER Service Bulletin 145LEG–38–0015 or 145LEG–38–0020.

Subject

(d) Air Transport Association (ATA) of America Code 38: Water/Waste.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

It has been found cases in which the drain mast of the water and waste system does not meet the SFAR–88 (Special Federal Aviation Regulation No. 88) requirements. In case of fuel leakage or fuel vapor release, the proximity of this mast with the fuel tank may cause fuel ignition, leading to a possible tank explosion.

The MCAI requires replacement of the water and waste system drain masts by new ones bearing a new part number (P/N).

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 5,000 flight hours or 4 years after the effective date of this AD, whichever occurs first, replace the water and waste system drain masts with P/N 9402.369.00674 by new ones bearing a P/N 9402.369.00675, according to the detailed instructions and procedures described in EMBRAER Service Bulletin 145LEG–38–0013, dated March 24, 2006.

(2) The accomplishment of the detailed instructions and procedures described in EMBRAER Service Bulletin 145LEG–38–0015, dated November 25, 2005; or 145LEG–38–0020, dated February 3, 2006; are acceptable for compliance with the requirements of this AD.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Brazilian Airworthiness Directive 2007–01–04, effective January 29, 2007, and the service bulletins listed in Table 1 of this AD, for related information.

TABLE 1.—SOURCES OF RELATED INFORMATION

EMBRAER Service Bulletin—	Revision level—	Dated—
145LEG–38–0005	02	November 20, 2003.
145LEG–38–0013	Original	March 24, 2006.
145LEG–38–0015	Original	November 25, 2005.
145LEG–38–0020	Original	February 3, 2006.

Material Incorporated by Reference

(i) You must use EMBRAER Service Bulletin 145LEG–38–0013, dated March 24, 2006; and EMBRAER Service Bulletin 145LEG–38–0005, Revision 02, dated November 20, 2003; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 14, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–16427 Filed 8–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28379; Directorate Identifier 2007–NM–077–AD; Amendment 39–15182; AD 2007–18–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

[T]he FAA has published SFAR 88 (Special Federal Aviation Regulation 88). * * *

Under this regulation, all holders of type certificates for passenger transport aircraft * * * are required to conduct a design review against explosion risks.

This Airworthiness Directive (AD), which renders mandatory the modification of the fuel pump wiring against short circuit, is a consequence of this design review.

The unsafe condition is chafing of the fuel pump cables, which could result in short circuits leading to fuel pump

failure, intermittent operation, arcing, and possible fuel tank explosion. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective October 2, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 2, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 28, 2007 (72 FR 35368). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> [T]he FAA has published SFAR 88 (Special Federal Aviation Regulation 88). In their letters referenced 04/00/02/07/01–L296, dated March 4th, 2002 and 04/00/02/07/03–L024, dated February 3rd, 2003, the JAA (Joint Aviation Authorities) recommended the application of a similar regulation to the National Aviation Authorities (NAA).
>
> Under this regulation, all holders of type certificates for passenger transport aircraft with either a passenger capacity of 30 or more, or a payload capacity of 7,500 pounds (3402 kg) or more, which have received their certification since January 1st, 1958, are required to conduct a design review against explosion risks.
>
> This Airworthiness Directive (AD), which renders mandatory the modification of the fuel pump wiring against short circuit, is a consequence of this design review.
>
> Note: for A310 and A300–600 aircraft, refer to [EASA] AD 2006–0284R1. [On March 7, 2007, the FAA issued a corresponding NPRM for Model A310 and A300–600 airplanes, which was published in the **Federal Register** (72 FR 11302, March 13, 2007.)]

The unsafe condition is chafing of the fuel pump cables, which could result in short circuits leading to fuel pump failure, intermittent operation, arcing, and possible fuel tank explosion. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

Based on the service information, we estimate that this AD affects about 29 products of U.S. registry. We also estimate that it takes about 72 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts cost about $5,050 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD on U.S. operators to be $313,490, or $10,810 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http//dms.dot.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2007–18–02 Airbus: Amendment 39–15182. Docket No. FAA–2007–28379; Directorate Identifier 2007–NM–077–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 2, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 series airplanes, all certified models, all serial numbers, certificated in any category; except Model A300–600 series airplanes; and except those modified by Airbus Service Bulletin A300–24–0103, Revision 01, dated January 11, 2007.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical Power.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

[T]he FAA has published SFAR 88 (Special Federal Aviation Regulation 88). In their letters referenced 04/00/02/07/01–L296, dated March 4th, 2002 and 04/00/02/07/03–L024, dated February 3rd, 2003, the JAA (Joint Aviation Authorities) recommended the application of a similar regulation to the National Aviation Authorities (NAA).

Under this regulation, all holders of type certificates for passenger transport aircraft with either a passenger capacity of 30 or more, or a payload capacity of 7,500 pounds (3402 kg) or more, which have received their certification since January 1st, 1958, are required to conduct a design review against explosion risks.

This Airworthiness Directive (AD), which renders mandatory the modification of the fuel pump wiring against short circuit, is a consequence of this design review.

Note: For A310 and A300–600 aircraft, refer to [EASA] AD 2006–0284R1. [On March 7, 2007, the FAA issued a corresponding NPRM for Model A310 and A300–600 airplanes, which was published in the **Federal Register** (72 FR 11302, March 13, 2007.)]

The unsafe condition is chafing of the fuel pump cables, which could result in short circuits leading to fuel pump failure, intermittent operation, arcing, and possible fuel tank explosion.

Actions and Compliance

(f) Within 31 months after the effective date of this AD, unless already done, modify the inner and outer fuel pumps wiring, route 1P and 2P harnesses in the LH (left-hand) wing and in the RH (right-hand) wing, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–24–0103, Revision 01, dated January 11, 2007. Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A300–24–0103, dated March 15, 2006, for airplanes under configuration 1 as defined in the service bulletin, are acceptable for compliance with the requirements of this AD.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2007–0066, dated March 13, 2007, and Airbus Service Bulletin A300–24–0103, Revision 01, dated January 11, 2007, for related information.

Material Incorporated by Reference

(i) You must use Airbus Service Bulletin A300–24–0103, Revision 01, dated January 11, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 17, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–16911 Filed 8–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26771; Directorate Identifier 2005–SW–07–AD; Amendment 39–15059; AD 2007–11–02]

RIN 2120–AA64

Airworthiness Directives; Enstrom Helicopter Corporation Model F–28A, F–28C, F–28F, TH–28, 280, 280C, 280F, 280FX, 480, and 480B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Enstrom Helicopter Corporation (Enstrom) Model F–28A, F–28C, F–28F, TH–28, 280, 280C, 280F, 280FX, 480, and 480B helicopters that requires determining the installation dates for each main rotor push-pull control rod (push-pull rod), inspecting the push-pull rods for corrosion, replacing any push-pull rod which has corrosion that is severe enough to cause pitting, or has visible moisture inside the rod, and repairing each push-pull rod that has corrosion but no pitting. This amendment is prompted by one reported incident in which the helicopter pilot encountered severe in-flight vibration due to the failure of a push-pull rod, requiring an emergency landing. The actions specified by this AD are intended to detect corrosion and prevent failure of a push-pull rod, and subsequent loss of control of the helicopter.

DATES: Effective October 2, 2007.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 2, 2007.

ADDRESSES: You may get the service information identified in this AD from The Enstrom Helicopter Corporation, Twin County Airport, P.O. Box 490, Menominee, Michigan 49858.

Examining the Docket

You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://dms.dot.gov* or at the Docket Operations office, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shawn Malekpour, Aviation Safety Engineer, FAA, Chicago Aircraft Certification Office, 2300 East Devon Ave., Des Plaines, Illinois 60018, telephone (847) 294–7837, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on January 8, 2007 (72 FR 669). That action proposed to require reviewing the helicopter maintenance records and determining the installation dates for the push-pull rods. If the dates cannot be determined from the maintenance records, using the "Date MFD", which is located on the helicopter data plate, was proposed to be used as the installation date for the push-pull rods. That action also proposed to require a visual inspection for corrosion on the exterior and interior of the three push-pull rods, part number (P/N) 28–16253-all dash numbers (for Model F–28A, F–28C, F–28F, 280, 280C, 280F, and 280FX helicopters) or P/N 4140532–all dash numbers (for Model TH–28, 480, and 480B helicopters), using the compliance times stated in the following table. Replacing any push-pull rod that has corrosion that is severe enough to cause pitting or has moisture inside the rod, and repairing any push-pull rod that has corrosion but no pitting, was proposed to be required before further flight. Repairing a push-pull rod consists of cleaning the push-pull rod, applying a protective coating, and sealing the push-pull rod before remarking and reinstalling it on a helicopter.

Helicopter models	Push-pull rod service life	Compliance times
Model F–28A, F–28C, F–28F, 280, 280C, 280F, and 280FX helicopters.	Push-pull rod that has been installed for 20 or more years.	Inspect within 10 hours time-in-service (TIS) or at next annual inspection, whichever occurs first.
Model F–28A, F–28C, F–28F, 280, 280C, 280F, and 280FX helicopters.	Push-pull rod that has been installed for 10 or more years, but less than 20 years.	Inspect within 50 hours TIS or at the next annual inspection, whichever occurs first.
Model F–28A, F–28C, F–28F, 280, 280C, 280F, and 280FX helicopters.	Push-pull rod that has been installed for less than 10 years.	Inspect before the service life of the push-pull rod reaches 10 years since initial installation.
Model TH–28, 480, and 480B helicopters	Push-pull rod that has been installed for 10 or more years.	Inspect within 50 hours TIS or at the next annual inspection, whichever occurs first.
Model TH–28, 480, and 480B helicopters	Push-pull rod that has been installed for less than 10 years.	Inspect before the service life of the push-pull rod reaches 10 years since initial installation.

We have reviewed the following service information:

- Enstrom Helicopter Corporation Service Directive Bulletin No. 0096, dated September 10, 2003, which describes visually inspecting the push-pull rods for corrosion and internal moisture, provides for repairing light corrosion, and is applicable to Model F–28A, F–28C, F–28F, 280, 280C, 280F, and 280FX helicopters.
- Enstrom Helicopter Corporation Service Directive Bulletin No. T–019, dated September 10, 2003, which describes visually inspecting the push-pull rods for corrosion and internal moisture, provides for repairing light corrosion, and is applicable to Model TH–28, 480, and 480B helicopters.
- Enstrom Helicopter Corporation Service Information Letter (SIL) No. T–019, dated December 9, 2003, applicable to Model TH–28, 480, and 480B helicopters, which describes visually inspecting each push-pull rod for a crack, nick, scratch, dent, corrosion, damaged threads, bending, and contact wear. We are not proposing to require the inspections specified in the SIL.
- Enstrom Helicopter Corporation Service Information Letter No. 0156, dated December 9, 2003, applicable to Model F–28A, F–28C, F–28F, 280, 280C, 280F, and 280FX helicopters, which describes visually inspecting each push-pull rod for a crack, nick, scratch, dent, corrosion, damaged threads, bending, and contact wear. We are not proposing to require the inspections specified in the SIL.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that this AD will affect 378 helicopters of U.S. registry, and the required actions will take the following numbers of work hours to accomplish on each helicopter at an average labor rate of $80 per work hour:

- 8 work hours to remove, disassemble, and inspect the 3 push-pull rods;
- 9 work hours to repair corrosion without pitting, remark each push-pull rod, and reassemble each push-pull rod; and
- 3 work hours to reinstall 3 push-pull rods on the helicopter.

Required parts will cost approximately $900 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators will be $945,000 ($2,500 per helicopter), assuming 3 push-pull rods are replaced on each helicopter.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this AD. See the DMS to examine the economic evaluation.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2007–11–02 Enstrom Helicopter Company: Amendment 39–15059. Docket No. FAA–2006–26771; Directorate Identifier 2005–SW–07–AD.

Applicability: Model F–28A, F–28C, and F–28F helicopters, excluding serial number (S/N) 816 and subsequent; Model 280, 280C, 280F, and 280FX helicopters, excluding S/N 2100 and subsequent; and Model TH–28, 480, and 480B helicopters, excluding S/N 5058 and subsequent, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect corrosion and prevent failure of a main rotor push-pull control rod (push-pull rod), and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS) or at the next annual inspection, whichever occurs first, review the helicopter maintenance records and determine the date that each push-pull rod, part number (P/N) 28–16253—all dash numbers (for Model F–28A, F–28C, F–28F, 280, 280C, 280F, and 280FX helicopters) and P/N 4140532—all dash numbers (for Model TH–28, 480, and 480B helicopters), was installed. If the date cannot be determined from the maintenance records, use the "Date MFD", which is located on the helicopter data plate, as the installation date for the push-pull rod.

(b) For Model F–28A, F–28C, F–28F, 280, 280C, 280F, and 280FX helicopters, using the compliance times stated in Table 1 of this AD, visually inspect the exterior and interior of each of the three push-pull rods for corrosion severe enough to cause pitting or any moisture, paying special attention to the area of the lower fitting, in accordance with section 5.1., INSPECTION, in Enstrom Helicopter Corporation Service Directive Bulletin No. 0096, dated September 10, 2003 (SDB 0096).

TABLE 1

Helicopter models	Push-pull rod service life	Compliance times
Model F–28A, F–28C, F–28F, 280, 280C, 280F, and 280FX helicopters.	Push-pull rod that has been installed for 20 or more years.	Inspect within 10 hours time-in-service (TIS) or at next annual inspection, whichever occurs first.
Model F–28A, F–28C, F–28F, 280, 280C, 280F, and 280FX helicopters.	Push-pull rod that has been installed for 10 or more years, but less than 20 years.	Inspect within 50 hours TIS or at the next annual inspection, whichever occurs first.
Model F–28A, F–28C, F–28F, 280, 280C, 280F, and 280FX helicopters.	Push-pull rod that has been installed for less than 10 years.	Inspect before the service life of the push-pull rod reaches 10 years since initial installation.

(1) Before further flight, if corrosion without pitting is found on a push-pull rod, then repair, reassemble, remark, and reinstall it in accordance with section 5.2., REPAIR/REASSEMBLY, in SDB 0096.

(2) Before further flight, if corrosion is found that is severe enough to cause pitting, or if any moisture is visible on the inside of a push-pull rod, replace it with an airworthy push-pull rod.

Note 1: Determining continued serviceability of the push-pull rods by inspecting the exterior only of each push-pull rod is described in Enstrom Helicopter Corporation Service Information Letter No. 0156, dated December 9, 2003.

(c) For Model TH–28, 480 and 480B helicopters, using the compliance times stated in Table 2 of this AD, visually inspect the exterior and interior of each of the three push-pull rods for corrosion severe enough to cause pitting or any moisture, paying special attention to the area of the lower fitting, in accordance with section 5.1., INSPECTION, in Enstrom Helicopter Corporation Service Directive Bulletin No. T–019, dated September 10, 2003 (SDB T–019).

TABLE 2

Helicopter models	Push-pull rod service life	Compliance times
Model TH–28, 480, and 480B helicopters	Push-pull rod that has been installed for 10 or more years.	Inspect within 50 hours TIS or at the next annual inspection, whichever occurs first.
Model TH–28, 480, and 480B helicopters	Push-pull rod that has been installed for less than 10 years.	Inspect before the service life of the push-pull rod reaches 10 years since initial installation.

(1) Before further flight, if corrosion without pitting is found on a push-pull rod, then repair, reassemble, remark, and reinstall it in accordance with section 5.2., REPAIR/REASSEMBLY, in SDB T–019.

(2) Before further flight, if corrosion is found that is severe enough to cause pitting, or if any moisture is visible on the inside of a push-pull rod, replace it with an airworthy push-pull rod.

Note 2: Determining continued serviceability of the push-pull rods by inspecting the exterior only of each push-pull rod is described in Enstrom Helicopter

Corporation Service Information Letter No. T–019, dated December 9, 2003.

(d) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Chicago Aircraft Certification Office, Small Airplane Directorate, FAA, for information about previously approved alternative methods of compliance.

(e) The inspection and replacement, if necessary, shall be done in accordance with Enstrom Helicopter Corporation Service Directive Bulletin No. 0096, dated September 10, 2003; Enstrom Helicopter Corporation Service Directive Bulletin No. T–019, dated September 10, 2003; Enstrom Helicopter Corporation Service Information Letter No. T–019, dated December 9, 2003; or Enstrom Helicopter Corporation Service Information Letter No. 0156, dated December 9, 2003, as applicable. The Director of the Federal Register approved these incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Enstrom Helicopter Corporation, Twin County Airport, P.O. Box 490, Menominee, Michigan 49858. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(f) This amendment becomes effective on October 2, 2007.

Issued in Fort Worth, Texas, on July 5, 2007.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E7–16770 Filed 8–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–194–AD; Amendment 39–15177; AD 2007–17–19]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 airplanes, that requires repetitive inspections and functional tests of the static port heater assemblies, and corrective actions if necessary. The actions specified by this AD are intended to prevent an electrical short of the static port heater from sparking and igniting the insulation blanket adjacent to the static port heater, which could result in smoke and/or fire in the cabin area. This action is intended to address the identified unsafe condition.

DATES: Effective October 2, 2007.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of October 2, 2007.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90–30 airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on December 20, 2005 (70 FR 75435). That action proposed to require repetitive inspections and functional tests of the static port heater assemblies, repetitive inspections of the static port heaters and insulators, and corrective actions if necessary.

Actions Since Issuance of Supplemental NPRM

We proposed in paragraph (b)(2) of the supplemental NPRM to require repetitive inspections for proper installation of the static port heaters and insulation. This proposal was in response to a National Transportation Safety Board (NTSB) comment on the original NPRM. However, we have re-assessed the safety implications of the issue based on additional information that we received from Boeing. Although we understand the NTSB's concern, we have determined that the inspections in paragraph (b)(2) of the supplemental NPRM are not necessary to address the identified unsafe condition. We have revised paragraph (b) of this AD to remove the requirement to inspect for proper installation for the following reasons.

We have concluded that the incorrect stacking of the heater assembly does not contribute to the heater connector wire damage and is therefore not a safety concern.

We based our original decision to incorporate a one-time inspection for incorrect stacking into the original NPRM on the following statement made to the FAA in Boeing Letter C1–L4L–03–0700, dated June 3, 2003.

> Boeing's evaluation included Delta's recommendation to redesign the "* * * heater resistance wires * * *" or heater element to incorporate larger bend radii. The problems of excessive localized heating near the bend radii of the element encountered by Delta may be attributed to heaters that were assembled improperly due to the AMM error. Delta's statements in its report indicate finding heater blankets improperly assembled. Boeing concurs with Delta that this assembly error would cause excessive heating and Boeing also believes this condition could lead to delamination or other damage in the bend radii areas.

Then, in the supplemental NPRM, we agreed with the NTSB recommendation to require repetitive inspections to address any incorrect stacking that might occur in the future.

After Boeing commented on the supplemental NPRM (see "Comments" section below), we contacted Boeing to clarify its comments. At the same time, in order to better understand the need for a repetitive inspection for proper installation as the NTSB recommended, we asked Boeing to provide us with additional information on the cause and effect of improper installation (incorrect stacking).

We specifically requested that Boeing clarify the definition of "excessive heating" and "other damage in the bend radii areas." Boeing confirmed that the bend radii area of the heater assembly is the internal heating element bend radii, within the laminated elastomer and is not the bend radii of the connector wire. Based on this statement, we concluded that the incorrect stacking of the heater as we understood before does not contribute to heater connector wire damage.

Our evaluation of the additional information has resulted in a better understanding of "excessive heating." We determined that improper stack-up of the static port heater might cause the heater assembly to run longer at the

high wattage setting in order to heat the static plate to the proper temperature. The heater assembly circuit design limits the absolute temperature that the element can reach. Thus, the heater assembly cannot reach temperatures significantly higher than the intended operating temperatures. Additionally, the heater circuit design incorporates a 310 °F thermal fuse. However, the additional duty time or cycles caused by the improper stack-up might accelerate the normal aging of the heater assembly. Based on the above information, our previous conclusion that "excessive heating" could damage the heater connector wire is incorrect.

Furthermore, Boeing addressed the improper stack-up of the static port heater assembly in McDonnell Douglas All Operator Letter (AOL) 9–2186, dated August 15, 1991. The AOL notified the operators of an incorrect depiction of the heater/insulator installation in the DC–9 and MD–80 Airplane Maintenance Manuals (AMMs), which were also revised and corrected in 1991. We are aware of no subsequent reports of improper stack-up of the static port heater assembly.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Withdraw the Supplemental NPRM

Boeing requests that the supplemental NPRM be withdrawn. Boeing considers its comments on the original NPRM still valid and offers these following additional comments on the supplemental NPRM.

Boeing contends that the unsafe condition no longer exists. Boeing states that the unsafe condition was addressed by Boeing Alert Service Bulletin MD90–30A023, including Appendix, dated March 14, 2001 (for Model MD–90–30 airplanes), which was mandated by AD 2001–10–11, amendment 39–12237 (66 FR 28651, May 24, 2001), and by Boeing Alert Service Bulletin MD80–30A092, including Appendix, dated March 14, 2001 (for Model DC–9–81, –82, –83, and –87 airplanes, and Model MD–88 airplanes), which was mandated by AD 2001–10–10, amendment 39–12236 (66 FR 28643, May 24, 2001). Boeing states that those ADs require inspecting the wiring of the primary and alternate static port heaters, determining if the type of insulation blanket installed is metallized Mylar, and modifying the insulation blankets if necessary.

Boeing also states that a review of operators' reports indicates only two events resulted in smoke in the cabin, both on one operator's MD–88 airplanes, with one report stating a smoke smell was "evident." In response, Boeing issued the service bulletins described previously. Boeing notes that "in the three years since the release of these service bulletins and the related ADs, no other static port heater smoke/fire events have been reported from the entire MD–80/90 fleet."

Boeing concludes that the unsafe condition no longer exists, and that the actions in the supplemental NPRM are purely an enhancement. Therefore, Boeing requests that the supplemental NPRM be withdrawn.

We do not agree with Boeing's request to withdraw the supplemental NPRM. Although no other static port heater smoke/fire events have been reported since all metallized Mylar insulation blankets were replaced with other insulation blankets such as Tedlar, the potential for arcing from an electrical short of the static port heater connector wire still exists.

As previously stated, we requested clarification of this request to withdraw the supplemental NPRM in an ex parte communication with Boeing.

Boeing stated that it addressed the potential for fire by removing material known to ignite easily and propagate fire. Boeing concluded that the ignition source in the one event in 1999 was of extremely low energy. The residual risk created by the potential for the low energy arcing of the wire identified in the event does not, in itself, create an undue risk. However, Boeing acknowledges the FAA's intent to further reduce risk by requiring the actions specified in paragraph (b)(1) of the supplemental NPRM. Boeing recommends that operators perform a general visual inspection and the functional test (health check) in accordance with Boeing Service Bulletins MD90–30–026 and MD80–30–097.

Therefore, it is Boeing's position that incorporating the inspections/tests, specified in paragraph (b)(1) of the supplemental NPRM, into the FAA-approved Maintenance Planning Document(s) is more appropriate.

In regard to the general visual inspection to verify stack-up specified in paragraph (b)(2) of the supplemental NPRM, Boeing stated that stack-up issues are not applicable to the alternate static port heater assembly. As stated previously, it is Boeing's assessment that improper stack-up of the primary static port assembly will not increase the potential for fire as described. Therefore, Boeing disagrees with the intent of paragraph (b)(2).

We concur with Boeing's recommendation that to further reduce risk, operators should perform a general visual inspection and functional test in accordance with Boeing Service Bulletin MD90–30–026, Revision 1, dated May 27, 2005. However, we do not agree that incorporation of the inspections/tests into the applicable FAA-approved Maintenance Planning Document(s) is more appropriate than issuance of this AD. We consider issuance of an AD necessary because ADs are the means to mandate accomplishment of procedures and adherence to specific compliance times.

We have determined, based on the above comments, that we will issue this AD with the requirement of repetitive inspections and the functional tests, as proposed, in accordance with Boeing Service Bulletin MD90–30–026, Revision 1, dated May 27, 2005, to identify and remove marginal static port heaters before they fail and generate sparks.

Based on the technical and economic information provided earlier, we do agree with Boeing that inspection of the heater and insulator for incorrect stacking is not necessary. We have revised paragraph (b) of this AD accordingly.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Explanation of Change to Cost Impact

After the supplemental NPRM was issued, we reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $65 per work hour to $80 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 116 airplanes of the affected design in the worldwide fleet. The FAA estimates that 22 airplanes of U.S. registry are affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the general visual inspection for wire damage and functional test, at an average labor rate of $80 per work hour. Based on these figures, the cost impact of the inspection for wire damage and functional test on U.S. operators is estimated to be $1,760, or $80 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2007–17–19 McDonnell Douglas: Amendment 39–15177. Docket 2003–NM–194–AD.

Applicability: Model MD–90–30 airplanes, certificated in any category, as identified in Boeing Service Bulletin MD90–30–026, Revision 1, dated May 27, 2005.

Compliance: Required as indicated, unless accomplished previously.

To prevent an electrical short of the static port heater from sparking and igniting the insulation blanket adjacent to the static port heater, which could result in smoke and/or fire in the cabin area, accomplish the following:

Service Bulletin References

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Boeing Service Bulletin MD90–30–026, Revision 1, dated May 27, 2005.

Inspection and Functional Test

(b) Within 18 months after the effective date of this AD, perform a general visual inspection of the left and right primary and alternate static port heater assemblies for wire damage; and perform a functional test of the left and right primary and alternate static port heater assemblies; in accordance with the service bulletin. Repeat the actions thereafter at intervals not to exceed 48 months.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation or assembly to detect obvious damage, failure or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normal available lighting conditions such as daylight, hangar lighting, flashlight or drop-light and may require removal or opening of access panels or doors. Stands, ladders or platforms may be required to gain proximity to the area being checked."

Wire Damage or Heater Failures

(c) If wire damage is found and/or the heater assembly fails the functional test during the general visual inspection and functional test required by paragraph (b) of this AD: Before further flight, replace the damaged or inoperative static port heater assembly with a new or serviceable static port heater assembly in accordance with the service bulletin.

Actions Accomplished According to Previous Issue of Service Bulletin

(d) Actions accomplished before the effective date of this AD according to Boeing Service Bulletin MD90–30–026, dated February 15, 2002, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

(e)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), is authorized to approve alternative methods of compliance for this AD.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions must be done in accordance with Boeing Service Bulletin MD90–30–026, Revision 1, dated May 27, 2005. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of this service information, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). To inspect copies of this service information, go to the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or to the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount

Boulevard, Lakewood, California; or to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(g) This amendment becomes effective on October 2, 2007.

Issued in Renton, Washington, on August 14, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–16674 Filed 8–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27687; Directorate Identifier 2000–NE–42–AD; Amendment 39–15179; AD 2007–07–07R1]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: The FAA is revising an existing airworthiness directive (AD) for General Electric Company (GE) CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 turbofan engines. That AD currently requires a one-time inspection of certain fan disks for electrical arc-out indications, replacing fan disks with electrical arc-out indications, and reducing the life limit of certain fan disks. This AD results from a comment received on AD 2007–07–07, and from recently issued revisions to the applicable GE Alert Service Bulletins (ASBs). We are issuing this AD to prevent an uncontained fan disk failure and airplane damage.

DATES: Effective September 12, 2007. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of September 12, 2007.

We must receive any comments on this AD by October 29, 2007.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- Hand Delivery: Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: (202) 493–2251.

You can get the service information identified in this AD from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215; telephone (513) 672–8400; fax (513) 672–8422.

The Docket Operations office is located at U.S. Department of Transportation, Docket Operations, M–30. West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *tara.chaidez@faa.gov*; telephone (781) 238–7773; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On March 30, 2007, the FAA issued AD 2007–07–07, Amendment 39–15012 (72 FR 16998, April 6, 2007). That AD requires a onetime inspection of certain fan disks for electrical arc-out indications, replacing fan disks with electrical arc-out indications, and reducing the life limit of certain fan disks. That AD was the result of a report that in January 2007, a CF34–3B1 turbofan engine experienced an uncontained fan disk failure during flight operation. That condition, if not corrected, could result in an uncontained fan disk failure and airplane damage.

Actions Since AD 2007–07–07 Was Issued

Since AD 2007–07–07 was issued, we received a comment from Star Air A/S, requesting clarification of the compliance requirement in Table C, item (ii). We published Table C as follows:

TABLE C.—BUSINESS JET SHOP-LEVEL FAN DISK INSPECTION COMPLIANCE TIMES

For fan disks	Inspect
(i) That have more than 5,500 flight hours on the effective date of this AD.	Within 500 flight hours after the effective date of this AD.
(ii) That have 5,500 or fewer flight hours on the effective date of this AD.	Within accumulating a total of 6,000 fan disk operating hours-since-new, or 5 calendar years, whichever occurs first.

The commenter asks if we intended to state "within 5 calendar years after the effective date of the AD", or, "within 5 years-since-new." We intended to state "within 5 years after the effective date of the AD." For clarification, we revised Table C as follows:

TABLE C.—BUSINESS JET SHOP-LEVEL FAN DISK INSPECTION COMPLIANCE TIMES

For fan disks	Inspect
(i) That have not had a shop-level inspection and have more than 5,500 flight hours on the effective date of this AD.	Within 500 flight hours after the effective date of this AD.
(ii) That have not had a shop-level inspection and have 5,500 or fewer flight hours on the effective date of this AD.	Within accumulating a total of 6,000 fan disk operating hours-since-new.

TABLE C.—BUSINESS JET SHOP-LEVEL FAN DISK INSPECTION COMPLIANCE TIMES—Continued

For fan disks	Inspect
(iii) That have had a shop-level inspection and have 5,500 or fewer flight hours on the effective date of this AD.	Within accumulating an additional 6,000 fan disk operating hours-since-shop-level inspection, or within 5 calendar years from the effective date of this AD, whichever occurs first.

Also, since that AD was issued, GE issued revisions to the applicable ASBs to make document reference updates and accomplishment instruction updates. We reference these ASB revisions in this AD revision.

Relevant Service Information

We have reviewed and approved the technical contents of GE ASB No. CF34–BJ S/B 72–A0212, Revision 3, dated June 27, 2007, ASB No. CF34–AL S/B 72–A0233, Revision 3, dated June 27, 2007, and ASB No. CF34–AL S/B 72–A0231, Revision 1, dated June 27, 2007. All three ASBs list the affected fan disks by serial number and part number. The first two ASBs describe procedures for performing fluorescent penetrant inspection (FPI), a Tactile and Enhanced Visual (TEV) inspection, and eddy current inspection (ECI) for cracks and electrical arc-out defects. The third ASB describes procedures for performing an on-wing TEV inspection of fan disks for electrical arc-out defects.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other GE CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 turbofan engines of the same type design. We are issuing this AD to prevent an uncontained fan disk failure and airplane damage. This AD requires on-wing TEV inspection of fan disks for electrical arc-out defects on fan disks installed on regional jets within 500 flight hours after the effective date of this AD. This AD also requires for all affected fan disks shop-level FPI, enhanced TEV, and ECI inspections for cracks and electrical arc-out defects. This AD also carries forward from AD 2006–05–04 the reduced life limit for certain fan disks. You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. FAA–2007–27687; Directorate Identifier 2000–NE–42–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the DMS Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15012 (72 FR 16998, April 6, 2007), and by adding a new airworthiness directive, Amendment 39–15179, to read as follows:

2007–07–07R1 General Electric Company: Amendment 39–15179. Docket No. FAA–2007–27687; Directorate Identifier 2000–NE–42–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 12, 2007.

Affected ADs

(b) This AD revises AD 2007–07–07.

Applicability

(c) This AD applies to General Electric Company (GE) CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 turbofan engines, with fan disks part numbers (P/Ns) 5921T18G01, 5921T18G09, 5921T18G10, 5921T54G01, 5922T01G02, 5922T01G04, 5922T01G05, 6020T62G04, 6020T62G05, 6078T00G01, 6078T57G01, 6078T57G02, 6078T57G03, 6078T57G04, 6078T57G05, and 6078T57G06 installed. These engines are installed on, but not limited to, Bombardier Canadair airplane models CL–600–2A12, –2B16, and –2B19.

Unsafe Condition

(d) This AD results from a comment received on AD 2007–07–07, and from GE recently issuing revisions to the applicable GE Alert Service Bulletins (ASBs). We are issuing this AD to prevent an uncontained fan disk failure and airplane damage.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Removal of Certain Fan Disks From Service

(f) For fan disks listed by P/N and serial number (SN) in the following Table A that have fewer than 8,000 cycles-since-new (CSN) on the effective date of this AD, replace fan disks before accumulating 8,000 CSN:

TABLE A.—FAN DISKS THAT REQUIRE REMOVAL BASED ON BLENDED CALLOUTS

Disk part No.	Disk serial No.
6078T57G02	GAT6306N
6078T00G01	GAT3860G
6078T57G02	GAT1924L
5922T01G04	GAT9599G
6078T57G04	GEE05831
6078T57G04	GEE06612
6078T57G04	GEE06618
6078T57G04	GEE06974
6078T57G04	GEE06980
6078T57G05	GEE143FY
6078T57G05	GEE1453G
6078T57G05	GEE14452
6078T57G05	GEE145NA
6078T57G04	GEE08086
6078T57G04	GEE09287
6078T57G04	GEE09337
6078T57G05	GEE12720
6078T57G05	GEE14214
6078T57G05	GEE142YT
6078T57G05	GEE146GT

(g) For fan disks listed in Table A of this AD that have 8,000 CSN or more on the effective date of this AD, replace the disk within 15 days after the effective date of this AD.

Inspections of Fan Disks Installed in Regional Jet Airplanes

(h) For CF34–3A1 and CF34–3B1 turbofan engines installed on Bombardier Canadair CL600–2B19 Regional Jet airplanes:

On-Wing Tactile and Enhanced Visual (TEV) Inspection

(1) On-wing TEV inspect the fan disks listed by P/N and SN in Table 1 of GE ASB No. CF34–AL S/B 72–A0231, Revision 1, dated June 27, 2007, using the compliance times specified in the following Table B:

TABLE B.—REGIONAL JET ON-WING FAN DISK INSPECTION COMPLIANCE TIMES

For fan disks	Inspect
(i) That have not had a shop-level inspection	Within 500 flight hours after the effective date of this AD.
(ii) That are marked with an asterisk in Table 1 of GE ASB No. CF34–AL S/B 72–A0231, Revision 1, dated June 27, 2007.	Within 500 flight hours after the effective date of this AD.

(2) Use paragraphs 3.A. through 3.A.(13) of the Accomplishment Instructions of GE ASB No. CF34–AL S/B 72–A0231, Revision 1, dated June 27, 2007, to do the inspection.

Shop-Level Inspection

(3) Within 5,000 flight hours or 5 calendar years after the effective date of this AD, whichever occurs first, fluorescent penetrant inspect (FPI), TEV inspect, and eddy current inspect (ECI) at shop-level for cracks and electrical arc-out defects on the fan disks listed by P/N and SN in Table 1 of GE ASB No. CF34–AL S/B 72–A0233, Revision 3, dated June 27, 2007.

(4) Use paragraphs 3.A.(1) through 3.A.(6) of the Accomplishment Instructions of GE ASB No. CF34–AL S/B 72–A0233, Revision 3, dated June 27, 2007, to do the inspections.

Shop-Level Inspection Exemption

(5) Fan disks are exempt from the shop-level inspection, that meet the following criteria:

(i) Fan disks inspected before the effective date of this AD per GE Engine Manual No. SEI–756, Section 72–21–00 (FAN ROTOR ASSEMBLY INSPECTION); and

(ii) That have accumulated no more than 100 cycles since that inspection; and

(iii) That pass the on-wing TEV inspection in paragraph (h)(2) of this AD.

Inspection of Fan Disks Installed in Business Jet Airplanes

(i) For CF34–1A, –3A, –3A1, –3A2, and –3B turbofan engines installed on Bombardier Canadair Models CL–600–2A12 (CL–601), CL–600–2B16 (CL–601–3A), (CL–601–3R), and (CL–604) Business Jet airplanes:

(1) FPI, TEV inspect, and ECI for cracks and electrical arc-out defects at shop-level on the fan disks listed by P/N and SN in Table 1 of GE ASB No. CF34–BJ S/B 72–A0212, Revision 3, dated June 27, 2007, using the compliance times specified in the following Table C:

TABLE C.—BUSINESS JET SHOP-LEVEL FAN DISK INSPECTION COMPLIANCE TIMES

For fan disks	Inspect
(i) That have not had a shop-level inspection and have more than 5,500 flight hours on the effective date of this AD.	Within 500 flight hours after the effective date of this AD.
(ii) That have not had a shop-level inspection and have 5,500 or fewer flight hours on the effective date of this AD.	Within accumulating a total of 6,000 fan disk operating hours-since-new.

TABLE C.—BUSINESS JET SHOP-LEVEL FAN DISK INSPECTION COMPLIANCE TIMES—Continued

For fan disks	Inspect
(iii) That have had a shop-level inspection and have 5,500 or fewer flight hours on the effective date of this AD.	Within accumulating an additional 6,000 fan disk operating hours-since-shop-level inspection, or within 5 calendar years from the effective date of this AD, whichever occurs first.

(2) Use paragraphs 3.A. through 3.A.(10) of the Accomplishment Instructions of GE ASB No. CF34–BJ S/B 72–A0212, Revision 3, dated June 27, 2007, to do the inspections.

Reporting Requirements

(j) Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD, and has assigned OMB Control Number 2120–0056.

(1) Report the results of the on-wing inspections performed in paragraph (h)(2) of this AD by following the instructions in paragraph 3.A.(14) of the Accomplishment Instructions of GE ASB No. CF34–AL S/B 72–A0231, Revision 1, dated June 27, 2007.

(2) Report the results of the shop-level inspections performed in paragraph (h)(4) of this AD by following the instructions in paragraph 3.A.(3)(b)11 of the Accomplishment Instructions of GE ASB No. CF34–AL S/B 72–A0233, Revision 3, dated June 27, 2007.

(3) Report the results of the shop-level inspections performed in paragraph (i)(2) of this AD by following the instructions in paragraph 3.A.(3)(b)11 of the Accomplishment Instructions of GE ASB No. CF34–AL S/B 72–A0212, Revision 3, dated June 27, 2007.

Previous Credit

(k) Credit is allowed for:

(1) Fan disks previously shop-level inspected before the effective date of this AD using GE ASB No. CF34–AL S/B 72–A0233, dated March 7, 2007, Revision 1, dated March 16, 2007, or Revision 2, dated March 22, 2007; and GE ASB No. CF34–BJ S/B 72–A0212, dated March 7, 2007, Revision 1, dated March 16, 2007, or Revision 2, dated March 22, 2007.

(2) Fan disks previously on-wing TEV inspected before the effective date of this AD using GE ASB No. CF34–AL S/B 72–A0231, dated March 7, 2007.

Alternative Methods of Compliance

(l) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(m) Emergency AD 2007–04–51 and AD 2007–05–16 also pertain to the subject of this AD.

Material Incorporated by Reference

(n) You must use the General Electric Company Alert Service Bulletins listed in Table D of this AD to perform the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table D of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215; telephone (513) 672–8400; fax (513) 672–8422. You can review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE D.—INCORPORATION BY REFERENCE

Alert service bulletin no.	Page number	Revision	Date
CF34–AL S/B 72–A0231 Total Pages: 94	All	1	June 27, 2007.
CF34–AL S/B 72–A0233 Total Pages: 92	All	3	June 27, 2007.
CF34–BJ S/B 72–A0212 Total Pages: 96	All	3	June 27, 2007.

Issued in Burlington, Massachusetts, on August 16, 2007.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–16554 Filed 8–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28282; Directorate Identifier 2007–NM–068–AD; Amendment 39–15169; AD 2007–17–11]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain McDonnell Douglas Model 717–200 airplanes. This AD requires installing in-line fuel float switch fuses and wire protection at the left, right, and center forward spars. This AD results from a design review of the fuel tank systems conducted by the manufacturer. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD becomes effective October 2, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 2, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Samuel S. Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain McDonnell Douglas Model 717–200 airplanes. That NPRM was published in the **Federal Register** on May 25, 2007 (72 FR 29278). That NPRM proposed to require installing in-line fuel float switch fuses and wire protection at the left, right, and center forward spars.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment received. The commenter, AirTran Airways, supports the NPRM.

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 149 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
5	$80	$509	$909	117	$106,353

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2007–17–11 McDonnell Douglas: Amendment 39–15169. Docket No. FAA–2007–28282; Directorate Identifier 2007–NM–068–AD.

Effective Date

(a) This AD becomes effective October 2, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model 717–200 airplanes, certificated in any category, as identified in Boeing Service Bulletin 717–28–0014, dated March 20, 2007.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems conducted by the manufacturer. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Fuse Installation

(f) Within 60 months after the effective date of this AD, install in-line fuel level float switch fuses and wire protection at the left, right, and center forward spars, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 717–28–0014, dated March 20, 2007.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(h) You must use Boeing Service Bulletin 717–28–0014, dated March 20, 2007, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 14, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–16423 Filed 8–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28258; Directorate Identifier 2006–NM–251–AD; Amendment 39–15181; AD 2007–18–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During a BCM (back-up control module) retrofit campaign, one resistor manufactured by SRT (Siegert) was found with an abnormal resistance drift. * * *

* * * * *

When the aircraft is in control back-up configuration (considered to be an extremely remote case), an incorrect value on these resistors may cause degradation of the BCM piloting laws, potentially leading to erratic motion of the rudder and to possible impact on the Dutch Roll [uncommanded coupling of airplane roll and yaw motions].

* * * * *

The unsafe condition is erratic motion of the rudder, which could result in reduced controllability of the airplane due to dutch roll characteristics. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective October 2, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 2, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 24, 2007 (72 FR 29082). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During a BCM (back-up control module) retrofit campaign, one resistor manufactured by SRT (Siegert) was found with an abnormal resistance drift. This resistor was subject to humidity absorption and then to oxidation, which leads to increased resistor value.

This oxidation has been determined as coming from a production quality issue.

When the aircraft is in control back up configuration (considered to be an extremely remote case), an incorrect value on these resistors may cause degradation of the BCM piloting laws, potentially leading to erratic motion of the rudder and to possible impact on the Dutch Roll [uncommanded coupling of airplane roll and yaw motions].

In order to detect a degradation of the BCM piloting laws due to resistor oxidation, this Airworthiness Directive (AD) mandates a repetitive ground operational test of the BCM fitted with resistor manufactured by SRT until accomplishment of terminating action (installation of BCM fitted with resistors manufactured by VISHAY).

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 20 products of U.S. registry. We also estimate that it will take about 15 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $24,000 or $1,200 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2007–18–01 Airbus: Amendment 39–15181. Docket No. FAA–2007–28258; Directorate Identifier 2006–NM–251–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 2, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to airplanes specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD:

(1) Model A330 airplanes, certificated in any category, with Modification 49144 installed in production, but without Production Modification 55185 or Airbus Service Bulletin A330–27–3142 installed in-service.

(2) Model A340–200 and –300 series airplanes, certificated in any category, with Modification 49144 installed in production, but without Production Modification 55185 or Airbus Service Bulletin A340–27–4142 installed in-service.

(3) Model A340–500 and –600 series airplanes, certificated in any category, without Production Modification 55186 or Airbus Service Bulletin A340–27–5036 installed in-service.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During a BCM (back-up control module) retrofit campaign, one resistor manufactured by SRT (Siegert) was found with an abnormal resistance drift. This resistor was subject to humidity absorption and then to oxidation, which leads to increase the resistor value.

This oxidation has been determined coming from a production quality issue.

When the aircraft is in control back up configuration (considered to be an extremely remote case), an incorrect value on these resistors may cause degradation of the BCM piloting laws, potentially leading to erratic motion of the rudder and to possible impact on the Dutch Roll [uncommanded coupling of airplane roll and yaw motions].

In order to detect a degradation of the BCM piloting laws due to resistor oxidation, this Airworthiness Directive (AD) mandates a repetitive ground operational test of the BCM fitted with resistor manufactured by SRT until accomplishment of terminating action (installation of BCM fitted with resistors manufactured by VISHAY).

The unsafe condition is erratic motion of the rudder, which could result in reduced controllability of the airplane due to Dutch Roll characteristics.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 900 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 900 flight hours, perform an operational test of the BCM and back-up power supply (BPS) by BITE (built in test equipment), and as applicable, apply the corrective actions, in accordance with instructions defined in Airbus Service Bulletin A330–27–3147, dated August 4, 2006; Airbus Service Bulletin A340–27–4147, dated August 4, 2006; or Airbus Service Bulletin A340–27–5038, dated August 4, 2006; as applicable. Replacement of affected BCM in accordance with Airbus Service Bulletin A330–27–3142, dated August 17, 2006; A340–27–4142, dated August 17, 2006; or A340–27–5036, dated August 17, 2006; cancels the mandatory repetitive operational test.

(2) Within 26 months after the effective date of this AD, install modified BCM in accordance with instructions given in Airbus Service Bulletin A330–27–3142, dated August 17, 2006; Airbus Service Bulletin A340–27–4142, dated August 17, 2006; or Airbus Service Bulletin A340–27–5036, dated August 17, 2006; as applicable.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No Differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tim Backman, Aerospace Engineer; International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2006–0313, dated October 13, 2006; and the service bulletins listed in Table 1 of this AD for related information.

TABLE 1.—AIRBUS SERVICE BULLETINS

Airbus Service Bulletin—	Dated—
A330–27–3123	December 13, 2004.
A330–27–3142	August 17, 2006.
A330–27–3147, including Appendix 01.	August 4, 2006.
A340–27–4124	December 13, 2004.
A340–27–4142	August 17, 2006.
A340–27–4147, including Appendix 01.	August 4, 2006.
A340–27–5036	August 17, 2006.
A340–27–5038, including Appendix 01.	August 4, 2006.

Material Incorporated by Reference

(i) You must use the service information specified in Table 2 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin—	Dated—
A330–27–3123	December 13, 2004.
A330–27–3142	August 17, 2006.
A330–27–3147, including Appendix 01.	August 4, 2006.
A340–27–4124	December 13, 2004.
A340–27–4142	August 17, 2006.
A340–27–4147, including Appendix 01.	August 4, 2006.
A340–27–5036	August 17, 2006.
A340–27–5038, including Appendix 01.	August 4, 2006.

Issued in Renton, Washington, on August 17, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–16910 Filed 8–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 29334; Amendment No. 71–39]

Airspace Designations; Incorporation By Reference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 relating to airspace designations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9R, Airspace Designations and Reporting Points. This action also explains the procedures the FAA will use to amend the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points incorporated by reference.

DATES: *Effective Date:* These regulations are effective September 15, 2007, through September 15, 2008. The incorporation by reference of FAA Order 7400.9R is approved by the Director of the Federal Register as of September 15, 2007, through September 15, 2008.

FOR FURTHER INFORMATION CONTACT: Tameka Bentley, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

FAA Order 7400.9P, Airspace Designations and Reporting Points, effective September 15, 2006, listed Class A, B, C, D and E airspace areas; air traffic service routes; and reporting points. Due to the length of these descriptions, the FAA requested approval from the Office of the Federal Register to incorporate the material by reference in the Federal Aviation Regulations section 71.1, effective September 15, 2006, through September 15, 2007. During the incorporation by reference period, the FAA processed all proposed changes of the airspace listings in FAA Order 7400.9P in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings were published in full text as final rules in the **Federal Register**. This rule reflects the periodic integration of these final rule amendments into a revised edition of Order 7400.9R, Airspace Designations and Reporting Points. The Director of the Federal Register has approved the incorporation by reference of FAA Order 7400.9R in section 71.1, as of September 15, 2007, through September 15, 2008.

This rule also explains the procedures the FAA will use to amend the airspace designations incorporated by reference in part 71. Sections 71.5, 71.15, 71.31, 71.33, 71.41, 71.51, 71.61, 71.71, and 71.901 are also updated to reflect the incorporation by reference of FAA Order 7400.9R.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9R, effective September 15, 2007, through September 15, 2008. During the incorporation by reference period, the FAA will continue to process all proposed changes of the airspace listings in FAA Order 7400.9R in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings will be published in full text as final rules in the **Federal Register**. The FAA will periodically integrate all final rule amendments into a revised edition of the Order, and submit the revised

edition to the Director of the Federal Register for approval for incorporation by reference in section 71.1.

The FAA has determined that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. This action neither places any new restrictions or requirements on the public, nor changes the dimensions or operation requirements of the airspace listings incorporated by reference in part 71. Consequently, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Because this action will continue to update the changes to the airspace designations, which are depicted on aeronautical charts, and to avoid any unnecessary pilot confusion, I find that good cause exists, under 5 U.S.C. 553(d), for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

■ 2. Section 71.1 is revised to read as follows:

§ 71.1 Applicability.

A listing for Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points can be found in FAA Order 7400.9R, Airspace Designations and Reporting Points, dated August 15, 2007. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552 (a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.9R is effective September 15, 2007, through September 15, 2008. During the incorporation by reference period, proposed changes to the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points will be published in full text as proposed rule documents in the **Federal Register**. Amendments to the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points will be published in full text as final rules in the **Federal Register**. Periodically, the final rule amendments will be integrated into a revised edition of the Order and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.9R may be obtained from Airspace and Rules Group, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–8783. An electronic version of the Order is available on the FAA Web site at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/*. Copies of FAA Order 7400.9R may be inspected in Docket No. 29334 on the **Federal Register** Web site at *www.regulations.gov*.

§ 71.5 [Amended]

■ 3. Section 71.5 is amended by removing the words "FAA Order 7400.9P" and adding, in their place, the words "FAA Order 7400.9R."

§ 71.15 [Amended]

■ 4. Section 71.15 is amended by removing the words "FAA Order 7400.9P" and adding, in their place, the words "FAA Order 7400.9R."

§ 71.31 [Amended]

■ 5. Section 71.31 is amended by removing the words "FAA Order 7400.9P" and adding, in their place, the words "FAA Order 7400.9R."

§ 71.33 [Amended]

■ 6. Paragraph (c) of section 71.33 is amended by removing the words "FAA Order 7400.9P" and adding, in their place, the words "FAA Order 7400.9R."

§ 71.41 [Amended]

■ 7. Section 71.41 is amended by removing the words "FAA Order 7400.9P" and adding, in their place, the words "FAA Order 7400.9R."

§ 71.51 [Amended]

■ 8. Section 71.51 is amended by removing the words "FAA Order 7400.9P" and adding, in their place, the words "FAA Order 7400.9R."

§ 71.61 [Amended]

■ 9. Section 71.61 is amended by removing the words "FAA Order 7400.9P" and adding, in their place, the words "FAA Order 7400.9R."

§ 71.71 [Amended]

■ 10. Paragraphs (b), (c), (d), (e), and (f) of section 71.71 are amended by removing the words "FAA Order 7400.9P" and adding, in their place, the words "FAA Order 7400.9R."

§ 71.901 [Amended]

■ 11. Paragraph (a) of section 71.901 is amended by removing the words "FAA Order 7400.9P" and adding, in their place, the words "FAA Order 7400.9R."

Issued in Washington, DC on August 17, 2007.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E7–16639 Filed 8–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Withdrawal of Approval of a New Animal Drug Application; Bacitracin Zinc

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations by removing those portions that reflect approval of a new animal drug application (NADA) for a bacitracin zinc Type A medicated article. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of this NADA.

DATES: This rule is effective August 28, 2007.

FOR FURTHER INFORMATION CONTACT: Pamela K. Esposito, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–7818; e-mail: *pamela.esposito@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68144, has requested that FDA withdraw approval of NADA 128–550 for ANCHOR Zinc Bacitracin Type A medicated article because the product is not manufactured or marketed.

In a notice published elsewhere in this issue of the **Federal Register**, FDA gave notice that approval of NADA 128–550 and all supplements and amendments thereto, are withdrawn,

effective August 28, 2007. As provided in the regulatory text of this document, the animal drug regulations are amended to reflect the withdrawal of approval.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In § 558.78, in paragraph (a), remove "5,"; in the table in paragraph (d)(1)(i), in the "Sponsor" column, remove "048164"; and revise paragraph (b) to read as follows:

§ 558.78 Bacitracin zinc.

* * * * *

(b) *Approvals.* See No. 046573 in § 510.600(c) of this chapter.

* * * * *

Dated: August 20, 2007.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. E7–16984 Filed 8–27–07; 8:45 am]

BILLING CODE 4160–01–S

MILLENNIUM CHALLENGE CORPORATION

22 CFR Part 1300

Organization and Functions of the Millennium Challenge Corporation

AGENCY: Millennium Challenge Corporation.

ACTION: Interim final rule.

SUMMARY: This document establishes a new chapter in the Code of Federal Regulations for the Millennium Challenge Corporation and provides information on the Millennium Challenge Corporation's organization, functions and operations.

DATES: Effective August 28, 2007.

FOR FURTHER INFORMATION CONTACT: John C. Mantini, Assistant General Counsel for Administration.

ADDRESSES: Office of the General Counsel, Millennium Challenge Corporation, 875 Fifteenth Street, NW., Washington, DC 20005–2221.

SUPPLEMENTARY INFORMATION: The Millennium Challenge Corporation establishes a new Chapter XIII in Title 22 of the Code of Federal Regulations to read "Chapter XIII—Millennium Challenge Corporation".

This interim final rule informs the public about the structure, function, operations, and quorum requirements of the Millennium Challenge Corporation.

Regulatory Impact

1. Administrative Procedures Act

In promulgating this rule, the Millennium Challenge Corporation finds that notice and public comment are not necessary. Section 553(b)(3)(A) of Title 5, United States Code, provides that when regulations involve matters of agency organization, procedure, or practice, the agency may publish regulations in final form. In addition, the Millennium Challenge Corporation finds, in accordance with 5 U.S.C. 553(d), that a delayed effective date is unnecessary. Accordingly, these regulations are effective upon publication.

2. Paperwork Reduction Act

This interim final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

3. Unfunded Mandates Reform Act of 1995

This interim final rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. This rule does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

List of Subjects in 22 CFR Part 1300

Organization and functions (Government agencies).

■ For the reasons stated in the preamble, the Millennium Challenge Corporation establishes a new Chapter XIII, consisting of part 1300, in title 22 to read as follows:

CHAPTER XIII—MILLENNIUM CHALLENGE CORPORATION

PART 1300—ORGANIZATION AND FUNCTIONS OF THE MILLENNIUM CHALLENGE CORPORATION

Sec.

Authority: 5 U.S.C. 552, as amended.

§ 1300.1 Purpose.

This part describes the organization, functions and operation of the Millennium Challenge Corporation (MCC). MCC is a government corporation (as defined in 5 U.S.C. 103) established by the Millennium Challenge Act of 2003 (Pub. L. 108–199, 118 Stat. 211.) Information about MCC is available from its Web site, *http://www.mcc.gov.*

§ 1300.2 Organization.

(a) MCC's Board consists of: (1) The Secretary of State, the Secretary of the Treasury, the Administrator of the United States Agency for International Development, the United States Trade Representative; and the Chief Executive Officer of the Corporation; and (2) four other individuals with relevant international experience from the private sector; appointed by the President with the advice and consent of the Senate.

(b) MCC's staff is comprised of the following administrative units:

(1) The Office of the Chief Executive Officer;

(2) The Department of Accountability;

(3) The Department of Administration and Finance;

(4) The Department of Congressional and Public Affairs;

(5) The Department of Operations;

(6) The Department of Policy and International Relations; and

(7) The Office of the General Counsel.

§ 1300.3 Functions.

(a) MCC provides United States assistance for global development; and

(b) Provides such assistance in a manner that promotes economic growth and the elimination of extreme poverty and strengthens good governance, economic freedom, and investments in people.

§ 1300.4 Operations.

In exercising its functions, duties, and responsibilities, MCC utilizes:

(a) MCC staff, consisting of specialized offices performing

specialized, administrative, legal and financial work for the Board.

(b) Rules published in the **Federal Register** and codified in this title of the Code of Federal Regulations.

(c) Meetings of the Board of Directors conducted pursuant to the Government in the Sunshine Act or voting by notation as provided in section 1300.5(b).

§ 1300.5 Quorum and voting requirements.

(a) *Quorum requirements.* A majority of the members of the Board shall constitute a quorum, which shall include at least one private sector member of the Board.

(b) *Voting.* The Board votes on items of business in meetings conducted pursuant to the Government in the Sunshine Act.

§ 1300.6 Office location.

The principal offices of the Millennium Challenge Corporation are located at 875 Fifteenth Street, NW., Washington, DC 20005–2221.

Dated: August 10, 2007.

William G. Anderson, Jr.,

Vice President and General Counsel, Millennium Challenge Corporation.

[FR Doc. E7–16142 Filed 8–27–07; 8:45 am]

BILLING CODE 9211–03–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–07–116]

RIN 1625–AA00

Safety Zone: Labor Day Celebration Fireworks, Village Beach Fishing Pier, Hog Island Channel, Island Park, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Labor Day Celebration Fireworks off Village Beach Fishing Pier, Island Park, NY. The safety zone is necessary to protect the life and property of the maritime community from the hazards posed by the fireworks display. Entry into or movement within this safety zone during the enforcement period is prohibited without approval of the Captain of the Port, Long Island Sound.

DATES: This rule is effective from 8 p.m. on September 1, 2007 until 10 p.m. on September 2, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD01–07–116 and will be available for inspection or copying at Sector Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant D. Miller, Chief, Waterways Management Division, Coast Guard Sector Long Island Sound at (203) 468–4596.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The Coast Guard did not receive an Application for Approval of Marine Event for this event in sufficient time to conduct a notice and comment period, thereby making an NPRM impracticable. A delay or cancellation of the fireworks display in order to accommodate a full notice and comment period would be contrary to the public interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be impracticable and contrary to public interest since immediate action is needed to prevent vessel traffic from transiting a navigable portion of Hog Island Channel off Village Beach Fishing Pier, Island Park, NY and to protect the maritime public from the hazards associated with this fireworks event.

The temporary zone should have minimal negative impact on the public and navigation because it will only be enforced for a two hour period on a single day and the area closed by the safety zone is minimal, thus allowing vessels to transit around the zone on Hog Island Channel off Village Beach Fishing Pier, Island Park, NY.

Background and Purpose

The Labor Day Celebration Fireworks display will be taking place off Village Beach Fishing Pier, Island Park, NY from 8 p.m. to 10 p.m. on September 1, 2007. If the fireworks display is cancelled due to inclement weather on September 1, 2007, it will take place from 8 p.m. to 10 p.m. on September 2, 2007. This safety zone is necessary to protect the life and property of the maritime public from the hazards posed by the fireworks display. It will protect the maritime public by prohibiting entry into or movement within this portion of Hog Island Channel one hour prior to, during and one hour after the stated event.

Discussion of Rule

This regulation establishes a temporary safety zone on the navigable waters off Village Beach Fishing Pier, Island Park, NY within a 300-foot radius of the fireworks launch site located at approximate position 40°36′30.947″ N, 073°39′22.226″ W. The temporary safety zone will be outlined by temporary marker buoys installed by the event organizers.

This action is intended to prohibit vessel traffic in a navigable portion of Hog Island Channel off Village Beach Fishing Pier, Island Park, NY to provide for the protection of life and property of the maritime public. The safety zone will be enforced from 8 p.m. until 10 p.m. on September 1, 2007 and if the event is postponed due to inclement weather, from 8 p.m. to 10 p.m. on September 2, 2007. Marine traffic may transit safely outside of the safety zone during the event thereby allowing navigation of the rest of the Hog Island Channel except for the portion delineated by this rule.

The Captain of the Port anticipates minimal negative impact on vessel traffic because of this safety zone due to the limited area covered by this safety zone and the short enforcement period. Public notifications will be made prior to the effective period via local notice to mariners and marine information broadcasts.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: vessels will only be excluded from the area of the safety zone for two hours and vessels will be able to operate in other areas of Hog Island Channel, Island Park, NY during the enforcement period.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations

that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in those portions of Sag Harbor covered by the safety zone. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Lieutenant D. Miller, Chief, Waterways Management Division, Sector Long Island Sound, at (203) 468–4596.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of the categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation as the rule establishes a safety zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226 and 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T01–116 to read as follows:

§ 165.T01–116 Safety Zone: Labor Day Celebration Fireworks, Village Beach Fishing Pier, Hog Island Channel, Island Park, NY.

(a) *Location.* The following area is a safety zone: All navigable waters of Hog Island Channel in a 300-foot radius of a firework launch site located at approximate position 40°36′30.947″ N, 073°39′22.226″ W. All coordinates are North American Datum 1983.

(b) *Definitions.* The following definitions apply to this section: *Designated on-scene patrol personnel,* means any commissioned, warrant and petty officers of the U.S. Coast Guard operating Coast Guard vessels who have been authorized to act on the behalf of the Captain of the Port, Long Island Sound.

(c) *Regulations.* (1) The general regulations contained in 33 CFR § 165.23 apply.

(2) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

(3) All persons and vessels must comply with the Coast Guard Captain of the Port or designated on-scene patrol personnel.

(4) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(5) Persons and vessels may request permission to enter the zone on VHF–16 or via phone at (203) 468–4401.

(d) *Enforcement period.* This section will be enforced from 8 p.m. to 10 p.m. on Saturday, September 1, 2007 and if the fireworks display is postponed, from 8 p.m. to 10 p.m. on Sunday, September 2, 2007.

Dated: August 13, 2007.

D.A. Ronan,

Captain, U. S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. E7–16933 Filed 8–27–07; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Parts 232 and 447

Conduct on Postal Property; Technical Amendment

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending two provisions in title 39, Code of Federal Regulations, to correct an outdated citation to a superseded Executive Order.

EFFECTIVE DATE: August 28, 2007.

FOR FURTHER INFORMATION CONTACT: John Covell, Office of Counsel Program Specialist, U.S. Postal Inspection Service, 202–268–3381.

SUPPLEMENTARY INFORMATION: Currently, references to Executive Order No. 10927, of March 18, 1961, dealing with charitable fund-raising and related matters, appear in 39 CFR 232.1(h) and 39 CFR 447.21. Those references are obsolete, since the revocation of that Order by Executive Order No. 12353, issued March 23, 1982. The Postal Service has determined it is appropriate to correct the obsolete references.

List of Subjects

39 CFR Part 232

Authority delegations (Government agencies), Crime, Federal buildings and facilities, Government property, Law enforcement officers, Postal Service, Security measures.

39 CFR Part 447

Conflict of interests, Political activities.

■ Accordingly, 39 CFR parts 232 and 447 are amended as follows:

PART 232—CONDUCT ON POSTAL PROPERTY

■ 1. The authority citation for part 232 continues to read as follows:

Authority: 18 U.S.C. 13, 3061; 21 U.S.C. 802, 844; 39 U.S.C. 401, 403(b)(3), 404(a)(7), 1201(2).

■ 2. Section 232.1(h)(1) is revised to read as follows:

§ 232.1 Conduct on postal property.

* * * * *

(h) Soliciting, electioneering, collecting debts, vending, and advertising. (1) Soliciting alms and contributions, campaigning for election to any public office, collecting private debts, soliciting and vending for commercial purposes (including, but not limited to, the vending of newspapers and other publications), displaying or distributing commercial advertising, collecting signatures on petitions, polls, or surveys (except as otherwise authorized by Postal Service regulations), are prohibited. These prohibitions do not apply to:

(i) Commercial or nonprofit activities performed under contract with the Postal Service or pursuant to the provisions of the Randolph-Sheppard Act;

(ii) Posting notices on bulletin boards as authorized in § 243.2(a) of this chapter;

(iii) The solicitation of Postal Service and other Federal military and civilian personnel for contributions by recognized agencies as authorized under Executive Order 12353, of March 23, 1982.

* * * * *

PART 447—RULES OF CONDUCT FOR POSTAL EMPLOYEES

■ 1. The authority citation for part 233 continues to read as follows:

Authority: 39 U.S.C. 401.

■ 2. Section 447.21(g) and the note following are revised to read as follows:

§ 447.21 Prohibited conduct.

* * * * *

(g) No employee while on property owned or leased by the Postal Service or the United States or while on duty, shall participate in any gambling activity, including the operation of a gambling device, in conducting or acting as an agent for a lottery or pool, in conducting a game for money or property, or in selling or purchasing a numbers slip or ticket.

Note: Paragraph (g) of this section does not prohibit participation in activities specified herein if participation is necessitated by an employee's law enforcement duties, or if participation is in accordance with section 7 of Executive Order No. 12353, of March 23, 1982, relating to agency-approved solicitations.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E7–16986 Filed 8–27–07; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–0421a; FRL–8452–1]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from refinery flares and storage tanks at petroleum facilities. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on October 29, 2007 without further notice, unless EPA receives adverse comments by September 27, 2007. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2007–0421a, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, at either (415) 947–4111, or *wamsley.jerry@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	1178	Further Control of VOC Emissions from Storage Tanks at Petroleum Facilities.	04/07/06	06/16/06
SCAQMD	1118	Control of Emissions from Refinery Flares	11/04/05	10/05/06

On July 21, 2006 and October 24, 2006, respectively, EPA found that SCAQMD Rules 1178 and 1118 met the completeness criteria in 40 CFR part 51, Appendix V. The state's submittal must meet these criteria before EPA's formal review can begin.

B. Are there other versions of these rules?

We approved a version of Rule 1178 into the SIP on August 26, 2003 (see 68 FR 51181). Rule 1118 has not been submitted previously to EPA for SIP inclusion. There have been no intervening submittals of these rules since we acted on the prior version of Rule 1178, or since Rule 1118 was submitted.

C. What is the purpose of the submitted rules?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Rule 1178 applies additional controls to reduce VOC emissions during the filling, storage, and emptying of large tanks at petroleum facilities. Rule 1178 applies to facilities emitting more than 20 tons/year of VOCs that have storage tanks larger than 19,815 gallons storing organic liquids with a true vapor pressure greater than or equal to 0.1 psi and establishes vapor pressure containment and control requirements for organic liquid storage tanks. Tanks and systems of tanks must have a vapor recovery system that recovers at least 95% of ROC vapors by weight or combusts excess vapors. Rule 1178 also sets specific requirements for vapor loss control devices, external floating roofs, and internal floating roofs. While some of Rule 1178's requirements are duplicative, many requirements are additive and more stringent than SCAQMD Rule 463—Organic Liquid Storage. Rule 1118 is designed to decrease VOC as well as, sulphur dioxide and nitrogen dioxide emissions from industries such as petroleum refineries, sulphur recovery plants, and hydrogen production plants. The rule also provides for monitoring and recording data related to flaring operations and flare related emissions.

EPA's technical support documents (TSD) have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see section 182(a)(2)), and must not relax existing requirements (see sections 110(l) and 193). The SCAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 1178 and 1118 must fulfill RACT.

Guidance and policy documents that we use to help evaluate specific enforceability and RACT requirements consistently include the guidance documents listed below.

(1) Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

(2) "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).

(3) "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

(4) "Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks," EPA–450/2–78–047, USEPA, December 1978.

(5) "Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks, "EPA–450/2–77–036, USEPA, December 1977.

There are no relevant CTGs for minimizing flare emissions through event monitoring.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The amendments to Rule 1178 either clarify the rule, or strengthen its provisions in a practical manner. Rule 1118 strengthens the SIP by minimizing emissions from a previously unregulated source of VOC. The TSD has more information on our respective evaluations.

C. EPA recommendations to further improve the rules

We have no recommendations for the next time the local agency modifies the rules.

D. Public comment and final action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by September 27, 2007, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 29, 2007. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission; to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 29, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 3, 2007.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(345)(i)(A)(*2*) and (c)(347)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(345) * * *

(i) * * *

(A) * * *

(*2*) Rule 1178 adopted on December 21, 2001, and amended on April 7, 2006.

* * * * *

(c) * * *

(347) * * *

(i) * * *

(B) South Coast Air Quality Management District.

(*1*) Rule 1118 adopted February 13, 1998, and amended November 4, 2005.

* * * * *

[FR Doc. E7–16822 Filed 8–27–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0285; FRL–8460–2]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Shipyard Facilities and Provisions for Distance Limitations, Setbacks, and Buffers in Standard Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a State Implementation Plan (SIP) revision for the State of Texas. This revision adds provisions which incorporate the evaluation of emissions from dockside vessels when reviewing applications for permits for new and modified sources and certain other administrative changes to its air permitting requirements. It also adds provisions concerning compliance with distance limitations, setbacks, and buffers at facilities that are authorized to construct or modify under an air quality standard permit. This action is being taken under section 110 of the Federal Clean Air Act (the Act).

DATES: This rule is effective on *October 29, 2007* without further notice, unless EPA receives relevant adverse comment by *September 27, 2007*. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in DOCKET ID No. EPA–R06–OAR–2007–0285, by one of the following methods:

- Federal rulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- U.S. EPA Region 6 "Contact Us" Web site: *http://epa.gov/region6/r6comment.htm* Please click on "6PD" (Multimedia) and select "Air" before submitting comments.
- E-mail: Mr. Stanley M. Spruiell at *spruiell.stanley@epa.gov*.
- Fax: Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), at fax number 214–665–7263.
- Mail: Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- Hand or Courier Delivery: Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Regional Material in DOCKET ID No. EPA–R06–OAR–2007–0285. EPA's policy is that all comments received will be included in the public file without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an

appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7212; fax number 214–665–7263; e-mail address *spruiell.stanley@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

Outline

I. What Action Is EPA Taking?

We are taking direct final action to approve revisions to the Texas SIP, submitted September 4, 2002, which require evaluation of the emissions from dockside vessels when applying for permits for new and modified sources and certain other administrative changes as described herein. This SIP revision requires that all dockside marine vessel emissions associated with onshore facilities or using onshore equipment be included in all permits. The emissions will require best available control technology (BACT), maximum allowable emission limitations, monitoring, testing, and ambient air impacts analysis. Such emissions originating from a dockside vessel that will be included in permits include: Loading and unloading of bulk liquid materials, liquefied gaseous materials, and solid bulk materials; cleaning and degassing liquid vessel compartments; and abrasive blasting and painting.

We are also taking direct final action to approve SIP revisions to section 116.615, submitted March 12, 2007, which relate to compliance with distance limitations, setbacks, and buffers which are to be determined at facilities that are authorized to construct or modify under an air quality standard permit. The Commission submitted this amendment to EPA to process as a revision to the Texas SIP. The revised rule provides that if a Standard Permit for a facility requires a distance setback, or buffer from other property or structure as a condition of the permit, the determination of whether the distance setback, or buffer is satisfied shall be made on conditions existing on the earlier of: The date new construction, expansion, or modification of a facility begins; or the date of any application or notice of intent is first filed with the TCEQ to obtain approval for the construction or operation of the facility.

II. What Did the State Submit?

We are approving provisions from two SIP revisions that the Texas Commission on Environmental Quality (TCEQ) submitted to EPA. These SIP revisions were dated September 4, 2002, and March 12, 2007. Copies of the revised rules as well as the Technical Support Document (TSD) can be obtained from the Docket, as discussed in the "Docket" section above. A discussion of the specific Texas rules changes that we are approving is included in the TSD and summarized below.

A. The September 4, 2002, SIP Revision

On September 4, 2002, the TCEQ submitted a SIP revision which requires evaluation of the emissions from dockside vessels when applying for permits for new and modified sources and certain other administrative changes. This includes revisions to 30 Texas Administrative Code (TAC) Chapter 116—Control of Air Pollution by Permits for New Construction or Modification. The TCEQ submitted revisions to section 116.10—General Definitions, section 116.111—General Application, and section 116.615—General Conditions. These sections are amended to add new definitions of "dockside vessel" and "dockside vessel emissions" in section 116.10 and to revise sections 116.111 and 116.615 to include requirements to evaluate the emissions from dockside vessels when the owner or operator applies for a permit or uses a Standard Permit for new and modified sources.

B. The March 12, 2007, SIP Revision.

On March 12, 2007, the TCEQ submitted amendments to section 116.615 which addresses compliance with distance limitations, setbacks, and buffers at facilities that are authorized to construct or modify under an air quality standard permit. The revised rule provides that if a Standard Permit for a facility requires a distance setback or buffer from other property or structure as a condition of the permit, the determination of whether the distance setback or buffer is satisfied shall be made on conditions existing on the earlier of: The date new construction, expansion, or modification of a facility begins or the date of any application or notice of intent is first filed with the TCEQ to obtain approval for the construction or operation of the facility.

III. What Is EPA's Evaluation of These SIP Revisions?

A. September 4, 2002, SIP Submittal

1. Section 116.10—General Definitions

The new definition of "dockside vessel" in section 116.10(4) defines the term as any water-based transportation, platforms, or similar structures which are connected or moored to the land. The new definition of "dockside vessel emissions" in section 116.10(5) defines the term as those emissions originating from a dockside vessel that are the result of functions performed by onshore facilities or using onshore equipment. These emissions include, but are not limited to: Loading and unloading of liquid bulk materials; loading and unloading of liquefied gaseous materials; loading and unloading of solid bulk materials; cleaning and degassing of liquid vessel compartments; and abrasive blasting and painting.

These definitions meet the requirements of 40 CFR 51.160(e) which provide that any SIP for review of new and modified sources must identify the types and sizes of facilities, building, structures, or installations that will be subject to review and discuss the basis determining which facilities will be subject to review. In this action, Texas has identified dockside vessels as a type of facility that should be reviewed in permits for new and modified facilities. When adopting these revisions to its regulations, the TCEQ determined that dockside vessels are facilities in the Texas Clean Air Act (TCAA), § 382.003(6), and thus subject to the requirements of Chapter 116. These emissions will be subject to BACT review, maximum allowable emission limitations, monitoring, testing, recordkeeping, and ambient air impacts analysis. The TSD contains additional information on our evaluation of the revisions to section 116.10 and the basis for how the revisions meet our requirements for approval.

2. Section 116.111—General Application

Texas revised section 116.111(a)(2) to add a requirement to review dockside vessel emissions; made non-substantive changes to clarify section 116.111(a)(2)(A)(i); and revised section 116.111(a)(2)(J) to preclude consideration of dispersion modeling predicting concentrations of non-criteria air contaminants over coastal waters of the state (limited to shipbuilding or ship repair operation).

The revision to section 116.111(a)(2) to add a requirement to review dockside vessel emissions, meets the requirements of 40 CFR 51.160(e) which provide that any SIP for review of new and modified sources must identify the types and sizes of facilities, building, structures, or installations which will be subject to review and discuss the basis determining which facilities will be subject to review. In this action, Texas has identified dockside vessels as a type of facility that should be reviewed in permits for new and modified facilities. When adopting these revisions to its regulations, the TCEQ determined that dockside vessels are facilities in the Texas Clean Air Act (TCAA), section 382.003(6), and thus subject to the requirements of Chapter 116. These emissions will be subject to BACT review, maximum allowable emission limitations, monitoring, testing, recordkeeping, and ambient air impacts analysis.

The revision to section 116.111(a)(2)(A)(i) previously provided that the "emissions from the proposed facility will comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and physical property of the people." Texas changed the last clause to read "including protection of the health and property of the public." This change is approvable as a non-substantive change.

Section 116.111(a)(2)(J) was revised to preclude consideration of dispersion modeling which predicts concentrations of non-criteria air contaminants over coastal waters of the state (limited to shipbuilding or ship repair operation). 40 CFR 51.160(a) requires a State or local agency to ensure that the proposed construction or modification of a facility, building, structure, or installation, or combination of these will not interfere with the attainment or maintenance of a national standard. The "national standard" refers to national ambient air quality standards (NAAQS) established under 40 CFR part 50 for the criteria pollutants. Thus, 40 CFR 51.160 requires a State or local agency to address interference with attainment or maintenance of the NAAQS for the criteria pollutants, and does not address attainment or maintenance of ambient standards for non-criteria pollutants. Texas' approved SIP for reviewing new and modified sources meets the requirements of 40 CFR 51.160 for the criteria pollutants. There is no requirement under section 51.160 to address ambient impacts for non-criteria pollutants. Thus Texas' revised provision not to "require and * * * consider air dispersion modeling results predicting ambient concentrations of non-criteria air contaminants over coastal waters of the state" is consistent with the provisions of section 51.160(a). The TSD contains additional information on our evaluation of the revisions to section 116.111 and the basis for how the revisions meet our requirements for approval.

3. Section 116.615—General Conditions

Section 116.615 is part of Texas' program for Standard Permits. Texas revised section 116.615(1) to add a requirement to review dockside vessel emissions; and revised section 116.615(9) to change cross-references from sections 101.6 and 101.7 to sections 101.201 and 101.211.

The revision to section 116.615(1) to add a requirement to review dockside vessel emissions, meets the requirements of 40 CFR 51.160(e) which provide that any SIP for review of new and modified sources must identify the types and sizes of facilities, building, structures, or installations that will be subject to review and discuss the basis determining which facilities will be subject to review. In this action, Texas has identified dockside vessels as a type of facility that should be reviewed in permits for new and modified facilities. When adopting these revisions to its regulations, the TCEQ determined that dockside vessels are facilities in the TCAA, section 382.003(6), and thus subject to the requirements of Chapter 116. These emissions will be subject to BACT review, maximum allowable emission limitations, monitoring, testing, recordkeeping, and ambient air impacts analysis.

The revision to section 116.615(9) changes the cross-references from sections 101.6 and 101.7 to sections 101.201 and 101.211. This change is approvable as an administrative change to remove obsolete provisions of TCEQ's regulation and replace them with the current provisions.[1] The TSD contains additional information on our evaluation of the revisions to section 116.615 and the basis for how the revisions meet our requirements for approval.

4. What is the status of other changes submitted in the September 4, 2002, SIP submittal?

In this action, EPA is not approving other provisions that Texas submitted on September 4, 2002. This includes sections 116.311, 116.315, 116.711, 116.715, 116.788, 116.803, and 116.919. These sections affect earlier provisions which were previously submitted and which are presently being reviewed by EPA. EPA will take appropriate action on sections 116.311, 116.315, 116.711, 116.715, 116.788, 116.803, and 116.919 after it completes its review of and takes appropriate action on the earlier submittals of these sections. Furthermore, the provisions of sections 116.10, 116.111, and 116.615, which we are approving in this action, do not cross-reference or depend on the sections that we are not approving. Accordingly, our taking no action on sections 116.311, 116.315, 116.711, 116.715, 116.778, 116.803, and 116.919 at this time does not affect the ability to approve sections 116.10, 116.111, and 116.615. The TSD contains detailed information concerning the basis for not acting on sections 116.311, 116.315, 116.711, 116.715, 116.778, 116.803, and 116.919 at this time.

B. March 12, 2007, SIP Submittal

1. Changes to provisions to incorporate provisions for compliance with distance limitations, setbacks, and buffers are to be determined at facilities that are authorized to construct or modify under an air quality Standard Permit.

Texas revised section 116.615 to add a new paragraph (11) which sets forth provisions relating to distance limitations, setbacks, and buffers that are authorized under an air quality Standard Permit. This provision provides that if a Standard Permit for a facility requires a distance limitation, setback, or buffer from other property or structures as a condition of the permit, such distance limitation, setback, or buffer is satisfied based on conditions existing on the earlier of: The date that new construction, expansion, or modification of a facility begins; or the date any application or notice of intent is first filed with the TCEQ to obtain approval or operation of the facility new construction or operation of the facility.

[1] On March 30, 2005 (70 FR 16129), we approved SIP revisions which approved the replacement of sections 101.6 and 101.7 with sections 101.201 and 101.211.

Any distance limitation, setback, or buffer that is included as a condition in a Standard Permit issued under Subchapter F—Standard Permits—of Chapter 116 is a discretionary measure not mandated by the Act. This revision improves the SIP by providing protection of persons located near the facility that operates under a Standard Permit which contains such distance limitation, setback, or buffer. By restricting the location of these types of facilities, the SIP provides additional assurances that persons located near these facilities will not be adversely affected by exposure to the air contaminants emitted from these facilities. Compliance with this condition will be determined consistent with section 116.111(2)(A)(i) of the SIP, which was revised in the September 4, 2002, SIP submittal (which is also being approved in this action) and which provides that emissions from a new or modified facility will comply with all rules and regulations of the Commission and with the intent of the Texas Clean Air Act, including the protection of the health and property of the public. This revision meets the requirements of 40 CFR 51.160(a) which requires the plan to provide that the construction or modification of facility, building, structure, installation, or combination thereof will not violate applicable portions of the control strategy or interfere with attainment or maintenance of a national standard. The TSD contains additional information on our evaluation of the revisions to section 116.615 and the basis for how the revisions meet our requirements for approval.

2. Other changes in the March 12, 2007, SIP submittal

The March 12, 2007, SIP submittal also includes several changes that are approvable as non-substantive changes. These include the following changes:

- Revision of section 116.615(1) to replace "TCAA" with "Texas Clean Air Act (TCAA)";
- Revision of section 116.615(3) to remove the words "relating to applicability".
- Revision of section 116.615(5)(A), (6), (8), and (10) to replace "air pollution control program" with "air pollution control agency".
- Revision of section 116.615(6) to replace "Office of Air Quality" with "commission's appropriate regional office".
- Revision of section 116.615(8) to replace "EPA" with "United States Environmental Protection Agency".

The TSD contains additional information on our evaluation of the revisions to section 116.615 and the basis for how the revisions meet our requirements for approval.

C. Does Approval of Texas' Rule Revisions Interfere With Attainment, Reasonable Further Progress, or Any Other Applicable Requirement of the Act?

Section 110(l) of the Clean Air Act states that EPA cannot approve a SIP revision if the revision would interfere with any applicable requirements concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act. Our review of the Texas SIP submittals indicate that the revision will not interfere with any applicable requirements concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act.

IV. Final Action

In this action, we are approving the revisions to sections 116.10, 116.111, and 116.615. These revisions meet the requirements of the Act and our regulations as described above and in the TSD. The change to require evaluation of emissions from dockside vessels and for setting distance limitations, setbacks, and buffers in Standard permits will improve the SIP and improve upon TCEQ's ability to ensure that emissions from new and modified facilities, buildings, structures, or installations will not violate applicable portions of the control strategy or interfere with attainment or maintenance of a national standard in the state in which the proposed source (or modification) is located or in a neighboring state.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on *October 29, 2007* without further notice unless we receive adverse comment by *September 27, 2007*. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997),

because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that, before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *October 29, 2007*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 16, 2007.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" is amended by revising the entries for sections 116.10, 116.111, and 116.615 to read as follows:

§ 52.2270 Identification of the Plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification				
Subchapter A—Definitions				
Section 116.10	General Definitions	08/21/02	8/28/07 [Insert FR page number where document begins].	The SIP does not include paragraphs (1), (2), (3), (6), (7)(F), (8), (10), (11), (12), and (16).
*	*	*	*	*
Subchapter B—New Source Review Permits				
Division 1—Permit Application				
*	*	*	*	*
Section 116.111	General Application.	08/21/02	8/28/07 [Insert FR page number where document begins].	The SIP does not include paragraphs (a)(2)(K) and (b).
*	*	*	*	*
Subchapter F—Standard Permits				
*	*	*	*	*
Section 116.615	General Conditions	02/21/07	8/28/07 [Insert FR page number where document begins].	
*	*	*	*	*

[FR Doc. E7–16829 Filed 8–27–07; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–0462; FRL–8458–9]

Revisions to the California State Implementation Plan, Sacramento Metropolitan Air Quality Management District and San Joaquin Valley Air Pollution Control District; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; technical amendment.

SUMMARY: On August 1, 2007, EPA published in the **Federal Register** a document to approve revisions to the Sacramento Metropolitan Air Quality Management District (SMAQMD) and San Joaquin Valley Air Pollution Control District (SJVAPCD) portions of the California State Implementation Plan (SIP). This action corrects the paragraph number of that regulation.

DATES: This correction is effective on August 28, 2007.

ADDRESSES: Copies of the documentation used in the action being corrected are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Francisco Dóñez, EPA Region IX, (415) 972–3956, *Donez.Francisco@epa.gov*.

SUPPLEMENTARY INFORMATION: On August 1, 2007 (72 FR 41894), EPA published direct final rulemaking action approving a section of the California State Implementation Plan (SIP). This action contained amendments to 40 CFR Part 52, Subpart F. The amendment which incorporated material by reference into § 52.220, Identification of plan, paragraph (c)(347) is incorrect. That amendment is being corrected in this action.

EPA has determined that today's action falls under the "good cause" exemption in section 3(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary or contrary to the public interest. Public notice and comment for this action are unnecessary because today's action to correct 40 CFR part 52 has no substantive impact on EPA's August 1, 2007, direct final rule approval. In addition, EPA can identify no particular reason why the public would be interested in being notified of the correction of this error or in having the opportunity to comment on the correction prior to this action being finalized, since this correction action does not change the approval status.

EPA also finds that there is good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behaviour and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule merely corrects an error. For these reasons, EPA finds good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely corrects an error, does not impose any new requirements on sources or allow a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (CAA). This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 29, 2007. Filing a

petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 10, 2007.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

■ 2. Section 52.220 is amended by redesignating paragraph (c)(347) (as added on August 1, 2007 at 73 FR 41894), as paragraph (c)(348) and by revising newly designated paragraph (c)(348) introductory text to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(348) New and amended rules for the following APCDs were submitted on December 29, 2006, by the Governor's designee.

* * * * *

[FR Doc. E7–16699 Filed 8–27–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 215, 247, and 252

RIN 0750–AF75

Defense Federal Acquisition Regulation Supplement; Carriage Vessel Overhaul, Repair, and Maintenance (DFARS Case 2007–D001)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 1017 of the National Defense Authorization Act for Fiscal Year 2007. Section 1017 requires DoD to establish an evaluation criterion, for use in obtaining carriage of cargo by vessel, that considers the extent to which an offeror has had overhaul, repair, and maintenance work for covered vessels performed in shipyards located in the United States or Guam.

DATES: *Effective date:* August 28, 2007.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before October 29, 2007, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2007–D001, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include DFARS Case 2007–D001 in the subject line of the message.
- *Fax:* (703) 602–7887.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, (703) 602–0302.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). Section 1017 requires DoD to issue an acquisition policy that establishes, as a criterion required to be considered in obtaining carriage of cargo by vessel for DoD, the extent to which an offeror of such carriage has had overhaul, repair, and maintenance work for covered vessels performed in shipyards located in the United States or Guam. Section 1017 defines "covered vessel" as one that is (1) Owned, operated, or controlled by the offeror, and (2) qualified to engage in the carriage of cargo in the coastwise or noncontiguous trade under Section 27 of the Merchant Marine Act (46 U.S.C. 883); 46 U.S.C. 12106; and Section 2 of the Shipping Act (46 U.S.C. App. 802). Section 1017 also requires DoD to submit an annual report to the congressional defense committees regarding overhaul, repair, and maintenance performed on covered vessels of each offeror of carriage to which the acquisition policy applies. The interim rule contains a solicitation provision and corresponding prescriptive language to address the statutory requirements. The solicitation provision includes a definition of "overhaul, repair, and maintenance work" consistent with the definition in Commander Military Sealift Command Instruction 4700.14B; and a definition of "shipyards" consistent with the definition applicable to NAICS Code 336611, Ship Building and Repairing.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of the rule is to maintain a strong national ship repair industrial base. Therefore, the rule contains an evaluation preference for use in DoD solicitations for carriage of cargo by vessel, to apply to those entities that use domestic shipyards for vessel overhaul, repair, and maintenance. The requirements of the rule will apply to entities interested in receiving DoD contracts for carriage of cargo by vessel. An evaluation preference will be given to offerors of carriage who use domestic shipyards for vessel overhaul, repair, and

maintenance work. This is expected to have a positive effect on entities owning domestic shipyards, by encouraging the use of those shipyards.

DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2007–D001.

C. Paperwork Reduction Act

This interim rule contains a new information collection requirement. The Office of Management and Budget (OMB) has approved the information collection requirement for use through February 29, 2008, under OMB Control Number 0704–0445, in accordance with the emergency processing procedures of 5 CFR 1320.13. DoD invites comments on the following aspects of the interim rule: (a) Whether the collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The following is a summary of the information collection requirement.

Title: Defense Federal Acquisition Regulation Supplement (DFARS); Subpart 247.5, Carriage Vessel Overhaul, Repair, and Maintenance.

Type of Request: New collection.

Number of Respondents: 15.

Responses Per Respondent: 1.

Annual Responses: 15.

Average Burden Per Response: 1.5 hours.

Annual Burden Hours: 22.5.

Needs and Uses: DoD needs this information to implement Section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364). Section 1017 requires DoD to (1) Issue an acquisition policy establishing an evaluation criterion, for use in obtaining carriage of cargo by vessel, that considers the extent to which an offeror has had overhaul, repair, and maintenance work for covered vessels performed in shipyards located in the United States or Guam; and (2) submit an annual report to the congressional defense committees regarding overhaul, repair, and maintenance performed on covered vessels of each offeror to which the acquisition policy applies.

Affected Public: Businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Written comments and recommendations on the proposed information collection should be sent to Ms. Hillary Fielden at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, with a copy to the Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). Section 1017 requires DoD to issue an acquisition policy that establishes an evaluation criterion, for use in obtaining carriage of cargo by vessel, that considers the extent to which an offeror of such carriage has had overhaul, repair, and maintenance work for covered vessels performed in shipyards located in the United States or Guam. In addition, Section 1017 requires DoD to submit an annual report to the congressional defense committees regarding overhaul, repair, and maintenance performed on covered vessels of each offeror to which the acquisition policy applies. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 212, 215, 247, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 212, 215, 247, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 215, 247, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Section 212.301 is amended by adding paragraph (f)(xiii) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(xiii) Use the provision at 252.247–7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, as prescribed in 247.574(e).

■ 3. Section 212.602 is amended by revising paragraph (b)(iii) to read as follows:

212.602 Streamlined evaluation of offers.

(b) * * *

(iii) For the direct purchase of ocean transportation services, also evaluate offers in accordance with the criteria at 247.573–2(c).

PART 215—CONTRACTING BY NEGOTIATION

■ 4. Section 215.304 is amended by adding paragraph (c)(iii) to read as follows:

215.304 Evaluation factors and significant subfactors.

(c) * * *

(iii) See 247.573–2(c) for additional evaluation factors required in solicitations for the direct purchase of ocean transportation services.

PART 247—TRANSPORTATION

■ 5. Section 247.570 is amended by revising paragraph (a) to read as follows:

247.570 Scope.

* * * * *

(a) Implements—

(1) The Cargo Preference Act of 1904 ("the 1904 Act"), 10 U.S.C. 2631, which applies to the ocean transportation of

cargo owned by, or destined for use by, DoD; and

(2) Section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364), which requires consideration of the extent to which offerers have had overhaul, repair, and maintenance work performed in shipyards located in the United States or Guam;

* * * * *

247.571, 247.572–1, 247.572–2, and 247.573 [Redesignated as 247.572, 247.573–1, 247.573–2, and 247.574]

■ 6. Sections 247.571, 247.572–1, 247.572–2, and 247.573 are redesignated as sections 247.572, 247.573–1, 247.573–2, and 247.574, respectively.

■ 7. A new section 247.571 is added to read as follows:

247.571 Definitions.

Covered vessel, overhaul, repair, and maintenance work, and *shipyards,* as used in this subpart, have the meaning given in the provision at 252.247–7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade.

■ 8. Newly designated section 247.572 is amended by revising paragraphs (a)(1) through (3) and adding paragraph (d) to read as follows:

247.572 Policy.

(a) * * *

(1) Those vessels are not available, and the procedures at 247.573–1(c)(1) or 247.573–2(d)(1) are followed;

(2) The proposed charges to the Government are higher than charges to private persons for the transportation of like goods, and the procedures at 247.573–1(c)(2) or 247.573–2(d)(2) are followed; or

(3) The Secretary of the Navy or the Secretary of the Army determines that the proposed freight charges are excessive or unreasonable in accordance with 247.573–1(c)(3) or 247.573–2(d)(3).

* * * * *

(d) In accordance with Section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364)—

(1) When obtaining carriage by vessel, DoD must consider the extent to which offerors have had overhaul, repair, and maintenance work for covered vessels performed in shipyards located in the United States or Guam; and

(2) DoD must submit an annual report to the congressional defense committees, addressing the information provided by offerors with regard to overhaul, repair, and maintenance for covered vessels performed in the United States or Guam.

■ 9. Section 247.573 is added to read as follows:

247.573 Procedures.

■ 10. Newly designated section 247.573–2 is amended as follows:

■ a. By revising paragraph (c); and

■ b. In paragraph (d)(3)(i) introductory text and paragraph (d)(3)(i)(C), by removing "247.572" and adding in its place "247.573".

The revised text reads as follows:

247.573–2 Direct purchase of ocean transportation services.

* * * * *

(c) All solicitations within the scope of this subsection must provide—

(1) A preference for U.S.-flag vessels in accordance with the 1904 Act;

(2) An evaluation factor or subfactor for offeror participation in the Voluntary Intermodal Sealift Agreement; and

(3) An evaluation factor or subfactor considering the extent to which offerors have had overhaul, repair, and maintenance work for covered vessels performed in shipyards located in the United States or Guam.

* * * * *

■ 11. Section 247.573–3 is added to read as follows:

247.573–3 Annual reporting requirement.

(a) No later than February 15th of each year, departments and agencies shall—

(1) Prepare a report containing all information received from offerors in response to the provision at 252.247–7026 during the previous calendar year; and

(2) Submit the report to: Directorate of Acquisition, U.S. Transportation Command, ATTN: TCAQ, 508 Scott Drive, Scott AFB, IL 62225–5357.

(b) The Director of Acquisition, U.S. Transportation Command, will submit a consolidated report to the congressional defense committees in accordance with Section 1017 of Public Law 109–364.

■ 12. Newly designated section 247.574 is amended as follows:

■ a. By revising the section heading;

■ b. In paragraph (d), by removing "247.571" and adding in its place "247.572"; and

■ c. By adding paragraph (e) to read as follows:

247.574 Solicitation provisions and contract clauses.

* * * * *

(e) Use the provision at 252.247–7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, in solicitations for carriage of cargo by vessel for DoD. See 247.573–3 for reporting of the information received from offerors in response to the provision.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.247–7022 [Amended]

■ 13. Section 252.247–7022 is amended in the introductory text by removing "247.573" and adding in its place "247.574".

252.247–7023 [Amended]

■ 14. Section 252.247–7023 is amended in the introductory text, and in the introductory text of Alternates I, II, and III, by removing "247.573" and adding in its place "247.574".

252.247–7024 [Amended]

■ 15. Section 252.247–7024 is amended in the introductory text by removing "247.573" and adding in its place "247.574".

252.247–7025 [Amended]

■ 16. Section 252.247–7025 is amended in the introductory text by removing "247.573" and adding in its place "247.574".

■ 17. Section 252.247–7026 is added to read as follows:

252.247–7026 Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade.

As prescribed in 247.574(e), use the following provision:

Evaluation Preference For Use of Domestic Shipyards—Applicable To Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade (Aug 2007)

(a) *Definitions.* As used in this provision—

Covered vessel means a vessel—

(1) Owned, operated, or controlled by the offeror; and

(2) Qualified to engage in the carriage of cargo in the coastwise or noncontiguous trade under Section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), commonly referred to as "Jones Act"; 46 U.S.C. 12106; and Section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802).

Overhaul, repair, and maintenance work means work requiring a pierside shipyard period greater than or equal to 15 calendar days.

Shipyards means fixed facilities with drydocks and fabrication equipment capable of building a ship, defined as watercraft typically suitable or intended for other than personal or recreational use.

(b) This solicitation includes an evaluation factor that considers the extent to which the offeror has had overhaul, repair, and maintenance work for covered vessels performed in shipyards located in the United States or Guam.

(c) The offeror shall provide the following information with its offer, addressing all covered vessels for which overhaul, repair, and maintenance work has been performed during the period covering the current calendar year, up to the date of proposal submission, and the preceding four calendar years:

(1) Name of vessel.

(2) Description of qualifying shipyard work performed.

(3) Name of shipyard that performed the work.

(4) Inclusive dates of work performed.

(5) Cost of work performed.

(d) Offerors are responsible for submitting accurate information. The Contracting Officer—

(1) Will use the information to evaluate offers in accordance with the criteria specified in the solicitation; and

(2) Reserves the right to request supporting documentation if determined necessary in the proposal evaluation process.

(e) The Department of Defense will provide the information submitted in response to this provision to the congressional defense committees, as required by Section 1017 of Public Law 109–364.

(End of provision)

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2007–29083]

Federal Motor Vehicle Safety Standards; Tires

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; technical amendments; response to petitions for reconsideration.

SUMMARY: In June 2003, NHTSA published a final rule establishing upgraded tire performance requirements for new tires for use on vehicles with a gross vehicle weight rating of 10,000 pounds or less. In January 2006, NHTSA published a final rule; response to petitions for reconsideration, which modified certain performance requirements to better address snow tires and certain specialty tires. This document responds to a petition for reconsideration of the January 2006 rule. After carefully considering the issues raised, the agency is denying the petition. We are also making a number of technical corrections in several tire-related Federal safety standards.

DATES: The amendments in this rule are effective September 1, 2007. Voluntary compliance is permitted before that date. If you wish to submit a petition for reconsideration of this rule, your petition must be received October 12, 2007

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, 4th Floor, Washington, DC 20590. Please see the Privacy Act heading under Regulatory Notices.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues, contact George Soodoo, Office of Crash Avoidance Standards, by telephone at (202) 366–2720, or by fax at (202) 366–4329.

For legal issues, contact Rebecca Schade, Office of the Chief Counsel, by telephone at (202) 366–2992, or by fax at (202) 366–3820.

Both persons may be reached by mail at the following address: National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Summary of Final Rule; Technical Amendments; Response to Petition for Reconsideration

This final rule makes several technical corrections and amendments to the regulatory text of Federal Motor Vehicle Safety Standard (FMVSS) Nos. 109, 110, 119, and 139, all of which are tire-related standards. This final rule also denies a petition by Advocates for Highway and Auto Safety (Advocates) for reconsideration of the January 2006 final rule; response to petitions for reconsideration, regarding the agency's requirements with respect to the endurance test for snow tires.

II. Background

The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, Section 10, "Endurance and resistance standards for tires," required NHTSA to revise and update FMVSS No. 109, *New pneumatic tires,* and FMVSS No. 119, *New pneumatic tires for vehicles other than passenger cars.*[1] In response to this mandate, NHTSA published a final rule on June 26, 2003, establishing FMVSS No. 139, *New pneumatic radial tires for light vehicles,* which will apply to new tires used on light vehicles; *i.e.*, vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less, except motorcycles and low speed vehicles.[2]

The new standard is scheduled to become effective on September 1, 2007. It features substantially more stringent high speed and endurance tests, and a new low-pressure performance test. The purpose of the new and more stringent requirements is to improve the ability of tires to withstand the effects of tire heat build-up and severe under-inflation during highway travel in fully loaded conditions. Unlike the existing tire safety standards, which previously differentiated between light trucks and passenger cars,[3] FMVSS No. 139 applies to tires used on both.

In a January 2006 final rule; response to petitions for reconsideration,[4] the agency reduced the test speed for the tire endurance and low-inflation pressure performance tests in FMVSS No. 139, paragraphs S6.3.1.2.3 and S6.4.1.2.1, from 120 km/h (75 mph) to 110 km/h (68 mph) for all passenger car snow tires and light truck snow tires with load ranges of C, D, and E. The other test parameters—inflation pressure, duration, load, and ambient temperature—remained unchanged.

For snow tires, the endurance test is a 34-hour test conducted at a speed of 110 km/h (68 mph) with a tire inflation

[1] Pub. L. 106–414, November 1, 2000, 114 Stat. 1800.

[2] 68 FR 38115 (June 26, 2003); Docket No. NHTSA–2003–15400.

[3] Historically, FMVSS No. 109 applied to tires for passenger cars, and FMVSS No. 119 applied to tires for use on all other vehicles, including light trucks.

[4] 71 FR 877 (Jan. 6, 2006); Docket No. NHTSA–2005–23439.

pressure that is 25 percent below the maximum inflation pressure of the tire, and with tire loads of 85 percent, 90 percent, and 100 percent of maximum load. After the snow tire has completed the endurance test, it is then subjected to a new low pressure test for 90 minutes at an inflation pressure about 42 percent below the tire's maximum inflation pressure at a test speed of 110 km/h (68 mph) with 100 percent of maximum load. The snow tire must complete both the endurance test and the low-inflation pressure test without any failures.

The agency made these changes because of practicability concerns. Snow tires are designed with more flexible (i.e., softer rubber) tread compounds, which are good for finding traction in snow but can pose difficulties for passing certain tire performance tests, because the tread designs and compounds are less able than other tires to withsfand the heat caused by the severity of testing on the road wheel. NHTSA determined that the technical design challenges and the costs to redesign existing snow tires to pass the new 120 km/h (75 mph) test would far outweigh the negligible safety benefits associated with that redesign.

The final rule also changed the effective date from June 1 to September 1, 2007, to correspond with the start of the industry model year, and to September 1, 2008 for snow tires.

III. Petition for Reconsideration

NHTSA received one petition for reconsideration from Advocates for Highway and Auto Safety (Advocates) on the January 2006 final rule; response to petitions for reconsideration.[5]

Advocates petitioned the agency to reconsider the revised requirements related to the endurance test for snow tires in FMVSS No. 139. According to Advocates, millions of motorists travel with dedicated snow tires at high speeds on what are often clear roads, free of snow and ice. The petition stated that recent speed studies show that increasing percentages of drivers regularly exceed even Interstate speed limits posted at 75 miles per hour. Advocates argued that instead of requiring manufacturers to improve their snow tire design and performance to better withstand the high speeds and temperatures commonly encountered in high-speed travel on U.S. highways, NHTSA has "grandfathered" existing snow tire safety design and performance by reducing compliance requirements. Advocates disagreed that this decision by the agency meets the intent of the TREAD Act.

IV. Discussion and Analysis

Currently, the endurance test for passenger car snow tires, included in FMVSS No. 109, *New pneumatic tires*, is conducted at a test speed of 80 km/h (50 mph). For light truck (LT) snow tires, the current endurance test is included in FMVSS No. 119, *New pneumatic tires for vehicles other than passenger cars*, and is conducted at a test speed of 80 km/h (50 mph) for load range "C" and "D" tires, and at 64 km/h (40 mph) for load range "E" tires. The change in endurance test speed to 110 km/h (68 mph) in the new FMVSS No. 139 is a speed increase of 38 percent for passenger car snow tires and LT snow tires load ranges C and D, and 72 percent for LT snow tires load range E. These changes represent a substantial increase in the stringency of the endurance test from the current standards.

FMVSS No. 109 also includes a high speed test for all passenger car tires, including snow tires, with test speeds of 121 km/h (75 mph), 129 km/h (80 mph), and 137 km/h (85 mph), for 30 minutes at each speed step. LT tires, including snow tires, are not currently subject to the requirements of a high speed test under FMVSS No. 119. FMVSS No. 139 includes a high speed test for all light vehicle tires, including snow tires, at test speeds of 140 km/h (87 mph), 150 km/h (93 mph), and 160 km/h (99 mph), for 30 minutes at each speed step.[6] These changes also represent a substantial increase in the stringency of the high speed test from the current standards.

In the final rule; response to petitions for reconsideration, NHTSA explained its determination that because of the nature of snow tire construction, the test speed specified in the June 2003 final rule for the endurance and low-inflation pressure tests[7] created practicability problems for these tires. Snow tires usually feature higher hysteretic tread compounds,[8] molded in greater tread depths and smaller tread blocks than non-snow tires. This construction is used to provide special performance in snow conditions.[9]

These tread designs and compounds are disproportionately affected at high speeds when tested on a laboratory road wheel. Research conducted by the ASTM International has shown that tires tested on a curved road wheel experience an increase in severity (in terms of stress and temperature) of about 12 percent compared to on a flat roadway. A snow tire that experiences chunking[10] from a 120 km/h (75 mph) road wheel test does so in part because of the relative severity of the road wheel as compared to the conditions on a flat roadway at the same speed.

The purpose of the endurance test is to evaluate the tire's performance for an extended time period. The test is conducted at loads of 85 percent of the tire's maximum load rating for 4 hours, at 90 percent for 6 hours, and at 100 percent for another 24 hours, for a total test time of 34 hours. In addition, the test inflation pressure is set at 25 percent below the tire's maximum inflation pressure. These are severe conditions for loading and under-inflation, especially given that a 100-percent load on the test road-wheel equals about a 112-percent load on a flat surface. From a real world perspective, this means that for the last 24 hours of the test, the tire is 12 percent overloaded and 25 percent under-inflated at a test speed of 110 km/h (68 mph). Moreover, the ambient temperature for the endurance test is 38 °C (100 °F).

Following the endurance test, the snow tire is subjected to a low pressure test, which is a new test for light vehicle tires. The purpose of the low pressure test is to ensure that the tire can be operated for 90 minutes at a speed of 110 km/h (68 mph), at an inflation pressure about 42 percent below the tire's maximum inflation pressure, with a load of 100 percent of the tire's maximum load rating.

FMVSS No. 139 also includes a 90-minute high speed test at speeds of 140 km/h (87 mph), 150 km/h (93 mph), and 160 km/h (99 mph) for all tires to which the standard applies, including snow tires. The purpose of the high speed test

[5] Docket No. NHTSA–2006–23439–3.

[6] We note that the miles per hour (mph) values listed in this sentence are not included in the regulatory text of FMVSS No. 139, which lists only the metric speed values in S6.2.1.2.7.

[7] The June 2003 final rule for FMVSS No. 139 also added a brand-new low-inflation pressure performance test, which no standard had previously contained. As a brand-new test, that addition to FMVSS No. 139 also represented a rise in the stringency of the standard over the current standards.

[8] In plainer English, this means that since snow tires are designed to operate in low ambient temperatures, the tread compound tends to be softer to enhance traction. Because it is softer and more pliable, as opposed to harder and more durable (like normal road tires), the tread compound is less able to withstand the high temperatures experienced on the road wheel during testing, which leads to pieces of tread rubber chunking off the tire.

[9] Deeper treads with smaller surface areas contacting the ground help in snow (and other low traction situations) because they are able to push deeper through the snow to find traction—not entirely unlike, for example, the advantage of wearing shoes with cleats on a wet sports field.

[10] "Chunking" is defined as the breaking away of pieces of the tread or sidewall rubber.

is to evaluate the tire's performance during high speed operation, which makes this test more directly related to the high speed driving to which Advocates referred in its petition. The high speed test parameters also include a load of 85 percent, and an inflation pressure of about 10 percent below the tire's maximum inflation pressure. This test is the same for all light vehicle tires, including snow tires.

Snow tires are generally operated on vehicles during the winter season when ambient temperatures are below 10 °C (50 °F). This real world ambient temperature is considerably lower than the ambient test temperature of 38 °C (100 °F); *i.e.*, the test condition is much more stringent than the likely real world condition. NHTSA believes that the upgraded high speed and endurance tests, and the new low pressure test in FMVSS No. 139, represent a significant increase in performance for light vehicle snow tires as compared to the requirements in FMVSSs No. 109 and 119.

Agency decision: NHTSA has decided to deny the petition from Advocates to increase the test speed for the endurance and low-inflation pressure performance tests for snow tires from 110 km/h (68 mph) to 120 km/h (75 mph).

As originally drafted, the test speed for these two tests was set at 120 km/h (75 mph). Based on analysis of agency research and testing, as well as testing conducted by industry groups and Transport Canada, NHTSA reduced the test speed from 120 km/h (75 mph) to 110 km/h (68 mph) for all passenger car snow tires and LT snow tires with load ranges of C, D, and E. As the response to petitions for reconsideration described, "The technical design challenges and the costs to redesign existing snow tires to pass the 120 km/h (75 mph) test would far outweigh the negligible safety benefits associated with that redesign. By reducing the * * * test speeds from 120 km/h (75 mph) to 110 km/h (68 mph) * * * we can ensure virtually all the safety benefits from upgrading the test speed for snow tires and eliminate practicability and cost concerns." [11]

The agency believes that this decision is sound. Advocates provided no data to support its argument that changing the test speed from 120 km/h (75 mph) to 110 km/h (68 mph) for snow tires would result in reduced safety for the public when motorists operate their vehicles with snow tires at high speeds for long periods of time. Advocates focused on the endurance test, but did not mention that FMVSS No. 139 includes an upgraded high speed test with speeds up to 160 km/h (99 mph). The endurance test, moreover, assesses the long-term durability of the tire when tested on the road-wheel for 34 hours straight in a significantly under-inflated condition.

The snow tires that NHTSA tested to the endurance and low pressure performance tests in FMVSS No. 139 experienced primarily chunking failures on the curved test road-wheel. Chunking, defined as the breaking away of pieces of the tread or sidewall rubber, occurs during testing on the curved road-wheel because the road-wheel heats the tire by deflecting its outer edges more than would typically occur when tested on a flat surface. In addition, the tread compound, the greater tread depth, and the smaller tread blocks used on snow tires make them more susceptible to chunking failures.

NHTSA believes that the combination of tests in FMVSS No. 139, which tests at increased stress and higher temperatures due to road-wheel curvature—the upgraded high speed test, the upgraded endurance test, and the new low pressure test—represents increases in test severity for snow tires that will result in overall enhanced performance as compared to the current levels of testing. Therefore, NHTSA believes that the rule clearly meets the intent of the TREAD Act, which directed NHTSA to revise and update FMVSS Nos. 109 and 119.

V. Technical Corrections to the Regulatory Text

1. The agency believes that the tire safety standards should be clear and as consistent as possible with one another. FMVSS No. 110 uses the terms "light truck (LT) tire" and "passenger car tire" without specifically defining them. Therefore, FMVSS No. 110 is being amended to add the same definitions for "light truck (LT) tire" and "passenger car tire" as are used in FMVSS No. 139.

2. In the June 2003 final rule, the agency included a new paragraph S4.2.2.3(b) in FMVSS No. 110, stating that "For vehicles equipped with LT tires, the vehicle normal load on the tire shall be no greater than 94 percent of the load rating at the vehicle manufacturer's recommended cold inflation pressure for that tire." The National Association of Trailer Manufacturers (NATM) and the National Marine Manufacturers Association (NMMA) submitted a "petition for clarification" to the agency requesting confirmation that S4.2.2.3(b) was not intended to apply to trailers. The agency agrees that it was not intended to apply to trailers, which typically have no designated seating positions. We note that the definition of "vehicle normal load on the tire" in S3 of FMVSS No. 110 states that "* * * load on an individual tire * * * is determined by distributing to each axle its share of the curb weight, accessory weight, and normal occupant weight (distributed in accordance with Table I) and divid[ed] by 2." We believe that the inclusion of "normal occupant weight" in the definition of vehicle normal load on a tire is an indication that S4.2.2.3(a) and (b) do not apply to trailers. To make the standard clearer, the agency is amending S4.2.2.3(a) and (b) of FMVSS No. 110 to exclude trailers that have no designated seating positions from the category of vehicles to which the paragraph applies.

3. In the January 2006 final rule, the agency sought to make clear that temporary spare tires would not be subject to the requirements of the new FMVSS No. 139 (but would instead continue to be subject to the requirements of FMVSS No. 109), by removing references to T-type temporary spare tires from the regulatory text of FMVSS No. 139. To better clarify this, the agency is amending S2, *Application*, of FMVSS No. 109 to include T-type temporary spare tires; the first sentence of S4.1(a) of FMVSS No. 110 to state that T-type temporary spare tires are subject to FMVSS No. 109; and S2.1, *Application*, of FMVSS No. 139 to exclude T-type temporary spare tires.

4. Since the January 2006 final rule was published, the agency has identified several typographical errors in Tables II and III of FMVSS No. 119, and is therefore revising and republishing the tables to correct those mistakes.

5. In the January 2006 final rule, FMVSS No. 139 was amended to remove references to CT tires because those tires are no longer being offered for sale in the United States. Because the January 2006 final rule failed to also make conforming changes to S3, *Definitions*, and S5.2, *Performance requirements*, of FMVSS No. 139, the agency is now amending those paragraphs to remove other references to CT tires.

6. In the January 2006 final rule, subparagraph (i) was added to S5.5, *Tire markings* of FMVSS No. 139, to specify requirements for snow tires marked with the "alpine symbol." Because the January 2006 final rule failed to also make a conforming change to the introductory paragraph of S5.5, the agency is now amending that paragraph

[11] 71 FR 880 (Jan. 6, 2006).

to account for this additional subparagraph.

7. A number of typographical errors were found throughout S6, *Test procedures, conditions, and performance requirements*, of FMVSS No. 139, and are being corrected in this final rule.

VI. Effective Date

The effective date of these amendments is September 1, 2007.

VII. Rulemaking Notices and Analyses

This rule makes a number of technical corrections to the regulatory text of several Federal tire safety regulations, and has no impact on the regulatory burden of manufacturers. The agency discussed the relevant requirements of Executive Order 12866, the Department of Transportation's regulatory policies and procedures, the Regulatory Flexibility Act, the National Environmental Policy Act, Executive Order 13132 (Federalism), the Unfunded Mandates Act, Civil Justice Reform, the National Technology Transfer and Advancement Act, and the Paperwork Reduction Act in the June 2003 and January 2006 final rules cited above. Those discussions are not affected by these technical amendments.

Privacy Act

Please note that anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov*.

VIII. Regulatory Text

List of Subjects in 49 CFR Part 571

Motor vehicles, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.109 is amended by revising S2 to read as follows:

§ 571.109 Standard No. 109—New pneumatic and certain specialty tires.

* * * * *

S2 *Application.* This standard applies to new pneumatic radial tires for use on passenger cars manufactured before 1975, new pneumatic bias ply tires, T-type spare tires, ST, FI, and 8–12 rim diameter and below tires for use on passenger cars manufactured after 1948. However, it does not apply to any tire that has been so altered so as to render impossible its use, or its repair for use, as motor vehicle equipment.

* * * * *

■ 3. Section 571.110 is amended by adding to S3, in alphabetical order, new definitions of "Light truck (LT) tire" and "Passenger car tire", and revising S4.1 and S4.2.2.3, to read as follows:

§ 571.110 Standard No. 110; Tire selection and rims for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less.

* * * * *

S3 *Definitions.*

* * * * *

Light truck (LT) tire means a tire designated by its manufacturer as primarily intended for use on lightweight trucks or multipurpose passenger vehicles.

* * * * *

Passenger car tire means a tire intended for use on passenger cars, multipurpose passenger vehicles, and trucks, that have a gross vehicle weight rating (GVWR) of 10,000 pounds or less.

* * * * *

S4.1 *General.* Vehicles shall be equipped with tires that meet the requirements of § 571.139, New pneumatic tires for light vehicles, except that passenger cars may be equipped with a pneumatic T-type temporary spare tire assembly that meets the requirements of § 571.109, or equipped with a non-pneumatic spare tire assembly that meets the requirements of § 571.129, New non-pneumatic tires for passenger cars, and S6 and S8 of this standard. Passenger cars equipped with a non-pneumatic spare tire assembly shall meet the requirements of S4.3(e), and S5, and S7 of this standard.

* * * * *

S4.2.2.3 (a) For vehicles, except trailers with no designated seating positions, equipped with passenger car tires, the vehicle normal load on the tire shall be no greater than 94 percent of the derated load rating at the vehicle manufacturer's recommended cold inflation pressure for that tire.

(b) For vehicles, except trailers with no designated seating positions, equipped with LT tires, the vehicle normal load on the tire shall be no greater than 94 percent of the load rating at the vehicle manufacturer's recommended cold inflation pressure for that tire.

* * * * *

■ 4. Section 571.119 is amended by revising Tables II and III to read as follows:

§ 571.119 Standard No. 119; New pneumatic tires for motor vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds) and motorcycles.

* * * * *

TABLE II.—MINIMUM STATIC BREAKING ENERGY
[Joules (J) and Inch-Pounds (inch-lbs)]

Tire characteristic	Motorcycle		All 12 rim diameter code or smaller except motorcycle		Light truck and 17.5 rim diameter code or smaller Tubeless		Tires other than Light Truck, Motorcycle, 12 rim diameter code or smaller							
							Tube type		Tubeless greater than 17.5 rim diameter code		Tube type		Tubeless greater than 17.5 rim diameter code	
Plunger diameter (mm and inches)	7.94 mm	5/16"	19.05 mm	3/4"	19.05 mm	3/4"	31.75 mm	1 1/4"	31.75 mm	1 1/4"	38.10 mm	1 1/2"	38.10 mm	1 1/2"
Breaking Energy	J	In-lbs	J	In-lbs	J	In-lbs	J	In-lbs	J	In-lbs	J	In-lbs	J	In-lbs
Load Range:														
A	16	150	67	600	225	2,000	.....	.....	.....	.....	.....	.....	.....	.....
B	33	300	135	1,200	293	2,600	.....	.....	.....	.....	.....	.....	.....	.....
C	45	400	203	1,800	361	3,200	768	6,800	576	5,100	.....	.....	.....	.....
D	.....	.....	271	2,400	514	4,550	892	7,900	734	6,500	.....	.....	.....	.....
E	.....	.....	338	3,000	576	5,100	1,412	12,500	971	8,600	.....	.....	.....	.....
F	.....	.....	406	3,600	644	5,700	1,785	15,800	1,412	12,500	.....	.....	.....	.....
G	.....	.....	.....	.....	711	6,300	.....	.....	.....	.....	2,282	20,200	1,694	15,000
H	.....	.....	.....	.....	768	6,800	.....	.....	.....	.....	2,598	23,000	2,090	18,500
J	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2,824	25,000	2,203	19,500
L	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	3,050	27,000	.....	.....
M	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	3,220	28,500	.....	.....
N	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	3,389	30,000	.....	.....

TABLE III.—ENDURANCE TEST SCHEDULE

Description	Load range	Test wheel speed		Test load: Percent of maximum load rating			Total test revolutions (thousands)
		km/h	r/m	I–7 hours	II–16 hours	III–24 hours	
Speed restricted service:							
90 km/h (55 mph)	F, G, H, J, L, M, N	40	125	66	84	101	352.0
80 km/h (50 mph)	F, G, H, J, L	32	100	66	84	101	282.5
56 km/h (35 mph)	All	24	75	66	84	101	211.0
Motorcycle	All	80	250	[1] 100	[2] 108	117	510.0
All other	F	64	200	66	84	101	564.0
	G	56	175	66	84	101	493.5
	H, J, L, N	48	150	66	84	101	423.5

* * * * *

■ 5. Section 571.139 is amended by revising S2.1; S3; S5.2(c); S5.5; S5.5.4; S6.1.1.1.5; S6.1.2; S6.2.1.1.2; S6.4.1.1.2; and S6.6 to read as follows:

§ 571.139 Standard No. 139; New pneumatic radial tires for light vehicles.

* * * * *

S2.1 *Application.* This standard applies to new pneumatic radial tires for use on motor vehicles (other than motorcycles and low speed vehicles) that have a gross vehicle weight rating (GVWR) of 10,000 pounds or less and that were manufactured after 1975. This standard does not apply to special tires (ST) for trailers in highway service, tires for use on farm implements (FI) in agricultural service with intermittent highway use, tires with rim diameters of 8 inches and below, or T-type temporary use spare tires with radial construction.

* * * * *

S3 *Definitions.*

Bead means the part of the tire that is made of steel wires, wrapped or reinforced by ply cords and that is shaped to fit the rim.

Bead separation means a breakdown of the bond between components in the bead.

Bias ply tire means a pneumatic tire in which the ply cords that extend to the beads are laid at alternate angles substantially less than 90 degrees to the centerline of the tread.

Carcass means the tire structure, except tread and sidewall rubber which, when inflated, bears the load.

Chunking means the breaking away of pieces of the tread or sidewall.

Cord means the strands forming the plies in the tire.

Cord separation means the parting of cords from adjacent rubber compounds.

Cracking means any parting within the tread, sidewall, or inner liner of the tire extending to cord material.

Extra load tire means a tire designed to operate at higher loads and higher inflation pressure than the corresponding standard tire.

Groove means the space between two adjacent tread ribs.

Innerliner means the layer(s) forming the inside surface of a tubeless tire that contains the inflating medium within the tire.

Innerliner separation means the parting of the innerliner from cord material in the carcass.

Light truck (LT) tire means a tire designated by its manufacturer as primarily intended for use on lightweight trucks or multipurpose passenger vehicles.

Load rating means the maximum load that a tire is rated to carry for a given inflation pressure.

Maximum load rating means the load rating for a tire at the maximum permissible inflation pressure for that tire.

Maximum permissible inflation pressure means the maximum cold inflation pressure to which a tire may be inflated.

Measuring rim means the rim on which a tire is fitted for physical dimension requirements.

Open splice means any parting at any junction of tread, sidewall, or innerliner that extends to cord material.

Outer diameter means the overall diameter of an inflated new tire.

Overall width means the linear distance between the exteriors of the sidewalls of an inflated tire, including elevations due to labeling, decorations, or protective bands or ribs.

Passenger car tire means a tire intended for use on passenger cars, multipurpose passenger vehicles, and trucks, that have a gross vehicle weight rating (GVWR) of 10,000 pounds or less.

Ply means a layer of rubber-coated parallel cords.

Ply separation means a parting of rubber compound between adjacent plies.

Pneumatic tire means a mechanical device made of rubber, chemicals, fabric and steel or other materials, that, when mounted on an automotive wheel, provides the traction and contains the gas or fluid that sustains the load.

Radial ply tire means a pneumatic tire in which the ply cords that extend to the beads are laid at substantially 90 degrees to the centerline of the tread.

Reinforced tire means a tire designed to operate at higher loads and at higher inflation pressures than the corresponding standard tire.

Rim means a metal support for a tire or a tire and tube assembly upon which the tire beads are seated.

Section width means the linear distance between the exteriors of the sidewalls of an inflated tire, excluding elevations due to labeling, decoration, or protective bands.

Sidewall means that portion of a tire between the tread and bead.

Sidewall separation means the parting of the rubber compound from the cord material in the sidewall.

Test rim means the rim on which a tire is fitted for testing, and may be any rim listed as appropriate for use with that tire.

Tread means that portion of a tire that comes into contact with the road.

Tread rib means a tread section running circumferentially around a tire.

Tread separation means pulling away of the tread from the tire carcass.

Treadwear indicators (TWI) means the projections within the principal grooves designed to give a visual indication of the degrees of wear of the tread.

Wheel-holding fixture means the fixture used to hold the wheel and tire assembly securely during testing.

* * * * *

S5.2 *Performance requirements.* Each tire shall conform to each of the following:

* * * * *

(c) Its maximum permissible inflation pressure shall be 240, 280, 300, 340, or 350 kPa.

* * * * *

S5.5 *Tire markings.* Except as specified in paragraphs (a) through (i) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5(a) through (d) and on one sidewall with the information specified in S5.5(e) through (i) according to the phase-in schedule specified in S7 of this standard. The markings must be placed between the maximum section width and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area that is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, those markings must appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings must be in letters and numerals not less than 0.078 inches high and raised above or sunk below the tire surface not less than 0.015 inches.

* * * * *

S5.5.4 For passenger car tires, if the maximum inflation pressure of a tire is 240, 280, 300, 340, or 350 kPa, then:

(a) Each marking of that inflation pressure pursuant to S5.5(c) must be followed in parenthesis by the equivalent psi, rounded to the next higher whole number; and

(b) Each marking of the tire's maximum load rating pursuant to S5.5(d) in kilograms must be followed in parenthesis by the equivalent load rating in pounds, rounded to the nearest whole number.

* * * * *

S6.1.1.1.5 Readjust the tire pressure to that specified in S6.1.1.1.2.

* * * * *

S6.1.2 *Performance Requirements.* The actual section width and overall width for each tire measured in accordance with S6.1.1.2 shall not exceed the section width specified in a submission made by an individual manufacturer, pursuant to S4.1.1(a) or in one of the publications described in S4.1.1(b) for its size designation and type by more than:

(a) (For tires with a maximum permissible inflation pressure of 32, 36, or 40 psi) 7 percent, or

(b) (For tires with a maximum permissible inflation pressure of 240, 280, 300, 340 or 350 kPa) 7 percent or 10 mm (0.4 inches), whichever is larger.

* * * * *

S6.2.1.1.2 Condition the assembly at 32 to 38 °C for not less than 3 hours.

* * * * *

S6.4.1.1.2 After the tire is deflated to the appropriate test pressure in S6.4.1.1.1 at the completion of the endurance test, condition the assembly at 32 to 38 °C for not less than 2 hours.

* * * * *

S6.6 Tubeless tire bead unseating resistance. Each tire shall comply with the requirements of S5.2 of § 571.109. For light truck tires, the maximum permissible inflation pressure to be used for the bead unseating test is as follows:

Load Range C	260 kPa.
Load Range D	340 kPa.
Load Range E	410 kPa.

For light truck tires with a nominal cross section greater than 295 mm (11.5 inches), the maximum permissible inflation pressure to be used for the bead unseating test is as follows:

Load Range C	190 kPa.
Load Range D	260 kPa.
Load Range E	340 kPa.

* * * * *

Issued: August 22, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E7–16934 Filed 8–27–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU76

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Catesbaea melanocarpa*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (the Service), are designating critical habitat for the endangered plant *Catesbaea melanocarpa* (no common name) under the Endangered Species Act of 1973, as amended (Act). Approximately 10.5 acres (ac) (4.3 hectares (ha)) fall within the boundaries of the critical habitat designation for *C. melanocarpa* in one unit located in Halfpenny Bay in Christiansted, St. Croix, U.S. Virgin Islands (USVI).

DATES: This rule becomes effective on September 27, 2007.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Caribbean Fish and Wildlife Office, Road 301 Km. 5.1, P.O. Box 491, Boquerón, PR 00622; telephone 787–851–7297; facsimile 787–851–7440.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this rule. For more information on *Catesbaea melanocarpa*, please refer to the final listing rule published in the **Federal Register** on March 17, 1999 (64 FR 13116), and the proposed rule to designate critical habitat published in the **Federal Register** on August 22, 2006 (71 FR 48883).

Previous Federal Actions

On September 17, 2004, the Center for Biological Diversity filed a lawsuit against the Department of the Interior and the Service [*Center for Biological Diversity* v. *Norton* (CV–00293–JDB) (D.D.C.)], challenging the failure to designate critical habitat for *Catesbaea melanocarpa*. In a settlement agreement dated June 3, 2005, the Service agreed to reevaluate the prudency of critical habitat for this species and, if prudent, submit a proposed designation of critical habitat to the **Federal Register** by August 15, 2006, and a final designation by August 15, 2007. For more information on previous Federal actions concerning *C. melanocarpa*, refer to the proposed critical habitat designation published in the **Federal Register** on August 22, 2006 (71 FR 48883), and in our notice of availability of the draft economic analysis published on March 14, 2007 (72 FR 11819). This final rule complies with the settlement agreement.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for *Catesbaea melanocarpa* in the proposed rule published on August 22, 2006 (71 FR 48883), and again in a subsequent notice of the availability of a draft economic analysis published in the **Federal Register** on March 14, 2007 (72 FR 11819). We also contacted appropriate Federal, Commonwealth, and Territorial agencies; scientific organizations; local researchers; and other interested parties and invited them to comment on the proposed rule.

The first comment period on the proposed designation opened August 22, 2006 and closed on October 23, 2006. During that time, we received comments from three individuals: One from a peer reviewer working for the USVI government, and two from private individuals. We received one letter during the second comment period, opened from March 14 to April 13, 2007, which covered both the proposed designation and the draft economic analysis. This comment letter was submitted by one of the private individuals who provided comments during the first comment period. In total, we received four comment letters from three individuals. One commenter supported the designation of critical habitat and one opposed the designation. The third commenter did not indicate support or opposition for the designation. We reviewed the comments for substantive issues and new information regarding critical habitat. We grouped the comments by issue and we addressed them in the following summary. We incorporated information into the final rule as appropriate. We did not receive requests for public hearings.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from seven knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received a response from one peer reviewer representing the USVI Department of Planning and Natural Resources, Division of Fish and Wildlife (DPNR–FW). The peer reviewer did not mention if the DPNR–FW generally concurred or not with our methods and conclusions, but provided additional information and suggestions to improve the final critical habitat rule.

Peer Reviewer Comments

Comment 1: The peer reviewer expressed concern that the description of the habitat in the proposed rule had lumped the habitat on USVI and Puerto Rico (PR) together, making it seem that there is much more habitat available for the plants. The peer reviewer suggested that the habitat description be differentiated between the islands.

Our Response: The proposed rule published in the **Federal Register** on August 22, 2006 (71 FR 48883) described the habitat of *Catesbaea melanocarpa* in PR and the USVI separately. The description of the habitat in the Halfpenny Bay area was described based on the site-specific soil type and the vegetation as observed by the Service in 2006. The habitat characteristics of the site coincide with the previous habitat description referenced in the scientific literature. However, the introductory paragraph of the Habitat Description section provided a general discussion of the main characteristics of the subtropical dry forest life zone as described by Ewel and Whitmore (1973, pp. 10–20). The subtropical dry forest life zone covers the Halfpenny Bay area, as well as other areas where the species has been reported in the past and is currently present in Puerto Rico (Guánica Commonwealth Forest and Peñones de Melones). The general description of the life zone does not substitute for the site-specific habitat description we provided in the proposed rule. Furthermore, the primary constituent elements (PCEs) for *C. melanocarpa* are based on the habitat components that are essential for the conservation of the species and not based on the life zones.

Comment 2: The peer reviewer mentioned information received from Mr. Rudy O'Reilly, District Conservationist for the U.S. Department of Agriculture National Resources Conservation Service, about two individual plants of *Catesbaea melanocarpa* previously observed on a property located to the west of the proposed designation. The commenter specified that he did not investigate the sighting report to establish if the species is still present in the area. However, the commenter suggested including this new locality in the designation of critical habitat for *C. melanocarpa*.

Our Response: We contacted Mr. O'Reilly, District Conservationist for the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) and requested additional information about the sighting mentioned by the peer reviewer. Mr. O'Reilly is the botanist who rediscovered the species in St. Croix in 1988. Mr. O'Reilly provided written information on January 23, 2007, and confirmed the information provided by the peer reviewer. Mr. O'Reilly explained that one plant of *C. melanocarpa* was observed during a casual drive-through on the west side of the South Shore Road (eastern boundary of the proposed critical habitat unit) in April, 2006. The area where the individual was observed is located outside of the proposed designation. Mr. O'Reilly mentioned that this location was the site where he first discovered the two individuals of *C. melanocarpa* reported in 1988, but that had been destroyed by a hurricane before the species was listed.

At the time of listing, we described the population near Christiansted, St. Croix consisting of about 24 individual plants. This information was obtained from Breckon and Kolterman (1993, p. 2). These authors made reference to the individuals they found in July, 1992; and revisited in December, 1992, and June, 1993. They described the locality east of the existing road (the other side of the road in reference to the site where

O'Reilly discovered the original individuals in 1988). The authors estimated the population as about 24 individuals, described the size of the plants and documented the presence of flowers and fruits. When the Service was gathering information to draft the recovery plan for the species in 2002, we surveyed the population reported by Breckon and Kolterman (1993, pp.1–2), collected GPS points and estimated the population to be 100 individuals (Lombard 2002). The site where this population is found is located east of the existing road and corresponds to the site identified in the proposed rule (Halfpenny Bay area). Although Breckon and Kolterman (1993, pp. 1–2) made referenced to the individuals Mr. O'Reilly discovered in 1988, they mentioned that individuals were affected by Hurricane Hugo in 1989. These authors did not mentioned that they visited the individuals reported in the west side of the road and did not provide information supporting that the individuals were alive at the time they conducted their studies.

Based on the above information and the information currently available to us, the individual referenced by the peer reviewer was not present at the time of listing. At the time of listing, the individuals first reported by Mr. O'Reilly in 1988 were considered extirpated by previous hurricanes. Mr. O'Reilly in his letter of January 23, 2007 confirmed the information that the two individuals he discovered in 1988 were destroyed by Hurricane Marilyn, and as a consequence the site was not considered occupied at the time of listing.

Since the area was not occupied at the time of listing we would have to find it essential to the conservation of the species in order to designate it as critical habitat. Because the only evidence of the existence of the species at this location is a casual drive-by, and no surveys have recently been conducted in this area, we do not have enough information at this time to determine that the area is essential to the conservation of the species.

Comment 3: The peer reviewer suggested mentioning in the rule that *Catesbaea melanocarpa* is protected by the Territorial law.

Our Response: In the proposed rule for the designation of critical habitat for *Catesbaea melanocarpa* published in the **Federal Register** on August 22, 2006, we discussed topics directly relevant to the designation of critical habitat. However, we incorporated by reference the information of the listing final rule we published in the **Federal Register** on March 17, 1999 (64 FR 13116). In the listing rule, under the "Summary of Factors Affecting the Species" section, we stated that the territory of the USVI had amended its regulations to protect endangered and threatened wildlife and plants and considered *Catesbaea melanocarpa* to be endangered. In the listing rule, we referred to prohibitions by this local regulation under the "Available Conservation Measures" section.

Public Comments Related to the Designation

Comment 1: The commenter believes that the area to be designated as critical habitat was based on the ownership of private property rather than the location of the species. The commenter provided a color aerial photo of the site.

Our Response: The Halfpenny Bay is currently occupied by approximately 100 individuals of *C. melanocarpa*. With the assistance of the aerial photo provided by the commenter, we re-examined the boundaries of the proposed area and removed from the designation highly degraded areas dominated by pastures located south of Road 62. We also redefined the boundaries utilizing GPS-located sightings of individuals collected by Service personnel within the property (Lombard 2002). The areas within the redefined boundaries meet the criteria we used to designate critical habitat. We also confirmed that the area occupied by the species contains the PCEs essential for the conservation of the species. Therefore, we reduced the size of the designated critical habitat to 10.5 ac (4.3 ha).

Comment 2: The commenter mentioned information received from Mr. Rudy O'Reilly about one *Catesbaea melanocarpa* plant previously observed in a property located to the west of the proposed designation. The commenter recommended we conduct additional research and prepare the planned 5-year review of the status of the species before finalizing the proposed designation of critical habitat.

Our Response: The presence of one individual in a site located west of the proposed designation was also documented by the peer reviewer. We responded to comments under Peer Reviewer Comment 2. We initiated the 5-year review process for *Catesbaea melanocarpa* on September 27, 2006 (71 FR 56545), and requested information and comments from the public. The purpose of the 5-year review is to ensure that the classification of species as threatened or endangered of the Lists of Endangered and Threatened Wildlife and Plants (50 CFR 17.11 and 17.12) is accurate. A 5-year review is an assessment of the best scientific and commercial data available at the time of the review. It does not include additional research on the species.

Comment 3: The commenter believes that the designation will destroy the property's economic value and result in a "taking" of private property.

Our Response: The designation of critical habitat does not mean that private lands would be taken by the Federal Government or continued private uses would not be allowed. The designation of critical habitat does not affect private lands if there is no Federal nexus in other words, if the landowner does not need a Federal permit or other Federal approval, or Federal funding, for his activities, then the designation will impose no Federal restriction on his property. If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. All regulatory effect of the designation of critical habitat comes from this requirement. Therefore, if a Federal permit or approval is not required, or if Federal funding is not involved, there will be no regulatory burden for actions on private lands.

If there is a Federal action that may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. When we issue a biological opinion we can include measures to reduce take of the species, or measures to offset any actions that would jeopardize the existence of the species or adversely modify critical habitat. Such measures must be consistent with the scope of the Federal agency's legal authority and jurisdiction, and must also be economically and technologically feasible.

The parcel that includes the critical habitat designation is currently zoned as District 2: Low Intensity, which permits low-density residential construction and small-scale agriculture. This zoning category allows a maximum of four residential units per acre for single and multi-family construction and a maximum of six units per acre for larger-scale condominium or hotel development. This zoning category does not prohibit development of the site.

We anticipate that any potential development could go forward on this site even if there was a Federal nexus. If we consulted on the site were would likely propose recommended conservation measures for the plants. We have identified likely recommended

measures, which would include establishing a buffer zone of 20 meters (m) (66 feet (ft)) around the existing population as a setback from the development. The buffer zone is included in the designation, and the total area to be designated is approximately 10.5 ac (4.3 ha). Given the size of the parcel and location of the plants, it is unlikely that the setback would significantly affect development plans.

Public Comments Related to the Economic Analysis

Comment 1: The commenter requested an extension of the public comment period opened on March 14, 2007, for a minimum of 60 days to provide additional time for the owner of the land to effectively respond to the proposed rule.

Our Response: We provided two comment periods, totaling 90 days, for the designation of critical habitat for *Catesbaea melanocarpa* between August 2006 and April 2007. Additionally, we contacted the commenter in February 2006 to request permission to visit the site, and we provided information about the proposed designation. Service biologists met with the commenter on March 1, 2006, and provided information about critical habitat.

Comment 2: The commenter requested the postponement or termination of the rulemaking process until legal review is made. He also suggests we should investigate opportunities to conserve the species on government-owned lands.

Our Response: We have a statutory obligation to designate critical habitat, and we are operating under a settlement agreement that requires us to finalize this designation by August 15, 2007. We are finalizing this rule in compliance with applicable legal standards.

Regarding opportunities to conserve the species on government-owned lands, the species is not currently present on government-owned lands in the USVI. The recovery plan identifies the establishment of a propagation program as the top priority for the recovery of the species. Once the appropriate propagation techniques are established and necessary funding allocated, we would direct our efforts toward the establishment of self-sustainable populations on protected lands. The recovery plan also identifies the need to establish conservation agreements with private landowners to provide protection to the existing individuals and their habitat in the USVI.

Comment 3: The commenter believes that the economic impact of designation would not range from $132,300 to $441,000 over 20 years, as discussed in the draft economic analysis, but rather would range from $630,000 to $2,100,000 over 20 years.

Our Response: The commenter confused the economic impact of the critical habitat designation with the assessment of the market value for the site. The draft economic analysis summarized the procedure taken to assess the market value of the property. Exhibit 2 of the draft economic analysis included the market value per acre of the proposed designated area, which ranges from $630,000 to $2,100,000. The economic impact of the designation was based on conservation recommendations we would provide as technical assistance to a developer to conserve the species within the property, if a development project is proposed. The conservation measures would include establishing a buffer zone of 20 meters (m) (66 feet (ft)) around the existing population as a setback from the development. The buffer zone is included in the designation, and the total area to be designated is approximately 10.5 ac (4.3 ha). The calculation of the economic impact of the designation to the landowner was based on the implementation of this conservation measure and ranged from $132,000 to $441,000 over 20 years.

Comment 4: The commenter stated that the draft economic analysis recommends a modification to the designation, specifically limiting the proposed designation to 21 percent of the property.

Our Response: With the assistance of the aerial photo provided by the commenter during the comment period, we reexamined the boundaries of the proposed area and removed highly degraded areas dominated by pastures located south of Road 62. We also redefined the boundaries utilizing GPS recorded sightings of individuals collected by Service personnel within the property (Lombard 2002). We verified that these redefined areas meet both criteria we are utilizing to designate critical habitat, they are occupied by the species and they support the PCEs essential for the conservation of the species. We reduced the size of the designated critical habitat to 10.5 ac (4.3 ha).

Comment 5: The commenter stated that the draft economic analysis incorrectly states that the site is not being used for agriculture and that the site is currently subject to an agricultural lease. The commenter mentioned that the site is subject to periodic grazing, which reduces the fire hazard and is beneficial for the protection of the species. The commenter interpreted the proposed designation as prohibiting agricultural activities in the area and stated that this would adversely affect the prospects of this population's survival.

Our Response: The draft economic analysis stated that the property proposed for critical habitat was no longer used for grazing activities. The revised analysis states: "The property is subject to an agricultural lease that has not been terminated, and is periodically grazed by livestock. The owner notes that this grazing activity reduces the threat of brush fires and may benefit the species."

Comments From the Territory of the USVI

Section 4(i) of the Act states that "the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition." Comments received from Territorial agencies (USVI Department of Planning and Natural Resources, Division of Fish and Wildlife) regarding the proposal to designate critical habitat for *Catesbaea melanocarpa* are addressed in the Peer Reviewer Comments section.

Summary of Changes From Proposed Rule

On the basis of comments received on the proposed rule and the draft economic analysis, we have developed our final designation of critical habitat for *Catesbaea melanocarpa*. Specifically, we adjusted the boundaries of the proposed critical habitat designation to remove the areas that were dominated by pastures, and as such did not contain the first primary constituent element and the area not currently occupied by the species. This adjustment resulted in the removal of 39.5 ac (16 ha) from the original boundaries and a final designation of 10.5 ac (4.3 ha). The boundaries of the designation were refined by utilizing an aerial photograph provided during the public comment period for the proposed rule and a layer created in GIS with the GPS readings of the sightings of the approximately 100 plants in the area. We used a 100-meter grid to establish Universal Transverse Mercator (UTM) North American Datum 27 (NAD 27) coordinates that, when connected, provided the boundaries of the critical habitat for *Catesbaea melanocarpa*.

In the proposed rule published on August 22, 2006 (71 FR 48883), we stated that the Guánica and the Susúa Commonwealth Forests in PR were not

included in the proposed designation because they are adequately protected under the management of the DNER and the master plan for the forests, and therefore do not require special management or protection. Under section 3(5)(A) of the Act, an area that was occupied at the time of listing on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection meets the definition of critical habitat. We have determined that these areas do meet the definition of critical habitat as there are additional management actions beyond those already in effect, that can be taken to conserve the plants in these areas. However, we believe the forests have management plans that appropriately address the conservation needs of the species and therefore minimize any benefits of designation (see "Exclusions Under Section 4(b)(2)" below). Thus, we are invoking the Secretary's discretion to exclude the two forests under section 4(b)2 of the Act, after taking into consideration the efforts by the Commonwealth of Puerto Rico to protect habitat under its jurisdiction.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation, as defined under section 3 of the Act, means "to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary." Such methods and procedures include, but are not limited to, all activities associated with scientific resources management, such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. Section 7 is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

To be included in a critical habitat designation, the habitat within the area occupied by the species at the time of listing must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (areas where PCEs are found, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. As discussed below, such areas may also be excluded from critical habitat under section 4(b)(2) of the Act. Areas outside of the geographical area occupied by the species at the time of listing may only be included in critical habitat if they are essential to the conservation of the species. Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species require additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. However, an area that is currently occupied by the species, but which was not known at the time of listing to be occupied, will likely, but not always, be essential to the conservation of the species and, therefore, considered for inclusion in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations of *Catesbaea melanocarpa*, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Section 7(a)(1) directs all other Federal agencies to utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of listed species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if

new information available to these planning efforts calls for a different outcome.

Primary Constituent Elements (PCEs)

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat within areas occupied by the species at the time of listing, we consider those physical and biological features that are essential to the conservation of the species (PCEs), and which may require special management considerations and protection. These include, but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing (or development) of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific PCEs required for *Catesbaea melanocarpa* are derived from the biological needs of this plant species and include those habitat components needed for growth and development, flower production, pollination, seed set and fruit production, and genetic exchange. Although at the present time the information on the species' biological and ecological needs is limited (USFWS 2005, p. 7), habitat characteristics supporting all three currently known localities are known. Additionally, individuals in all three localities have been documented in fruit or flower. The presence of sexual reproduction indicates that the species has the potential to produce viable populations, with the assistance of appropriate conservation strategies.

Catesbaea melanocarpa is currently known from both the subtropical dry forest and subtropical moist forest life zones of PR and the USVI. Except for one locality, the historical and current range of the species is within dry forest life zone. The Susúa Commonwealth Forest is the only locality that is not dry forest; however, based on our observations because of its serpentine soils, the vegetation structure and species composition are similar to dry forest habitat (Breckon and García 2001; Silander et al. 1986, p. 243). In all three localities, the species is under the canopy of trees and shrubs, and all localities in PR are forested hills associated with either limestone or serpentine soils. The locality in St. Croix, based on Service observations, is on a coastal plain with patches or thickets of trees and shrubs characteristic of dry forest habitat.

Within the subtropical dry and moist forest life zones, *Catesbaea melanocarpa* has been reported from four discrete sites within the U.S. Caribbean: Halfpenny Bay, Peñones de Melones, the Guánica Commonwealth Forest, and the Susúa Commonwealth Forest. However, the species presently occupies only Halfpenny Bay in St. Croix, USVI, the Guánica Commonwealth Forest, PR, and the Susúa Commonwealth Forest, PR.

Vegetation at the Halfpenny Bay site is comprised of dry thicket scrub vegetation, dominated by grasses with patches of trees and shrubs (USFWS 2005, pp. 6–7). Based on Service observations during a site visit conducted on March 1 and 2, 2006, *Catesbaea melanocarpa* is an understory species, currently growing below trees and shrubs characteristic of dry forest habitat. Associated flora include introduced grass species, *Caesalpinia coriaria* (dividive), *Tamarindus indica* (tamarind), *Castela erecta* (goat-bush), *Acacia turtuosa* (acacia), *Cassia poplyphylla* (retama prieta), *Leucaena leucocephala* (tan-tan), *Randia aculeata* (box-briar or tintillo), and *Cordia alba* (white manjack). Soils in the Halfpenny Bay site have been described as belonging to the Glynn-Hogensborg unit, which consists of very deep, well drained, nearly level to moderately steep soils (NRCS 1998, pp. 63–64).

We observed the vegetation within the Guánica Commonwealth Forest locality in 2006 as dry forest with semi-closed canopy on limestone soils. The species is found under the canopy. In this forest type, trees often reach 33 ft (10 m). Some associated dry forest vegetation in this locality include *Coccoloba microstachya* (uvillo), *C. diversifolia* (uvilla), *Thouinia portoricensis* (quebracho), *Guettarda elliptica* (cucubano liso), *Croton lucidus* (alhelí), *Savia sessiliflora* (amansa guapo), *Pithecellobium unguis-cati* (uña de gato), *Guaiacum sanctum* (guayacán), *Leucaena leucocephala* (zarcilla), among other common species (Trejo-Torres 2001, pp. 59–63).

Susúa Commonwealth Forest is located in southwestern Puerto Rico in the municipalities of Yauco and Sabana Grande. The Susúa Forest lies between the humid Central Cordillera and the dry coastal plains typical of the south coast. The forest represents not only the influence of a climatic transition zone (dry to moist), but also a combination of volcanic and serpentine soils (Department of Natural Resources 1976, p. 24). The majority of the forest (90 percent) is underlain by serpentine outcrop. The rest of the forest (10 percent) has nine other soil types that belong to the Caguabo-Múcaro association (Silander et al. 1986, pp. 224–226; Soil Conservation Survey 1975, p. 9). These soils are described as slightly leached, loamy and clay, sticky and plastic soils underlain by hard or weathered rock at a depth of less than 30 inches (Soil Conservation Survey 1975, p. 9). Serpentine-derived soils create stressful conditions for the establishment and growth of plants, and their associated floras are characterized by high diversity and endemism (Cedeño-Maldonado and Breckon 1996, p. 348). Two vegetation associations (dry slope forest and gallery forest) have been delineated in the subtropical moist life zone (Department of Natural Resources 1976, p. 224). The trees are slender, open-crowned, and usually less than 39.4 ft (12 m) tall. The forest floor is open because the excessively drained soil supports little herbaceous growth (Ewel and Whitmore 1973, p. 25). *Catesbaea melanocarpa* is found in the dry slope forest type. The climatic conditions and serpentine-derived soils contribute to more xeric conditions and a forest structure and species composition similar to the Guánica Commonwealth Forest based on observations by the Service and others (Silander et al. 1986, pp. 239–245; Breckon and García 2001).

Primary Constituent Elements for Catesbaea melanocarpa

The area designated as critical habitat for *Catesbaea melanocarpa* is occupied, is within the species' current and historic geographic range, and contains sufficient primary constituent elements (PCEs) to support at least one of the plant's life-history functions. Based on our current knowledge of the species and the requirements of the habitat to sustain the essential life-history functions of the species, as discussed above, we have determined that the PCEs for *C. melanocarpa* are:

(1) Single-layered canopy forest with little ground cover and open forest floor that supports patches of dry vegetation with grasses, and

(2) Well to excessively drained, limestone and serpentine-derived soils (including soils of the San Germán, Nipe, and Rosario series and Glynn and Hogensborg series).

Open forest floor, canopy, and little ground cover are important requirements for an understory species like *Catesbaea melanocarpa*. The canopy provides shade, and the open forest floor reduces competition by

herbaceous species. Limestone and serpentine-derived soils that are well to excessively drained provide essential nutrients to this plant and sustain the dry conditions needed by the species. This designation is designed for the conservation of areas supporting PCEs necessary to support the life-history functions that were the basis for the proposal. The area designated as critical habitat in this rule has been determined to contain sufficient PCEs to support one or more of the life-history functions of *C. melanocarpa*.

Criteria Used To Identify Critical Habitat

As required by section 4 of the Act, we used the best scientific data available in determining areas that contain the features that are essential to the conservation of *Catesbaea melanocarpa*. We began our analysis by considering the historic distribution of the species and sites occupied by the species at the time of listing. The 1999 listing rule (64 FR 13116) identified two localities occupied by the species within the U.S. jurisdiction: a 50-ac (20-ha) privately owned parcel in Halfpenny Bay in St. Croix, USVI; and a 330-ac (132-ha) property in Peñones de Melones in Cabo Rojo, PR. Both localities are found within the subtropical dry forest life zone and support habitat for the species. The final listing rule identified two historic collections: one in Guánica, PR, in 1886. and one in Susúa Commonwealth Forest, PR, in 1974. The Guánica Commonwealth Forest is within the subtropical dry forest life zone, and Susúa Commonwealth Forest is considered within the moist forest life zone. However, the Susúa Commonwealth Forest supports slopes with dry forest vegetation due to the climatic conditions and soil type. Both forests are similar in forest structure and species composition. Although both forests support habitat for *C. melanocarpa*, the presence of the species within these two forests was not corroborated at the time of listing. The rule noted that the Susúa specimen could not be confirmed as *C. melanocarpa* because of its poor condition (64 FR 13116, March 17, 1999; Breckon and Kolterman 1993, p. 1).

We reviewed the approved recovery plan to identify new records of occupancy of the species, biological information, and habitat characteristics (USFWS 2005, pp. 3–8). The plan identifies both downlisting and delisting criteria and emphasizes the importance of protecting existing populations within the range of this plant to prevent its extinction, decrease the threat to the species associated with catastrophic events, and to obtain sexual (seeds) and asexual (cuttings) propagation material to establish a propagation program for the species. The plan includes information provided by a peer reviewer during the comment period showing a recent collection of *Catesbaea melanocarpa* located at the Guánica Commonwealth Forest. This forest is located within the previously known distribution of the species and supports a historic collection of *C. melanocarpa*. A voucher of this collection is located in the herbarium of the University of Puerto Rico (UPR 2006).

We also reviewed other information (such as sighting records from herbariums, Department of Natural and Environmental Resources (DNER) maps, and office files) and scientific literature and reports to identify additional information available on species range and biological needs. The Service contacted all researchers that have reported the species in recent years and visited all reported sites; they confirmed sightings at all sites except the west side of the South Shore Road, which is outside of the designation. Herbarium records for Guánica and Peñones de Melones describe the species growing in low forest or the understory of dry forest vegetation in limestone soils. The herbarium voucher for the species in Susúa describes the species growing in low forest on serpentine soils (Trejo-Torres 2003). Vegetation characteristics, climatic conditions, and soil type coincide with the previously described habitat for the species. We confirmed sightings in St. Croix and Guánica Commonwealth Forest. Although additional forested areas within the dry forest life zone and the moist forest life zone are present in PR and USVI, no additional sightings for the species have been reported in these other areas.

The only areas considered for designation were those that either (1) were occupied at the time of listing (as a population or an occurrence) and possess sufficient PCEs to support the life history functions, or (2) were not occupied at the time of listing but are essential to the conservation of the species. Information gathered by the Service and data collected during field visits resulted in the consideration of only three discrete areas in the U.S. Caribbean.

The Halfpenny Bay area was occupied at the time of listing and continues to be occupied. This area contains features that are essential to the conservation of *Catesbaea melanocarpa* that may require special management or protection. Another area that was occupied at the time of listing, located in Peñones de Melones in Cabo Rojo, PR, is not currently occupied by the species and has lost PCEs due to periodic land-clearing activities with heavy machinery; it is not being designated as critical habitat due to the lack of PCEs and the lack of conservation value for the species.

The Guánica and Susúa Commonwealth forests have current and historical records of the species presence. The presence has been documented based on recent reports (Trejo-Torres 2001, p. 62; Trejo-Torres 2003; 2006) and site visits conducted by the Service in 2006.

These three areas (Halfpenny Bay and both Commonwealth forests) represent all known populations of this species in the wild within U.S. jurisdiction (currently known to be fewer than 115 individuals). Protecting individuals in the three localities is vital to maintain genetic representation of all known localities in the U.S. Caribbean. We have determined that it is essential to prevent extinction of this plant by protecting and securing existing populations, establishing a propagation program, augmenting existing populations with propagated individuals, and establishing new self-sustainable populations in protected areas (USFWS 2005). We believe all three currently occupied areas presently contain essential habitat features for the species.

We reviewed existing management and conservation plans and management actions for *Catesbaea melanocarpa* to determine if any of the areas identified above that contained features essential to the conservation of the species could be excluded under section 4(b)(2) of the Act. On the basis of this review, we believe that essential features within both Commonwealth Forests are adequately managed and protected under the management of Puerto Rico DNER. Accordingly, while these areas collectively total 14,575 ac (5,898 ha) and contain the habitat features that are essential to the conservation of the species, they are excluded from this designation because they are being adequately managed as wildlife sanctuaries by DNER, where they are protecting wildlife and plants in perpetuity and allowing only nonconsumptive use by the public in designated areas and trails (see Application of section 4(b)(2) of the Act below).

When determining critical habitat boundaries, we made every effort to avoid including developed areas such as buildings, paved areas, and other

structures that lack PCEs for *Catesbaea melanocarpa*. The scale of the maps prepared under the parameters for publication within the *Code of Federal Regulations* may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the final rule and are not designated as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they affect the species or primary constituent elements in adjacent critical habitat.

The area of approximately 10.5 ac (4.3 ha) identified within the Halfpenny Bay area meets all criteria used to identify critical habitat: The site was occupied at the time of listing and contains sufficient PCEs to support the life-history functions essential for the conservation of the species that are in need of special management and protection. A brief discussion of the Halfpenny Bay area is provided in the unit description below. Additional detailed documentation concerning the essential nature of this area is contained in our documentation record for this rulemaking.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing contain the PCEs that may require special management considerations or protection. As discussed in this section and in the unit description below, we find that all of the PCEs in Halfpenny Bay may require special management considerations or protection due to threats to the species or its habitat from periodic but intense grazing, human-induced fires, and potential development for a tourist project (USFWS 2005, p. 8). Such management considerations and protections include fencing off forest patches to exclude cattle, developing fire-breaks adjacent to existing roads and farm boundaries during dry season, and establishing conservation agreements with landowners to protect habitat within the property.

Critical Habitat Designation

We are designating one unit in the Halfpenny Bay area in Christiansted, St. Croix, USVI as critical habitat for *Catesbaea melanocarpa*. This critical habitat area described below (see Table 1) constitutes our best assessment at this time of areas determined to be occupied at the time of listing, that contain the PCEs that are essential for the conservation of the species, and that may require special management considerations or protection. Appropriate management and protection will support reproduction, recruitment, adaptation to catastrophic events, and genetic diversity (Primack 2000, pp. 124–133; Falk et al. 1996, pp. 113–119) as identified using the best available data.

TABLE 1.—LANDS DETERMINED TO MEET THE DEFINITION OF CRITICAL HABITAT FOR CATESBAEA MELANOCARPA, LAND OWNERSHIP, APPROXIMATE AREA (ACRES, HECTARES).

Critical habitat unit, location	Land ownership	Areas meeting the definition of critical habitat acres (hectares)
Halfpenny Bay, St. Croix, USVI	Private	10.5 (4.3)
Total		10.5 (4.3)

Presented below is a brief description and rationale for the designated critical habitat for *Catesbaea melanocarpa*.

Halfpenny Bay, St. Croix

The Halfpenny Bay critical habitat area consists of an area of approximately 10.5 ac (4.3 ha) on a privately owned agricultural tract located in a dry coastal plain about 2.48 miles (4 km) south of Christiansted, St. Croix, USVI. This unit encompasses the habitat features essential to the conservation of *Catesbaea melanocarpa* and does not contain manmade structures, such as existing private homes or barns. The species is located within dry thickets of scrub vegetation in this unit, which is dominated by grasses with patches of trees and shrubs. The unit contains both PCEs and is important to conserving the genetic diversity of this plant. Since this is the locality with the highest number of individuals (100 plants), we believe that it should be considered the core population to maintain genetic representation of this plant in the U.S. Caribbean.

At the time of the 1999 listing, the population was estimated at 24 individuals, but in 2002 the population was estimated at 100 individuals (Lombard 2002). The presence of the species at this site was confirmed by the Service in March 2006. This USVI population has the highest number of plants and has been documented in its reproductive condition (with fruit and flowers). The site and the PCEs contained thereon are currently threatened by periodic but intense grazing, human-induced fires, potential development for a tourist project (USFWS 2005, p. 8), and may require special management considerations and protection as discussed in the "Special Management Considerations or Protections" section above.

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." However, recent court decisions have invalidated this definition (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F. 3d 434, 442 (5th Cir. 2001)). Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations

implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only. However, once a proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the proposed species or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report, while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (1) a concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that may affect, but are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. "Reasonable and prudent alternatives" are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid jeopardy to the listed species or destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat.

Federal activities that may affect *Catesbaea melanocarpa* or its designated critical habitat will require section 7 consultation under the Act. Activities on State, Tribal, local or private lands requiring a Federal permit (such as a permit from the Corps under section 404 of the Clean Water Act or a permit under section 10 of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to Catesbaea melanocarpa and Its Critical Habitat

Jeopardy Standard

When performing jeopardy analysis for *Catesbaea melanocarpa,* the Service applies an analytical framework that relies heavily on the importance of core area populations to the survival and recovery of this plant. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of *Catesbaea melanocarpa* in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Adverse Modification Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve its intended conservation role of the critical habitat unit for this plant is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the species.

Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for *Catesbaea melanocarpa* is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for *C. melanocarpa* include, but are not limited to:

(1) Actions that would reduce or degrade dry thicket scrub areas

dominated by patches of trees and shrubs in the Halfpenny Bay area. Such activities could include vegetation clearing, intensive and extensive cattle grazing activities, and fire. Dry forest species in the Caribbean are not fire-resistant species.

(2) Earth movement activities using heavy machinery within critical habitat that may result in changes in quantity and quality of soils within designated critical habitat.

We consider the area designated as critical habitat, as well as those that were excluded, to contain features essential to the conservation of *Catesbaea melanocarpa*. The designated area is within the geographic range of the species, was occupied by the species at the time of listing (64 FR 13116, March 17, 1999; Proctor 1991, pp. 43–44; Breckon and Kolterman 1993, p. 1), and is currently occupied by the species. Federal agencies already consult with us on activities in areas currently occupied by *C. melanocarpa*, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of *C. melanocarpa*.

Application of Section 3(5)(A) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species at the time of listing on which are found those physical and biological features (i) essential to the conservation of the species and (ii) which may require special management considerations or protection. Therefore, areas within the geographical area occupied by the species at the time of listing that do not contain the features essential for the conservation of the species are not, by definition, critical habitat. Similarly, areas within the geographic area occupied by the species at the time of listing that do not require special management or protection also are not, by definition, critical habitat. Following a review of all areas, we have determined that each area meets the definition of critical habitat.

There are multiple ways to provide management for species habitat. Statutory and regulatory frameworks that exist at a local level can provide such protection and management, as can lack of pressure for change, such as areas too remote for anthropogenic disturbance. Finally, State, local, or private management plans as well as management under Federal agencies' jurisdictions can provide protection and management to avoid the need for designation of critical habitat. When we consider a plan to determine its adequacy in protecting habitat, we consider whether the plan, as a whole, will provide the same level of protection that designation of critical habitat would provide. The plan need not lead to exactly the same result as a designation in every individual application, as long as the protection it provides is equivalent, overall. In making this determination, we examine whether the plan provides management, protection, or enhancement of the PCEs that is at least equivalent to that provided by a critical habitat designation, and whether there is a reasonable expectation that the management, protection, or enhancement actions will continue into the foreseeable future. Each review is particular to the species and the plan, and some plans may be adequate for some species and inadequate for others.

Application of Section (4)(b)(2) of the Act

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Secretary is afforded broad discretion, and the Congressional record is clear that, in making a determination under the section, the Secretary has discretion as to which factors and how much weight will be given to any factor.

Under section 4(b)(2), in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If an exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species. In the following sections, we address a number of general issues that are relevant to the exclusions we considered.

The following is our analysis of the benefits of including lands within versus excluding such lands from this critical habitat designation.

(1) Benefits of Inclusion of Guánica and Susúa Commonwealth Forests

The principal regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation pursuant to section 7 of the Act to ensure that they will not destroy or adversely modify critical habitat. In the *Gifford Pinchot* decision, the U.S. Court of Appeals for the Ninth Circuit ruled that adverse modification evaluations require consideration of impacts on the recovery of species (379 F.3d 1059, 1070–1072). Conducting section 7 consultations would provide benefits by protecting plants on lands with a Federal nexus. For example, if a federally funded road project was proposed to cross these lands that were designated as critical habitat, a consultation would need to be conducted to ensure the designated critical habitat was not destroyed or adversely modified. Section 7 consultations only commit Federal agencies to prevent adverse modification to critical habitat caused by the particular project, and they are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Thus, any management plan that considers enhancement or recovery as the management standard will always provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision. Without a critical habitat designation, Federal agencies remain obligated under section 7 to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence. The DNER does not utilize Federal funding to manage forest reserves in PR; however, the DNER routinely consults with us on research activities and projects on the forests that may affect federally listed species to ensure that the continued existence of such species is not adversely affected. Thus, under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species. However, we believe the conservation achieved through implementing habitat management plans is typically greater than would be achieved through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection to particular habitat for at

least one and possibly other listed or sensitive species.

Designation of critical habitat also serves to educate landowners, State and local governments, and the public, regarding the potential conservation value of the area. This helps focus, prioritize, and revitalize conservation efforts, such as restoration projects, or more extensive monitoring of populations. This benefit is closely related to a second, more indirect benefit: that designation of critical habitat would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

However, the benefits of inclusion are low, since the forests are already managed in an appropriate manner and education of the public is already occurring. For instance, extensive management plans already cover these forests. The DNER developed a master plan for the Commonwealth forests of Puerto Rico in 1976. The master plan identified soil and land types, climate, wildlife, vegetation, land use, recreation opportunities, and future research needs for all Commonwealth forests, including Guánica and Susúa forests. The master plan also identified management recommendations to address identified issues for each forest unit.

In Guánica, the master plan identified special management considerations in accordance with the uniqueness of the forest, proposed to manage the forest and associated vegetation types for nonconsumptive use by the public, and reserved and managed the entire unit as a wildlife sanctuary (DNR 1976, pp. 56–58). Because of the forest condition, it was designated as a United Biosphere Reserve in 1981 by the United Nations Educational, Scientific and Cultural Organization (UNESCO).

For Susúa, the master plan identified special management considerations, including locating representative areas of all plant communities and rare and endangered species and limiting public use on these areas; not issuing new permits for transmission lines; and delineating all unique areas and preserving them in their natural condition (DNR 1976, pp. 230–232).

Additionally, both forests are currently managed as wildlife sanctuaries, protecting wildlife and plants in perpetuity and allowing only nonconsumptive use by the public in designated areas and trails. Active management includes developing and maintaining fire breaks, conducting prescribed burning adjacent to roads to reduce fuel load, removing exotic plant species along roads, and promoting scientific data collection, and conducting outreach and education activities within adjacent communities. Forest management also provides opportunities for scientific research and the use of existing trails for passive recreation and education. The Guánica Forest also provides for beach use. These current management activities have not been identified as threats for *Catesbaea melanocarpa*. Also, the DNER has an island-wide education program that produces educational materials, talks, seminars and presentations on threatened and endangered species in Puerto Rico and their conservation needs, therefore there is no appreciable educational benefit to the designation of critical habitat in these areas.

The Guánica and Susúa Commonwealth Forests and adjacent lands are designated as Critical Wildlife Areas (CWA) by the Commonwealth of Puerto Rico (DNER 2005, pp. 211 and 221). The CWA designation constitutes a special recognition by the Commonwealth with the purpose of providing information to Commonwealth and Federal agencies about the conservation needs of these areas and assisting permitting agencies in precluding negative impacts as a result of permit approvals or endorsements (DNER 2005, pp. 2–3).

We believe there may be some benefits of inclusion, but they would be low because of the ongoing efforts of the Commonwealth. Critical habitat designation alone does not require specific steps toward recovery. The benefits of including these DNER-managed lands in designated critical habitat are minimal because the land managers and landowners are currently implementing conservation actions for *C. melanocarpa* and its habitat that encompass more than a critical habitat designation would. The DNER manages the forests as wildlife sanctuaries, does not allow for economic use of the forests and conducts management activities consistent with the conservation of the species and its habitat, including educating the public. Additionally, the purpose normally served by the designation, that of informing State agencies and local governments about areas that would benefit from protection and enhancement of habitat for *Catesbaea melanocarpa*, is already well established among State and local governments and Federal agencies in those areas that we are excluding from critical habitat in this rule on the basis of other existing habitat management protections.

(2) Benefits of Exclusion of Guánica and Susúa Commonwealth Forests

Exclusion would further enhance the cooperative working relationship with the Forests by focusing on activities that are designed to protect and recover the species, and allowing resources to go toward on-the-ground efforts rather than regulatory procedures. Since 1984, the Service and DNER have a signed cooperative agreement pursuant to section 6 (c) of the Act, establishing a partnership agreement for the purpose of implementing an endangered and threatened fish, wildlife and plant species conservation program in the Commonwealth of Puerto Rico. Both parties agree that programs of the Commonwealth of Puerto Rico are designed to assist resident endangered and threatened species; it is their mutual desire to work in harmony for the common purpose of planning, developing and conducting programs to protect, manage and enhance the populations of all resident endangered and threatened fish, wildlife and plants within the Commonwealth of Puerto Rico. As stated previously, there are instances where section 7 consultation could occur. If these lands are designated, there would be an additional burden for each individual action to ensure that designated critical habitat was not destroyed or adversely modified. Given the goal of the Commonwealth to protect, manage and enhance populations, this additional burden would likely add additional time and paperwork to consultations, which is unnecessary.

Threats identified for *Catesbaea melanocarpa* on the Guánica and Susúa Commonwealth Forests are human-induced fires during dry season and cutting of vegetation for trail and powerline maintenance. The DNER has regulatory mechanisms to protect individuals of *C. melanocarpa* from these threats within the forest boundaries, and forest managers are aware of the occupied localities within the forests. We believe that management guidelines for both forests, current local laws and regulations and the close coordination and excellent working partnership with DNER will adequately address identified threats to *C. melanocarpa*, features essential to its conservation, and its habitat on DNER lands.

The DNER approved laws and regulations to protect threatened and endangered species within lands under their jurisdiction. In 1999, the Commonwealth of Puerto Rico approved Law Number 241, Wildlife Law of the Commonwealth of Puerto Rico (Ley de Vida Silvestre del Estado Libre Asociado de Puerto Rico—Ley Núm. 241 del 15 Ago. 1999). The purpose of

this law is to protect, conserve, and enhance native and migratory wildlife species; declare all wildlife species within its jurisdiction as the property of Puerto Rico; regulate permits; regulate hunting activities; and regulate exotic species. In 2004, the DNER approved Commonwealth of Puerto Rico's Regulation Number 6766, which regulates the management of threatened and endangered species in Puerto Rico (Reglamento para Regir el Manejo de las Especies Vulnerables y en Peligro de Extinción en el Estado Libre Asociado de Puerto Rico—Núm. 6766 del 11 de Feb 2004). *Catesbaea melanocarpa* has been included in the list of protected species. Article 2.06 of this regulation prohibits collecting, cutting, and removing (among other activities) listed plant individuals within the jurisdiction of PR.

Recent surveys conducted in Guánica Commonwealth Forest have expanded the known range of other federally listed species such as *Trichilia triacantha* (bariaco) and *Ottoschulzia rhodoxylon* (palo de rosa), and other State-protected species all previously known for only a few individuals within the forest. We believe additional occurrences of *Catesbaea melanocarpa* will be found in both forests. Protection of such areas, as the Commonwealth forests, conveys stability of forest development since most forests in Puerto Rico were destroyed for agriculture. Forest reserves like Guánica, protected since 1919, provide the necessary structure to support the conservation of the species, and thus the benefit of additional regulatory requirements for the conservation of the species is extremely low.

Therefore, the benefits of exclusion are relaxation of regulatory requirements that would be imposed by the designation. Exclusion would also enhance the partnership efforts with the DNER focused on conservation of the species in the State, and secure conservation benefits for the species beyond those that could be attained through the regulatory requirements under section 7 of the Act if the area were designated as critical habitat. When landowners are already taking sufficient steps to conserve the species, the imposition of additional regulatory requirements is not necessary. Further, it may require the expenditure of funds on consultations for projects that are largely beneficial to the species. Exclusion of these lands from critical habitat designation would eliminate the need to expend these funds.

(3) Benefits of Exclusion of Guánica and Susúa Commonwealth Forests Outweigh the Benefits of Inclusion

Thus, on the basis that Susúa and the Guánica Commonwealth Forests are being adequately managed as wildlife sanctuaries by DNER, where they are protecting wildlife and plants in perpetuity and allowing only nonconsumptive use by the public in designated areas and trails, we believe that, for these sites, the benefits of inclusion are nominal. We believe these benefits to include increased recognition concerning the status and conservation needs of the species and protection afforded through consultations with Federal action agencies under section 7 of the Act. In contrast, we believe greater benefits will be realized for the species by excluding these specific lands from designated critical habitat. These benefits include relief from the expenditure of resources to conduct consultations under section 7 of the Act with Federal action agencies, maintaining partnerships with DNER, and recognition of the on-going conservation measures that they are taking for the species. It is our determination that these combined measures will provide greater conservation benefits for *Catesbaea melanocarpa* than the benefits realized through the regulatory designation of critical habitat and will put available resources toward on-the-ground efforts rather than implementing a regulatory procedure. We have also evaluated economic impacts for this exclusion, but we do not believe there are disproportionate impacts that warrant an exclusion under section 4(b)(2) of the Act on that basis.

(4) Exclusion Will Not Result in Extinction

Approximately 88 percent of the known *Catesbaea melanocarpa* individuals within U.S. jurisdiction are located within the designated critical habitat. The remaining 12 percent (13 known individuals) are within the excluded areas. We anticipate that little, if any, conservation benefit to *C. melanocarpa* will be foregone as a result of excluding these areas, as both forests are currently managed as wildlife sanctuaries, protecting wildlife and plants in perpetuity, allowing only nonconsumptive use by the public in designated areas and trails, and since the forests are already managed in an appropriate manner. Additionally, the conservation status of these forests and current local laws and regulations in PR adequately protect essential *C. melanocarpa* habitat and provide appropriate management to maintain and enhance the primary constituent elements for the species within the forests. As a result of the protection of *C. melanocarpa* and its habitat provided in both forests, and the fact that the majority of occurrences are within designated critical habitat, we find that the exclusion of these areas will not result in the extinction of *C. melanocarpa*. Accordingly, we exercise discretion under section 4(b)(2) of the Act to exclude these areas from the designation of critical habitat.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available for public review on March 14, 2007 (72 FR 11819). We accepted comments on the draft analysis until April 13, 2007.

The purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for *Catesbaea melanocarpa*. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State

and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

The draft economic analysis estimated a potential economic cost of $132,300 to $441,000 over a 20-year period as a result of the critical habitat designation. The analysis, which was prepared in a manner consistent with the ruling in *N.M. Cattle Growers Ass'n* v. *USFWS*, 248 F3rd 1277 (10th Cir. 2001), measured lost economic efficiency associated with residential and commercial development, and public projects and activities. Potential economic impacts stem entirely from possible limitations on development of the designated property. The total potential value loss is 21 percent of the property's market value. The actual loss would depend on the future sale price, and could range from $132,300 to $441,000. This potential value loss is based on the implementation of the conservation recommendations, which consist of protecting existing individuals (approximately 100 plants) and maintaining a buffer of 20 meters around them as a setback from a development project. The analysis also conservatively included all potential costs attributed to consultation requirements resulting both from the listing of the species and designation of critical habitat. Overall, the analysis did not anticipate a decrease in the amount of construction activity on St. Croix as a result of the designation. As a result, small developers and construction firms are not anticipated to be affected. For Guánica and Susúa Commonwealth Forests, we evaluated the activities that we expect to occur in the forests, based on their management plans. These include nonconsumptive public recreational use, developing and maintaining fire breaks, conducting prescribed burning adjacent to roads, scientific data collecting, and removing exotic plant species. Although we have not quantified any impacts to these activities as a result of the designation, these actions are likely to have a minimal or beneficial affect to the species and therefore we expect the economic impacts to these areas would be small if they were designated as critical habitat. Based on the analysis, we have concluded that the economic impacts that may result from the designation alone are minimal.

A copy of the final economic analysis with supporting documents are included in our administrative record and may be obtained by contacting U.S. Fish and Wildlife Service, Caribbean Fish and Wildlife Office (see **ADDRESSES**).

Pursuant to section 4(b)(2) of the Act, we must consider relevant impacts in addition to economic ones. We determined that the lands within the designation of critical habitat for *Catesbaea melanocarpa* are not owned or managed by the Department of Defense, there are currently no habitat conservation plans for *C. melanocarpa*, and the designation does not include any Tribal lands or trust resources. We anticipate no impact to national security or Tribal lands. Our economic analysis indicates an overall low potential cost resulting from the designation. Therefore, we have not excluded any areas from this designation of critical habitat for *C. melanocarpa* based on economic impacts. As such, we have considered, but not excluded, any lands from this designation based on the potential impacts to these factors. We have excluded areas for other reasons; please see the section 4(b)(2) exclusions discussion under "Application of Section (4)(b)(2) of the Act" above.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. As explained above, we prepared an economic analysis of this action. The draft economic analysis estimated a potential economic cost of $132,300 to $441,000 over a 20-year period as a result of the critical habitat designation. We used the information in and results of this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat. We also used it to help determine whether to exclude any area from critical habitat, as provided for under section 4(b)(2). Based on this economic analysis, we believe that there are no disproportionate economic impacts that warrant exclusion pursuant to section 4(b)(2) of the Act at this time.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA also amended the RFA to require a certification statement.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (that is, housing development, grazing, oil and gas production, timber harvesting). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. However, the SBREFA does

not explicitly define "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect *Catesbaea melanocarpa*. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

In our economic analysis of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of *Catesbaea melanocarpa* and proposed designation of its critical habitat. This analysis estimated prospective economic impacts due to the implementation of conservation efforts for the species, such as incorporating a buffer zone around the individuals into the development project plans. We determined from our analysis that the implementation of conservation measures for *C. melanocarpa* within the proposed designation may impact the private landowners, but impacts are not anticipated to small business.

Costs associated with the value of the land for residential and commercial development comprise 100 percent of the total quantified potential future impacts. Total potential costs are expected to be $132,300 to $441,000 over a 20-year period. These costs are related to the implementation of a buffer zone of 20 m (66 ft) around the current population as a conservation measure for private development within the critical habitat designation. This buffer zone has the potential to affect approximately 10.5 ac (4.3 ha) of the property. Overall, the analysis does not anticipate a decrease in the amount of construction activity on St. Croix as a result of the designation. As a result, small developers and construction firms are not anticipated to be affected. Please refer to our final economic analysis for this designation for a more detailed discussion of potential economic impacts.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for the private landowners of the Halfpenny Bay area if they are required to consult with us regarding the effects of projects' impacts on *Catesbaea melanocarpa* or its habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would help the applicant to avoid jeopardizing the continued existence of listed species or result in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal or plant species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through nondiscretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. We can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and its critical habitat designation. Within the final designation area, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization implemented or licensed by Federal agencies;

(3) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities;

(4) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Act;

(5) Activities authorized or funded by the Environmental Protection Agency, U.S. Department of Energy, or any other Federal agency.

It is likely that a developer or other project proponent could modify a project or take measures to protect *Catesbaea melanocarpa*. The kind of actions that may be included if future reasonable and prudent alternatives become necessary include conservation set-asides, management of competing nonnative species, restoration of degraded habitat, and regular monitoring. These are based on our understanding of the needs of the species and threats it faces, as described in the final listing rule and proposed critical habitat designation. These measures are not likely to result in a significant economic impact to project proponents.

In summary, we have considered whether this would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons and based on currently available

information, that it is not likely to affect a substantial number of small entities. Federal involvement, and thus section 7 consultations, would be limited to the area designated. The most likely Federal involvement could include Federal Highway Administration funding for road improvement, Natural Resources Conservation Service funding for agricultural practices, Housing and Urban Development funding for residential development and Federal Communications Commission permits for the construction and operation of telecommunication towers. Therefore, for the above reasons and based on currently available information, we certify that the rule will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Based on the information from the economic analysis, this final rule to designate critical habitat for *Catesbaea melanocarpa* is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, Tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or Tribal governments "lack authority" to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. As such, Small Government Agency Plan is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating 10.5 ac (4.3 ha) of lands in Halfpenny Bay area in St. Croix, USVI as critical habitat for *Catesbaea melanocarpa* in a takings implication assessment. The takings implications assessment concludes that this final designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism (E.O. 13132)

In accordance with Executive Order 13132 (Federalism), the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Puerto Rico and the U.S. Virgin Islands. The designation of critical habitat in areas currently occupied by *Catesbaea melanocarpa* imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the primary constituent elements within the designated area to assist the public in understanding the habitat needs of *Catesbaea melanocarpa*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork

Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq:)

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Indian Tribes (E.O. 13175)

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands occupied at the time of listing containing the features essential for the conservation of *Catesbaea melanocarpa* and no Tribal lands that are unoccupied areas that are essential for the conservation of *C. melanocarpa*. Therefore, critical habitat for *C. melanocarpa* has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Caribbean Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary authors of this package are the staff of Caribbean Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.12(h), revise the entry for "*Catesbaea melanocarpa*" under "FLOWERING PLANTS" to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	*
Castesbaea melanocarpa.	None	U.S.A. (PR, VI), Antigua, Barbuda, Guadalupe.	Rubiaceae	E	657	17.96(a)	NA
*	*	*	*	*	*	*	*

■ 3. In § 17.96, amend paragraph (a) by adding in alphabetical order an entry for Family Rubiaceae consisting of *Catesbaea melanocarpa* to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Rubiaceae: *Catesbaea melanocarpa* (no common name)

(1) Critical habitat is depicted on the map below for Halfpenny Bay, St. Croix, U.S. Virgin Islands.

(2) The primary constituent elements (PCEs) of critical habitat for *Catesbaea melanocarpa* are the habitat components that provide:

(i) Single-layered canopy forest with little ground cover and open forest floor that supports patches of dry vegetation with grasses, and

(ii) Well to excessively drained limestone and serpentine-derived soils (including soils of the San Germán, Nipe, and Rosario series and Glynn and Hogensborg series).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, roads, and other paved areas) and the land on which they are located existing on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) *Critical habitat map.* Data layers were created by overlaying habitats that contain at least two of the PCEs, as defined in paragraph (2) of this section, on U.S. Geological Survey (USGS) topographic maps (UTM 20, NAD 27).

(5) Critical Habitat unit: Halfpenny Bay, St. Croix, U.S. Virgin Islands.

(i) *General description:* The Halfpenny Bay unit consists of approximately 10.5 ac (4.3 ha) on privately owned property located about 2.48 mi (4 km) south of Christiansted, St. Croix, U.S. Virgin Islands. The designated unit is located east of South Shore Road, approximately 342 m (1,122 ft) south of Road 62, approximately 600 m (1,968 ft) north of the Halfpenny Bay coast, and 70 m (230 ft) west of a local road to Halfpenny Bay. This unit encompasses the habitat features essential to the conservation of *Catesbaea melanocarpa* within Estate Granard, Christiansted, St. Croix, and does not contain any manmade structures.

(ii) *Coordinates:* From Christiansted USGS 1:24,000 quadrangle map, St. Croix land bounded by the following UTM 20 NAD 27 coordinates (E,N):

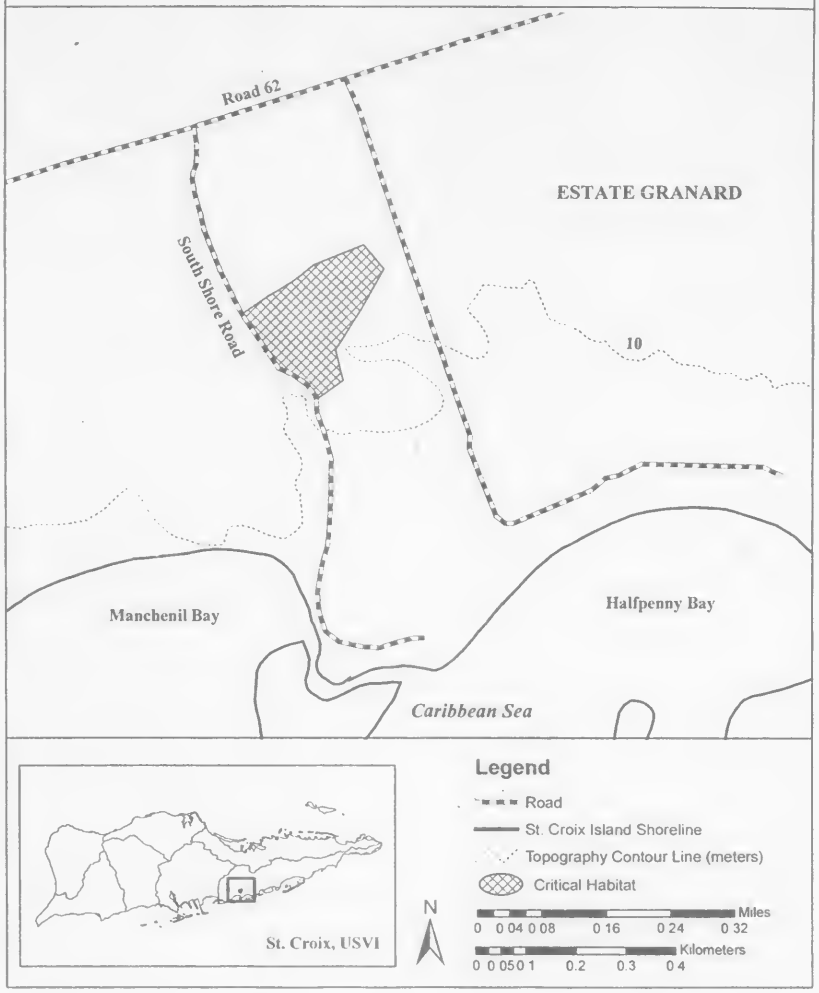
319156.03, 1958989.97; 319205.44, 1959023.35; 319258.18, 1959055.40; 319297.57, 1959086.11; 319397.72, 1959126.83; 319437.78, 1959079.43; 319393.05, 1958998.65; 319340.97, 1958916.53; 319356.33, 1958854.44; 319307.59, 1958819.72; 319284.39,

1958851.87; 319259.52, 1958866.45; 319226.80, 1958883.81; 319181.40, 1958951.24; 319156.03, 1958989.97

(iii) Note: Map of Halfpenny Bay follows:

BILLING CODE 4310–55–P

Map 1. Critical Habitat Designation for *Catesbaea melanocarpa*, Halfpenny Bay, St. Croix, USVI



* * * * *

Dated: August 14, 2007.

Mitchell J. Butler,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07–4061 Filed 8–27–07; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XC26

Fisheries of the Economic Exclusive Zone off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason adjustment; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA), effective 2400 hrs, Alaska local time, September 1, 2007. This adjustment is necessary to allow a 12–hour fishery for species that comprise the shallow-water species fishery without exceeding the fourth seasonal apportionment of the 2007 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 1, 2007, through 2400 hrs, A.l.t., September 1, 2007. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 12, 2007.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

- Mail to: P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;
- FAX to 907–586–7557;
- E-mail to *inseason.fakr@noaa.gov* and include in the subject line of the e-mail the document identifier: goaswx4s12.fo.wpd (E-mail comments, with or without attachments, are limited to 5 megabytes); or
- Webform at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The fourth seasonal apportionment of the 2007 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA is 150 metric tons (mt) as established by the 2007 and 2008 harvest specifications for groundfish of the GOA (72 FR 9676, March 5, 2007), for the period 1200 hrs, A.l.t., September 1, 2007, through 1200 hrs, A.l.t., October 1, 2007.

Regulations at § 679.23(b) specify that the time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 1200 hrs, A.l.t. Current information shows the expected trawl Pacific halibut bycatch rates observed in groundfish fisheries during the fourth season in the GOA to be 300 mt per day. The Administrator, Alaska Region, NMFS, has determined that the 2007 Pacific halibut bycatch allowance specified for the trawl fisheries could be exceeded if a 24–hour fishery were allowed to occur. NMFS intends that the halibut bycatch allowance not be exceeded and, therefore, will not allow a 24–hour directed fishery. NMFS, in accordance with § 679.25(a)(1)(i) and 679.25(a)(2)(i)(A), is adjusting the trawl shallow-water species fishery in the GOA by prohibiting the fishery at 2400 hrs, A.l.t., September 1, 2007, at which time directed fishing for shallow-water species by vessels using trawl gear in the GOA will be prohibited. This action has the effect of opening the fishery for 12 hours.

NMFS is taking this action to allow a controlled fishery to occur, thereby preventing the overharvest of the Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery designated in accordance with the 2007 and 2008 harvest specifications for groundfish in the GOA (72 FR 9676, March 5, 2007) and § 679.21(d). In accordance with § 679.25(a)(2)(iii), NMFS has determined that prohibiting directed fishing at 2400 hrs, A.l.t., September 1, 2007, after a 12–hour opening is the least restrictive management adjustment to allow the fishing industry opportunity to harvest species that comprise the shallow-water species fishery without exceeding the fourth seasonal apportionment of the 2007 Pacific halibut bycatch allowance for the shallow-water species fishery in the GOA. Pursuant to § 679.25(b)(5), NMFS has considered data regarding inseason prohibited species bycatch rates observed in groundfish fisheries in the GOA in making this adjustment.

The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates and "other species." This inseason adjustment does not apply to fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This inseason adjustment does not apply to vessels fishing under a cooperative quota permit in the cooperative fishery in the Rockfish Pilot Program for the Central GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the inseason adjustment closing of the shallow-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 20, 2007.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for the shallow-water species fishery in the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 12, 2007.

This action is required by § 679.21 and § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 22, 2007.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–17035 Filed 8–27–07; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 166
Tuesday, August 28, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 331

9 CFR Part 121

[Docket No. APHIS–2007–0033]

RIN 0579–AC53

Agricultural Bioterrorism Protection Act of 2002; Biennial Review and Republication of the Select Agent and Toxin List

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: In accordance with the Agricultural Bioterrorism Protection Act of 2002, we are proposing to amend and republish the list of select agents and toxins that have the potential to pose a severe threat to animal or plant health, or to animal or plant products. The Act requires the biennial review and republication of the list of select agents and toxins and the revision of the list as necessary. This action would implement the findings of the second biennial review of the list.

DATES: We will consider all comments that we receive on or before October 29, 2007.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click "Submit." In the Docket ID column, select APHIS–2007–0033 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0033, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0033.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: For information concerning the regulations in 7 CFR part 331, contact Ms. Gwendolyn Burnett, Select Agent Program Compliance Manager, PPQ, APHIS, 4700 River Road Unit 2, Riverdale, MD 20737–1231, (301) 734–5960.

For information concerning the regulations in 9 CFR part 121, contact Dr. Frederick D. Doddy, Veterinary Medical Officer, Animals, Organisms and Vectors, and Select Agents, VS, APHIS, 4700 River Road Unit 2, Riverdale, MD 20737–1231, (301) 734–5960.

SUPPLEMENTARY INFORMATION:

Background

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 provides for the regulation of certain biological agents and toxins that have the potential to pose a severe threat to both human and animal health, to animal health, to plant health, or to animal and plant products. The Animal and Plant Health Inspection Service (APHIS) has the primary responsibility for implementing the provisions of the Act within the Department of Agriculture (USDA). Veterinary Services (VS) select agents and toxins are those that have been determined to have the potential to pose a severe threat to animal health or animal products. Plant Protection and Quarantine (PPQ) select agents and toxins are those that have been determined to have the potential to pose a severe threat to plant health or plant products. Overlap select agents and toxins are those that have been determined to pose a severe threat to both human and animal health or animal products. Overlap select agents are subject to regulation by both APHIS and the Centers for Disease Control and Prevention (CDC), which has the primary responsibility for implementing the provisions of the Act for the Department of Health and Human Services (HHS).

Subtitle B (which is cited as the "Agricultural Bioterrorism Protection Act of 2002" and referred to below as the Act), section 212(a), provides, in part, that the Secretary of Agriculture (the Secretary) must establish by regulation a list of each biological agent and each toxin that the Secretary determines has the potential to pose a severe threat to animal or plant health, or to animal or plant products. Paragraph (a)(2) of section 212 requires the Secretary to review and republish the list every 2 years and to revise the list as necessary. In this document, we are proposing to amend and republish the list of select agents and toxins based on the findings of our second biennial review of the list.

In determining whether to include an agent or toxin in the list, the Act requires that the following criteria be considered:

- The effect of exposure to the agent or toxin on animal or plant health, and on the production and marketability of animal or plant products;
- The pathogenicity of the agent or the toxin and the methods by which the agent or toxin is transferred to animals or plants;
- The availability and effectiveness of pharmacotherapies and prophylaxis to treat and prevent any illness caused by the agent or toxin; and
- Any other criteria that the Secretary considers appropriate to protect animal or plant health, or animal or plant products.

We use the term "select agent and/or toxin" throughout the preamble of this proposed rule. Unless otherwise specified, the term "select agent and/or toxin" will refer to all agents or toxins listed by APHIS. When it is necessary to

specify the type of select agent or toxin, we will use the following terms: "PPQ select agent and/or toxin" (for the plant agents and toxins listed in 7 CFR 331.3), "VS select agent and/or toxin" (for the animal agents and toxins listed in 9 CFR 121.3), or "overlap select agent and/or toxin" (for the agents and toxins listed in both 9 CFR 121.4 and 42 CFR 73.4).

PPQ Select Agents and Toxins

APHIS's Plant Protection and Quarantine (PPQ) program convened an interagency working group to review the list of PPQ select agents and toxins and develop recommendations regarding possible changes to that list. Using the four criteria for listing found in the Act, the working group revisited the currently listed PPQ select agents and toxins and evaluated a number of plant pathogens for inclusion on the list. Based on this review, APHIS is proposing several amendments to the list of PPQ select agents and toxins listed in 7 CFR 331.3.

First, we are proposing to remove *Candidatus* Liberobacter asiaticus, a bacterium causing Huanglongbing or citrus greening disease, from the list. Citrus greening disease has been introduced into the United States and now *C.* Liberobacter asiaticus would have virtually no impact if used as a weapon of terrorism. The bacterium itself is not harmful to humans but the disease has harmed trees in Asia, Africa, the Arabian Peninsula, and Brazil. The Asian strain of the disease, *C.* Liberibacter asiaticus, was found in south Miami-Dade County Florida in early September, 2005. Since that time, this plant pathogen has spread through much of Southern Florida. The disease is primarily spread by the Asian citrus psyllid and the African citrus psyllid as they feed. The Asian citrus pysllid, *Diaphorina citri,* has been present in Florida since 1998. The exact pathway responsible for introducing citrus greening and the Asian citrus psyllid into the United States is still unknown. Once infected, there is no cure for a tree with citrus greening disease. In areas of the world where citrus greening is endemic, citrus trees decline and die within a few years. In order to protect the U.S. citrus industry, there is an urgent need to facilitate timely research on effective means to manage the disease in the United States. For these reasons, we are removing *C.* Liberobacter asiaticus from list of PPQ select agents and toxins.

We are proposing to regulate all pathovars of *Xanthomonas oryzae.* Currently, *Xanthomonas oryzae* pv. *oryzicola* is listed. However, both pathovars (*oryzicola* and *oryzae*) represent a significant risk to U.S. rice production. By removing the pathovar designation (pv. *oryzicola*) from the currently listed organism, both pathovars would be covered by the regulations. Originally, we included the pathovar designation because scientific reports indicated the presence of *Xanthomonas oryzae* pv. *oryzae* in the United States. However, current scientific information indicates that this pathovar does not occur in the United States. Entities that currently have possession of *Xanthomonas oryzae* pv. *oryzae* would become regulated as a result of this proposed change to the regulations.

We are also proposing to add *Peronosclerospora sacchari* as a synonym of the listed organism *Peronosclerospora philippinensis* because recent scientific research has shown that these two organisms are the same. Entities that currently have possession of *Peronosclerospora sacchari* would become regulated as a result of this proposed amendment to the regulations.

In addition to the proposed changes to the existing list, the following pathogens would be added to the list:

- *Candidatus* Liberibacter americanus. This bacterial species also causes citrus greening disease and has only been reported in Sao Paulo State, Brazil, where it has been detected in 26 municipalities of Sao Paulo State since its discovery in 2004. The citrus greening disease management plan in place for *C.* Liberobacter asiaticus mentioned above is specific to that one pathogen—not all three. *C.* Liberobacter africanus, which is currently listed, and *C.* Liberobacter asiaticus have different biological characteristics than *C.* Liberibacter americanus, and each of the pathogens has a potential to cause different detrimental effects on citrus production in the United States. There have been no reports of this Liberibacter species in the United States although the psyllid insect vector (*Diaphorina citri*) has been reported in both Florida and Texas. Polymerase chain reaction (PCR) assays can distinguish this species from *C.* Liberobacter africanus and *C.* Liberobacter asiaticus. While we use the spelling "Liberobacter" in the proposed regulations, some sources use the spelling "Liberibacter." APHIS considers both spellings to be identical for regulatory purposes.
- *Phoma glycinicola* (formerly *Pyrenochaeta glycines*). This fungus causes red leaf blotch of soybean and has been described as very aggressive, having resulted in yield losses up to 75 percent in Ethiopia due to defoliation of some soybean cultivars. The fungus survives in soil for long periods, and the disease may be spread widely through movement of contaminated seed, soil, or other means. This pathogen is not present in the United States, but it has the potential to be a major foliar disease of soybean if introduced.
- *Phytophthora kernoviae.* This fungus-like organism is a newly reported pathogen of forest trees and shrubs and has only been reported in England, Wales, and New Zealand. The extent of host damage and speed with which disease symptoms arose in rhododendron, beech, and oak prompted England's Department for Environment, Food and Rural Affairs to identify this pathogen as a serious threat to its woodland areas. Nursery stock shipped to the United States from the European Union must be tested for this pathogen. Pathogen spores are easily spread through airborne mist droplets, rain, wind, or movement of contaminated plant material or soil. *P. kernoviae* is considered more virulent or aggressive in rhododendron than is *P. ramorum*, which causes sudden oak death syndrome. This pathogen could be a highly destructive disease in many common trees and shrubs in the United States if introduced.
- *Rathayibacter toxicus.* This bacterium causes gumming disease in ryegrass and is transported into seed heads by species of *Anguina,* a genus of nematodes widely present in the United States. Additionally, if consumed, a neurotoxin produced by this plant pathogen causes illness or death in mammals. Disease management has been expensive and difficult in areas affected by this pathogen, with heavy reliance on use of herbicides on affected grasses.

VS Select Agents and Toxins

APHIS' Veterinary Services (VS) program also convened an interagency working group to review the list of VS select agents and toxins and the list of overlap agents and toxins in 9 CFR part 121 in order to update and revise the lists as necessary.

We are proposing to remove 10 of the 20 overlap select agents and toxins from the list set out in § 121.4(b). Specifically, we would remove the following bacteria: Botulinum neurotoxin producing species of *Clostridium, Coxiella burnetii,* and *Francisella tularensis;* the fungus *Coccidioides immitis;* Eastern equine encephalitis virus; and the following toxins: Botulinum neurotoxins, *Clostridium perfringens* epsilon toxin, shigatoxin, staphylococcal enterotoxin, and T–2 toxin.

The interagency working group considered each of the overlap pathogens with respect to the four criteria for listing found in the Act (as listed above, under "Background"), and based on the group's analysis, APHIS has determined that the 10 overlap select agents and toxins should be removed from the list because they are naturally found in the United States, do not pose a significant impact to animal health, and are not likely candidates for use in an agroterrorism event directed toward animal health. While any one of these considerations alone would not likely be grounds for removing an agent or toxin from the list, the group concluded that all three considerations mentioned above apply to each of the 10 overlap select agents and toxins identified.

Botulinum neurotoxin producing species of *Clostridium* (i.e., *C. botulinum, C. butyricum* and C. *baratii*) are widely distributed in soil, sediments of lakes and ponds, and decaying vegetation. The species may be found in any region of the world and some species may occasionally colonize the intestinal tract of birds and mammals under natural conditions. The neurotoxins produced by these agents produce the infectious toxicosis of botulism. There is a well known and established history of infection and toxicosis in agricultural species associated with *C. botulinum* in the United States, and we have concluded that Botulinum neurotoxin producing species do not pose a serious threat to American agriculture.

Coccidioides immitis is found naturally and predominantly in the hot, dry regions of the southwestern United States, where winters are relatively mild and the soil is alkaline. The introduction of *Coccidioides immitis* may result in inapparent infection or Coccidioidomycosis. Coccidioidomycosis, however, is not a contagious disease, nor is it a disease of major agricultural concern. While infections do occur in agricultural species, they appear to be limited.

Coxiella burnetii is a ubiquitous organism that occurs commonly in animal reservoirs that include mammals, birds, and arthropods throughout the United States. Infection in ruminants may result in reproductive failures. Inapparent infection or mild illness does occur, but abortion is the most significant clinical presentation.

Eastern equine encephalitis virus has been recognized as an important veterinary pathogen that infects equines and birds during sporadic outbreaks. Infection results in central nervous system dysfunction and may result in moderate to high morbidity and mortality. The virus is maintained naturally in nature in marshes and swamps in an enzootic bird-mosquito-bird cycle, and is endemic in the United States along the Atlantic and Gulf coasts. Eastern equine encephalitis virus does not play a major role in agricultural species of concern, and equine species are considered a dead-end host of the virus.

Additionally, the working group concluded that because the following overlap select agents and toxins are naturally found in the United States, do not pose a significant impact to animal health, and are not likely candidates for use in an agroterrorism event directed toward animal health, these select agents and toxins would have a limited socio-economic impact on American agriculture, and thus should be removed from the list: Botulinum neurotoxin producing species of *Clostridium*, *Clostridium perfringens* epsilon toxin, *Francisella tularensis*, staphylococcal enterotoxin, shigatoxin, and T–2 toxin.

These select agents and toxins would still be regulated by the CDC under 42 CFR part 73. However, because these select agents and toxins would no longer be subject to regulation under 9 CFR 121.4, they would no longer be overlap select agents and toxins. CDC has initiated rulemaking to revise its regulations to reclassify these select agents and toxins as HHS select agents and toxins.

To reflect recent changes in scientific nomenclature, we would amend the list of VS select agents and toxins in § 121.3(b) by replacing *Cowdria ruminantium* with *Ehrlichia ruminantium;* replacing *Mycoplasma mycoides mycoides* with *Mycoplasma mycoides* subspecies *mycoides* small colony (*Mmm*SC); and replacing *Mycoplasma capricolum/M.* F38/*M. mycoides capri* with *Mycoplasma capricolum* subsp. *capripneumoniae*.

The World Organization for Animal Health (OIE) defines reportable Newcastle disease as an infection of birds caused by an avian paramyxovirus 1 virus possessing certain *in vivo* and/or molecular characteristics. To be consistent with OIE's guideline for reporting an outbreak of Newcastle disease, we would change how we refer to Newcastle disease in the regulations. Specifically, we would replace references to "Newcastle disease virus (velogenic)" in the list in § 121.3(b) and in the text of §§ 121.3(f)(3)(i), 121.5(a)(3)(i), and 121.9(c)(1) with references to "virulent Newcastle disease virus." Additionally, we would add a footnote to the entry for virulent Newcastle disease virus in § 121.3(b). In the footnote we would define a virulent Newcastle disease virus as either having an intracerebral pathogenicity index in day-old chicks (*Gallus gallus*) of 0.7 or greater, or as having an amino acid sequence at the fusion (F) protein cleavage site that is consistent with virulent strains of Newcastle disease virus.

In § 121.4(d)(3), we list five overlap toxins that cannot exceed a specified amount while under the control of a principal investigator, treating physician or veterinarian, or commercial manufacturer or distributor. However, because we are proposing to remove from the overlap select agent list the five overlap toxins listed in this paragraph—specifically, botulinum neurotoxins, *Clostridium perfringens* epsilon toxin, shigatoxin, staphylococcal enterotoxins, and T–2 toxin—the paragraph would no longer be necessary. Therefore, we would remove § 121.4(d)(3) in its entirety.

Section 121.6 deals with the exemptions for overlap select agents and toxins. Two of the overlap select agents and toxins listed in § 121.6(a)(3)(i) are botulinum neurotoxins and *Francisella tularensis*. To reflect our proposed removal of those two select agents and toxins from our list of overlap select agents and toxins, we would also amend § 121.6 by removing botulinum neurotoxins and *Francisella tularensis* from paragraph (a)(3)(i).

Similarly, botulinum neurotoxins and *Francisella tularensis* are included in § 121.9(c)(1), which sets out the reporting requirements for the identification and final disposition of overlap select agents or toxins contained in a specimen presented for diagnosis or verification. We would amend § 121.9 by removing botulinum neurotoxins and *Francisella tularensis* from paragraph (c)(1).

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Agricultural Bioterrorism Protection Act of 2002, we are proposing to amend and republish the list of select agents and toxins that have the potential to pose a severe threat to both human and animal health, to animal or plant health, or to animal or plant products. The Act requires the biennial review and republication of the list of select agents and toxins and the revision of the list as necessary. This

action would implement the findings of the second biennial review of the list.

Certain pathogens or toxins produced by biological organisms that are released intentionally or accidentally can result in disease, wide-ranging and devastating impacts on the economy, disruption to society, diminished confidence in public and private institutions, and large-scale loss of life. People or livestock can be exposed to these agents from inhalation, through the skin, or by the ingestion of contaminated food, feed, or water. Similarly, crops can be exposed to biological pathogens in several ways—at the seed stage, in the field, or after harvest.

Because of its size and complexity, the U.S. food and agriculture system is vulnerable to deliberate attacks, particularly with foreign diseases that do not now occur domestically. The U.S. livestock industry, with revenues of approximately $150 billion annually, is vulnerable to a host of highly infectious and often contagious biological agents that have been eradicated from the United States, or have never existed here. Many of these animal-targeted agents could simply be point-introduced into herds. Given the increasing concentration and specialization in the livestock industries, this could cause the immediate halt of movement and export of vast quantities of U.S. livestock and livestock products. Crops, too, are vulnerable. They are grown over very large areas (more than 72 million acres of soybeans were cultivated in the United States in 2003), exacerbating difficulties in surveillance and monitoring.[1]

Preparedness for a biological attack against people, crops or livestock is complicated by the large number of potential agents, the long incubation periods of some agents, and the potential for secondary transmission. All of these factors make it vital to prevent the misuse of biological agents and toxins through registration, biosafety, security and incident response measures.

This preliminary regulatory impact analysis addresses expected economic effects of this rule. Expected benefits and costs are examined in accordance with Executive Order 12866. Expected impacts for small entities are also considered, as required by the Regulatory Flexibility Act.

[1] Making the Nation Safer: The Role of Science and Technology in Countering Terrorism. Committee on Science and Technology for Countering Terrorism, Division on Engineering and Physical Sciences, National Research Council. National Academy Press (2002).

Benefits and Costs

This rule would update the select agents and toxins listed in 7 CFR part 331 and 9 CFR part 121. Those parts of the CFR require registration, biosafety, incident response and security measures for the possession, use and transfer of the listed select agents and toxins. These parts are intended to prevent the misuse of those select agents and toxins, and therefore reduce the potential for harm to humans, animals, animal products, plants or plant products in the United States. Should any select agent or toxin be intentionally introduced into the United States, the consequences could be significant. Direct losses in agriculture could occur as a result of the exposure, such as death or debility of affected production animals, or yield loss in plants. Industry could also be affected through the imposition of domestic and foreign quarantines and the resulting loss of markets. The Federal and State governments would also incur costs associated with eradication and quarantine enforcement to prevent further spread, and, in the case of intentional introduction, law enforcement. In addition, there is the potential for a disruption in the domestic food supply, whether through contamination, consumer perception, or both. Past food safety incidents have shown that consumer perceptions (both domestic and international) about the safety of an implicated food product and about the producing country or sector's ability to produce safe food can be slow to recover and can have a lasting influence on food demand and global trade.[2] As such, the benefits associated with the rule are the avoided losses to the animals or plants that could be attacked by these organisms, and their products and markets.

The costs associated with outbreaks can be very high, as is demonstrated by natural outbreaks associated with select agents. For example, it has been estimated that the losses to agriculture and the food chain from a recent foot-and-mouth disease (FMD) outbreak in the United Kingdom, including the costs compensated by the government, amounted to about £3.1 billion ($4.7 billion). In 1999, it was estimated that the potential impacts of an FMD outbreak in California alone would be between $8.5 billion and $13.5 billion.[3]

[2] Buzby, J.C. *Effects of food-safety perceptions on food demand and global trade.* Changing Structure of Global Food Consumption and Trade/WRS–01–1. Economic Research Service/USDA.

[3] Ekboir, J.M. *Potential impact of foot-and-mouth disease in California: the role and contribution of animal health surveillance and monitoring services.* Davis, CA: Agricultural Issues Center, Division of Agriculture and Natural Resources, University of California, Davis, 1999.

The above-cited consequences relate to natural or accidental introduction. Deliberate introduction greatly increases the probability of a select agent or toxin becoming established and causing wide-ranging and devastating impacts on the economy, disruption to society, diminished confidence in public and private institutions, and possible loss of life.

Any entity that possesses, uses, or transfers listed select agents or toxins is required to comply with the select agent regulations. These entities include research and diagnostic facilities; Federal, State and university laboratories; and private commercial and non-profit enterprises. The regulations include requirements for registering the possession, use, transfer or destruction of select agents or toxins. In addition, the entity is also required to ensure that the facility where the agent or toxin is housed has adequate biosafety and containment measures; ensure that the physical security of the premises are adequate; ensure that all individuals with access to select agents or toxins have the appropriate education, training, and/or experience to handle such agents or toxins; ensure that all individuals with access to select agents or toxins have an approved security risk assessment; and maintain complete records concerning activities related to the select agents or toxins.

While any entity affected by the changes proposed in this rule may incur costs in complying with the select agent regulations, the proposed changes are expected to have minimal impacts. The proposed changes to the PPQ select agent list include the addition of four pathogens to the list, the removal of an organism from the list, and technical changes to the names of organisms currently listed. These changes should only affect a small number of entities. The plant pest permit database maintained by APHIS indicates that very few entities currently possess any of the agents that would be added to the list. In addition, most of the entities that do possess these agents are already registered due to their possession of other listed agents or toxins. The few entities that would be affected by the removal of organisms from the list would no longer be required to comply with the select agent regulations with regard to those removed organisms.

The proposed changes to the VS select agent list include the removal of agents, the redefinition of an agent, and technical changes to the nomenclature used for some agents in the list to be

consistent with OIE definitions. The agents that are proposed for removal are overlap agents regulated by both USDA and HHS. HHS would continue to regulate these agents as HHS-only agents. Therefore, any entity in possession of these agents would continue to be subject to select agent regulations as administered by HHS. The redefinition of Newcastle disease virus (velogenic) to virulent Newcastle disease virus may lead to new registrants. It is possible that additional entities may be in possession of a virulent strain of Newcastle disease virus that does not fit the current definition. However, these strains have not circulated in the United States since the 1970s. In addition, entities most likely to be in possession of virulent Newcastle disease virus are already in possession of Newcastle disease virus (velogenic) and therefore already registered.

Alternatives Considered

The alternative to this rule would be to leave the regulations unchanged. In this case, the lists of select agents in 7 CFR part 331 and 9 CFR part 121 would remain unchanged. However, APHIS has conducted reviews of these lists and concluded that changes are necessary to ensure that the lists contain those biological agents and toxins that have the potential to pose a severe threat to both human and animal health, to plant health, or to animal and plant products. These reviews were conducted in accordance with the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, which requires a biennial review and republication of the select biological agent and toxin list, with revisions as appropriate. Therefore, this alternative was rejected.

Conclusion

This proposed rule would update the PPQ, VS, and overlap select agent and toxin lists. The regulation of select agents and toxins is intended to prevent their misuse and thereby reduce the potential for harm to animals, animal products, plants or plant products in the United States. Should any select agent or toxin be intentionally introduced into the United States, the consequences would be significant. Consequences could include disruption of markets, difficulties in sustaining an adequate food and fiber supply, and the potential spread of disease infestations over large areas. In any animal or plant disease outbreak, the government would incur the costs of eradication or control. Industry would be affected through the imposition of domestic and foreign quarantines and the resulting loss of markets, and the destruction of infected or exposed animals or plants, or animal products or plant products. Even though compensation may be paid for the destroyed property, repopulating (flocks, herds, fields, etc.) may be time-consuming, with additional losses from idle capital and lost markets. In addition, there is the potential for a disruption in the domestic food supply, whether through contamination, consumer perception, or both. Such a disruption can have a lasting influence on food demand and global trade.

Entities most likely to be affected by this rule are laboratories and other institutions conducting research and related activities that involve the use of the newly added select agents and toxins. The impact of these changes is expected to be minimal, however. Indications are that very few entities currently possess any of the agents or toxins that would be added to the list of select agents and toxins. Entities that would be affected by the removal of agents or toxins from the list would no longer be required to comply with the regulations with regard to those removed agents or toxins. Other changes proposed would not affect what agents or toxins are listed but rather the nomenclature by which those agents and toxins are identified, and therefore would have no economic impact.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 331

Agricultural research, Laboratories, Plant diseases and pests, Reporting and recordkeeping requirements.

9 CFR Part 121

Agricultural research, Animal diseases, Laboratories, Medical research, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 7 CFR part 331 and 9 CFR part 121 as follows:

TITLE 7—[AMENDED]

PART 331—POSSESSION, USE, AND TRANSFER OF SELECT AGENTS AND TOXINS

1. The authority citation for part 331 continues to read as follows:

Authority: 7 U.S.C. 8401; 7 U.S.C. 2.22, 2.80, and 371.3.

2. In § 331.3, paragraph (b) is revised to read as follows:

§ 331.3 PPQ select agents and toxins

* * * * *

(b) PPQ select agents and toxins:

Candidatus Liberobacter africanus (*Candidatus* Liberibacter africanus);
Candidatus Liberobacter americanus (*Candidatus* Liberibacter americanus);
Peronosclerospora philippinensis (*Peronosclerospora sacchari*);
Phoma glycinicola (formerly *Pyrenochaeta glycines*);
Phytophthora kernoviae;
Ralstonia solanacearum, race 3, biovar 2;
Rathayibacter toxicus;
Sclerophthora rayssiae var. *zeae*;
Synchytrium endobioticum;
Xanthomonas oryzae;
Xylella fastidiosa (citrus variegated chlorosis strain).

* * * * *

TITLE 9—[AMENDED]

PART 121—POSSESSION, USE, AND TRANSFER OF SELECT AGENTS AND TOXINS

3. The authority citation for part 121 continues to read as follows:

Authority: 7 U.S.C. 8401; 7 U.S.C. 2.22, 2.80, and 371.4.

4. In § 121.3, footnotes 1 and 2 are redesignated as footnotes 2 and 3, respectively, and paragraph (b) is revised to read as follows:

§ 121.3 VS select agents and toxins

* * * * *

(b) VS select agents and toxins:

African horse sickness virus;
African swine fever virus;
Akabane virus;
Avian influenza virus (highly pathogenic);
Bluetongue virus (exotic);
Bovine spongiform encephalopathy agent;
Camel pox virus;
Classical swine fever virus;
Ehrlichia ruminantium (Heartwater);
Foot-and-mouth disease virus;
Goat pox virus;
Japanese encephalitis virus;
Lumpy skin disease virus;
Malignant catarrhal fever virus (Alcelaphine herpesvirus type 1);
Menangle virus;
Mycoplasma capricolum subspecies *capripneumoniae* (contagious caprine pleuropneumonia);
Mycoplasma mycoides subspecies *mycoides* small colony (*Mmm*SC) (contagious bovine pleuropneumonia);
Peste des petits ruminants virus;
Rinderpest virus; Sheep pox virus;
Swine vesicular disease virus;
Vesicular stomatitis virus (exotic).
Virulent Newcastle disease virus [4]

* * * * *

5. Section 121.4 is amended as follows:

a. By revising paragraph (b) to read as set forth below.

b. In paragraphs (c) and (d), by redesignating footnotes 3 and 4 as footnotes 4 and 5, respectively.

c. By removing paragraph(d)(3).

d. In paragraph (f)(3)(i), by removing the words "*Botulinum neurotoxins,*" and "*Francisella tularensis,*".

§ 121.4 Overlap select agents and toxins.

* * * * *

(b) Overlap select agents and toxins:

Bacillus anthracis;
Brucella abortus;
Brucella melitensis;
Brucella suis;
Burkholderia mallei;
Burkholderia pseudomallei;
Hendra virus;
Nipah virus;
Rift Valley fever virus;
Venezuelan equine encephalitis virus.

* * * * *

§ 121.5 [Amended]

6. In § 121.5, paragraph (a)(3)(i) is amended by removing the words "Newcastle disease virus (velogenic)" and adding the words "virulent Newcastle disease virus" in their place.

§ 121.6 [Amended]

7. Section 121.6, paragraph (a)(3)(i) is amended by removing the words "*Botulinum neurotoxins,*" and "*Francisella tularensis,*".

§§ 121.7 and 121.8 [Amended]

8. Sections 121.7 and 121.8 are amended by redesignating footnotes 5, 6, and 7 as footnotes 6, 7, and 8, respectively.

§ 121.9 [Amended]

9. In § 121.9, paragraph (c)(1) is amended by removing the words "*Botulinum neurotoxins,*" and "*Francisella tularensis,*", and by removing the words "Newcastle disease virus (velogenic)" and adding the words "virulent Newcastle disease virus" in their place.

§§ 121.12 through 121.16 [Amended]

10. Sections 121.12 through 121.16 are amended by redesignating footnotes 8 through 13 as footnotes 9 through 14, respectively.

§ 121.20 [Amended]

11. Section 121.20 is amended by redesignating footnote 14 as footnote 15.

Done in Washington, DC, this 22nd day of August 2007.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–17039 Filed 8–27–07; 8:45 am]

BILLING CODE 3410–34–P

[4] A virulent Newcastle disease virus (avian paramyxovirus serotype 1) has an intracerebral pathogenicity index in day-old chicks (*Gallus gallus*) of 0.7 or greater or having an amino acid sequence at the fusion (F) protein cleavage site that is consistent with virulent strains of Newcastle disease virus.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28053; Directorate Identifier 2007–NE–18–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Arrius 2F Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) provided by the aviation authority of France to identify and correct an unsafe condition on Turbomeca Arrius 2F turboshaft engines. The MCAI states the following:

This AD is issued following a case of non-commanded in-flight engine shutdown which occurred on an Arrius 2F turboshaft engine, following the seizing of the gas generator. The result may be an emergency autorotation landing, or, at worst, an accident.

Investigations of this event have revealed that the seizing of the gas generator was caused by the fracture of the separator cage of the gas generator front bearing, due to high-cycle fatigue cracks initiated in the lubrication slots of the separator cage.

We are proposing this AD to prevent uncommanded shutdown of the engine, which could lead to an accident.

DATES: We must receive comments on this proposed AD by September 27, 2007.

ADDRESSES: You may send comments by any of the following methods:

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *Christopher.spinney@faa.gov;* telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about

this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2007–28053; Directorate Identifier 2007–NE–18–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD 2007–0057, dated March 1, 2007, to correct an unsafe condition for the specified products. The EASA AD states:

> This AD is issued following a case of non-commanded in-flight engine shutdown which occurred on an Arrius 2F turboshaft engine, following the seizing of the gas generator. The result may be an emergency autorotation landing, or, at worst, an accident.
>
> Investigations of this event have revealed that the seizing of the gas generator was caused by the fracture of the separator cage of the gas generator front bearing, due to high-cycle fatigue cracks initiated in the lubrication slots of the separator cage.
>
> Modification Tf 12 introduces a new gas generator front bearing without lubrication slots on the separator cage.

You may obtain further information by examining the EASA AD in the AD docket.

Relevant Service Information

Turbomeca has issued Mandatory Service Bulletin No. 319 72 4012, Update No. 1, dated September 19, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the EASA AD.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of France and is approved for operation in the United States. Pursuant to our bilateral agreement with France, they have notified us of the unsafe condition described in the EASA AD and service information referenced above. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require replacing the engine module 02 with a module that incorporates Turbomeca Modification Tf 12A. That replacement must occur at the next engine shop visit after the effective date of the proposed AD, but no later than April 30, 2008. Modification Tf 12A installs into the engine module 02, a new gas generator front bearing without lubrication slots on the separator cage.

Costs of Compliance

We estimate that this proposed AD would affect 61 engines installed on aircraft of U.S. registry. We also estimate that it would take about 10 work-hours per engine to perform the proposed actions, and that the average labor rate is $80 per work-hour. Required parts would cost about $111,440 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $6,846,640. Our cost estimate is exclusive of possible warranty coverage.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Turbomeca: Docket No. FAA–2007–28053; Directorate Identifier 2007–NE–18–AD.

Comments Due Date

(a) We must receive comments by September 27, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca Arrius 2F turboshaft engines that have not incorporated Turbomeca Modification Tf 12A. These engines are installed on, but not limited to, Eurocopter EC120B helicopters.

Reason

(d) European Aviation Safety Agency (EASA) AD No. 2007–0057, dated March 1, 2007, states:

> This AD is issued following a case of non-commanded in-flight engine shutdown which occurred on an Arrius 2F turboshaft engine, following the seizing of the gas generator. The result may be an emergency autorotation landing, or, at worst, an accident.
>
> Investigations of this event have revealed that the seizing of the gas generator was caused by the fracture of the separator cage of the gas generator front bearing, due to high-cycle fatigue cracks initiated in the lubrication slots of the separator cage.
>
> Modification Tf12 introduces a new gas generator front bearing without lubrication slots on the separator cage.

Actions and Compliance

(e) Unless already done, do the following actions.

(1) At the next engine shop visit after the effective date of this AD, but no later than April 30, 2008, replace the engine module 02 with a module that incorporates Turbomeca Modification Tf 12A. Turbomeca Modification Tf 12A installs into the engine module 02 a new gas generator front bearing without lubrication slots on the separator cage.

(2) Use the Instructions to be Incorporated section of Turbomeca Mandatory Service Bulletin No. 319 72 4012, Update No. 1, dated September 19, 2006, to do the actions in paragraph (e)(1) of this AD.

Other FAA AD Provisions

(f) Alternative Methods of Compliance (AMOCs): The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(g) Refer to EASA AD 2007–0057, dated March 1, 2007, for related information.

(h) Contact Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *Christopher.spinney@faa.gov*; telephone (781) 238–7175, fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on August 22, 2007.

Mark A. Rumizen,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–17003 Filed 8–27–07; 8:45 am]

BILLING CODE 4910–13–P

MILLENNIUM CHALLENGE CORPORATION

22 CFR Part 1304

Regulations Implementing the Freedom of Information Act

AGENCY: Millennium Challenge Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this document is to outline the procedures by which the Millennium Challenge Corporation proposes to implement the relevant provisions of the Freedom of Information Act as required under that statute. This document will assist interested parties in obtaining access to Millennium Challenge Corporation public records.

DATES: Submit comments on or before October 29, 2007.

FOR FURTHER INFORMATION CONTACT: John Mantini, FOIA Officer, 202–521–3863.

ADDRESSES: Send comments to John Mantini, FOIA Officer, Office of the General Counsel, Millennium Challenge Corporation, 875 Fifteenth Street, NW., Washington, DC 20005–2221.

SUPPLEMENTARY INFORMATION: The Millennium Challenge Act (MCA) of 2003 established a new federal agency called the Millennium Challenge Corporation. Congress enacted the Freedom of Information Act (FOIA) in 1966 and last modified it with the Electronic Freedom of Information Act amendments of 1996. This proposed rule addresses electronically available documents, procedures for making requests, agency handling of requests, records not disclosed, changes in fees, and public reading rooms as well as other related provisions.

List of Subjects in 22 CFR Part 1304

Freedom of Information Act procedures.

For the reasons set forth in the preamble, the Millennium Challenge Corporation proposes to amend Chapter XIII of title 22 by adding a new part 1304 to read as follows:

PART 1304—FREEDOM OF INFORMATION ACT PROCEDURES

Sec.

Authority: 5 U.S.C. 552, as amended.

§ 1304.1 General Provisions.

This part contains the regulations the Millennium Challenge Corporation (MCC) follows in implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552) as amended. These regulations provide procedures by which you may obtain access to records compiled, created, and maintained by MCC, along with the procedures that MCC must follow in response to such requests for records. These regulations should be read together with the FOIA, which provides additional information about access to records maintained by MCC.

§ 1304.2 Definitions.

(a) *Agency* has the meaning set forth in 5 U.S.C. 552(f)(1).

(b) *Commercial use requester* means a requester seeking information for a use or purpose that furthers the commercial, trade, or profit interests of himself or the person on whose behalf the request is made, which can include furthering those interests through litigation. In determining whether a request properly belongs in this category, the FOIA Officer shall determine the use to which the requester will put the documents requested. Where the FOIA Officer has reasonable cause to doubt the use to which the requester will put the records sought, or where that use is not clear from the request itself, the FOIA Officer shall contact the requester for additional clarification before assigning the request to a specific category.

(c) *Confidential commercial information* means records provided to the government by a submitter that arguably contains material exempt from disclosure under Exemption 4 of the FOIA, because disclosure could reasonably be expected to cause substantial competitive harm.

(d) *Direct costs* mean those expenditures by MCC actually incurred in searching for and duplicating records in response to the FOIA request. These costs include the salary of the employee(s) performing the work (basic rate of pay plus a percentage of that rate to cover benefits) and the cost of operating duplicating machinery. Direct costs do not include overhead expenses, such as the cost of space, heating, or lighting of the facility in which the records are stored.

(e) *Duplication* means the process of making a copy of a record in order to respond to a FOIA request, including paper copies, microfilm, audio-video materials, and computer diskettes or other electronic copies.

(f) *Educational institution* refers to a preschool, a public or private elementary or secondary school, an institute of undergraduate higher education, an institute of graduate higher education, an institute of professional education, or an institute of vocational education which operates a program of scholarly research. To qualify for this category, the requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought to further scholarly research.

(g) *FOIA* means the Freedom of Information Act, as amended (5 U.S.C. 552).

(h) *FOIA Officer* means the MCC employee who is authorized to make determinations as provided in this part. The mailing address for the FOIA Officer is: Millennium Challenge Corporation, Attn: FOIA Officer, 875 Fifteenth Street, NW., Washington, DC 20005.

(i) *Non-commercial scientific institution* refers to an institution that is

not operated on a "commercial" basis as that term is used in paragraph (a) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To qualify for this category, the requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought to further scholarly research.

(j) *Record* means information or documentary material MCC maintains in any form or format, including an electronic form or format, which MCC:

(1) Made or received under federal law or in connection with the transaction of public business;

(2) Preserved or determined is appropriate for preservation as evidence of MCC operations or activities or because of the value the information it contains; and

(3) Controls at the time it receives a request.

(k) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. For a "freelance journalist" to be regarded as working for a news organization, the requester must demonstrate a solid basis for expecting publication through that organization, such as a publication contract. Absent such showing, the requester may provide documentation establishing the requester's past publication record. To qualify for this category, the requester must not be seeking the requested records for a commercial use. However, a request for records supporting a news-dissemination function shall not be considered to be for a commercial use.

(l) *Requester* means any person, including an individual, corporation, firm, organization, or other entity, who makes a request to MCC under FOIA for records.

(m) *Review* means the process of examining a record to determine whether all or part of the record may be withheld, and includes redacting or otherwise processing the record for disclosure to a requester. It does not include time spent:

(1) Resolving legal or policy issues regarding the application of exemptions to a record; or

(2) At the administrative appeal level, unless MCC determines that the exemption under which it withheld records does not apply and the records are reviewed again to determine whether a different exemption may apply.

(n) *Search* means the time spent locating records responsive to a request, manually or by electronic means, including page-by-page or line-by-line identification of responsive material within a record.

(o) *Submitter* means any person or entity which provides information directly or indirectly to MCC. The term includes, but is not limited to, corporations, state governments and foreign governments.

(p) *Working day* means a Federal workday that does not include Saturdays, Sundays, or Federal holidays.

§ 1304.3 Records available to the public.

(a) *General.* (1) It is the policy of MCC to respond promptly to all FOIA requests.

(2) MCC may disclose records that were previously published or disclosed or are customarily furnished to the public in the course of the performance of official duties without complying with this part. These records include, but are not limited to, the annual report that MCC submits to Congress pursuant to section 613(a) of the Millennium Challenge Act of 2003 (22 U.S.C. 7701), press releases, MCC forms, and materials published in the **Federal Register**. MCC should first determine whether the information requested is already available on its Web site, which contains information readily accessible to the public. In such an event, MCC will contact the requesting party, either orally or in writing, to advise the individual of the availability of the information on the public Web site. MCC should document this request and the manner in which it handled the file. Where MCC makes the determination that the information requested is not already publicly accessible, MCC should adhere to the procedures outlined in this part for processing a FOIA request and any administrative appeals received.

(b) *Public Reading room.* (1) Records that are required to be maintained by MCC shall be available for public inspection and copying at 875 Fifteenth Street, NW., Washington, DC 20005. Reading room records created on or after November 1, 1996 shall be made available electronically via the Web site at *http://www.mcc.gov.*

(2) MCC shall assess fees for searching, reviewing, or duplicating reading room records in accordance with § 1304.9.

§ 1304.4 Requests for records.

(a) *Request requirements.* Requests for access to, or copies of, MCC records shall be in writing and addressed to the FOIA Officer. Each request shall include the following:

(1) A description of the requested record that provides sufficient detail to enable MCC to locate the record with a reasonable amount of effort;

(2) The requester's full name, mailing address, and a telephone number where the requester can be reached during normal business hours;

(3) A statement that the request is made pursuant to FOIA; and

(4) At the discretion of the requester, a dollar limit on the fees MCC may incur to respond to the request for records. MCC shall not exceed such limit.

(b) *Incomplete Requests.* If a request does not meet all of the requirements of paragraph (a) of this section, the FOIA Officer may advise the requester that additional information is needed. If the requester submits a corrected request, the FOIA Officer shall treat the corrected request as a new request.

§ 1304.5 Responsibility for responding to requests.

(a) *General.* In determining which records are responsive to a request, MCC ordinarily will include only records in its possession as of the date it begins its search for records. If any other date is used, the FOIA Officer shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The FOIA Officer shall make initial determinations either to grant or deny in whole or in part a request for records. When the FOIA Officer denies the request in whole or in part, the FOIA Officer shall notify the requester of the denial, the grounds for the denial, and the procedures for appeal of the denial under § 1304.8.

(c) *Consultations and referrals.* When a requested record has been created by another Federal Government agency, that record shall be referred to the originating agency for direct response to the requester. The requester shall be informed of the referral. As this is not a denial of a FOIA request, no appeal rights are afforded to the requester. When a requested record is identified as containing information originating with another Federal Government agency, the record shall be referred to the originating agency for review and recommendation on disclosure.

(d) *Timing and deadlines.* (1) The FOIA Officer ordinarily shall respond to requests according to their order of receipt.

(2) The FOIA Officer may use multi-track processing in responding to requests. This process entails separating simple requesters that require rather

limited review from more lengthy and complex requests. Requests in each track are then processed according to paragraph (d)(1) of this section in their respective track.

(3) The FOIA Officer may provide requesters in the slower track an opportunity to limit the scope of their requests in order to decrease the processing time required. The FOIA Officer may provide such an opportunity by contacting the requester by letter or telephone.

(4) The FOIA Officer shall make an initial determination regarding access to the requested information and notify the requester within twenty (20) working days after receipt of the request. This 20 day period may be extended if unusual circumstances arise. If an extension is necessary, the FOIA Officer shall promptly notify the requester of the extension, briefly providing the reasons for the extension, the date by which a determination is expected, and providing the requester with the opportunity to modify the request so that the FOIA Officer may process it in accordance with the 20 day period. Unusual circumstances warranting extension are:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a lengthy amount of records which are demanded in a single request; or

(iii) The need for consultation with another agency having a substantial interest in the determination of the request, which consultation shall be conducted with all practicable speed.

(iv) If the FOIA Officer has a reasonable basis to conclude that a requester or group of requesters has divided a request into a series of requests on a single subject or related subject to avoid fees, the requests may be aggregated and fees charged accordingly. Multiple requests involving unrelated matters will not be aggregated.

(6) If no initial determination has been made at the end of the 20 day period provided for in paragraph (d)(4) of this section, including any extension, the requester may appeal the action to the FOIA Appeals Officer.

(e) *Expedited processing of request.* The FOIA Officer must determine whether to grant a request for expedited processing within 10 calendar days of its receipt. Requests will receive expedited processing if one of the following listed compelling reasons is met:

(1) The requester can establish that failure to receive the records quickly could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) The requester is primarily engaged in disseminating information and can demonstrate that an urgency to inform the public concerning actual or alleged Federal Government activity exists.

(f) *Providing responsive records.* The FOIA Officer shall provide one copy of a record to a requester in any form or format requested if the record is readily reproducible by MCC in that form or format by regular U.S. mail to the address indicated in the request, unless other arrangements are made. At the option of the requester and upon the requester's agreement to pay fees in accordance with § 1304.9, the FOIA Officer shall provide copies by facsimile transmission or other express delivery methods.

§ 1304.6 Records not disclosed.

(a) *Records exempt from disclosure.* Except as otherwise provided in this part, MCC shall not disclose records that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order.

(2) Related solely to the MCC's internal personnel rules and practices.

(3) Specifically exempted from disclosure by a statute other than FOIA if such statute requires the record to be withheld from the public in such a manner as to leave no discretion on the issue, establishes particular criteria for withholding, or refers to particular types of records to be withheld.

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(5) Inter-or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with MCC.

(6) Personnel, medical, or similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority, any private institution, or a Bank, which furnished information on a confidential basis, and, in the case of a record compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) *Reasonably segregable portions.* (1) MCC shall provide a requester with any reasonably segregable portion of a record after deleting the portions that are exempt from disclosure under paragraph (a) of this section.

(2) MCC shall make a reasonable effort to estimate the volume of removed information and provide that information to the requester unless providing the estimate would harm an interest protected by the exemption under which the removal is made.

(3) MCC shall indicate the estimated volume of removed information on the released portion of the record unless providing the estimate would harm an interest protected by the exemption under which the removal is made. If technically feasible, MCC shall make the indication at the place in the record where the removal is made.

(c) *Public interest.* MCC may disclose records it has authority to withhold under paragraph (a) of this section upon a determination that disclosure would be in the public interest.

§ 1304.7 Confidential commercial information.

(a) *Notice to submitters.* The FOIA Officer shall, to the extent permitted by law, provide a submitter who provides confidential commercial information to the FOIA Officer, with prompt notice of a FOIA request or administrative appeal encompassing the confidential

commercial information if the Commission may be required to disclose the information under the FOIA. Such notice shall either describe the exact nature of the information requested or provide copies of the records or portions thereof containing the confidential commercial information. The FOIA Officer shall also notify the requester that notice and an opportunity to object has been given to the submitter.

(b) *Where notice is required.* Notice shall be given to a submitter when:

(1) The information has been designated by the submitter as confidential commercial information protected from disclosure. Submitters of confidential commercial information shall use good faith efforts to designate either at the time of submission or a reasonable time thereafter, those portions of their submissions they deem protected from disclosure under Exemption 4 of the FOIA because disclosure could reasonably be expected to cause substantial competitive harm. Such designation shall be deemed to have expired ten years after the date of submission, unless the requester provides reasonable justification for a designation period of greater duration; or

(2) The FOIA Officer has reason to believe that the information may be protected from disclosure under Exemption 4 of the FOIA.

(c) *Opportunity to object to disclosure.* The FOIA Officer shall afford a submitter a reasonable period of time to provide the FOIA Officer with a detailed written statement of any objection to disclosure. The statement shall specify all grounds for withholding any of the information under any exemption of the FOIA, and if Exemption 4 applies, shall demonstrate the reasons the submitter believes the information to be confidential commercial information that is exempt from disclosure. Whenever possible, the submitter's claim of confidentiality shall be supported by a statement or certification by an officer or authorized representative of the submitter. In the event a submitter fails to respond to the notice in the time specified, the submitter will be considered to have no objection to the disclosure of the information. Information provided by the submitter that is received after the disclosure decision has been made will not be considered. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(d) *Notice of intent to disclose.* The FOIA Officer shall carefully consider a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose the information requested. Whenever the FOIA Officer determines that disclosure is appropriate, the FOIA Officer shall, within a reasonable number of days prior to disclosure, provide the submitter with written notice of the intent to disclose which shall include a statement of the reasons for which the submitter's objections were overruled, a description of the information to be disclosed, and a specific disclosure date. The FOIA Officer shall also notify the requester that the requested records will be made available.

(e) *Notice of lawsuit.* If the requester files a lawsuit seeking to compel disclosure of confidential commercial information, the FOIA Officer shall promptly notify the submitter of this action. If a submitter files a lawsuit seeking to prevent disclosure of confidential commercial information, the FOIA Officer shall notify the requester.

(f) *Exceptions to the notice requirements under this section.* The notice requirements under paragraphs (a) and (b) of this section shall not apply if:

(1) The FOIA Officer determines that the information should not be disclosed pursuant to Exemption 4 and/or any other exemption of the FOIA;

(2) The information lawfully has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than the FOIA);

(4) The information requested is not designated by the submitter as exempt from disclosure in accordance with this part, when the submitter had the opportunity to do so at the time of submission of the information or within a reasonable time thereafter, unless the agency has substantial reason to believe that disclosure of the information would result in competitive harm; or

(5) The designation made by the submitter in accordance with this part appears obviously frivolous. When the FOIA Officer determines that a submitter was frivolous in designating information as confidential, the FOIA Officer must provide the submitter with written notice of any final administrative disclosure date, but no opportunity to object to disclosure will be offered.

§ 1304.8 Appeals.

(a) *Right of appeal.* The requester has the right to appeal to the FOIA Appeals Officer any adverse determination.

(b) *Notice of appeal.*—(1) *Timing for appeal.* An appeal must be received no later than thirty (30) working days after notification of denial of access to records or after the time limit for response by the FOIA Officer has expired. Prior to submitting an appeal any outstanding fees related to FOIA requests must be paid in full.

(2) *Method of appeal.* An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and initial denial of access to records. To expedite the appellate process and give the requester an opportunity to present his or her arguments, the notice should contain a brief statement of the reasons why the requester believes the initial denial of access to records to have been in error. The appeal shall be addressed to the Millennium Challenge Corporation, Attn: FOIA Appeals Officer, 875 Fifteenth Street, NW., Washington, DC 20005.

(c) *Final agency determinations.* The FOIA Appeals Officer shall issue a final written determination, stating the basis for his or her decision, within twenty (20) working days after receipt of a notice of appeal. If the determination is to provide access to the requested records, the FOIA Officer shall make those records immediately available to the requester. If the determination upholds the denial of access to the requested records, the FOIA Appeals Officer shall notify the requester of the determination.

§ 1304.9 Fees.

(a) *General.* Fees pursuant to the FOIA shall be assessed according to the schedule contained in paragraph (b) of this section for services rendered by MCC in response to requests for records under this part. MCC's fee practices are governed by the FOIA and by the Office of Management and Budget's Uniform Freedom of Information Act Fee Schedule and Guidelines. All fees shall be charged to the requester, except where the charging of fees is limited under paragraph (d) of this section or whether a waiver or reduction of fees is granted under paragraph (c) of this section. Payment of fees should be in U.S. Dollars in the form of either a check or bank draft drawn on a bank in the United States or a money order. Payment should be made payable to the Treasury of the United States and mailed to the Millennium Challenge Corporation, 875 Fifteenth Street, NW., Washington, DC 20005.

(b) *Charges for responding to FOIA requests.* The following fees shall be assessed in responding to requests for records submitted under this part, unless a waiver or reduction of fees has been granted pursuant to paragraph (c) of this section:

(1) *Duplications.* The FOIA Officer shall charge $0.20 per page for copies of documents up to 81/2 x 14. For copies prepared by computer, the FOIA Officer will charge actual costs of production of the computer printouts, including operator time. For other methods of reproduction, the FOIA Officer shall charge the actual costs of producing the documents.

(2) *Searches.*—(i) *Manual searches.* Search fees will be assessed at the rate of $25.30 per hour. Charges for search time less than a full hour will be in increments of quarter hours.

(ii) *Computer searches.* The FOIA Officer will charge the actual direct costs of conducting computer searches. These direct costs shall include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for requested records, as well as the costs of operator/programmer salary apportionable to the search. MCC is not required to alter or develop programming to conduct searches.

(3) *Review fees.* Review fees shall be assessed only with respect to those requesters who seek records for a commercial use under paragraph (d)(1) of this section. Review fees shall be assessed at the rate of $43.63 per hour. Review fees shall be assessed only for the initial record review, for example, review undertaken when the FOIA Officer analyzes the applicability of a particular exemption to a particular record or portion thereof at the initial request level. No charge shall be assessed at the administrative appeal level of an exemption already applied.

(c) *Statutory Waiver.* Documents shall be furnished without charge or at a charge below that listed in paragraph (b) of this section where it is determined, based upon information provided by a requester or otherwise made known to the FOIA Officer, that disclosure of the requested information is in the public interest. Disclosure is in the public interest if it is likely to contribute significantly to public understanding of government operations and is not primarily for commercial purposes. Requests for a waiver or reduction of fees shall be considered on a case by case basis. In order to determine whether the fee waiver requirement is met, the FOIA Officer shall consider the following six factors:

(1) The subject of the request. Whether the subject of the requested records concerns the operations or activities of the government;

(2) The informative value of the information to be disclosed. Whether disclosure is likely to contribute to an understanding of government operations or activities;

(3) The contribution to an understanding of the subject by the general public likely to result from disclosure. Whether disclosure of the requested information will contribute to public understanding;

(4) The significance of the contribution to public understanding. Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities;

(5) The existence and magnitude of commercial interest. Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(6) The primary interest in disclosure. Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(d) Types of requesters. There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutional requesters; representatives of the news media; and all other requesters. These terms are defined in § 1304.2. The following specific levels of fees are prescribed for each of these categories:

(1) *Commercial use requesters.* The FOIA Officer shall charge commercial use requesters the full direct costs of searching for, reviewing, and duplicating requested records.

(2) *Educational and non-commercial scientific institution requesters.* The FOIA Officer shall charge educational and non-commercial scientific institution requesters for document duplication only, except that the first 100 pages of paper copies shall be provided without charge.

(3) *News media requesters.* The FOIA Officer shall charge news media requesters for document duplication costs only, except that the first 100 pages of paper copies shall be provided without charge.

(4) *All other requesters.* The FOIA Officer shall charge requesters who do not fall into any of the categories in paragraphs (d)(1) through (3) of this section fees which recover the full reasonable direct costs incurred for searching for and reproducing records if that total cost exceeds $14.99, except that the first 100 pages of duplication and the first two hours of manual search time shall not be charged.

(e) *Charges for unsuccessful searches.* If the requester has been notified of the estimated cost of the search time and has been advised specifically that the requested records may not exist or may be withheld as exempt, fees may be charged.

(f) *Nonpayment of fees.* The FOIA Officer may assess interest charges on an unpaid bill, accrued under previous FOIA request(s), starting the thirty-first (31st) day following the day on which the bill was sent to the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717. MCC will require the requester to pay the full amount owed plus any applicable interest as provided above, and to make an advance payment of the full amount of the remaining estimated fee before MCC will begin to process a new request or continue processing a then-pending request from the requester. The administrative response time limits prescribed in subsection (a)(6) of the FOIA will begin only after MCC has received fee payments described in this section.

(g) *Aggregating requests.* The requester or a group of requesters may not submit multiple requests at the same time, each seeking portions of a document or documents solely in order to avoid payment of fees. When the FOIA Officer reasonably believes that a requester is attempting to divide a request into a series of requests to evade an assessment of fees, the FOIA Officer may aggregate such request and charge accordingly.

(h) *Advance payment of fees.* Fees may be paid upon provision of the requested records, except that payment will be required prior to that time if the requester has previously failed to pay fees or if the FOIA Officer determines the total fee will exceed $250.00. When payment is required in advance of the processing of a request, the time limits prescribed in § 1304.5 shall not be deemed to begin until the FOIA Officer has received payment of the assessed fee. Where it is anticipated that the cost of providing the requested record will exceed $25.00 but fall below $250.00 after the free duplication and search time has been calculated, MCC may, in its discretion may require either:

(1) An advance deposit of the entire estimated charges; or

(2) Written confirmation of the requester's willingness to pay such charges.

Dated: August 2, 2007.

John C. Mantini,

Chief FOIA Officer, Millennium Challenge Corporation.

[FR Doc. E7–16143 Filed 8–27–07; 8:45 am]

BILLING CODE 9211–03–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–0421b; FRL–8452–2]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from refinery flares and storage tanks at petroleum facilities. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by September 27, 2007.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2007–0421b, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, at either (415) 947–4111, or *wamsley.jerry@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses SCAQMD Rules 1178—Further Control of VOC Emissions from Storage Tanks at Petroleum Facilities and 1118—Control of Emissions from Refinery Flares. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. However, if we receive adverse comments, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 3, 2007.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E7–16819 Filed 8–27–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0285; FRL–8460–1]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Shipyard Facilities and Provisions for Distance Limitations, Setbacks, and Buffers in Standard Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision for the State of Texas. This revision adds provisions which incorporate the evaluation of emissions from dockside vessels when reviewing applications for permits for new and modified sources and certain other administrative changes to its air permitting requirements. It also adds provisions concerning compliance with distance limitations, setbacks, and buffers at facilities that are authorized to construct or modify under an air quality standard permit. The Commission submitted this amendment to EPA to process as a revision to the Texas SIP. This action is being taken under section 110 of the Federal Clean Air Act (the Act).

DATES: Written comments must be received on or before September 27, 2007.

ADDRESSES: Comments may be mailed to Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7212; fax number 214–665–7263; e-mail address *Spruiell.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be

severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: August 16, 2007.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. E7–16830 Filed 8–27–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 73

Possession, Use, and Transfer of Select Agents and Toxins

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The select agents and toxins listed in 42 CFR part 73 include those regulated only by the U.S. Department of Health and Human Services (HHS) (42 CFR 73.3), as well as those overlap select agents and toxins regulated by both HHS and the U.S. Department of Agriculture (USDA) (42 CFR 73.4). In response to USDA's proposal to no longer regulate ten select agents and toxins currently listed as "overlap" agents and toxins, we are proposing to move those ten select agents and toxins from the overlap select agents and toxins section to the HHS select agents and toxins section.

DATES: Written comments must be received on or before October 29, 2007. Comments received after October 29, 2007 will be considered to the extent practicable.

ADDRESSES: Comments on the changes to the list of select agents and toxins should be marked "Comments on the changes to the list of select agents and toxins" and mailed to: Centers for Disease Control and Prevention, Division of Select Agents and Toxins, 1600 Clifton Road, MS A–46, Atlanta, GA 30333. Comments may be e-mailed to: *SAPcomments@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Robbin Weyant, Director, Division of Select Agents and Toxins, Centers for Disease Control and Prevention, 1600 Clifton Rd., MS A–46, Atlanta, GA 30333. Telephone: (404) 718–2000.

SUPPLEMENTARY INFORMATION: The *Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Subtitle A of Public Law 107–188 (42 U.S.C. 262a) (the Bioterrorism Preparedness Act),* required the HHS Secretary to establish by regulation a list of each biological agent and each toxin that has the potential to pose a severe threat to public health and safety. In determining whether to include an agent or toxin on the list, the HHS Secretary considered the effect on human health of exposure to an agent or toxin; the degree of contagiousness of the agent or toxin and the methods by which the agent or toxin is transferred to humans; the availability and effectiveness of pharmacotherapies and immunizations to treat and prevent illnesses resulting from an agent or toxin; the potential for an agent or toxin to be used as a biological weapon; and the needs of children and other vulnerable populations. Once established, the Bioterrorism Preparedness Act requires that the HHS Secretary review and republish the list of select agents and toxins on at least a biennial basis.

The HHS Secretary promulgated the current select agents and toxins list in a final rule amending Part 73 of title 42 of the Code of Federal Regulations, published on March 18, 2005, and made effective on April 18, 2005. The select agents and toxins list found in Part 73 is divided into two sections. The select agents and toxins listed in section 73.3 (HHS select agents and toxins) are those select agents and toxins regulated only by HHS. The select agents and toxins listed in section 73.4 (Overlap select agents and toxins) are those select agents and toxins regulated by HHS and USDA under the provisions of the Agricultural Bioterrorism Protection Act of 2002.

The Agricultural Bioterrorism Protection Act of 2002, Subtitle B of Public Law 107–188 (7 U.S.C. 8401) (the Agricultural Bioterrorism Protection Act), requires the USDA Secretary to establish by regulation a list of each biological agent and each toxin that the Secretary determines has the potential to pose a severe threat to animal or plant health or animal or plant products. In determining whether to include an agent or toxin on the list, the USDA Secretary considered the effect of exposure to the agent or toxin on animal or plant health, and on the production and marketability of animal or plant products; the pathogenicity of the agent or the toxicity of the toxin and the methods by which the agent or toxin is transferred to animals and plants; the availability and effectiveness of pharmacotherapies and prophylaxis to treat and prevent any illness caused by the agent or toxin; and the potential of an agent or toxin for use as a biological weapon. The USDA Secretary is also required to conduct a biennial review of the USDA select agents and toxins list.

HHS completed its biennial review on February 22, 2007 and determined that it would neither add nor remove any agents or toxins from its select agents and toxins list. To assist with the biennial review, HHS reviewed recommendations provided by subject matter experts and the Intragovernmental Select Agents and Toxins Advisory Committee (ISATTAC). The ISATTAC is comprised of Federal government employees from the CDC, the National Institutes of Health (NIH), the Food and Drug Administration (FDA), the USDA/Animal and Plant Health Inspection Service (APHIS), USDA/Agricultural Research Service (ARS), USDA/CVB (Center for Veterinary Biologics) and the Department of Defense (DOD).

After conducting its biennial review, USDA has proposed that it will no longer regulate ten of the select agents and toxins currently listed as "overlap" select agents and toxins in section 73.4. If their decision becomes final, HHS will move those ten select agents and toxins from section 73.4 to section 73.3. Published in today's **Federal Register** is USDA's proposal to remove from Part 121 of Title 9 of the Code of Federal Regulations the following agents and toxins: Botulinum neurotoxins; Botulinum neurotoxin producing species of *Clostridium, Coxiella burnetti, Francisella tularensis, Coccidioides immitis,* Eastern equine encephalitis virus, T–2 toxin, Staphylococcal enterotoxins, Shigatoxin, and *Clostridium perfringens* epsilon toxin. Comments regarding USDA's proposal to no longer regulate ten select agents and toxins currently listed as "overlap" agents and toxins should be sent to USDA.

Regulatory Analyses

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), requires that the HHS consider the impact of paperwork and other information collection burdens imposed on the public. We have determined no new information collection requirements are associated with this proposed rule.

Executive Order 12866 and Regulatory Flexibility Act

This action has been determined not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget. The Regulatory Flexibility Act (5 U.S.C. 601

et seq.) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This rule will have no costs because it merely changes the designation of ten select agents and toxins from being regulated by both HHS and USDA to being regulated solely by HHS. We hereby certify this proposed rule will not have a significant economic impact on a substantial number of small businesses.

Unfunded Mandates

The Unfunded Mandates Reform Act at 2 U.S.C. 1532 requires that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted for inflation) in any given year. This proposed rule is not expected to result in any one-year expenditure that would exceed this amount.

Executive Order 12988

This Notice of Proposed Rulemaking has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Would preempt all State and local laws and regulations that are inconsistent with this rule; (2) would have no retroactive effect; and (3) would not require administrative proceedings before parties may file suit in court challenging this rule.

Executive Order 13132

This Notice of Proposed Rulemaking has been reviewed under Executive Order 13132, Federalism. The notice does not propose any regulation that would preempt State, local, and Indian tribe requirements, or that would have any substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 42 CFR Part 73

Biologics, Incorporation by reference, Packaging and containers, Penalties, Reporting and Recordkeeping requirements, Transportation.

Dated: August 17, 2007.

Michael O. Leavitt,

Secretary.

For the reasons stated in the preamble, we are proposing to amend 42 CFR part 73 as follows:

PART 73—SELECT AGENTS AND TOXINS

1. The authority citation for part 73 continues to read as follows:

Authority: 42 U.S.C. 262a; sections 201–204, 221 and 231 of Title II of Public Law No. 107–188, 116 Stat. 637 (42 U.S.C. 262a).

2. Amend paragraph (b) of § 73.3 by adding the following entries in alphabetical order and revising the entry for *Coccidioides posadasii* to read as follows:

§ 73.3 HHS select agents and toxins.

* * * * *

(b) * * *

Botulinum neurotoxins

Botulinum neurotoxin producing species of *Clostridium*

* * * * *

Clostridium perfringens epsilon toxin

Coccidioides posadasii/Coccidioides immitis

* * * * *

Coxiella burnetii

* * * * *

Eastern Equine Encephalitis virus

* * * * *

Francisella tularensis

* * * * *

Shigatoxin

* * * * *

Staphylococcal enterotoxins

T–2 toxin

* * * * *

3. Amend paragraph (d)(3) of § 73.3 by adding the following entries in alphabetical order: 05. mg of Botulinum neurotoxins; 100 mg of *Clostridium perfringens* epsilon toxin; 100 mg of Shigatoxin; 5 mg of Staphylococcal enterotoxins; or 1,000 mg of T–2 toxin.

4. Amend paragraph (f)(3)(i) of § 73.3 by adding the following entries in alphabetical order: Botulinum neurotoxins and *Francisella tularensis.*

§ 73.5 [Amended]

5. Amend paragraph (a)(3)(i) of § 73.5 by adding the following entries in alphabetical order: Botulinum neurotoxins and *Francisella tularensis.*

§ 73.4 [Amended]

6. Amend paragraph (b) of § 73.4 by removing the entries for Botulinum neurotoxins, Botulinum neurotoxin producing species of *Clostridium, Clostridium perfringens* epsilon toxin, *Coccidioides immitis, Coxiella burnetii,* Eastern Equine Encephalitis virus, *Francisella tularensis,* Shigatoxin, Staphylococcal enterotoxins, and T–2 toxin.

7. Remove paragraph (d)(3) of § 73.4.

8. Amend paragraph (f)(3)(i) of § 73.4 by removing the following entries: Botulinum neurotoxins and *Francisella tularensis.*

§ 73.6 [Amended]

9. Amend paragraph (a)(3)(i) of § 73.6 by removing the following entries: Botulinum neurotoxins and *Francisella tularensis.*

[FR Doc. 07–4233 Filed 8–27–07; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Gunnison's Prairie Dog as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; initiation of status review and request for new information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the opening of a public comment period regarding the status of the Gunnison's prairie dog (*Cynomys gunnisoni*) in the contiguous United States. We are initiating this status review under a July 2, 2007, court-approved settlement agreement, in which we agreed to prepare a 12-month finding on a petition to list the species as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). Through this action, we encourage all interested parties to provide us information regarding the status of, and any potential threats to, the Gunnison's prairie dog.

DATES: To be considered in the 12-month finding, comments must be received on or before October 29, 2007. However, we will accept new scientific and commercial information on the Gunnison's prairie dog after the official comment period closes.

ADDRESSES: If you wish to provide new information, you may submit your comments and materials by any one of the following methods:

(1) You may mail or hand-deliver written comments and information to Gunnison's Prairie Dog Comments, U.S. Fish and Wildlife Service, 764 Horizon Drive, Building B, Grand Junction, Colorado 81506–3946.

(2) You may electronic mail (e-mail) your comments to *FW6_Gunnison's_prairie_dog@fws.gov* For directions on how to submit comments by e-mail, see the "Public

Comments Solicited" section of this notice.

FOR FURTHER INFORMATION CONTACT: Larry Thompson, U.S. Fish and Wildlife Service, 764 Horizon Drive, Building B, Grand Junction, Colorado 81506–3946 (telephone 970–243–2778, extension 39).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

You may submit your comments and materials concerning this status review by one of two methods (see **ADDRESSES**). If you use email to submit your comments, please include "Attn: Gunnison's prairie dog" in your subject header, preferably with your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact us directly by calling our Grand Junction Fish and Wildlife Office at 970–243–2778.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation used in the preparation of this status review will be available for public inspection by appointment, during normal business hours at the Grand Junction Fish and Wildlife Office, 764 Horizon Drive, Building B, Grand Junction, Colorado 81506–3946 (telephone 970–243–2778).

Background

On February 23, 2004, the Service received a petition from Forest Guardians and 73 other organizations and individuals requesting that the Gunnison's prairie dog, found in Arizona, Colorado, New Mexico, and Utah, be listed as threatened or endangered, and that critical habitat be designated for the species. Action on this petition was precluded by court orders and settlement agreements for other listing actions that required nearly all of our listing funds for Fiscal Year 2004.

On July 29, 2004, we received a 60-day notice of intent to sue for failure to complete a finding. On December 7, 2004, an amended complaint for failure to complete a finding for this and other species was filed. We reached a settlement agreement with the plaintiffs, and on February 7, 2006, we published a 90-day finding in the **Federal Register** (71 FR 6241) determining that the petition did not present substantial scientific information indicating that listing the Gunnison's prairie dog species may be warranted.

On August 17, 2006, Forest Guardians and eight other organizations and individuals provided written notice of their intent to sue regarding the determination in the 90-day finding. On December 13, 2006, the plaintiffs filed a complaint challenging the finding and seeking a Court order requiring issuance of a new positive 90-day finding, and completion of a 12-month finding on the petition to list the Gunnison's prairie dog. On June 29, 2007, we reached a settlement agreement with the plaintiffs for submittal to the **Federal Register** of a 12-month finding by February 1, 2008, and the terms and conditions of the agreement were adopted by the court on July 2, 2007.

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants (Lists) that contains substantial scientific or commercial information that the petitioned action may be warranted, we make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) Not warranted, (b) warranted, or (c) warranted, but that the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and we are making expeditious progress to add or remove qualified species from the Lists.

We are opening a 60-day comment period to allow all interested parties an opportunity to provide information on the status of the Gunnison's prairie dog and potential threats to the species. We will base our 12-month finding on a review of the best scientific and commercial information available, including information received as a result of this notice.

We are especially seeking any new scientific information regarding the taxonomic status of the Gunnison's prairie dog; the distribution, population, and status of the Gunnison's prairie dog in Arizona, Colorado, New Mexico, and Utah, on both local and State-wide scales; and the effects and dynamics of sylvatic plague on the Gunnison's prairie dog, including its population responses to plague.

Author

The primary author of this document is staff from the Grand Junction, Colorado U.S. Fish and Wildlife Service office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 21, 2007.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

[FR Doc. E7–16941 Filed 8–27–07; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 72, No. 166
Tuesday, August 28, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 23, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: District of Columbia Plant Health Certificate.

OMB Control Number: 0579–0166.

Summary of Collection: The United States Department of Agriculture is responsible for preventing plant pests and noxious weeds from entering the United States, preventing the spread of pests and weeds not widely distributed in the United States and eradicating those imported pests and weeds when eradication is feasible. The Federal Plant Protection Act (7 U.S.C. 7701–7772) authorized the Secretary to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests. The Plant Protection and Quarantine (PPQ) of the Animal and Plant Health Inspection Service (APHIS) provides certification services for plant material moving interstate to assure States that the plants and plant products they are receiving from the District of Columbia are free of prohibited or otherwise regulated plant pests. APHIS will collect information using form PPQ 571 District of Columbia Plant Health Certificate.

Need and Use of the Information: APHIS will collect information using forms PPQ 571, to certify that the domestic plant or other plant material described by the shipper has been inspected according to appropriate procedures and that it is considered free from certain plant diseases, insects, or other pests, and is considered to conform with the requirements of the importing State. If the information is not collected, it would likely result in the interstate spread of damaging agricultural pests. Further entities in the District of Columbia would be unable to ship their products to other States, as other States require this certification.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 2.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 20.

Animal & Plant Health Inspection Service

Title: Restrictions on Importation of Live Poultry, Poultry Meat, and Other Poultry Products from Specified Regions.

OMB Control Number: 0579–0228.

Summary of Collection: Title 21 U.S.C. 117, Animal Industry Act of 1884, authorizes the Secretary to prevent, control and eliminate domestic diseases such as brucellosis, as well as to take actions to prevent and manage exotic diseases such as classical swine fever and other foreign animal diseases. Veterinary Services of the USDA's Animal and Plant Health Inspection Service (APHIS) is responsible for administering regulations intended to prevent the introduction of animal diseases into the United States. The regulations in 9 CFR part 94 allow the importation of poultry meat and products and live poultry from Argentina and the Mexican States of Campeche, Quintana Roo, and Yucatan under certain conditions. APHIS will collect information through the use of a certification statement that must be completed by Mexican veterinary authorities prior to export.

Need and Use of the Information: The information collected from the certificate will provide APHIS with critical information concerning the origin and history of the items destined for importation in the United States. Without the information APHIS' ability to ensure that poultry, poultry meat, or other poultry products from certain States within Mexico pose a minimal risk of introducing exotic Newcastle disease and other exotic animal diseases into the United States.

Description of Respondents: Federal Government.

Number of Respondents: 10.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 100.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–17015 Filed 8–27–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. AMS–PY–07–0105]

Notice of Request for an Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget (OMB) for an extension of a currently approved information collection for organic exemption requests under national research and promotion programs. Upon OMB approval, this burden will be merged into the information collection currently approved under OMB No. 0581–0093 for National Research, Promotion, and Consumer Information Programs.

DATES: Comments on this notice must be received by October 29, 2007.

ADDITIONAL INFORMATION: Interested persons are invited to submit written comments on the Internet at *http://www.regulations.gov* or to Angela C. Snyder, Research and Promotion; Standards, Promotion & Technology Branch; Poultry Programs, AMS, U.S. Department of Agriculture; 1400 Independence Avenue, SW., Stop 0256; Washington, DC 20250–0259, (202) 720–0976. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk, Poultry Programs, AMS, USDA, Room 3953–S, 1400 Independence Avenue, SW., Washington, DC 20250–0259, during regular business hours, or can be viewed at: *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Title: Organic Producer and Marketer Exemption From Assessment Under Research and Promotion Programs.

OMB Number: 0581–0217.

Expiration Date, as approved by OMB: 01/31/2008.

Type of Request: Extension of a currently approved information collection.

Abstract: National research and promotion programs: 7 CFR parts 1150 (dairy), 1160 (fluid milk), 1205 (cotton), 1206 (mango), 1207 (potato), 1209 (mushroom), 1210 (watermelon), 1215 (popcorn), 1216 (peanut), 1218 (blueberry), 1219 (Hass avocado), 1220 (soybean), 1230 (pork), 1240 (honey), 1250 (egg), 1260 (beef), and 1280 (lamb) are under AMS oversight, and are wholly industry-funded and -operated. These programs are charged with creating and expanding markets for the agricultural commodities they represent. Producers, handlers, importers, and/or others in the marketing chain pay assessments to these commodity boards to fund the programs. Research and promotion programs allow industries to establish, finance, and carry out coordinated programs of research, producer and consumer education, and promotion to improve, maintain, and develop markets for their commodities.

Any person that produces and markets solely 100 percent organic products, and does not produce any conventional or non-organic products, is exempt from paying assessments under a commodity promotion law with respect to any agricultural commodity that is produced on a certified organic farm as defined in Section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). To be exempt from paying assessments under a research and promotion program, an application—Organic Exemption Request Form—must be submitted to the applicable board or council prior to or during the initial applicable assessment period, and annually thereafter, as long as the applicant continues to be eligible for the exemption. The information request requires the following: applicant's name, name and address of the company, telephone and fax numbers, type of operation, list of commodities produced, a copy of the applicant's organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent under the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. If the applicant complies with these requirements and is eligible for a promotion assessment exemption, the board or council will approve the exemption and notify the applicant within 30 days of receiving the application. If the application is disapproved, the board or council will notify the applicant of the reason(s) for disapproval. The Secretary may review any decisions made by the boards or councils at her or his discretion.

The form covered under this collection requires the minimum information necessary to effectively carry out the requirements under Section 501 the Federal Agriculture Improvement and Reform Act (7 U.S.C. 7401), and every effort has been made to minimize any unnecessary recordkeeping requirements. AMS has determined that there is no practical method for collecting the required information without the use of this form. The form is available from the boards and councils in hard copy and electronic fillable format. The information collection is used only by authorized board or council employees and representatives of USDA, including AMS staff. Authorized board and council employees are the primary users of the information, and AMS is the secondary user.

AMS is committed to complying with the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Upon OMB approval, this burden will be merged into the information collection currently approved under OMB No. 0581–0093 for National Research, Promotion, and Consumer Information Programs.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.50 hours per response.

Respondents: Eligible certified organic producers and marketers.

Estimated Number of Respondents: 2,165.

Estimated Total Annual Responses: 2,165.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,082.5 hours

Copies of this information collection can be obtained from Angela C. Snyder, Research and Promotion; Standards, Promotion & Technology Branch at (202) 720–0976.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received will be available for public inspection during regular business hours at the above address and may be viewed at *http://www.regulations.gov*. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 22, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–16972 Filed 8–27–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. AMS–FV–07–0108; FV07–996–2 N]

Peanut Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; request for nominations to fill vacancies.

SUMMARY: The Farm Security and Rural Investment Act of 2002 requires the Secretary of Agriculture to establish a Peanut Standards Board (Board) for the purpose of advising the Secretary on quality and handling standards for domestically produced and imported peanuts. The initial Board was appointed by the Secretary and announced on December 5, 2002. USDA seeks nominations for individuals to be considered for selection to the Board to fill two vacant Board positions for the remainder of a term of office ending June 30, 2010. The Board consists of 18 members representing producers and industry representatives.

DATES: Written nominations must be received on or before September 27, 2007.

ADDRESSES: Nominations should be sent to Dawana J. Clark, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737: Telephone: (301) 734–5243; Fax: (301) 734–5275; E-mail: *Dawana.Clark@usda.gov*.

SUPPLEMENTARY INFORMATION: Section 1308 of the Farm Security and Rural Investment Act of 2002 (Farm Bill) requires the Secretary of Agriculture to establish a Peanut Standards Board (Board) for the purpose of advising the Secretary regarding the establishment of quality and handling standards for all domestic and imported peanuts marketed in the United States. The Farm Bill requires the Secretary to consult with the Board before the Secretary establishes or changes quality and handling standards for peanuts.

The Farm Bill provides that the Board consist of 18 members, with three producers and three industry representatives from the States specified in each of the following producing regions: (a) Southeast (Alabama, Georgia, and Florida); (b) Southwest (Texas, Oklahoma, and New Mexico); and (c) Virginia/Carolina (Virginia and North Carolina).

For the initial appointments, the Farm Bill required the Secretary to stagger the terms of the members so that: (a) One producer member and peanut industry member from each peanut producing region serves a one-year term; (b) one producer member and peanut industry member from each peanut producing region serves a two-year term; and (c) one producer member and peanut industry member from each peanut producing region serves a three-year term. The term "peanut industry representatives" includes, but is not limited to, representatives of shellers, manufacturers, buying points, marketing associations and marketing cooperatives. The Farm Bill exempted the appointment of the Board from the requirements of the Federal Advisory Committee Act. The initial Board was appointed by the Secretary and announced on December 5, 2002.

USDA invites those individuals, organizations, and groups affiliated with the categories listed above to nominate individuals for membership on the Board. Nominees sought by this action would fill one vacant producer member position in each of the Southeast and Virginia-Carolina producing regions. The new members would serve for the remainder of a 3-year term of office ending June 30, 2010.

Nominees should complete a Peanut Standards Board Background Information form and submit it to Mrs. Clark. Copies of this form may be obtained at the internet site: *http://www.ams.usda.gov/fv/peanut-farmbill.htm*, or from Mrs. Clark. USDA seeks a diverse group of members representing the peanut industry. Equal opportunity practices will be followed in all appointments to the Board in accordance with USDA policies. To ensure that the recommendations of the Board have taken into account the needs of the diverse groups within the peanut industry, membership shall include, to the extent practicable, individuals with demonstrated abilities to represent minorities, women, persons with disabilities, and limited resource agriculture producers.

Authority: 7 U.S.C. 7958.

Dated: August 22, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–16977 Filed 8–27–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Woodsy Owl Official Licensee Royalty Statement

AGENCY: Forest Service, USDA.

ACTION: Request for Comment; Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection, Woodsy Owl Official Licensee Royalty Statement.

DATES: Comments must be received in writing on or before October 29, 2007 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to the Office of the Conservation Education Program, Program Manager National Symbols, U.S. Forest Service, 1400 Independence Avenue, SW., Mail Stop 1147, Washington, DC 20250–1147.

Comments also may be submitted via facsimile to (202) 690–5658 or by e-mail to *ivelez@fs.fed.us*.

The public may inspect comments received at the Office of Conservation Education Program, Room 1C, U.S. Forest Service, 201 14th Street SW., Washington, DC. Visitors are urged to call ahead to (202) 205–5681 to facilitate entrance into the building.

FOR FURTHER INFORMATION CONTACT: Iris Velez, Program Manager National Symbols, Office of Conservation Education Program, at (202) 205–5681. Individuals who use TDD may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Woodsy Owl Official Licensee Royalty Statement.

OMB Number: 0596–0087.

Expiration Date of Approval: March 31, 2008.

Type of Request: Extension of a currently approved collection.

Abstract: The Woodsy Owl-Smoky Bear Act of 1974 established the Woodsy Owl symbol and slogan,

authorizes the Secretary of Agriculture to manage the use of the slogan and symbol, authorizes the licensing of the symbol for commercial use, and provides for continued protection of the symbol. Part 272 of Title 36 of the Code of Federal Regulations authorizes the Chief of the Forest Service to approve commercial use of the Woodsy Owl symbol and to collect royalty fees. Commercial use includes replicating Woodsy Owl symbol or logo on items, such as tee shirts, mugs, pins, figurines, ornaments, stickers, and toys and using the image and or slogan of the icon in motion pictures, documentaries, TV magazine stories, and books, magazines, and other for-profit paper products.

Woodsy Owl is America's symbol for the conservation of the environment. The public service campaign slogans associated with Woodsy Owl are "Give a Hoot, Don't Pollute" and "Lend a Hand, Care for the Land." The mission statement of the Woodsy Owl's conservation campaign is to help young children discover the natural world and join in life-long actions to care for that world.

The USDA Forest Service National Symbols Program Manager will use the collected information to determine if the applicant will receive a license or renewal of an existing license and the associated royalty fees. Information collected includes, but is not limited to, tenure of business or non-profit organization, current or planned products, physical location, projected sales volume, and marketing plans. Licensees submit quarterly reports, which include:

1. A list of each item sold with the Woodsy Owl symbol.
2. Projected sales of each item.
3. The sales price of each item.
4. Total sales subject to Forest Service royalty fee.
5. Royalty fee due based on sales quantity and price.
6. Description and itemization of deductions (such as fees waived or previously paid as part of advance royalty payment).
7. The new total royalty fee the business or organization must pay after deductions.
8. The running total amount of royalties accrued in that fiscal year.
9. The typed name and signature of the business or organizational employee certifying the truth of the report.

Data gathered in this information collection are not available from other sources.

Estimate of Annual Burden: 30 minutes per response.

Type of Respondents: Individuals, for-profit businesses and non-profit organizations.

Estimated Annual Number of Respondents: 15.

Estimated Annual Number of Responses per Respondent: 5.

Estimated Total Annual Burden on Respondents: 37.5 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: August 10 ,2007.

James E. Hubbard,

Deputy Chief, State and Private Forestry.

[FR Doc. E7–16983 Filed 8–27–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Reconstruction of Meadows Road 205 and Issuance of a Road Easement to Access Private Land

AGENCY: Forest Service, Department of Agriculture.

ACTION: Notice of availability of a Final Environmental Impact Statement for a proposal to issue a road easement to a private landowner and to permit the landowner to reconstruct the Meadows Road (FDR–205) to access private land in-holding.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and implementing regulations and other applicable statutes, the U.S. Forest Service announces the availability of a Final Environmental Impact Statement (FEIS) for an applicant's proposal to acquire a road easement and reconstruct an access road to their private land in-holding on the San Juan National Forest. The FEIS analyzes the impacts of issuing the road easement and reconstructing Forest Development Road (FDR) 205 to a standard that would allow reasonable access to the landowner's private land in-holding.

ADDRESSES: Please address questions or requests for copies of the FEIS to the San Juan Public Lands Center, Attn: Jim Powers, 15 Burnett Court, Durango, Colorado 81301; or phone (970) 247–4874. The FEIS is also available on the internet at *ftp://ftp2.fs.fed.us/incoming/r2/sanjuan/lizard_head.*

FOR FURTHER INFORMATION CONTACT: Patrick McCoy at (970) 82–6821 or Jim Powers at (970)247–4874.

SUPPLEMENTARY INFORMATION: The responsible official for issuance of the road easement is Richard Stem, Deputy Regional Forester, Rocky Mountain Region at P.O. Box 25127, Lakewood, Colorado 80225–0127. The EIS addresses road reconstruction and issuance of an easement across such road for the purpose of providing the applicant access to non-federally owned lands within the boundaries of the San Juan National Forest. The private landowner has proposed use of the existing road to meet their access needs.

Dated: July 12, 2007.

Richard Stem,

Deputy Regional Forester, Forest Service, Rocky Mountain Region.

[FR Doc. E7–16987 Filed 8–27–07; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Hawaii State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the regulations of the Federal Advisory Committee Act (FACA), that an open session of a subcommittee of the Hawaii State Advisory Committee will convene at 1 p.m. and adjourn at 5 p.m. on Friday, September 14, 2007 in the Performing Arts Center of the Kauai Community College at 3–1901 Kaumualii Hwy, Lihue, Hawaii. The purpose of the meeting is to hear from members of the public on their comments about "The Native Hawaiian Government Reorganization Act of 2007." Members of the public will make short statements to the Committee.

Members of the pubic are entitled to submit written comments; the

comments must be received in the Western Regional Office by September 17, 2007. The address is 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Angelica Trevino, Western Regional Office, U.S. Commission on Civil Rights at (213) 894 3437, [TDD 213–894–3435], or by e-mail at *hisac@usccr.gov*.

Hearing impaired persons who will attend the meeting and require the service of a sign language interpreter should contact the Western Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov*, or to contact the Western Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated at Washington, DC, August 23, 2007.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 07–4213 Filed 8–27–07; 8:45 am]

BILLING CODE 6335–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Hawaii State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the regulations of the Federal Advisory Committee Act (FACA), that a meeting of a subcommittee of the Hawaii State Advisory Committee will convene at 12:30 p.m. and adjourn at 4:30 p.m. on Thursday, September 13, 2007 in Conference Rooms A, B, and C of the state office building at 75 Aupuni Street in Hilo, Hawaii. The purpose of the meeting is to hear from members of the public on their comments about "The Native Hawaiian Government Reorganization Act of 2007." Members of the public will make short statements to the Committee.

Members of the public are entitled to submit written comments; the comments must be received in the Western Regional Office by September 17, 2007. The address is 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Angelica Trevino, Western Regional Office, U.S. Commission on Civil Rights at (213) 894–3437, [TDD 213–894–3435], or by e-mail at *hisac@usccr.gov*.

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Western Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov*, or to contact the Western Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated at Washington, DC, August 23 2007.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E7–17000 Filed 8–27–07; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Hawaii State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the regulations of the Federal Advisory Committee Act (FACA), that a meeting of a subcommittee of the Hawaii State Advisory Committee will convene at 1 p.m. and adjourn at 5 p.m. on Wednesday, September 12, 2007 in the auditorium of the Hawaii state capitol located at 415 S. Beretania Street, Honolulu, Hawaii. The purpose of the meeting is to hear from members of the public on their comments about the "The Native Hawaiian Government Reorganization Act of 2007." Members of the public will make short statements to the Committee.

Members of the public are entitled to submit written comments; the comments must be received in the Western Regional Office by September 17, 2007. The address is 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Angelica Trevino, Western Regional Office, U.S. Commission on Civil Rights at (213) 894–3437, [TDD 213–894–3435], or by e-mail at *hisac@usccr.gov*.

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Western Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov*, or to contact the Western Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated at Washington, DC., August 23 2007.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E7–17001 Filed 8–27–07; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration (ITA).

Title: Commercial Service—Strategic User Satisfaction Survey.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 750.

Number of Respondents: 1,500.

Average Time per Response: 30 minutes.

Needs and Uses: The International Trade Administration's U.S. Commercial Service (CS) is mandated

by Congress to help U.S. businesses, particularly small and medium-sized companies, export their products and services to global markets. As part of its mission, CS currently uses transactional user satisfaction surveys to collect feedback from U.S. business clients that use CS pay-for-use products/events provided by the organization's domestic and international offices. These surveys request the client to evaluate CS on its customer service delivery for a specific transaction. The results from the surveys are used to ensure that clients' needs and expectations are met and service delivery is consistent across the organization.

In addition to conducting user satisfaction surveys, CS would like to conduct a strategic user satisfaction survey on an annual basis to collect more in-depth user satisfaction feedback from CS clients in order to assess the importance or relative impact of specific service delivery processes and attributes on overall customer satisfaction. Survey responses would enable the CS to prioritize the allocation of time, budget and resources using performance-importance diagrams. Without this information, USFCS is unable to systematically determine the actual and relative levels of performance for attributes, processes and subprocesses, identify the drivers or determinants of overall satisfaction, and provide clear, actionable insights for managerial intervention. This information will be used for program improvement, strategic planning, and allocation of resources.

Affected Public: Business or other for profit organizations; not-for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection can be obtained by writing Diana Hynek, Department Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 or via e-mail *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent within 30 days of the publication of this notice in the **Federal Register** to David Rostker, OMB Desk Officer, at *David_Rostker@omb.eop.gov* or fax (202) 395–7285.

Dated: August 22, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–16966 Filed 8–27–07; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Foreign Availability Procedures and Criteria.

Agency Form Number: None.

OMB Approval Number: 0694–0004.

Type of Request: Regular submission.

Burden Hours: 510.

Number of Respondents: 2.

Average Time per Response: 255 hours.

Needs and Uses: The Office of Technology Evaluation (BIS) responds to requests by Congress and industry to make foreign availability determinations. This office identifies foreign goods and technology analogous to American equipment subject to export controls. The U.S. and foreign equipment, however, must demonstrate a similarity of design or approach to the technical problems as well as exhibit similar performance and reliability characteristics.

The foreign equipment must be of comparable quality and available in sufficient quantities to controlled destinations. Continued restrictions on U.S. exports when comparable items are available from uncontrollable sources decreases U.S. competitiveness in high-technology industries and undermines U.S. national security interests.

Affected Public: Business or other for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, e-mail address, *David_Rostker@omb.eop.gov*, or fax number, (202) 395–7285.

Dated: August 22, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–16974 Filed 8–27–07; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Procedure for Voluntary Self-Disclosure of Violations of the Export Administration Regulations.

Agency Form Number: None.

OMB Approval Number: 0694–0058.

Type of Request: Regular submission.

Burden Hours: 1,930.

Average Time Per Response: 10.

Number of Respondents: 193.

Needs and Uses: BIS codified its voluntary self-disclosure policy to increase public awareness of this policy and to provide the public with a better understanding of BIS's likely response to a given disclosure. Voluntary self-disclosures allow BIS to conduct investigations of the disclosed incidents faster than would be the case if BIS had to detect the violations without such disclosures.

Affected Public: Individuals or households, and business or other for-profit organizations.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, e-mail address, *David_Rostker@omb.eop.gov*, or fax number, (202) 395–7285.

Dated: August 22, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–16975 Filed 8–27–07; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Report of Requests for Restrictive Trade Practice or Boycott, Single or Multiple Transactions.

Agency Form Number: 621P, 6051P, and 6051P-A (continuation sheet).

OMB Approval Number: 0694–0012.

Type of Request: Regular submission.

Burden Hours: 1,417.

Average Time Per Response: 1 to 1 hour and 30 minutes.

Number of Respondents: 1,291.

Needs and Uses: The collected information, from U.S. citizens, is used to accurately monitor requests for participation in foreign boycotts against countries friendly to the U.S.

This information is also used to note trends in such boycott activity and to assist in carrying out the U.S. policy of opposition to such boycotts.

Affected Public: Business or other for-profit organizations.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, e-mail address, *David_Rostker@omb.eop.gov*, or fax number, (202) 395–7285.

Dated: August 22, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–16976 Filed 8–27–07; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 070725407–7408–01]

American Community Survey Data Products

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice and request for comments.

SUMMARY: Beginning in 2008, the Bureau of the Census (Census Bureau) will introduce multyear estimates into the American Community Survey (ACS) data products. The Census Bureau is proposing to modify its current line of data products to accommodate the multiyear estimates and is requesting comments from current and potential users of ACS data products to help guide this modification. The ACS data products are currently only available in the form of single-year estimates for years 2005 and 2006.

DATES: Written comments must be submitted on or before September 27, 2007.

ADDRESSES: Direct all written comments to the Director, U.S. Census Bureau, Room 8H001, Mail Stop 0100, Washington, DC 20233–0001.

FOR FURTHER INFORMATION CONTACT: Douglas Hillmer, Assistant Division Chief, Data Products, American Community Survey Office, on (301) 763–2994, by e-mail at *douglas.w.hillmer@census.gov*, or by mail at Room 3K275, Washington, DC 20233–0001.

SUPPLEMENTARY INFORMATION: The ACS is the Nation's largest survey with an annual sample size of approximately 3 million addresses in the United States and Puerto Rico. The ACS is part of the 2010 Decennial Census Program and provides annually updated, detailed demographic, socioeconomic, and housing information for communities across the United States and Puerto Rico.

In 2008, the ACS will publish multiyear estimates in the form of 3-year period estimates for years 2005–2007, in addition to the single-year estimates for 2007. The current line of data products was developed for the initial releases of ACS data that only included single-year estimates. The Census Bureau is most interested in suggestions on how the current data products can be modified to incorporate the multiyear estimates in ways that are most useful for data users. To view the Census Bureau proposal, please visit *http://www.census.gov/acs/www/Downloads/proposal_acsdataproducts.pdf.*

Census Bureau working groups have sought to improve the ACS data products by taking into account the previous comments and suggestions of data users. On May 14, 2004 (69 FR 26806), the ACS program issued an earlier **Federal Register** notice and request for comments on the data products. That notice focused on soliciting comments for data products released in 2005. The Census Bureau received 31 responses to the 2004 notice; each response was reviewed in detail. Several suggestions were incorporated into the ACS data products starting in 2005. For additional information on the earlier 2004 notice, please contact the official identified in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

We have developed a preliminary version of the suite of data products for the multiyear estimates and are now asking for feedback from public data users. In particular, the Census Bureau is looking for feedback about the basic concept of each product and its usefulness to the public. We welcome all comments and suggestions about how the product could be improved to seamlessly incorporate the multiyear estimates into the existing data products. This second solicitation is for the data release scheduled for 2008 and does not relate to earlier data releases.

The following provides a description of each of the types of data products. All of the data products include sampling errors displayed as margins of error.

- Detailed Tables—These tables provide basic distributions of characteristics. They are the most detailed data and are the basis for other ACS products. The detailed tables include tables iterated for nine race and Hispanic origin universes and tables that show imputation (allocation) rates for selected variables.
- Data Profiles—Detailed tables that provide summaries by demographic, social, economic, and housing characteristics.
- Narrative Profiles—Data profile information presented in a user-friendly, text-and-graphic format that put various topics into words for the general user.
- Geographic Ranking Tables (state rankings)—These tables compare indicators for the United States, all states, and the District of Columbia. Ranking tables also can be viewed as charts that show the estimate as a point and the upper and lower bounds of the confidence interval as "wings" or "arms" extending to either side of the

estimate. These tables and charts are available as Adobe Acrobat files.

- Thematic Maps—Display geographic variation in map format from the geographic ranking tables.
- Geographic Comparison Tables—These are single-variable tables comparing key indicators for geographies other than States.
- Subject Tables—These tables highlight a particular subject of interest.
- Selected Population Profiles—Data profiles for selected population groups.
- Public Use Microdata Sample File (PUMS)—Computerized files containing record-level data that can be used to create custom analyses. The geography on these files is the same as the PUMS that were defined for the Census 2000 Sample PUMS files.

Please go to the American FactFinder (AFF) Web site to review each data product in detail. Users can access the AFF from the Census Bureau's home page at *http://www.census.gov/.*, or from the AFF link on the ACS home page at *http://www.census.gov/acs/www/.* Users can view and download each data product. If you have questions about any of these data products, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a current, valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 United States Code, Chapter 35, the OMB approved the ACS survey under OMB Control Number 0607–0810. We will furnish report forms to organizations included in the survey, and additional copies will be available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

Dated: August 21, 2007.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. E7–16850 Filed 8–27–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposed Information Collection; Comment Request; Expenditures Incurred by Recipients of Bio-Medical Research and Development Awards From the National Institutes of Health (NIH)

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before 5 p.m. October 29, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or via e-mail at *dhynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Charlotte Anne Bond, Government Fixed Assets Branch, Government Division (BE–57), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone: (202) 606–5581; fax: (202) 606–5369; or via e-mail at *CharlotteAnne.Bond@bea.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Economic Analysis (BEA) will administer a survey to obtain the distribution of expenditures incurred by recipients of bio-medical research awards from the National Institutes of Health Research (NIH) and will provide information on how the NIH award amounts are expended across several major categories. This information, along with wage and price data from other published sources, will be used to generate the Bio-medical Research and Developmental Price Index (BRDPI). BEA develops this index for NIH under a reimbursable contract. The BRDPI is an index of prices paid for the labor, supplies, equipment, and other inputs required to perform the bio-medical research the NIH supports in its intramural laboratories and through its awards to extramural organizations. The BRDPI is a vital tool for planning the NIH research budget and analyzing future NIH programs. A survey of award recipient entities is currently the only means for updating the expenditure categories that are used to prepare the BRDPI.

II. Authority

This survey will be voluntary. The authority for NIH to collect information for the BRDPI is provided in 45 CFR subpart C, Post-Award Requirements, section 74.21. This sets forth explicit standards for grantees in establishing and maintaining financial management systems and records, and section 74.53 which provides for the retention of such records as well as NIH access to such records.

BEA will administer the survey and analyze the survey results on behalf of NIH, through an interagency agreement between the two agencies. The authority for the NIH to contract with DOC is the Economy Act (31 U.S.C. 1535 and 1536).

The "Special Studies" authority, 15 U.S.C. 1525 (first paragraph), permits DOC to provide, upon the request of any person, firm or public or private organization (a) Special studies on matters within the authority of the Department of Commerce, including preparing from its records special compilations, lists, bulletins, or reports, and (b) furnishing transcripts or copies of its studies, compilations and other records. BEA has programmatic authority to perform this work pursuant to 15 U.S.C. 1527a. NIH's support for this research is consistent with the Agency's duties and authority under 42 U.S.C. 282.

The information provided by the respondents will be held confidential and be used for exclusively statistical purposes. This pledge of confidentiality is made under the Confidential Information Protection provisions of title V, subtitle A, Public Law 107–347. Title V is the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA). Section 512 (on Limitations on Use and Disclosure of Data and Information) of the Act, provides that "data or information acquired by an agency under a pledge of confidentiality and for exclusively statistical purposes shall be used by officers, employees, or agents of the agency exclusively for statistical purposes. Data or information acquired by an agency under a pledge of confidentiality for exclusively statistical purposes shall not be disclosed by an agency in identifiable form, for any use other than an exclusively statistical purpose, except with the informed consent of the respondent."

Responses will be kept confidential and will not be disclosed in identifiable form to anyone other than employees or

agents of BEA without prior written permission of the person filing the report. By law, each employee as well as each agent is subject to a jail term of up to 5 years, a fine of up to $250,000, or both for disclosing to the public any identifiable information that is reported about a business or institution.

Section 515 of the Information Quality Guidelines applies to this survey. The collection and use of this information complies with all applicable information quality guidelines, i.e., those of the Office of Management and Budget, Department of Commerce, and BEA.

III. Method of Collection

A survey with a cover letter that includes a brief description of, and rationale for, the survey will be sent by e-mail to potential respondents by the first week of June of each year. A report of the respondent's expenditures of the NIH award amounts, following the proposed format for expenditure categories included with the survey's cover letter, will be requested to be completed and submitted online no later than 60 days after mailing. Survey respondents will be selected on the basis of award levels, which determine the weight of the respondent in the biomedical research and development price index. Potential respondents will include (1) the top 100 organizations in total awards, which account for about 74 percent of total awards; (2) 40 additional organizations that are not primarily in the "Research and Development (R&D) contracts" category; and (3) 10 additional organizations that are primarily in the "R&D contracts" category.

IV. Data

OMB Number: 0608–0069.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Universities or other organizations that are NIH award recipients.
Estimated Number of Respondents: 90.
Estimated Time per Response: 11 hours and 12 minutes.
Estimated Total Annual Burden Hours: 1,008.
Estimated Total Annual Cost: $41,610.

V. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the NIH, including whether the information has practical utility: (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; They also will become a matter of public record.

Dated: August 22, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–16965 Filed 8–27–07; 8:45 am]

BILLING CODE 3510–EA–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 38–2007]

Foreign–Trade Zone 7—Mayaguez, Puerto Rico, Application for Subzone, MOVA Pharmaceutical Corporation (Pharmaceutical Manufacturing), Manatí, Puerto Rico

An application has been submitted to the Foreign–Trade Zones (FTZ) Board (the Board) by the Puerto Rico Industrial Development Company, grantee of FTZ 7, requesting special–purpose subzone status with manufacturing authority for pharmaceutical products at the pharmaceutical manufacturing facility of MOVA Pharmaceutical Corporation (MOVA), located in Manat´, Puerto Rico. The application was submitted pursuant to the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 14, 2007.

The proposed subzone facility (104 acres, 17 buildings totaling 410, 000 sq. ft., 40 percent of which is devoted to manufacturing) is located at State Road 670, Km 2.7 in Manat´, Puerto Rico. The company has indicated that the square footage of the buildings devoted to manufacturing operations could increase to include up to 70 percent of the total in the near future.

The MOVA facility (310 employees) has requested authority to manufacture two pharmaceutical products, Januvia/MK–431A (HTSUS 3004.90) and sitagliptin (HTSUS 2933.59), on behalf of Merck, Sharpe & Dohme Quimica de Puerto Rico, Inc. Duty rates on the finished products range from duty–free to 6.5 percent, *ad valorem*. Foreign–origin material inputs to be used in the manufacturing process (up to 25 percent of total materials, by value) include sitagliptin (HTSUS 2933.59), metformin hydrochloride (HTSUS 2925.20), enamine amide (HTSUS 2933.59), and butyl josphos (HTSUS 2931.00), which have duty rates of 3.7 percent to 6.5 percent, *ad valorem*.

The application also requests authority to include a broad range of inputs and finished pharmaceutical products that MOVA may produce under FTZ procedures in the future. (As required by the Board's regulations, new major activity involving these inputs/products would require review by the Board.) The duty rates for these inputs and final products range from duty–free to 10 percent.

FTZ procedures would exempt MOVA from customs duty payments on foreign materials used in export production to non–NAFTA countries. Some 30 to 40 percent of the plant's shipments are exported. On its domestic shipments and sales to NAFTA countries, MOVA could defer duty until the products are entered for consumption or exported, and choose the lower duty rate that applies to the finished product for the foreign components used in production. The company may also realize certain logistical/procedural savings related to zone–to zone transfers and direct delivery procedures as well as savings on materials that become scrap/waste during manufacturing. The application indicates that FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 29, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 13, 2007).

A copy of the application will be available for public inspection at each of the following locations: U.S. Department of Commerce Export Assistance Center, Centro Internacional de Mercado, Tower II, Suite 702, Road 165, Guaynabo, Puerto Rico, 00968–8058; and, Office of the Executive Secretary, Foreign–Trade Zones Board, Room 2111, U.S. Department of

Commerce, 1401 Constitution Avenue, NW, Washington, D.C. 20230–0002.

For further information, contact Diane Finver at Diane_Finver@ita.doc.gov or (202) 482–1367.

Dated: August 21, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–17036 Filed 8–27–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Technical Data Letter of Explanation

AGENCY: Bureau of Industry and Security (BIS), Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 29, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4896, *lhall@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

These technical data letters of explanation will assure BIS that U.S.-origin technical data will be exported only for authorized end-uses, users and destinations. The letters also place the foreign consignee on notice that the technical data is subject to U.S. export controls and may only be reexported in accordance with U.S. law.

II. Method of Collection

Submitted on paper or electronically.

III. Data

OMB Control Number: 0694–0047.

Form Number(s): None.

Type of Review: Business or for-profit organizations.

Estimated Number of Respondents: 5,050.

Estimated Time per Response: 30 minutes to 2 hours.

Estimated Total Annual Burden Hours: 8,807.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 22, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–16973 Filed 8–27–07; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Modification of Export Trade Certificate of Review Application No. 92–00015.

SUMMARY: The Secretary of Commerce issued an Export Trade Certificate of Review to Refined Sugar Trading Institute on May 3, 1993. Because this Certificate Holder has failed to file a complete annual report as required by law, the Secretary is modifying the certificate. This notice summarizes the notification letter sent to Refined Sugar Trading Institute.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a Toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("The Act") (Pub. L. 97–290, 15 U.S.C. 4011–21) Authorizes the Secretary of Commerce to Issue Export Trade Certificates of Review. The Regulations Implementing Title III ("the Regulations") are found at 15 CFR Part 325 (1999). Pursuant to this Authority, a Certificate of Review was issued on May 3, 1993 to Refined Sugar Trading Institute.

A Certificate Holder is required by law to submit to the Secretary of Commerce Annual Reports that update financial and other information relating to business activities covered by its Certificate (Section 308 of the Act, 15 U.S.C. 4018, Section 325.14(a) of the Regulations, 15 CFR 325.14(a)). The Annual Report is due within 45 days after the Anniversary Date of the Issuance of the Certificate of Review (Sections 325.14(a) and (b) of the Regulations). Failure to submit a complete Annual Report may be the Basis for Modification or Revocation (Sections 325.10(a)(3) and 325.14(c) of the Regulations). On the following dates April 23, 2005, April 23, 2006 and April 23, 2007, the Secretary of Commerce sent to Refined Sugar Trading Institute a letter containing Annual Report questions stating that its annual report was due on June 17, 2005, June 17, 2006 and June 17, 2007, respectively. The Secretary has received no written response from Refined Sugar Trading Institute or Domino Sugar Corporation relating to Domino Sugar Corporation's annual report. On July 12, 2007, and in accordance with Section 325.14(a) and (b) of the Regulations, the Secretary of Commerce sent a letter by Certified Mail to notify Refined Sugar Trading Institute that the Secretary was formally initiating the process to modify its Certificate to remove Domino Sugar Corporation for its failure to file annual reports directly or through the Refined Sugar Trading Institute. The Secretary has received no response from Refined Sugar Trading Institute. Pursuant to Section 325.10(a)(3) of the Regulations (15 CFR 325.10(a)(3)), the Secretary considers the response of Refined Sugar Trading Institute to be an admission of the statements contained in the notification letter. The Secretary has determined to modify the Certificate issued to Refined Sugar Trading Institute for the failure to file a complete Annual Report. The Secretary has sent a letter, dated August 20, 2007 to notify the Refined Sugar Trading Institute of its final determination.

The Modification is effective thirty (30) days from the date of publication of this notice (325.10(a)(3) of the

Regulations, 15 CFR 325.14(c)). Any person aggrieved by this decision may appeal to an appropriate U.S. District Court within 30 days from the date of publication of this notice in the **Federal Register** "(15 CFR 325.11 of the Regulations)."

Dated: August 20, 2007.

Jeffrey Anspacher,

Director Export Trading Company Affairs.

[FR Doc. E7–16921 Filed 8–27–07; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 070817470–7471–01; I.D. 051906D]

RIN 0648–ZB83

Availability of Grant Funds for Fiscal Year 2008

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: NOAA publishes this notice to amend the agency's solicitation for applications published on July 2, 2007 in an action entitled "Omnibus Notice Announcing the Availability of Grant Funds for Fiscal Year 2008".

DATES: Proposals must be received by the date and time specified under each program listed in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Proposals must be submitted to the program address listed in the **SUPPLEMENTARY INFORMATION** section of this document. NOAA's discretionary grant fund notices may be found on the internet at Grants.gov. The URL for Grants.gov is *http://www.grants.gov*.

FOR FURTHER INFORMATION CONTACT: For those without Internet access request a copy of the full funding opportunity announcement and/or application kit, from the person listed as the information contact under each program.

SUPPLEMENTARY INFORMATION: Applicants must comply with all requirements contained in the Federal Funding Opportunity announcement for each of the programs listed in this omnibus notice. These Federal Funding Opportunities are available at *http://www.grants.gov*.

The list of grant opportunities under NOAA Project Competitions (below) describe the basic information and requirements for the competitive grant/cooperative agreement programs offered by NOAA. These programs are open to anyone who meets the eligibility criteria specified under each grant. To be considered for an award in a competitive grant/cooperative agreement program, eligible applicants must submit a complete and responsive application to the appropriate address by the deadline specified in this notice. An award is made upon conclusion of the evaluation and selection process for the respective program.

Table of Contents

I. Background

In this amendment, NOAA adds eight programs that are making funds available for financial assistance awards. Interested applicants should consult the July 2, 2007, notice for all of the other requirements for submitting an application. Each of the following grant opportunities provide: A description of the program, funding availability, statutory authority, catalog of Federal domestic assistance (CFDA) number, application deadline, address for submitting proposals, information contacts, eligibility requirements, cost sharing requirements, and intergovernmental review under Executive Order 12372.

In addition, this notice announces information related to a non-competitive financial assistance project to be administered by NOAA. This project is titled "NOAA Coral Reef Conservation Grant Program—Coral Reef Ecosystem Research Grants". This project will award Federal financial assistance to the National Undersea Research Center at the University of Hawaii to administer competitive coral reef research grant programs for the Caribbean, Southeastern United States, Florida, the Gulf of Mexico, Hawaii and the Western Pacific. To receive an award for this project, an eligible applicant must submit a complete and responsive application to the appropriate program office. An award is made upon conclusion of the evaluation process for the prospective project.

II. NOAA Project Competitions

Oceanic and Atmospheric Research (OAR)

1. NMFS—Sea Grant Fellowships in Marine Resource Economics

Summary Description: The Graduate Fellowship Program generally awards two new Ph.D. fellowships each year to students who are interested in careers related to the development and implementation of quantitative methods for assessing their status or the economics of the conservation and management of living marine resources. Fellows will work on thesis problems of public interest and relevance to NMFS under the guidance of NMFS mentors at participating NMFS Science Centers or Laboratories. This solicitation is responsive to NOAA Mission Goal 1: Protect, restore and manage the use of coastal and ocean resources through ecosystem-based management.

Funding Availability: The NMFS Sea Grant Joint Graduate Fellowship Program in Marine Resource Economics expects to support two new Fellows for 2 years beginning in FY 2008. The award for each fellowship will be a cooperative agreement of $38,500 per year, with an anticipated start date of June 1, 2008.

Statutory Authority: Authority for the Resource Economics Graduate Fellowship Program is provided by the following: 33 U.S.C. 1127(a).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.417, Sea Grant Support.

Application Deadline: Applications must be received by 4 p.m., Eastern time February 22, 2008 by the National Sea Grant Office (NSGO).

Address for Submitting Proposals: Applications from Sea Grant programs should be submitted through *www.Grants.gov*. Facsimile transmission and electronic mail submission of applications will not be accepted.

Information Contacts: Contact Dr. Terry Smith, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; tel: (301) 734–1084; e-mail: *Terry.Smith@noaa.gov*.

Eligibility: Prospective Fellows must be United States citizens. At the time of

application, prospective Marine Resource Economics Fellows must be admitted to a Ph.D. degree program in natural resource economics or a related field at an institution of higher education in the United States or its territories or submit a signed letter from the institution indicating provisional acceptance to a Ph.D. degree program conditional on obtaining financial support such as this fellowship. Applications must be submitted by the institution of higher education, which may be any such institution in the United States or its territories.

Cost Sharing Requirements: Of the $38,500 award, 50 percent ($19,250) will be contributed by NMFS, 33⅓ percent ($12,833) by the National Sea Grant Office (NSGO), and 16⅔ percent ($6,417) by the institution of higher education as the required 50 percent match of NSGO funds.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

2. NOAA Marine Aquaculture Program

Summary Description: The National Oceanic and Atmospheric Administration (NOAA) is seeking preliminary proposals and full proposals for demonstration projects and innovative research for the development of environmentally and economically sustainable marine aquaculture in nearshore, open water, and terrestrial environments. The Great Lakes are considered marine for this competition. Priorities include: (1) Site-specific commercial/pilot scale demonstration projects to establish technical and economic feasibility with special emphasis on hatchery development, land based, near shore and offshore production systems; (2) studies to assess environmental impacts of current marine aquaculture production systems and species including fish and shellfish; (3) nutrition research involving alternative protein based diets and influence of diet on product quality; (4) development of environmental models and GIS tools to aid site selection for new facilities; (5) disease diagnostics and control; (6) development of technical, hands-on training programs in marine hatchery operations and management; and (7) development of synthesis research papers (i.e., executive summary and journal publication) for the following topics: (a) Environmental impacts of marine production systems; (b) alternative protein feeds and potential impacts; (c) disease transmission from aquaculture to wild stocks and vice versa, and status of ecologically acceptable treatments and preventives; and 9d) genetic technologies and environmental risk analysis. This program supports NOAA's mission to protect, restore and manage the use of coastal and ocean resources through ecosystem based management. Projects funded under this competition should support NOAA's overall goals for its marine aquaculture program, which are to: (1) Establish a comprehensive regulatory program for the conduct of marine aquaculture operations; (2) Develop appropriate technologies to support commercial marine aquaculture and enhancement of wild stocks; (3) Establish and implement procedures for the environmental assessment and monitoring of marine aquaculture activities; (4) Conduct education and outreach activities to establish a well informed public on marine aquaculture; and (5) Meet international obligations to promote environmentally sustainable practices for the conduct of marine aquaculture.

Funding Availability: NOAA will hold an open competition for up to $8 million for FY 2008 and FY 2009, with individual projects ranging from approximately $200,000 to $1,000,000 for a two year period. It is anticipated that we will make approximately 20 awards, three or four pilot scale demonstration projects at or near the $1,000,000 level for the two year period and the remainder at or about the $200,000 level. In addition, funding for the synthesis research papers (priority # 7 described in Summary Description section) is anticipated to be up to $50,000 with four awards being made. Some funds in FY 2008 may be used to finish out projects started in FY 2007. We intend to fund projects for the full two year project period (08 and 09) using FY 2008 funds. In addition we will use some FY 2009 funds to start other two year projects identified through this FY 2008 competition. It is not anticipated that a competition will be held in 2009. We reserve the option to use some FY 2010 funds to finish projects started in FY 2009. Only exceptional projects with multiple partners providing significant impact towards the previously mentioned goals will be considered for the higher level of funding. Projects involving industry collaboration and specific resource leveraging are encouraged and will be given higher rank and consideration.

Statutory Authority: 33 D.S.C. 1121 *et seq.*

Catalog of Federal Domestic Assistance (CFDA) Number: 11.417, Sea Grant Support.

Application Deadline: Preproposals must be received at NOAA by 4 p.m. EDT, on October 18,2007 and full proposals by 4 p.m. EST on January 24, 2008. Anticipated grant start dates will be June 1, 2008. Anticipated grant start dates will be June 1, 2008.

Address for Submitting Proposals: Full proposals should be submitted through grants.gov. Preliminary proposals from all applicants, and full proposals from those that do not have access to internet should be sent in hardcopy to: Dr. Andy Lazur, NOAA R/SG; 1315 East-West Highway, Bldg SSMC 3, Room 11805, Silver Spring, MD 20910–3283, tel. 301–734–1082.

Information Contacts: Dr. Andy Lazur, 301–734–1082; via internet at *Andy.Lazur@noaa.gov*, facsimile 301–713–0799. For information on past projects contact: NOAA Aquaculture Information Center, Eileen McVey at: *Eileen.mcvev@,noaa.gov*.

Eligibility: Institutions of higher education, nonprofit organizations, commercial organizations, Federal, State, local and Indian tribal governments and individuals are eligible.

Please Note: Before non NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 D.S.C. 1535) is not an appropriate legal basis. Only those who submit preliminary proposals by the preliminary proposal deadline are eligible to submit full proposals.

Cost Sharing Requirements: Matching funds are not required, however proposals that combine resources from institutions such as private industry, universities, Federal and State agencies, and foundations to address national or regional issues will be considered in relation to Criteria One (Impacts) in this solicitation and factor 6 (partnerships) of the selection factors listed in the Omnibus **Federal Register** notice for this competition.

Intergovernmental Review: Applications under this Program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

3. National Sea Grant College Program Aquatic Invasive Species Research and Outreach

Summary Description: The National Sea Grant College Program seeks to fund research and outreach projects addressing the introduction and spread of aquatic invasive species. The goal of the program is to discover and develop

information and tools that can lead to the prevention, detection, monitoring and control of aquatic invasive species threatening United States coastal, oceanic and Great Lakes communities, resources and ecosystems. The program seeks especially to support NOAA-relevant regional research and outreach priorities identified by the Regional Panels of the Aquatic Nuisance Species Task Force. Consult the full Federal Funding Opportunity for these priorities. Appropriate areas of research may include: Biology and life history research, population dynamics, genetics, physiology, behavior, and parasites and diseases of invasive species, ecological and environmental tolerances of invasive species, impacts of invasive species at each stage of their life history on the environment, resources, and human health, research into invasive species control measures (engineering, physical, chemical, biological, physicochemical, administrative, and educational), and economic impact analysis of invasive species on marine and coastal resources, sport, commercial and tribal fisheries, the recreation and tourism industry, the shipping and navigation industry, and municipal and industrial water users. Other appropriate areas of endeavor may include: Use of research results to provide a scientific basis for developing sound policy and environmental law, public education and technology transfer, research and outreach into identifying vectors of aquatic invasive species introduction, and education and outreach activities that will transfer this information to the appropriate users. The program priorities for this opportunity support NOAA's mission support goal of: Ecosystems—Protect, Restore, and Manage Use of Coastal and Ocean Resources through Ecosystem-Based Management.

Funding Availability: Depending on the overall funding appropriation for the National Sea Grant College Program, a total of up to $2,000,000 for FY 2008 and FY 2009 is anticipated to be available to support invasive species research and outreach projects of up to two years duration. Federal funding will range approximately between $30,000 and $300,000 per project. This announcement solicits for FY 2008 and FY 2009; we do not anticipate issuing a separate solicitation for this program in FY 2009.

Statutory Authority: Program Authority for the Aquatic Invasive Species Research and Outreach Program is provided by 33 U.S.C. 1121–1131.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.417, Sea Grant Support.

Application Deadline: Applications must be received by the National Sea Grant Office (NSGO) or the state Sea Grant Program by 4 p.m. EDT on October 11, 2007, for preliminary proposals and by 4 p.m. EST on February 14, 2008, for full proposals.

Address for Submitting Proposals: APPLICANTS FROM SEA GRANT STATES must submit applications (both preliminary and full proposals) to their state Sea Grant Program, to the addresses provided by that Program. Consult your state Sea Grant Program for information on addresses. Sea Grant states are: Alabama; Alaska; California; Connecticut; Delaware; Florida; Georgia; Hawaii; Illinois; Indiana; Louisiana; Maine; Maryland; Massachusetts; Michigan; Minnesota; Mississippi; New York; New Hampshire; New Jersey; North Carolina; Ohio; Oregon; Pennsylvania; Puerto Rico; Rhode Island; South Carolina; Texas; Vermont; Virginia; Washington; Wisconsin. The contact information for Sea Grant College Programs may be found at: *http://www.seagrant.noaa.gov/SGDirectors.html* or may also be obtained by contacting Dorn Carlson listed in the Agency Contacts section. Internet links to state Sea Grant Programs can be found at: *http://www.seagrant.noaa.gov/colleges/textlinks.html*. Applicants *NOT* From Sea Grants States may submit their applications to a nearby state Sea Grant program, or directly to the NSGO. If applications are sent directly to the NSGO, preliminary proposals must be submitted in paper hardcopy, to: National Sea Grant Office, Attn: Mrs. Geraldine Taylor, Invasive Species, 1315 East-West Highway, R/SG, Rm 11732, Silver Spring, MD 20910, telephone 301–734–1072. Full proposals must be submitted electronically, via *http://grants.gov*, addressing opportunity number OAR–SG–2008–2001200. If an applicant does not have access to Grants.gov, full applications may be sent in hardcopy (one signed original and two copies) to the address given above for preliminary proposals. Include a cover letter stating that you are submitting in hardcopy because you do not have access to Grants.gov. Sea Grant College Programs must submit applications through Grants.gov.

Information Contacts: Dorn Carlson, NOAA R/SG, National Sea Grant Office, 1315 East-West Highway, Rm 11839, Silver Spring, MD 20910, telephone 301–734–1080; via electronic mail at *invasive.species@noaa.gov*.

Eligibility: Individuals, institutions of higher education, nonprofit organizations, commercial organizations, State, local and Indian tribal governments, foreign governments, and international organizations are eligible. Only those who submit preliminary proposals by the deadline are eligible to submit full proposals.

Cost Sharing Requirements: Each proposal must include additional non-Federal matching funds equivalent to at least 50 percent of the Federal funds requested; for example, a proposal requesting $100,000 in Federal support must include at least an additional $50,000 in matching funds.

Intergovernmental Review: Applications under this Program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

4. FY08 Ocean Exploration (OE) Omnibus

Summary Description: OE is seeking pre-proposals and full proposals to support its mission, consistent with NOAA's Strategic Plan (*http://www.nrc.noaa.gov*), to search, investigate, and document marine archaeological resources and to further ocean education and ocean literacy. OE is seeking proposals for exploration and discovery of significant maritime heritage sites, including submerged, previously subaerial, landscapes, shipwrecks, aircraft, and other maritime cultural sites. Competitive OE proposals will be bold, innovative and interdisciplinary in their approach and objectives. Proposals will emphasize the early phases of field archaeology: searching, locating, evaluating or inventorying sites. Marine Archaeology projects may be conducted in any of the oceans, coasts or Great Lakes regions, on any suitable platform, vessel or other charter. In prior years, OE has funded the development of educational products to enable teachers to bring NOAA science into classrooms throughout the country. To facilitate the use of NOAA science in formal and informal education environments, OE is seeking proposals to extend the use of these existing OE education products, located on its Web site, in school districts and other learning centers throughout the country. It is anticipated that a total of approximately $700,000 will be available through this announcement, partitioned, approximately, as follows: Marine Archaeology, $400,000 and Ocean Exploration Education, $300,000. Applicants are encouraged to visit the Ocean Explorer Web site (*http://*

www.oceanexplorer.noaa.gov) to familiarize themselves with past and present OE-funded activities. Background on how to apply and the required proposal cover sheets are accessible through the OE Office Web site at *http://www.explore.noaa.gov/opportunitv/welcome.html*. In furtherance of this objective, NOAA issues this Federal Funding Opportunity for extramural research, innovative projects, and sponsorships that address one the following mission goal descriptions contained in the NOAA Strategic Plan: To Protect, Restore, and Manage the Use of Coastal and Ocean Resources through an Ecosystem Approach to Management.

Funding Availability: In anticipation of the FY08 President's Budget, OE anticipates supporting approximately 9 awards through this solicitation; 4 in Marine Archaeology and 5 in Education. The OE Director may hold-over select proposals submitted for 2008 funding for consideration in 2009. The amount of funding available through this announcement is subject to the final FY08 appropriation for Ocean Exploration. Publication of this announcement does not obligate NOAA to fund any specific project or to obligate all or any part of available funds. There is no guarantee that sufficient funds will be available to initiate or continue research activities where funding has been recommended by OE. The exact amount of funds that OE may recommend be granted will be determined in pre-award negotiations between the applicant and NOAA representatives. Future opportunities for submitting proposals may be available and will depend on OE funding levels.

Statutory Authority: 33 U.S.C. 883d.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.460, Special Oceanic and Atmospheric Projects.

Application Deadline: Pre-proposals are required for all categories and must be received by 5 p.m. Eastern Time, September 27, 2007. Applicants will receive an e-mail encouraging or discouraging a full proposal submission 40 days after submission. If you have not received a reply 40 days after submission contact OE (*OEoffice@noaa.gov*) as soon as possible. Full proposal submissions must be received no later than 5 p.m. Eastern Time, October 29, 2007. Applications received after the above deadlines will not be considered.

Address for Submitting Proposals: Pre-proposal submissions can be either by e-mail (send to *OEOffice@noaa.gov*) or by hard-copy (send three copies to the mailing address below). If by e-mail, please put your last name in the subject heading along with the words OE Pre-proposal, e.g., 'Smith OE Pre-proposa1.' Adobe PDF format is preferred. No facsimile pre-proposals will be accepted. Full proposal submissions for non-Federal applicants must be submitted through *www.grants.gov*. Federal applicants must submit hard-copies to the address below. The Catalog of Federal Domestic Assistance (CFDA) number is 11.460—Special Oceanic and Atmospheric Projects. An exception will be made for those non-Federal applicants with limited internet access, who may submit hard-copy to the address below. No e-mail proposal submissions will be accepted. Instructions and Mailing Address for Hard-Copy Submissions: Pre-proposals or Full Proposals. Hard copy applications should be binder-clipped together (not bound or stapled) and printed on one-side only. Three signed, hard copy originals are required (use blue/black ink). Since reviewers will require access to an electronic copy, applicants submitting hard copies are highly-encouraged to also submit a digital version in one Adobe PDF file on CD–ROM.

Mailing Address: ATTN: Dr. Nicolas Alvarado, NOAA Office of Ocean Exploration, SSMC III, 10th Floor, 1315 East West Highway, Silver Spring, Maryland 20910.

Information Contacts: For further information contact the NOAA Office of Ocean Exploration at (301) 734–1015 or submit inquiries via email to the Frequently Asked Questions address: *oar.oe.FAQ@noaa.gov*. Email inquiries should include the Principal Investigator's name in the subject heading. Inquiries can be mailed to ATTN: Dr. Nicolas Alvarado, NOAA Office of Ocean Exploration, 1315 East West Highway, SSMC3, 10th Floor, Silver Spring, MD 20910.

Eligibility: Eligible applicants are from institutions of higher education, other nonprofits, commercial organizations, organizations under the jurisdiction of foreign governments, international organizations, State, Local and Indian tribal governments.

Applications from Federal agencies are also eligible. **Please Note:** Before non-NOAA Federal applicants may be funded, they must demonstrate they have legal authority to receive funds from another Federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

Cost Sharing Requirements: Cost-sharing is not required.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." Applicants must contact their State's Single Point of Contact (SPOC) to find out about and comply with the State's process under EO 12372. The names and addresses of the SPOCs are listed in the Office of Management and Budget's Web site: *http://www.whitehouse.gov/omb/grants/spoc.html*.

5. 2009 Dean John A. Knauss Marine Policy Fellowship (Knauss Fellowship Program)

Summary Description: The Dean John A. Knauss Marine Policy Fellowship Program is committed not only to advancing marine-related educational and career goals of participating students, but also to increasing partnerships between universities and government. The Program matches graduate students who have an interest in ocean, coastal and Great Lakes resources, and in the national policy and management decisions affecting these resources, with hosts in the Legislative and Executive branches of the Federal government for a one year paid fellowship. The program priorities for this opportunity support NOAA's Ecosystem mission support goal: Protect, restore and manage use of coastal and ocean resources through ecosystem-based management.

Funding Availability: No less than 30 applicants will be selected. Up to 11 selected applicants will be assigned to the Congress. The overall cooperative agreement is $43,500 per student.

Statutory Authority: 33 U.S.C. 1127(b).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.417, Sea Grant Support.

Application Deadline: Eligible graduate students must submit applications to state Sea Grant college programs. Applications from prospective fellows to the State Sea Grant College Programs (SGCP) are due February 29,2008. Applicants from states not served by a Sea Grant program should contact the NSGO; subsequently, the applicant will be referred to the appropriate Sea Grant program to submit applications by the February 29 deadline. Applicants should consult the Sea Grant program before submitting an application to it.

Address for Submitting Proposals: Applications from Sea Grant programs should be submitted through *www.Grants.gov*. Hard copy justification

and applications should be submitted to: Miguel Lugo, Program Manager, Knauss Fellowship Program, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910.

Information Contacts: Miguel Lugo, Program Manager, Knauss Fellowship Program, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; tel: (301) 734–1077 x1075. Inquiries can also be made to any state Sea Grant Program. Contact information for state Sea Grant College Programs can be found at: *http://www.seagrant.noaa.gov/other/programsdirectors.html.*

Eligibility: Any student, regardless of citizenship, who, on February 29, 2008, is in a graduate or professional program in a marine or aquatic-related field at a United States-accredited institution of higher education in the United States or U.S. Territories may apply.

Cost Sharing Requirements: There will be one-third required cost share for those applicants selected as legislative fellows.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

6. NMFS-Sea Grant Fellowships in Population Dynamics

Summary Description: The Graduate Fellowship Program awards at least two new Ph.D. fellowships each year to students who are interested in careers related to the population dynamics of living marine resources and the development and implementation of quantitative methods for assessing their status. Fellows will work on thesis problems of public interest and relevance to NMFS under the guidance of NMFS mentors at participating NMFS Science Centers or Laboratories. This solicitation is responsive to NOAA Mission Goal 1: protect, restore and manage the use of coastal and ocean resources through ecosystem-based management.

Funding Availability: The award for each Fellowship, contingent upon the availability of Federal funds, will be a multi-year cooperative agreement in the amount of $38,500 per year for up to three years.

Statutory Authority: Authority for the Population Dynamics Graduate Fellowship Program is provided by the following: 33 U.S.C. 1127(a).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.417, Sea Grant Support.

Application Deadline: Applications must be received by 4 p.m., Eastern time February 22, 2008 by the National Sea Grant Office (NSGO). State Sea Grant programs should set an internal deadline of January 25, 2008 to facilitate the entry of non-electronic applications into Grants.gov.

Address for Submitting Proposals: Applications from Sea Grant programs should be submitted through *www.Grants.gov.* Facsimile transmission and electronic mail submission of applications will not be accepted.

Information Contacts: Contact Dr. Terry Smith, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; tel: (301) 734–1084; e-mail: *Terry.Smith@noaa.gov.*

Eligibility: Prospective Fellows must be United States citizens. At the time of application, prospective Population Dynamics Fellows must be admitted to a Ph.D. degree program in population dynamics or a related field such as applied mathematics, statistics, or quantitative ecology at an institution of higher education in the United States or its territories, or submit a signed letter from the institution indicating provisional acceptance to a Ph.D. degree program conditional on obtaining financial support such as this fellowship. Applications must be submitted by the institution of higher education, which may be any such institution in the United States or its territories.

Cost Sharing Requirements: Of the $38,500 award, 50 percent ($19,250) will be contributed by NMFS, 33⅓ percent ($12,833) by the National Sea Grant Office (NSGO), and 16⅔ percent ($6,417) by the institution of higher education as the required 50 percent match of NSGO funds.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

7. Pennsylvania Sea Grant Institutional Program

Summary Description: NOAA's National Sea Grant College Program (NSGCP) invites applications to establish an Institutional Sea Grant Program for the Commonwealth of Pennsylvania beginning in FY 2008. Applicants should provide a 4-year plan for an institutional program that will be part of the larger National Sea Grant network, a partnership between the Federal Government and universities to conduct integrated research, education and outreach in fields related to ocean, coastal and Great Lakes resources. Applicants must comply with all requirements contained in the full funding opportunity announcement. The program priorities for this opportunity support NOAA's Ecosystem mission support goal: protect, restore and manage use of coastal and ocean resources through ecosystem-based management.

Funding Availability: NOAA expects that about $500K will be available from the NSGCP to establish a new Sea Grant institutional program for the Commonwealth of Pennsylvania beginning in FY 2008. NOAA anticipates continuing support at that level from FY 2009–FY 2011 if funds are available.

Statutory Authority: 33 U.S.C. 1121 *et seq.*, as amended.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.417, Sea Grant Support.

Application Deadline: Proposals must be received no later than 5 p.m. Eastern Standard Time, October 15,2007.

Address for Submitting Proposals: Program Officer: Sami Grimes, 1315 East West Hwy, Silver Spring, MD 20910–3282 301–734–1077 Ext. 1073 *sami.grimes@noaa.gov* Organization: NOAA/National Sea Grant Program R/SG 1315 East-West Hwy, Silver Spring, MD 20910.

Information Contacts: For a copy of the full funding opportunity announcement and/or application kit, access it at Grants.gov, via NOAA Sea Grants Web site, or by contacting Ms. Sami Grimes, NOAA R/SG, 1315 East West Highway, Silver Spring, MD 20910–3283, telephone: 301–734–1073, e-mail: *sami.grimes@noaa.gov.*

Eligibility: Proposals may be submitted by institutions of higher education, or confederations of such institutions in the state of Pennsylvania that have achieved coherent area program status.

Cost Sharing Requirements: To be eligible for the NSGCP funds, a match of 50% of the requested Federal funds (direct and indirect costs) is needed. Sea Grant requires that funds be matched with at least one non-Federal dollar for every two Federal dollars.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

Office of the Under Secretary (USEC)

1. Administrative Services for the Ernest F. Hollings Undergraduate Scholarship Program

Summary Description: The purpose of this document is to advise the public that NOAA's Office of Education is announcing the availability of Federal assistance for a not-for-profit

organization for administrative services for the Ernest F. Hollings Undergraduate Scholarship Program. The purposes of the program include: (1) To increase undergraduate training in oceanic and atmospheric science, research, technology, and education and foster multidisciplinary training opportunities; (2) to increase public understanding and support for stewardship of the ocean and atmosphere and improve environmental literacy; (3) to recruit and prepare students for public service careers with the National Oceanic and Atmospheric Administration and other natural resource and science agencies at the Federal, state and local levels of government; and (4) to recruit and prepare students for careers as teachers and educators in oceanic and atmospheric science and to improve scientific and environmental education in the United States. The Ernest F. Hollings Scholarship Program provides approximately 100 selected undergraduate applicants per year with awards that include academic assistance (up to a maximum of $8,000) for full-time study during the 9-month academic year; a 10-week, full-time internship position ($650/week) during the summer at a NOAA or partner facility; and, if reappointed, academic assistance (up to a maximum of $8,000) for full-time study during a second 9-month academic year. The internship between first and second years of award provides hands-on multi-disciplinary educational training experience involving Scholars in NOAA-related scientific, research, technological, policy, management, and education activities. Awards also include a housing subsidy for scholars who do not reside at home during the summer internship and travel expenses for attendance and participation at a Ernest F. Hollings scholarship orientation program, conference travel, and an end of summer internship presentation program. The program priorities for this opportunity support NOAA's mission support goal of Critical Support Facilities, ships, aircraft, environmental satellites, data-processing systems, computing and communications systems.

Funding Availability: Subject to appropriations, this solicitation announces that funding at a maximum of $6,800,000 will be available for program administration of the Ernest F. Hollings Undergraduate Scholarship Program over a four-year period. Only one application will be funded. Up to 18 percent is allowed for administrative overhead and at least 82 percent of the Federal funding is for student support. It is anticipated that the funding instrument will be a cooperative agreement since NOAA will be substantially involved in the selection of scholarship recipients, identifying NOAA facilities to place students during the one summer internship, and with collaboration, participation, or intervention in project performance.

Statutory Authority: 15 U.S.C. 1540, Public Law 108–447.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.481, Educational Partnership Program.

Application Deadline: Dates: Applications must be received by NOAA Office of Education by October 1, 2007, no later than 11:59 p.m. (Eastern Daily Time). Hard copy applications will be date and time stamped when they are received. Facsimile transmission and electronic mail submission of applications will not be accepted.

Address for Submitting Proposals: Applications submitted in response to this announcement should be submitted through the Grants.gov Web site. Electronic access to the full funding announcement for this program is available via the Grants.gov Web site: *http://www.grants.gov.* The announcement will also be available by contacting the program official identified below. Only if an applicant does not have Internet access, hard copies may be sent to the Office of Education, Educational Partnership Program, 1315 East-West Highway, Room 10703, Silver Spring, MD 20910. No facsimile applications will be accepted. Organizations are encouraged to submit Letters of Intent to NOAA within 30 days of this announcement to aid in planning the review processes. Letters of Intent may be submitted to Chantell Haskins via e-mail to *StudentScholarshipPrograms@noaa.gov.* Information should include a general description of the program administration proposal.

Information Contacts: Program Management. Chantell Haskins, NOAA Office of Education, 301–713–9437 ext. 150, Internet: *StudentScholarshipPrograms@noaa.gov.* Business Management Information. Arlene S. Porter, NOAA/GMD Grants Administrator, 301–713–0942 ext 152, Internet: *Arlene.S.Porter@noaa.gov.*

Eligibility: Eligible applicants are not for profit organizations with demonstrated administrative experience operating fellowships, scholarship and internship programs in science and technology areas. Federal agencies and the academic community are not eligible to apply to this notice.

Cost Sharing Requirements: None.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

III. NOAA Non-Competitive Project

The following entry provides the description and requirements of NOAA's noncompetitive project.

Oceanic and Atmospheric Research (OAR)

1. NOAA Coral Reef Conservation Grant Program—Coral Reef Ecosystem Research Grants

Summary Description: The NOAA Coral Reef Conservation Grant Program announces that it is providing funding to the NOAA Undersea Research Program (NURP) Centers for: the Southeastern U.S., Florida, and Gulf of Mexico Region, the Southeast U.S. and Gulf of Mexico Center; and the Hawaii and Western Pacific Region, the Hawaii Undersea Research Laboratory to administer two external, competitive coral reef ecosystem research grants programs. Research supported through these programs will address priority information needs identified by coral reef ecosystem managers and scientists. Broad coral reef research priorities supported through these programs may include research on coral disease and bleaching, fisheries population dynamics and ecology, coral reef restoration and mitigation approaches, effects of anthropogenic stressors on benthic invertebrates, impacts and spread of invasive species, and evaluation of management actions and strategies. Specific priorities within these broad areas, and geographic preferences, will be indicated in each NURP Center's request for proposals. The NURP Center external coral reef research grants programs are part of the NOAA Coral Reef Conservation Grants Program under the Coral Reef Conservation Act of 2000. The program priorities for this opportunity support NOAA's mission support goal of: Ecosystems—Protect, Restore, and Manage Use of Coastal and Ocean Resources through Ecosystem-Based Management.

Funding Availability: Approximately $600,000 may be available in FY 2008 to support awards under this program.

Statutory Authority: Statutory authority for this program is provided under 16 U.S.C. 6403.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.430, National Undersea Research Program.

Information Contact: Kimberly Puglise, 301–713–2427, extension 199 or e-mail at *kimberly.puglise@noaa.gov*. Announcements requesting proposals will be announced on: *http://www.uncw.edu/nurc*, for the NURP Center for the Southeastern U.S. and the Gulf of Mexico; for the NURP Center for Hawaii and the Western Pacific, the Hawaii Undersea Research Laboratory.

Cost Sharing Requirements: The awards require a 1:1 Federal to non-Federal match.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

IV. Classification

Limitation of Liability

Funding for potential projects in this notice is contingent upon the availability of Fiscal year 2008 appropriations. Applicants are hereby given notice that funds have not yet been appropriated for any proposed activities in this notice. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

Universal Identifier

Applicants should be aware that, for programs which have deadline dates on or after October 1, 2003, they may be required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the 67 FR 66 177; October 30, 2002 information.

Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the Internet (*http://www.dunandbradstreet.com*).

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA Federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216–6–TOC.pdf*, NEPA Questionnaire, *http://www.nepa.noaa.gov/questionnaire.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm*. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

Compliance With Department of Commerce Bureau of Industry and Security Export Administration Regulations

(a) This section applies to the extent that this BAA results in financial assistance awards involving access to export-controlled information or technology.

(b) In performing a financial assistance award, the recipient may gain access to export-controlled information or technology. The recipient will then be responsible for compliance with all applicable laws and regulations regarding export-controlled information and technology, including deemed exports. The recipient shall establish and maintain throughout performance of the financial assistance award effective export compliance procedures at non-NOAA facilities. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled information and technology.

(c) Definitions.

(1) Deemed export. The Export Administration Regulations (EAR) define a deemed export as any release of technology or source code subject to the EAR to a foreign national, both in the United States and abroad. Such release is "deemed" to be an export to the home country of the foreign national. 15 CFR 734.2(b)(2)(ii).

(2) Export-controlled information and technology. Export-controlled information and technology is information and technology subject to the EAR (15 CFR parts 730 *et seq.*), implemented by the DOC Bureau of Industry and Security, or the International Traffic Arms Regulations (ITAR) (22 CFR parts 120–130), implemented by the Department of State, respectively. This includes, but is not limited to, dual-use items, defense articles and any related assistance, services, software or technical data as defined in the EAR and ITAR.

(d) The recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of a financial assistance award, to ensure that access is restricted, or licensed, as required by applicable Federal laws, Executive Orders, and/or regulations.

(e) Nothing in the terms of this section is intended to change, supersede, or waive any of the requirements of applicable Federal laws, Executive Orders or regulations.

(f) The recipient shall include this clause, including this paragraph (f), in all lower tier transactions (subawards, contracts, and subcontracts) under the financial assistance award that may involve access to export-controlled information technology.

NOAA Implementation of Homeland Security Presidential Directive—12

If the performance of a financial assistance award, if approved by NOAA, requires recipients to have physical access to Federal premises for more than 180 days or access to a Federal information system, any items or services delivered under a financial assistance award shall comply with the Department of Commerce personal identity verification procedures that implement Homeland Security Presidential Directive—12, FIPS PUB 201, and the Office of Management and Budget Memorandum M–05–24. The recipient shall insert this clause in all subawards or contracts when the subaward recipient or contractor is required to have physical access to a

federally controlled facility or access to a Federal information system.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) are applicable to this solicitation.

Paperwork Reduction Act.

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF LLL, CD–346, SF 424 Research and Related Family, SF 424 Short Organizational Family, SF 424 Individual Form family has been approved by the Office of Management and Budget (OMB) under the respective control numbers 4040–0004, 0348–0044, 0348–0040, 0348–0046, 0605–0001, 4040–0001, 4040–0003, and 4040–0005. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: August 22, 2007.

Helen Hurcombe,

Director, Acquisition and Grants Office, National Oceanic and Atmospheric Administration.

[FR Doc. 07–4225 Filed 8–27–07; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC20

Atlantic Highly Migratory Species; Meeting of the Atlantic Highly Migratory Species Advisory Panel

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting and a scoping meeting.

SUMMARY: NMFS will hold a 3–day Highly Migratory Species (HMS) Advisory Panel (AP) meeting in October 2007. The intent of the meeting is to consider options for the conservation and management of Atlantic HMS. This meeting will also double as a scoping meeting to consider options for updating HMS essential fish habitat (EFH). The meeting is open to the public.

DATES: The AP meeting will be held from 1 p.m. to 5 p.m. on Tuesday, October 2, 2007, from 8 a.m. to 5 p.m. on Wednesday, October 3, 2007, and from 8 a.m. to 3:30 p.m. on Thursday, October 4, 2007.

ADDRESSES: The meeting will be held at the NOAA Science Center, 1305 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Carol Douglas or Chris Rilling at 301–713–2347.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act, Public Law 104–297, provided for the establishment of an AP to assist in the collection and evaluation of information relevant to the development of any Fishery Management Plan (FMP) for HMS. NMFS consults with and considers the comments and views of AP members when preparing and implementing FMPs or FMP amendments for Atlantic tunas, swordfish, billfish, and sharks. The AP has previously consulted with NMFS on: the HMS FMP (April 1999), Amendment 1 to the HMS FMP (December 2003), Amendment 1 to the Billfish FMP (April 1999), and the Consolidated Atlantic HMS FMP (October 2006). The October 2007 AP meeting will focus on conservation and management options for Atlantic tunas, swordfish, billfish, and sharks. Topics for discussion will include, among others, Amendment 1 to update EFH, Amendment 2 to revise shark management measures, a proposed rule for the 2008 first trimester shark season, greenstick gear, and bluefin tuna specifications. NMFS will also be soliciting ideas for other topics covered in Amendment 1 including Habitat Areas of Particular Concern (HAPCs) and fishing and non-fishing impacts on EFH.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carol Douglas at (301) 713–2347, at least 7 days prior to the meeting.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 22, 2007.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–17016 Filed 8–27–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DOD–2007–HA–0029]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 27, 2007.

Title and OMB Number: TRICARE Retiree Dental Program Enrollment Application; OMB Control Number 0720–0015.

Type of Request: Extension.

Number of Respondents: 71,332.

Responses per Respondent: 1.

Annual Responses: 71,332.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 17,833.

Needs and Uses: The information is necessary to enable the DoD-contracted third party administrator of the program to identify the program's applicants, determine their eligibility for TRICARE Retiree Dental Program enrollment, establish the premium payment amount. and to verify by the applicant's signature that the applicant understands the benefits and rules of the program. The information is provided by Uniformed Services members entitled to retired pay and their eligible family members who are seeking enrollment in the TRICARE Retiree Dental Program.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: August 22, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 07–4207 Filed 8–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2007–HA–0022]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 27, 2007.

Title, Associated Form and OMB Number: Statement of Personal Injury—Possible Third Party Liability, TRICARE Management Activity; DD Form 2527; OMB Control Number 0720–0003.

Type of Request: Extension.

Number of Respondents: 133,000.

Responses per Respondent: 1.

Annual Responses: 133,000.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 33,250.

Needs and Uses: The information is provided by CHAMPUS beneficiaries suffering from personal injuries and receiving medical care at Government expense. The information is necessary in the assertion of the Government's right to recovery under the Federal Medical Care Recovery Act. The data is used in the evaluation and processing of these claims.

Affected Public: Individuals or households; Federal Government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: August 22, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4208 Filed 8–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DOD–2007–HA–0023]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 27, 2007.

Title, Associated Form and OMB Number: Professional Qualifications Medical/Peer Reviewers; CHAMPUS Form 780; OMB Control Number 0720–0005.

Type of Request: Extension.

Number of Respondents: 60.

Responses per Respondent: 1.

Annual Responses: 60.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 15.

Needs and Uses: The information collection requirement is necessary to obtain and record the professional qualifications of medical and peer reviewers utilized within TRICARE. The form is included as an exhibit in an appeal or hearing case file as evidence of the reviewer's professional qualifications to review the medical documentation contained in the case file.

Affected Public: Business or other for-profit; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed

information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: August 22, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4209 Filed 8–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DOD–2007–HA–0030]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 27, 2007.

Title and OMB Number: Diagnosis Related Groups (DRG) Reimbursement (Two Parts); OMB Control Number 0720–0017.

Type of Request: Extension.

Number of Respondents: 5,600.

Responses per Respondent: 1.

Annual Responses: 5,600.

Average Burden per Response: 90 minutes.

Annual Burden Hours: 8,400.

Needs and Uses: The TRICARE/CHAMPUS contractors will use the information collected to reimburse hospitals for TRICARE/CHAMPUS share of capital and direct medical education cost. Respondents are institutional providers.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: August 22, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4210 Filed 8–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2007–OS–0037]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 27, 2007.

Title, Associated Form, and OMB Number: Request for Information Regarding Deceased Debtor; DD Form 2840; OMB Control Number 0730–0015.

Type of Request: Extension.

Number of Respondents: 2,000.

Responses per Respondent: 1.

Annual Responses: 2,000.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 167.

Needs and Uses: This information is used by the Defense Finance and Accounting Service, Directorate of Debt and Claims Management to contact a probate court to determine if a deceased debtor has left an estate. According to DoD 7000.14–R, Volume 5, Chapter 29, action must be taken to recover debts owed DoD by individuals, including those no longer drawing a salary from the United States. If an individual dies prior to liquidating an indebtedness, it may be possible to collect all or part of the indebtedness from the estate.

Affected Public: State, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: August 22, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4211 Filed 8–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2007–OS–0038

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 27, 2007.

Title, Associated Form, and OMB Number: Statement of Claimant Requesting Recertified Check; DD Form 2660; OMB Control Number 0730–0002.

Type of Request: Revision.

Number of Respondents: 47,496.

Responses per Respondent: 1.

Annual Responses: 47,496.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 3,958.

Needs and Uses: In accordance with TFM Volume 1, Part 4, Section 7060.20 and Department of Defense (DoD) Financial Management Regulation 7000.14–R, volume 5, there is a requirement that a payee identify himself/herself and certify as to what happened to the original check issued by the government (non-receipt, loss, destruction, theft, etc.). This collection will be used to identify rightful reissuance of government checks to individuals or businesses outside DoD.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; state, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent o Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submission received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: August 22, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4212 Filed 8–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant an Exclusive Patent License

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, as amended, the Department of the Air Force announces its intention to grant Infra Red Imaging Systems, Inc., an Ohio corporation, having a place of business at 1275 Kinnear Road, Columbus, Ohio 43212, an exclusive license in any right, title and interest the Air Force has in the following:

U.S. Patent Application No. 10/421,270, filed April 23, 2003, titled "Method for Detection and Display of Extravasation and Infiltration of Fluids and Substances in Subdermal or Intradermal Tissue," by Robert L. Crane and David M. Callard.

U.S. Patent Application No. 10/988,882, filed November 15, 2004, titled "System and Method of Detection and Localization of an Intravenous Catheter," by Robert L. Crane and David M. Callard.

U.S. Patent Application No. 11/548,313, filed October 11, 2006, titled "Synchronization of Illumination Source and Sensor for Improved Visualization of Subcutaneous Structures," by Robert L. Crane, Michael P. Buchin and David M. Callard.

U.S. Patent Application No. 11/548,318, filed October 11, 2006, titled "Determining Inserted Catheter End Location and Orientation," by Robert L. Crane.

DATES: A license for this patent will be granted unless a written objection is received within fifteen (15) days from the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Written objection should be sent to Air Force Materiel Command Law Office, AFMCLO/JAZ, Building 11, Suite 100, 2240 B Street, Wright-Patterson AFB OH 45433–7109. Telephone: (937) 255–2838; Facsimile (937) 255–7333.

Bao-Anh Trinh,

DAF, Air Force Federal Register Liaison Officer.

[FR Doc. E7–17005 Filed 8–27–07; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Senior Executive Service Performance Review Board

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice.

SUMMARY: This notice announces the membership of the Defense Nuclear Facilities Safety Board (DNFSB) Senior Executive Service (SES) Performance Review Board (PRB).

EFFECTIVE DATE: August 28, 2007.

ADDRESSES: Send comments concerning this notice to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2001.

FOR FURTHER INFORMATION CONTACT: Deborah Biscieglia by telephone at (202) 694–7041 or by e-mail at *debbieb@dnfsb.gov*.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c)(1) through (5) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The PRB shall review and evaluate the initial summary rating of the senior executive's performance, the executive's response, and the higher level official's comments on the initial summary rating. In addition, the PRB will review and recommend executive performance bonuses and pay increases.

The DNFSB is a small, independent Federal agency; therefore, the members

of the DNFSB SES Performance Review Board listed in this notice are drawn from the SES ranks of other agencies. The following persons comprise a standing roster to serve as members of the Defense Nuclear Facilities Safety Board SES Performance Review Board:

Christopher E. Aiello, Director of Human Resources, Federal Deposit Insurance Corporation

DeDe Greene, Executive Officer, Civil Rights Division, Department of Justice

Raymond Limon, Chief Human Capital Officer, Corporation for National & Community Service

Lawrence W. Roffee, Executive Director, United States Access Board

Christopher W. Warner, General Counsel, U.S. Chemical Safety and Hazard Investigation Board

Dated: August 21, 2007.

Brian Grosner,

Chairman, Executive Resources Board.

[FR Doc. E7–16923 Filed 8–27–07; 8:45 am]

BILLING CODE 3670–01–P

DELAWARE RIVER BASIN COMMISSION

Interim Action Concerning Operation of the New York City Delaware Basin Reservoirs Pending Rulemaking To Implement a Flexible Flow Management Program

AGENCY: Delaware River Basin Commission.

ACTION: Notice.

SUMMARY: The Delaware River Basin Commission ("Commission" or DRBC) will hold a public hearing to receive comments on an interim New York City Delaware River Basin reservoir operations plan. An interim operations plan is proposed to be implemented pending unanimous agreement on a revised Flexible Flow Management Program (FFMP) proposal by the Parties to the U.S. Supreme Court Decree of 1954—the states of Delaware, New Jersey, and New York, the Commonwealth of Pennsylvania and the City of New York—and completion by the Commission of a rulemaking process on such FFMP proposal.

DATES: The public hearing will take place on Wednesday, September 26, 2007 during the Commission's regular business meeting, beginning at 1:30 p.m. Written comments will be accepted through the close of the public hearing; however, earlier submittals would be appreciated. Persons wishing to testify are asked to register in advance with the Commission Secretary at (609) 883–9500 ext. 203. All written comments submitted to the Commission during the prior comment period, or presented orally or in writing at its prior scheduled hearings on the form of the FFMP that was posted on the Commission's Web site in February 2007 will be included in the administrative record for this action and need not be resubmitted.

ADDRESSES: The public hearing will take place at the Commission's office building, located at 25 State Police Drive, West Trenton, New Jersey. Directions are available on the Commission's Web site, *http://www.drbc.net*. Please do not rely upon MapQuest or other Internet mapping services for driving directions, as they may not provide accurate directions to the DRBC. Written comments may be submitted by e-mail to *paula.schmitt@drbc.state.nj.us;* by U.S. Mail to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628–0360; or by fax to 609–883–9522. In all cases, the commenter's name, affiliation, and address should be provided in the comment document, and "FFMP" should appear in the subject line.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, DRBC, at 609–883–9500 ext. 203.

SUPPLEMENTARY INFORMATION: The Decree Parties have considered the broad range of public comments received on an initial FFMP proposal published in February 2007. With the administrative support of the DRBC staff and the Delaware River Master, the Parties continue to work towards a consensus proposal that incorporates changes made in response to those comments. The Parties' efforts are now focused on completing negotiations by early September 2007. In order to be implemented by the DRBC, the relevant portions of any revised FFMP proposal developed by the Parties must be promulgated as a rule or adjudicated in a docket by incorporating them into (a) Amendments to the DRBC's Water Code; (b) one or more DRBC dockets (similar to permits) or docket revisions; or (c) a combination of Water Code amendments and dockets. The DRBC's Comprehensive Plan may also require revision.

Insufficient time remains to complete a full notice and comment rulemaking process before the Commission's next public meeting and hearing on September 26, 2007. Thus, if the Parties reach consensus on a revised FFMP on or before September 26, the Commission will consider approving an interim New York City Delaware River Basin reservoir operations plan on September 26 to be implemented pending completion of a rulemaking process on the revised FFMP. Such interim action could consist of (1) Extending the current fisheries management program (Revision 7 of Docket D–77–20 CP); (2) reinstating a previous flow regime; or (3) implementing in whole or in part the consensus FFMP as proposed on an interim basis.

If the Commission acts to extend the current fisheries management program or to reinstate a previous flow regime, such program will be considered in combination with a spill mitigation program such as Revision 9 of Docket D–77–20 CP, which is currently in effect, and a program designed to ameliorate the potential effects on the tailwaters fishery of the Lake Wallenpaupack drought operating plan adopted by Resolution No. 2002–33. Any interim operations program that the Commission selects would be implemented simultaneously with a full notice and comment rulemaking process on rules to implement any FFMP proposal unanimously consented to by the Decree Parties. An interim program approved by the Commission and the Decree Parties would continue in effect until any expiration date contained in the program adopted or unless and until replaced by another program that has been approved by the Commission and the Decree Parties following notice and a public hearing.

In the event consensus is not reached on the FFMP on or before the Commission's meeting on September 26, the Commission will consider options 1 and 2 above. In accordance with section 3.3 of the Delaware River Basin Compact, 75 Statutes at Large 688, any program of the Commission that affects the diversions, compensating releases, rights, conditions, and obligations of the 1954 Supreme Court Decree in the matter of *New Jersey* v. *New York*, 347 U.S. 995, 74 S. Ct. 842 also requires the unanimous consent of the Decree Parties.

The current reservoir releases program, established by Resolution No. 2004–3, and the current spill mitigation program, established by Resolution No. 2006–18, both were due to expire on May 31, 2007. In light of ongoing efforts by the Decree Parties to develop a revised consensus FFMP proposal, the Commission extended both programs through September 30, 2007 by Resolution No. 2007–7 on May 10, 2007.

A notice concerning the original FFMP proposal of the Decree Parties appeared in the **Federal Register** on February 12, 2007 (72 FR 6509).

All resolutions and docket approvals relating to operation of the New York City Delaware Basin Reservoirs are available on the Commission's Web site at *http://www.drbc.net* or upon request from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, NJ 08628–0360.

Dated: August 22, 2007.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 07–4234 Filed 8–24–07; 9:28 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 29, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 22, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: REL West Educational Needs Assessment Survey.

Frequency: Annually.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden: Responses: 3,157;

Burden Hours: 1,042.

Abstract: This OMB package requests clearance for data collection instruments to be used in the REL West Educational Needs Assessment Survey, which will be administered by Berkeley Policy Associates (BPA), under contract with WestEd. The purpose of the survey is to determine the needs of educators in the western region in order to inform further research to support the region. Developed for teachers and school and district administrators in the western states (Arizona, California, Nevada, and Utah), the survey is designed to yield valuable information about practitioner needs and priorities as they relate to issues of school improvement, educating English learners, quality of teaching, teacher workforce, assessment, student readiness to learn, and secondary school reform.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 3449. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–16978 Filed 8–27–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 27, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response "Comment: [insert OMB number], [insert abbreviated collection name, *e.g.*, "Upward Bound Evaluation"]. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of

the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 22, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Extension.

Title: Ronald E. McNair Postbaccalaureate Achievement Program Annual Performance Report.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 178.

Burden Hours: 890.

Abstract: McNair Program grantees must submit the report annually. The reports provides the Department of Education with information needed to evaluate a grantee's performance and compliance with program requirements and to award prior experience points in accordance with the program regulations. The data collected is also aggregated to provide national information on project participants and program outcomes.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 3394. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–16979 Filed 8–27–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 27, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response "Comment: [insert OMB number], [insert abbreviated collection name, e.g., "Upward Bound Evaluation"]. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 22, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Innovation and Improvement

Type of Review: Reinstatement.

Title: Application for Grants under the Credit Enhancement for Charter School Facilities Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 15.

Burden Hours: 1,200.

Abstract: The Department of Education will use the application to award grants under the Credit Enhancement for Charter School Facilities Program (formerly known as the Charter School Facilities Financing Demonstration Program) grants. These grants will be made to private, non-profits; public entities; governmental entities; and consortia of these organizations. The funds are to be deposited into a reserve account that will be used to leverage private funds on behalf of charter schools to acquire, construct, and renovate school facilities.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 3446. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–16980 Filed 8–27–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 27, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response "Comment: [insert OMB number], [insert abbreviated collection name, e.g., "Upward Bound Evaluation"]. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 22, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Revision.
Title: Jacob K. Javits Fellowship Program Final Performance Report.
Frequency: Annually.
Affected Public: Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 20.
Burden Hours: 120.
Abstract: The purpose of the Jacob J. Javits Fellowship Program is to award fellowships to eligible students of superior ability, selected on the basis of demonstrated achievement, financial need, and exceptional promise, to undertake graduate study in selected fields in the arts, humanities, and social sciences leading to a doctoral degree or to a master's degree in those fields in which the master's degree is the terminal highest degree awarded in the selected field of study at accredited institutions of higher education. Awards are made to institutions of higher education, who disburse funds to fellows. This Final Performance Report will be used by these institutions to report information on the fellowships administered during the four-year project period. Program staff have revised the Final Performance Report based on an analysis of respondent comments and an evaluation of the data provided by the report. Program staff believe that the revised report will improve the clarity of the document, reduce burden on respondents, and more effectively collect the data necessary to evaluate the projects' performance and address updated Government Performance and Results Act (GPRA) requirements.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 3367. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–16981 Filed 8–27–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 27, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response "Comment: [insert OMB number], [insert abbreviated collection name, *e.g.*, "Upward Bound Evaluation"]. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested,

e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 22, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Extension.

Title: Annual Performance, Financial Need and Certification Report for the Jacob K. Javits Fellowship Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 100; Burden Hours: 400.

Abstract: The Department of Education (ED) uses this form annually to collect, from the institutions attended by the individual fellows, both the financial need information of students who have Javits fellowships, and the certification of their academic progress. ED uses this data to calculate fellowship amounts for individuals and the total amount of program funding to be sent to the institution.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 3359. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–16982 Filed 8–27–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 12, 2007, 5 p.m.

ADDRESSES: 7710 West Cheyenne Avenue, Suite 130, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Rosemary Rehfeldt, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 657–9088; Fax: (702) 295–5300 or E-mail: *ntscab@nv.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Update on the Transuranic Waste Sub-Project.
2. Approval of Fiscal Year 2008 Committee Work Plans.
3. Chair and Vice-Chair Elections.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Rosemary Rehfeldt at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Rosemary Rehfeldt at the address listed above.

Issued at Washington, DC on August 22, 2007.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–17032 Filed 8–27–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; High Energy Physics Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, November 29, 2007; 9 a.m. to 6 p.m. and Friday, November 30, 2007; 8:30 a.m. to 4 p.m.

ADDRESSES: Double Tree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Kogut, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; SC–25/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone: 301–903–1298.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda: Agenda will include discussions of the following: Thursday, November 29, 2007, and Friday, November 30, 2007.

- Discussion of Department of Energy High Energy Physics Program.
- Discussion of National Science Foundation Elementary Particle Physics Program.
- Reports on and Discussions of Topics of General Interest in High Energy Physics.
- Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John Kogut, 301–903–1298 or *John.Kogut@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral

statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available on the U.S. Department of Energy's *Office of High Energy Physics* Web site for viewing.

Issued at Washington, DC on August 22, 2007.

R. Samuel,

Deputy Committee Management Officer.

[FR Doc. E7–17024 Filed 8–27–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a teleconference of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) requires that public notice of these teleconferences be announced in the **Federal Register**.

DATES: September 19, 2007 from 2 p.m. to 3 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Assistant Manager, Intergovernmental Projects & Outreach, Golden Field Office, U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401, Telephone 303/275–4801.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Update members on routine business matters.

Public Participation: The teleconference is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the conference call; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the call in a fashion that will facilitate the orderly conduct of business.

Notes: The notes of the teleconference will be available for public review and copying within 60 days on the STEAB Web site, *http://www.steab.org.*

Issued at Washington, DC, on August 22, 2007.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E7–17033 Filed 8–27–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770), requires that public notice of these meetings be announced in the **Federal Register**.

DATES: October 16, 2007 (Open Meeting). October 17, 2007 (Open Meeting). October 18, 2007 (Open Meeting).

ADDRESSES: L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Assistant Manager, Office of Intergovernmental Projects & Outreach, Golden Field Office, Energy Efficiency and Renewable Energy (EERE), U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401, Telephone 303/275–4801.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Briefings on, and discussions of:

—EERE Energy Efficiency and Policy.
- EERE Commercialization and Deployment.
- EERE Weatherization and Intergovernmental Program.
- General Counsel.
- EERE Solar Energy Technologies Program.
- EERE Building Technologies Program.
- EERE Industrial Technologies Program.

—Board Discussions/Responses to Presentations.

—STEAB Effectiveness/Formal Discussions Regarding Current STEAB Products and the Potential Development of New Recommendations and Resolutions.

— STEAB Effectiveness Discussions for the Development of the FY 07 STEAB Annual Report.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days on the STEAB Web site, *http://www.steab.org.*

Issued at Washington, DC, on August 22, 2007.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E7–17034 Filed 8–27–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–432–000]

Atlas Pipeline Mid-Continent WestTex, LLC, and Pioneer Natural Resources (USA), Inc.; Notice of Application

August 21, 2007.

Take notice that on August 7, 2007, as supplemented on August 20, 2007, Atlas Pipeline Mid-Continent WestTex, LLC (WestTex), West Pointe Corporate Center I, 1550 Coraopolis Heights Road, Second Floor, Moon Township, Pennsylvania 15108, and Pioneer Natural Resources (USA), Inc. (Pioneer), 1400 Williams Square West, 5205 North O'Connor Boulevard, Irving, Texas, filed in Docket No. CP07–432–000, an

application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for certificate authorization to operate and maintain certain facilities referred to as the Midkiff Line located in Regan and Upton Counties, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

On June 22, 2007, the Commission issued a certificate to WGR and Pioneer, jointly, in Docket Nos. CP06–385–000 and –001, to operate and maintain the Midkiff Line. In Docket No. CP07–432–000, WestTex proposes to acquire Western Gas Resources, Inc.'s (WGR) interest in the Midkiff Line and, as a co-applicant with Pioneer, seeks joint certificate authorization to operate and maintain the Midkiff Line. Pioneer is also a co-applicant with WGR in a related application filed in Docket No. CP07–431–000 for an order permitting and approving abandonment of WGR's interest in the Midkiff Line by conveyance to WestTex.

Any questions regarding this application should be directed to Deryl Gotcher, Vice President, Human Resources, Public & Government Affairs, Atlas Pipeline Mid-Continent WestTex, LLC, 1437 S. Boulder, Suite 1500, Tulsa, Oklahoma 74119, phone (918) 496–4932, or fax (918) 398–2122.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link at *http://www.ferc.gov*. The Commission strongly encourages intervenors to file electronically. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: September 12, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–16946 Filed 8–27–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket Nos. RP07–581–000; RP07–580–000; RP07–582–000; RP07–583–000; RP07–587–000; RP07–589–000; RP07–586–000; RP07–584–000; RP07–585–000

Enbridge Pipelines (AlaTenn) L.L.C.; Enbridge Pipelines (KPC); Enbridge Pipelines (Midla) L.L.C.; Garden Banks Gas Pipeline, LLC; Iroquois Gas Transmission System, L.P.; Kern River Gas Transmission Company; Mississippi Canyon Gas Pipeline, LLC; Nautilus Pipeline Company, L.L.C.; Stingray Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

August 21, 2007.

Take notice that the above-referenced pipelines tendered for filing their tariff sheets respectively, pursuant to section 154.402 of the Federal Energy Regulatory Commission's (Commission) Regulations to reflect the Commission's change in the unit rate for the Annual Charge Adjustment (ACA) surcharge to be applied to rates for recovery of 2007 Annual Charges pursuant to Order No. 472, in Docket No. RM87–3–000. The proposed effective date of the tariff sheets is October 1, 2007.

The above-referenced pipelines state that the purpose of their filings is to reflect the revised ACA effective for the twelve-month period beginning October 1, 2007. The pipelines state that their tariff sheets reflect an increase of $.0003 per Dth from $.0016 per Dth in the ACA adjustment surcharge, resulting in a new ACA rate of $.0019 Dth as specified by the Commission in its invoice dated June 28, 2007 for the Annual Charge Billing—Fiscal Year 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

Any person desiring to become a party in any of the listed dockets must file a separate motion to intervene in each docket for which they wish party status.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention and Protest Date: 5 p.m. eastern time, August 28, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–16952 Filed 8–27–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–81–040]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Compliance Filing

August 21, 2007.

Take notice that on August 17, 2007, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–A, Fifteenth Revised Sheet No. 4G.01, Tenth Revised Sheet No. 4K, and Third Revised Sheet No. 4K.01, to be effective August 18, 2007.

KMIGT states that the tariff sheets are being filed in compliance with the Commission's December 31, 1996 "Order Accepting Tariff Filing Subject to Conditions" in Docket No. RP97–81 (77 FERC ¶ 61,350) and the Commission's Letter Orders dated March 28, 1997 and November 30, 2000 in Docket Nos. RP97–81–001 and RP01–70–000, respectively.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–16945 Filed 8–27–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–298–005]

National Fuel Gas Supply Corporation; Notice of Semi-Annual Report

August 21, 2007.

Take notice that on July 27, 2007, National Fuel Gas Supply Corporation (National Fuel) tendered for filing its Semi-Annual Report of Operational Sales of Gas pursuant to section 40.3 of the General Terms and Conditions of its FERC Gas Tariff and section 154.502 of the regulations of the Commission.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. Eastern Time August 28, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–16951 Filed 8–27–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–588–000]

Trailblazer Pipeline Company; Notice of Penalty Revenue Crediting Report

August 21, 2007.

Take notice that on August 17, 2007, Trailblazer Pipeline Company (Trailblazer) tendered for filing its Penalty Revenue Crediting Report.

Trailblazer states the purpose of this filing is to inform the Commission that Trailblazer collected no penalty revenues in the quarter ended June 30, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the

"eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention and Protest Date: 5 p.m. Eastern Time August 28, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–16953 Filed 8–27- 07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No.CP07–431–000]

Western Gas Resources, Inc., and Pioneer Natural Resources (USA), Inc.; Notice of Application

August 21, 2007.

Take notice that on August 7, 2007, as supplemented on August 20, 2007, Western Gas Resources, Inc. (WGR), 1099 18th Street, Suite 1200, Denver, Colorado 80202 and Pioneer Natural Resources (USA), Inc. (Pioneer), 1400 Williams Square West, 5205 North O'Connor Boulevard, Irving, Texas, filed in Docket No. CP07–431–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for an order permitting and approving WGR's abandonment by conveyance to Atlas Pipeline Mid-Continent WestTex, LLC (WestTex) of WGR's interest in certain facilities referred to as the Midkiff Line located in Regan and Upton Counties, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

On June 22, 2007, the Commission issued a certificate to WGR and Pioneer, jointly, in Docket Nos. CP06–385–000 and –001, to operate and maintain the Midkiff Line. Pioneer is also a co-applicant with WestTex in a related application filed in Docket No. CP07–432–000 requesting a joint certificate to operate and maintain the Midkiff Line upon the abandonment of WGR's interest in the line by conveyance to WestTex.

Any questions regarding this application should be directed to Sherri Manuel, Western Gas Resources, Inc., P.O. Box 1330, Houston, Texas 77251–1330, or phone (832) 636–1000.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the "e-Filing" link at *http://www.ferc.gov*. The Commission strongly encourages intervenors to file electronically.

Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: September 12, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–16954 Filed 8–27–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR07–18–000]

American West Airlines, Inc. and US Airway, Inc., Chevron Products Company, Continental Airlines, Inc., Northwest Airlines, Inc., Southwest Airlines Co., Valero Marketing and Supply Company; Complainants v. Calnev Pipe Line, L.L.C.; Respondent; Notice of Complaint

August 21, 2007.

Take notice that on August 20, 2007, pursuant to Rule 206 of the Rules and Practice and Procedure, 18 CFR 385.206; the Procedural Rules Applicable to Oil Pipeline Proceedings, 18 CFR 343; sections 1(4), 1(5), 8, 9, 13, 15, and 16 of the Interstate Commerce Act , 49 U.S.C. App. sections 1(4), 1(5), 8, 9, 13, 15, and 16 (2004); and section 1803 of the Energy Policy Act of 1992 (EPAct) (Pub. L. 102–486, 106 Stat. 2772), American West Airlines, Inc. and U.S. Airway, Inc., Chevron Products Company, Continental Airlines, Inc., Northwest Airlines, Inc., Southwest Airlines Co. and Valero Marketing and Supply Company, (Complainants), jointly and individually, filed a formal complaint against Calnev Pipe Line, L.L.C. (Respondent) alleging that the respondents rates for transportation and terminalling are just and unreasonable and therefore request the Federal Energy Regulatory Commission to investigate the respondent's rates; set the proceedings for an evidentiary hearing to determine just and reasonable rates for the respondent; require the respondent to pay reparations starting two years before the date of the complaints for all rates; and award such other relief as is necessary and appropriate under the Interstate Commerce Act.

The Complainants state that copies of the complaint have been served on the respondent.

Any person desiring to intervene or to protest this filing must file in

accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 10, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–16949 Filed 8–27–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–88–000]

Great Lakes Utilities, Indiana Municipal Power Agency, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Prairie Power, Inc., Southern Minnesota Municipal Power Agency, Wisconsin Public Power, Inc.; Complainants v. Midwest Independent Transmission System Operator, Inc.; Respondent; Notice of Complaint

August 21, 2007.

Take notice that on August 17, 2007, pursuant to Rule 206 of the Rules and Practice and Procedure, 18 CFR 385.206, and section 206 of the Federal Power Act, Great Lakes Utilities, Indiana Municipal Power Agency, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Prairie Power, Inc., Southern Minnesota Municipal Power Agency, Wisconsin Public Power, Inc. (Complainant) filed a formal complaint against Midwest Independent Transmission System Operator, Inc. (Respondent) alleging that the Revenue Sufficiency Guarantee charge allocation provisions of the Respondent's tariff are unjust, unreasonable and unduly discriminatory, and therefore must be revised. The Complainants request that the Federal Energy Regulatory Commission (Commission) establish the earliest possible refund-effective date with respect to the necessary revisions.

The Complainants state that copies of the complaint were served on the contacts for the Respondent as listed on the Commission's Corporate Officials list.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 7, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–16947 Filed 8–27–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR07–9–000]

Bay Gas Storage Company, Ltd.; Notice of Staff Panel

August 21, 2007.

Take notice that a Staff Panel shall be convened in accordance with the Commission's order issued on August 2, 2007, in the above-captioned docket.[1]

The Staff Panel is being held to allow opportunity for written comments and for the oral presentation of views, data, and arguments regarding the fair and equitable rates to be established for transportation service under section 311 of the Natural Gas Policy Act of 1978 on Bay Gas Storage Company, Ltd.'s system.

The Staff Panel will not be a judicial or evidentiary-type hearing and there will be no cross-examination of persons presenting statements. Members participating on the Staff Panel before whom the presentations are made may ask questions. If time permits, Staff Panel members may also ask such relevant questions as are submitted to them by participants. Other procedural rules relating to the panel will be announced at the time the proceeding commences.

The Staff Panel will be held on Tuesday, September 25, 2007, at 10 a.m. (EDT) in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For further information please contact Rita Johnson at (202) 502–6518 or e-mail *Rita Johnson@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–16950 Filed 8–27–07; 8:45 am]

BILLING CODE 6717–01–P

[1] *Bay Gas Storage Company, Ltd.*, 120 FERC ¶61,130 (2007).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–2569–005; ER98–4652–005; ER02–1175–004; ER01–2568–003]

Boralex Livemore Falls LP; Boralex Stratton Energy LP; Boralex Ft. Fairfield LP; Boralex Ashland LP; Second Notice of Technical Conference

August 21, 2007.

As announced on August 8, 2007, the staff of the Federal Energy Regulatory Commission will hold a technical conference in the above-referenced proceeding on Wednesday, August 29, 2007, from 9 a.m. to 1 p.m. at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All parties and interested persons are invited to attend.

The conference will address the following issues raised with regard to Boralex's updated market power analysis:

1. What is the relevant geographic market for Boralex's market power analysis—the Northeast Power Coordinating Council's Maritimes Control Area (MCA) or the Northern Maine Independent System Administrator (NMISA) region?

2. Should Boralex be disallowed from deducting long-term firm non-requirements capacity in its market power analysis due to extraordinary circumstances (i.e., unique structural issues) in the relevant geographic market?

3. Should uncommitted capacity from Boralex's remote generation in the ISO–NE balancing authority area be considered in Boralex's market power analysis?

4. How should transmission import capacity into NMISA be allocated, and what impact will planned transmission additions have on import capabilities?

5. Why is the Boralex Sherman plant currently mothballed?

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For further information please contact Marek Smigielski at (202) 502–6818 or e-mail *marek.smigielski@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–16948 Filed 8–27–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8461–6]

Proposed CERCLA Section 122(g) Administrative Agreement for de minimis Settlement for the Consolidated Iron and Metal Co. Superfund Site, City of Newburgh, Orange County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency ("EPA"), Region II, of a proposed *de minimis* administrative agreement pursuant to Section 122(g) of CERCLA, 42 U.S.C. 9622(g), between EPA and nine (9) settling parties pertaining to the Consolidated Iron and Metal Co. Superfund Site ("Site") located in the City of Newburgh, Orange County, New York. The settlement requires specified individual payments by each settling party to the EPA Hazardous Substance Superfund Consolidated Iron and Metal Co. Superfund Site Special Account, which combined total $304,916.16. Each settling party's individual settlement amount is considered to be that party's fair share of cleanup costs incurred and anticipated to be incurred in the future, plus a "premium" that accounts for, among other things, uncertainties associated with the costs of that future work at the Site. The settlement includes a covenant not to sue pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, relating to the Site, subject to limited reservations, and protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5). For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region 2, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before September 27, 2007.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region 2 offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Consolidated Iron and Metal Co. Superfund Site, Index No. CERCLA–02–2007–2001. To request a copy of the proposed settlement agreement, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: Carol Y. Berns, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3177.

Dated: August 15, 2007.

William McCabe,

Acting Director, Emergency and Remedial Response Division, EPA, Region 2.

[FR Doc. E7–16999 Filed 8–27–07; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comments Requested for Freedom To Compete Award Program

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Extension with Revisions.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (Commission or EEOC), announces that it intends to submit to the Office of Management and Budget (OMB), a request for a three-year extension of the collection of information for the Freedom To Compete (FTC) Award program with revisions to the application criteria, procedures and process.

DATE: Written comments on this notice must be submitted on or before October 29, 2007.

ADDRESSES: Comments should be sent to Stephen Llewellyn, Acting Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile ("FAX") machine. This limitation is necessary to assure access to the equipment. The telephone

number of the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTY). (These are not toll-free telephone numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: For further information about the FTC Award program and the proposed revisions contact Jay Friedman, Director, Strategic Planning and Management Controls Division, Office of Research, Information and Planning, at 1801 L Street, NW., Room 8219, Washington, DC 20507; or by telephone at (202) 663–4094 (voice) or (202) 663–7124 (TTY); or by e-mail at *Freedom.Award@eeoc.gov*. This notice is also available in the following formats: large print, braille, audiotape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the EEOC Publications Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: The EEOC launched its Freedom to Compete (FTC) initiative in 2002. The FTC initiative is a national outreach, education, and coalition-building strategy designed to complement the agency's enforcement and litigation efforts by identifying equal employment opportunity (EEO) practices and programs worthy of emulation. In 2004, the EEOC added the Freedom to Compete (FTC) Award as another component of its FTC initiative; issuing the first awards in 2005. The Award recognizes employers, organizations and other entities whose extraordinary efforts embody the EEOC's mission of ensuring individuals the freedom to compete in the workplace on a level playing field regardless of race, color, gender, age, national origin, religion or disability. The EEOC has collected information in the past from employers, organizations, other entities, and members of the public who voluntarily submitted nominations to be considered for the Award. The Commission is soliciting public comment on its proposals to modify the criteria, procedures, and processes for collecting information and determining the eligibility of nominations for consideration for an Award.

Overview of This Information Collection

Collection Title: Freedom To Compete Award Nominations.

OMB Number: 3046–0044.

Frequency of Report: Annually.

Type of Respondent: Individuals; businesses or other for-profit and not-for-profit institutions; State or local governments; or other entities.

Description of Affected Public: Individuals; businesses or other for-profit and not-for-profit institutions; State or local governments; or other entities.

Responses: 50–100.

Reporting Hours: 500–1,000 (10 hours for each response).

Federal Cost: $6,000.

Number of Forms: 1.

Form Number: EEOC Nomination Form [unnumbered].

Abstract: The EEOC's Freedom to Compete (FTC) Award is designed to recognize organizations whose practices and procedures embody the EEOC's mission of ensuring individuals the freedom to compete in the workplace on a level playing field and to go as far as their talent and abilities will allow regardless of race, color, gender, age, national origin, religion or disability. Award winners will be presented the EEOC's FTC Award at a ceremony in Washington, DC. The EEOC provides specific nomination instructions on its Internet Web site each year when the period for accepting applications is announced. Nominees voluntarily participate by submitting information about a nominated procedure or practice and the organization implementing the procedure/practice.

Proposed Criteria and Nomination Materials: The EEOC proposes revisions to the criteria and the nomination materials previously used for the FTC Award program. The EEOC requests public comment on the program and the revisions.

Summary of Major Revisions

There are two major revisions to the FTC Award program under *Eligibility Criteria*. Other types of revisions are included under *Requirements for Submitting Nominations*. These revisions are designed to better explain the information EEOC requests, which it has collected in the past. The major revisions are:

A. A nomination will not be considered if a nominee meets the requirements for filing an EEOC EEO survey form and did not file. This criterion was not explicitly mentioned in the previous nomination instructions, but the EEOC believes it was an implied criterion because eligible organizations are required by law and EEOC regulation to file the appropriate survey form. This revision makes the requirement explicit.

B. Nominees must use the Nomination Form designed by the EEOC to submit the information requested. In the first year of the Award program, a nominee was required to submit an essay containing the information requested by the EEOC. For the second and third years of the program, the EEOC designed a Nomination Form to collect information about the entity, so that the required essay could solely focus on describing the procedure/practice nominated. Use of the Form was optional and an entity could still file just an essay as long as it contained all of the information EEOC requested. Most nominees over the two year period used the Form along with their essay to file their applications. The EEOC believes that the Form improved the quality of submissions. It provides important information in a logical and consistent fashion; ensures that all of the information is provided, eliminating the need to contact the nominee to obtain it; and, takes less time to provide the information than in the essay. In addition, the Form enabled the nominee to describe the procedure/practice more thoroughly, while meeting the word limitation required for the essay. Organizations using only the essay substantially limited their descriptive information about the procedure/practice nominated, because other required information had to be included within the essay. For these reasons, the EEOC will require the use of the Nomination Form to provide all of the information requested, unless the nominee provides a reasonable justification for not being able to use it. A section of the Form will require an essay on the procedure/practice nominated.

Eligibility Criteria

The following criteria apply to the Freedom to Compete Award Nominees. A nominee must:

A. Be a public or private employer, corporation, association, organization, or other entity whose nominated practice exemplifies the goals of the Freedom to Compete initiative. A nominee may self-nominate or be nominated by others.

B. Have implemented a program or practice that has successfully removed barriers that hinder free and fair workplace competition and increased access, inclusion, and/or other workplace opportunities for qualified workers.

C. Have filed an EEOC Equal Employment Opportunity survey, if it is required to do so based upon the appropriate survey filing requirements. Filing requirements for each type of survey are available on EEOC's Web site at *http://www.eeoc.gov/employers/surveys.html.*

D. Use the Nomination Form designed by the EEOC for submitting applications for the FTC Award. The Form will be available each year on EEOC's Internet Web site or by contacting the agency for a copy when the nomination period opens.

Requirements for Submitting Nominations

The nominee for the Freedom to Compete Award must complete and submit the Nomination Form provided by the EEOC each year. The form collects information to evaluate (1) The eligibility criteria described above, and (2) the merits of the procedure or practice nominated for the Award. The nominee must provide the following types of information:

A. Information about the organization using the procedure/practice nominated, including its mission, size, number of employees, and products/services.

B. Contact information.

C. Activities the organization proposes to undertake in collaboration with the EEOC to promote the procedure/practice with other organizations that seek to replicate it, and to promote the Award and the principles of a free and fair competition in the workplace, if the organization receives an Award.

D. Pending charges, complaints or legal or enforcement actions involving violations of Federal, state or local employment discrimination law, or any corrective actions, consent decrees or other settlement agreements currently in effect that have resulted from litigation or other enforcement actions under these same employment discrimination laws.

E. A short essay that describes the procedure/practice nominated for the FTC Award and the results achieved from using the procedure/practice. The essay is a critical component of the application. It must describe a specific procedure/practice; not multiple procedures/practices (multiple nominations from the same organization are acceptable). In addition, specific results obtained by using the procedure/practice nominated must be included. The essay should include the following elements:

(1) The original purpose for implementing the procedure/practice nominated;

(2) A detailed description of the procedure/practice nominated;

(3) The major obstacles encountered during the implementation of the procedure/practice and how they were overcome;

(4) The length of time the practice has been in effect;

(5) How the organization or operation of the procedure/practice is managed/supervised;

(6) The specific, tangible results that have been achieved over time (the practice/procedure must have been in place for at least one year to obtain tangible results);

(7) The methodology for collecting and analyzing the results to determine the effectiveness of the procedure/practice;

(8) Who is held accountable for achieving the results;

(9) The level of executive involvement in, and commitment to, the procedure/practice during its development and during its implementation; and,

(10) What are the key factors that makes the procedure/practice effective.

Application Period and Submission of Nominations

Each year the EEOC announces the inclusive dates for submitting applications for the FTC Award, the date and location of the Awards ceremony, specific details about the information to submit, the Nomination Form required, and the methods for submitting an application. The announcement and all relevant application materials are available on EEOC's Internet Web site at *http://www.eeoc.gov/.* Requests for application materials in hard copy or other formats are available by contacting Jay Friedman (see contact information, above). However, the EEOC prefers that organizations obtain the application materials on EEOC's Web site or submit all application materials by e-mail at *Freedom.Award@eeoc.gov.*

EEOC Statutory Responsibilities: Receipt of the Freedom to Compete Award does not constitute or be considered a waiver by the EEOC of its statutory responsibilities with respect to any future charges, investigations, or litigation against a nominee or the recipient of an award.

Burden Statement: The estimated number of respondents included in the annual process is estimated at 50–100 applicants. Submitting a voluntary application for an award and subsequent requests for information to clarify or supplement application materials is estimated at 500–1,000 Respondent burden hours (10 hours for each Respondent). Because the program has already been established, there are no substantive one time implementation costs.

Paperwork Reduction Act Notice: Pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and OMB regulations 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

2. Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: August 21, 2007.

For the Commission.

Naomi C. Earp,

Chair.

[FR Doc. E7–17023 Filed 8–27–07; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested

persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 24, 2007.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First Banks, Inc., Hazelwood, Missouri, and its subsidiary, The San Francisco Company, Clayton, Missouri; to acquire 100 percent of the voting shares of Coast Financial Holdings, Inc., Bradenton, Florida, and thereby indirectly acquire voting shares of Coast Bank of Florida, Bradenton, Florida.

Board of Governors of the Federal Reserve System, August 23, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–17008 Filed 8–27–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Tuesday, September 4, 2007.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, August 24, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 07–4243 Filed 8–24–07; 1:53 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Decision To Evaluate a Petition To Designate a Class of Employees at the Mound Plant, Dayton, OH, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at the Mound Plant, Dayton, Ohio, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Mound Plant.

Location: Dayton, Ohio.

Job Titles and/or Job Duties: All workers.

Period of Employment: February 1, 1949 through the present.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

Dated: August 23, 2007.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E7–17026 Filed 8–27–07; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Decision To Evaluate a Petition To Designate a Class of Employees at Texas City Chemicals, Texas City, TX, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at Texas City Chemicals, Texas City, Texas, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Texas City Chemicals.

Location: Texas City, Texas.

Job Titles and/or Job Duties: All employees.

Period of Employment: January 1, 1952 through December 31, 1956.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

Dated: August 23, 2007.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E7–17025 Filed 8–27–07; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0324]

Withdrawal of Approval of a New Animal Drug Application; Bacitracin Zinc

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) for a bacitracin zinc Type A medicated article. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to remove portions reflecting approval of this NADA.

FOR FURTHER INFORMATION CONTACT: Pamela K. Esposito, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–7818; e-mail: *pamela.esposito@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68144, has requested that FDA withdraw approval of NADA 128–550 for ANCHOR Zinc Bacitracin Type A medicated article because the product is not manufactured or marketed.

Therefore, under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 128–550, and all supplements and amendments thereto, are hereby withdrawn, effective August 28, 2007.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to reflect the withdrawal of approval of this NADA.

Dated: August 20, 2007.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. E7–16985 Filed 8–27–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Pretesting of NIAID's HIV Vaccine Research Communications Messages

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Allergy and Infectious Diseases (NIAID), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: *Title:* Pretesting of NIAID's HIV Vaccine Research Communications Messages. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* This is a request for clearance to pretest messages, materials and program activities produced for the NIAID HIV Vaccine Research Education Initiative (NHVREI). The primary objectives of the pretests are to (1) Assess audience knowledge, attitudes, behaviors and other characteristics for the planning/development of health messages, education products, communication strategies, and public information programs; and (2) pretest these health messages, products, strategies, and program components while they are in developmental form to assess audience comprehension, reactions, and perceptions. The information obtained from audience research and pretesting results in more effective messages, materials, and programmatic strategies. By maximizing the effectiveness of these messages and strategies for reaching targeted audiences, the frequency with which publications, products, and programs need to be modified is reduced. *Frequency of Response:* On occasion. *Affected Public:* Individuals. *Type of Respondents:* Adults at risk for HIV/AIDS, particularly those who are Black/African-American, Hispanic/Latino, or men who have sex with men; healthcare providers; representatives of organizations disseminating HIV-related messages or materials. The annual reporting burden is shown in the table below. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
At-risk Adults	3,374	1	.3422	1155
Healthcare providers	50	1	.75	37.5
Organization Gatekeepers	75	1	.50	37.5
Total	3,499			1230

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Katharine Kripke, Assistant Director, Vaccine Research Program, Division of AIDS, NIAID, NIH, 6700B Rockledge Dr., Bethesda, MD 20892–7628, or call non-toll-free number 301–402–0846, or e-mail your request, including your address to *kripkek@niaid.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: August 21, 2007.

John J. McGowan,

Deputy Director for Science Management, NIAID, National Institutes of Health.

[FR Doc. E7–17012 Filed 8–27–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the Director, National Institutes of Health (NIH), announces the establishment of the Scientific Management Review Board (SMRB).

The NIH Reform Act of 2006 (Pub. L. 109–482) provides organizational authorities to HHS and NIH officials to: (1) Establish or abolish national research institutes; (2) reorganize the offices within the Office of the Director, NIH including adding, removing, or transferring the functions of such offices or establishing or terminating such offices; and (3) reorganize, divisions, centers, or other administrative units within an NIH national research institute or national center including adding, removing, or transferring the functions of such units, or establishing or terminating such units. The purpose of the Scientific Management Review Board (also referred to as SMRB or Board) is to advise appropriate HHS and NIH officials on the use of these organizational authorities and identify the reasons underlying the recommendations.

Duration of this committee is tow years from the date of Charter is filed.

Dated: August 20, 2007.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 07–4221 Filed 8–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Development of Antigenic Chimeric St. Louis Encephalitis Virus/Dengue Virus Type Four Recombinant Viruses (SLEV/DEN4) as Vaccine Candidates for the Prevention of Disease Caused by SLEV

Description of Invention: St. Louis Encephalitis Virus (SLEV) is a mosquito-borne flavivirus that is endemic in the Americas and causes sporadic outbreaks of disease in humans. SLEV is a member of the Japanese encephalitis virus serocomplex and is closely related to West Nile Virus (WNV). St. Louis encephalitis is found throughout North, Central, and South America, and the Caribbean, but is a major public health problem mainly in the United States. Prior to the outbreak of West Nile virus in 1999, St. Louis encephalitis was the most common human disease caused by mosquitoes in the United States. Since 1964, there have been about 4,440 confirmed cases of St. Louis encephalitis, with an average of 130 cases per year. Up to 3,000 cases have been reported during epidemics in some years. Many more infections occur without symptoms and go undiagnosed. At present, a vaccine or FDA approved antiviral therapy is not available.

The inventors have previously developed a WNV/Dengue4Delta30 antigenic chimeric virus as a live attenuated virus vaccine candidate that contains the WNV premembrane and envelope (prM and E) proteins on a dengue virus type 4 (DEN4) genetic background with a thirty nucleotide deletion (Delta30) in the DEN4 3'-UTR. Using a similar strategy, the inventors have generated an antigenic chimeric virus, SLE/DEN4Delta30. Preclinical testing results indicate that, chimerization of SLE with DEN4Delta30 decreased neuroinvasiveness in mice, did not affect neurovirulence in mice, and appeared to overattenuate the virus for non-human primates. Modifications of the SLE/DEN4Delta30 vaccine candidate are underway to improve its immunogenicity.

This application claims live attenuated chimeric SLE/DEN4Delta30 vaccine compositions and bivalent WNV/SLE/DEN4Delta30 vaccine compositions. Also claimed are methods of treating or preventing SLEV infection in a mammalian host, methods of producing a subunit vaccine composition, isolated polynucleotides comprising a nucleotide sequence encoding a SLEV immunogen, methods for detecting SLEV infection in a biological sample and infectious chimeric SLEV.

Application: Immunization against SLEV or SLEV and WNV.

Development Status: Live attenuated vaccine candidates are currently being developed and preclinical studies in mice and monkeys are in progress. Suitable vaccine candidates will then be evaluated in clinical studies.

Inventors: Stephen S. Whitehead, Joseph Blaney, Alexander Pletnev, Brian R. Murphy (NIAID).

Patent Status: U.S. Provisional Application No. 60/934,730 filed 14 Jun 2007 (HHS Reference No. E–240–2007/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Collaborative Research Opportunity: The NIAID Laboratory of Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize live attenuated virus vaccine candidates for St. Louis encephalitis virus. Please contact Dr. Whitehead at 301–496–7692 for more information.

Monoclonal Antibodies Against Dengue and Other Viruses With Deletion in Fc Region

Description of Invention: The four dengue virus (DENV) serotypes (DENV–1 to DENV–4) are the most important arthropod-borne flaviviruses in terms of morbidity and geographic distribution. Up to 100 million DENV infections occur every year, mostly in tropical and subtropical areas where vector mosquitoes are abundant. Infection with any of the DENV serotypes may be asymptomatic or may lead to classic dengue fever or more severe dengue hemorrhagic fever (DHF) and dengue shock syndrome (DSS), which are increasingly common in the dengue endemic areas. Immunity to the same virus serotype (homotypic immunity) is life-long, whereas immunity to different serotypes (heterotypic immunity) lasts

2–3 months so that infection with a different serotype virus is possible. DHF/DSS often occurs in patients with second, heterotypic DENV infections or in infants with maternally transferred dengue immunity. Severe dengue is a major cause of hospitalization, and fatality rates vary from <1% to 5% in children.

Antibody-dependent enhancement (ADE) has been proposed as an underlying pathogenic mechanism of DHF/DSS. ADE occurs because preexisting subneutralizing antibodies and the infecting DENV form complexes that bind to Fc receptor-bearing cells, leading to increased virus uptake and replication. ADE has been repeatedly demonstrated *in vitro* using dengue immune sera or monoclonal antibodies and cells of monocytic and recently, B lymphocytic lineages bearing Fc receptors. ADE of DENV–2 infection has also been demonstrated in monkeys infused with a human dengue immune serum.

We have identified chimpanzee-human chimeric IgG1 mAbs capable of neutralizing or binding to one or more DENV serotypes. Cross-reactive IgG 1A5 neutralizes DENV–1 and DENV–2 more efficiently than DENV–3 and DENV–4, and type-specific IgG 5H2 neutralizes DENV–4 at a high titer. Analysis of antigenic variants has localized the IgG 1A5 binding site to the conserved fusion peptide in E. Thus, IgG 1A5 shares many characteristics with the cross-reactive antibodies detected in flavivirus infections.

This application claims a variant of an antibody comprising a polypeptide in the Fc region, which binds an Fc gamma receptor (FcgammaR) with lower affinity than the parent antibody. The variant polypeptide comprises a deletion of nine amino acids at the N-terminus of the C_H2 domain in the Fc region. Introduction of the Fc variant abrogates the antibody-mediated dengue virus replication enhancing activity. This invention has important implications for the antibody-mediated prevention of dengue virus infection.

Application: Immunization against Dengue and/or flaviviruses.

Developmental Status: Antibody candidates have been synthesized and preclinical studies have been performed.

Inventors: Ana Goncalvez, Robert Purcell, C.J. Lai (NIAID).

Publication: AP Goncalvez *et al.* Monoclonal antibody-mediated enhancement of dengue virus infection in vitro and in vivo and strategies for prevention Proc Natl Acad Sci USA. 2007 May 29;104(22):9422–9427. Epub 2007 May 15.

Patent Status:

U.S. Provisional Application No. 60/922,282 filed 04 Apr 2007 (HHS Reference No. E–159–2007/0–US–01).

U.S. Provisional Application No. 60/927,755 filed 04 May 2007 (HHS Reference No. E–159–2007/1–US–01).

U.S. Provisional Application No. 60/928,405 filed 08 May 2007 (HHS Reference No. E–159–2007/2–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301/435–4646; *soukasp@mail.nih.gov.*

Live Attenuated Virus Vaccines for La Crosse Virus and Other *Bunyaviridae*

Description of Invention: La Crosse virus (LACV), family *Bunyaviridae*, is a mosquito-borne pathogen endemic in the United States. LACV infection results in 70–130 clinical cases a year and is the major cause of pediatric arboviral encephalitis in North America. LACV was first identified as human pathogen in 1960 after its isolation from a 4 year-old girl from Minnesota who suffered meningoencephalitis and later died in La Crosse, Wisconsin. The majority of LACV infections are mild and never reported, however serologic studies estimate annual infection rates of 10–30/100,000 in endemic areas. LACV is a member of the California serogroup of viruses in the genus *Orthobunyavirus*. The serogroup contains members found on five continents that include human pathogens such as La Crosse, Snowshoe hare, and Jamestown Canyon viruses in North America; Guaroa virus in North and South America; Inkoo and Tahyna viruses in Europe; and Lumbo virus in Africa. Children who recover from severe La Crosse encephalitis may have significantly lower IQ scores than expected and a high prevalence (60% of those tested) of attention-deficit-hyperactivity disorder. Seizure disorders are also common in survivors. LACV can also cause encephalitis in immunosuppressed adults. Projected lifelong economic costs associated with neurologic sequelae range from $48,775–3,090,398 per case. At present, a vaccine or FDA-approved antiviral therapy is not available.

This application principally claims live attenuated LACV vaccine compositions, but also includes subunit vaccine compositions including California encephalitis virus (CEV) serogroup immunogens, attenuated and inactivated CEV serogroup and chimeric *Bunyaviridae*. Also claimed are methods of treating or preventing CEV serogroup infection in a mammalian host, methods of producing a subunit vaccine composition, isolated polynucleotides comprising a nucleotide sequence encoding a CEV serogroup immunogen, methods for detecting LACV infection in a biological sample and infectious chimeric *Bunyaviridae*.

Application: Immunization against *Bunyaviridae*.

Developmental Status: Live attenuated vaccine candidates are currently being developed and preclinical studies in mice and monkeys are in progress. Suitable vaccine candidates will then be evaluated in clinical studies.

Inventors: Stephen S. Whitehead, Richard S. Bennett, Brian R. Murphy (NIAID).

Publication: RS Bennett *et al.* Genome sequence analysis of La Crosse virus and in vitro and in vivo phenotypes. Virol J. 2007 May 8;4:41.

Patent Status:

U.S. Provisional Application No. 60/920,691 filed 29 Mar 2007 (HHS Reference No. E–158–2007/0–US–01).

U.S. Provisional Application No. 60/928,406 filed 08 May 2007 (HHS Reference No. E–158–2007/1–US–01).

U.S. Provisional Application filed 29 Jun 2007 (HHS Reference No. E–158–2007/2–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301/435–4646; *soukasp@mail.nih.gov.*

Collaborative Research Opportunity: The NIAID Laboratory of Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize live attenuated virus vaccine candidates for La Crosse virus and other *Bunyaviridae*. Please contact Dr. Whitehead at 301/496–7692 for more information.

Chlamydia Vaccine

Description of Invention: Chlamydia trachomatis is an obligate intracellular bacterial pathogen that colonizes and infects oculogenital mucosal surfaces. The organism exists as multiple serovariants that infect millions of people worldwide. Ocular infections cause trachoma, a chronic follicular conjunctivitis that results in scarring and blindness. The World Health Organization estimates that 300–500 million people are afflicted by trachoma, making it the most prevalent form of infectious preventable blindness. Urogenital infections are the leading cause of bacterial sexually transmitted disease in both industrialized and developing nations. Moreover, sexually transmitted diseases

are risk factors for infertility, the transmission of HIV, and human papilloma virus-induced cervical neoplasia. Control of *C. trachomatis* infections is an important public health goal. Unexpectedly, however, aggressive infection control measures based on early detection and antibiotic treatment have resulted in an increase in infection rates, most likely by interfering with natural immunity, a concept suggested by studies performed in experimental infection models. Effective management of chlamydial disease will likely require the development of an efficacious vaccine.

This technology claims vaccine compositions that comprise an immunologically effective amount of PmpD protein from *C. trachomatis*. Also claimed in the application are methods of immunizing individuals against *C. trachomatis*. PmpD is an antigenically stable pan-neutralizing target that, in theory, would provide protection against all human strains, thus allowing the development of a univalent vaccine that is efficacious against both blinding trachoma and sexually transmitted disease.

Application: Prophylactics against *C. trachomatis*.

Developmental Status: Preclinical studies have been performed.

Inventors: Harlan Caldwell and Deborah Crane (NIAID).

Publication: DD Crane *et al.* Chlamydia trachomatis polymorphic membrane protein D is a species-common pan-neutralizing antigen. Proc. Natl Acad Sci USA. 2006 Feb 7;103(6):1894–1899. Epub 2006 Jan 30.

Patent Status: PCT Patent Application No. PCT/US2007/001213 filed 16 Jan 2007 (HHS Reference No. E–031–2006/0–PCT–02).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301/435–4646; *soukasp@mail.nih.gov*.

Collaborative Research Opportunity: The NIAID, Laboratory of Intracellular Parasites, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize PmpD vaccine development. Please contact Harlan D. Caldwell, at *hcaldwell@niaid.nih.gov* or 406/363–9333 for more information.

Dated: August 21, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–16935 Filed 8–27–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors of the NIH Clinical Center.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the Clinical Center, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors of the NIH Clinical Center.

Date: September 24–25, 2007.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate the Critical Care Medicine Program.

Place: National Institutes of Health, Building 10, 10 Center Drive, CRC Room 4–2551, Bethesda, MD 20892.

Contact Person: David K. Henderson, MD, Deputy Director for Clinical Care, Office of the Director, Clinical Center, National Institutes of Health, Building 10, Room 6–1480, Bethesda, MD 20892, (301) 496–3515.

Dated: August 20, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4196 Filed 8–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Open: September 17, 2007, 8:30 a.m. to 4:15 p.m.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Closed: September 17, 2007, 4:15 p.m. to 5:30 p.m.

Agenda: Review of grant applications.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Open: September 18, 2007, 8 a.m. to 12 p.m.

Agenda: Program reports and presentations; Business of the Board.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/ncab.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: August 20, 2007.

Jennifer Spaeth,

Directar, Office af Federal Advisary Committee Policy.

[FR Doc. 07–4197 Filed 8–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Cammittee: National Center for Research Resources Special Emphasis Panel.

Date: October 25, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy I, 6701 Democracy Blvd., 1064, Bethesda, MD 20892 (Telephone Conference Call).

Cantact Person: Guo Zhang, PhD, MD, Scientific Review Administrator, National Center for Research Resources, or National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza Room 1064, MSC 4874, Bethesda, MD 20892–4874, 301–435–0812, *zhanggu@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: August 21, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisary Committee Policy.

[FR Doc. 07–4222 Filed 8–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committe Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or comercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Cammittee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Randomized Warfarin Therapy Trial.

Date: September 17, 2007.

Time: 10 a.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Doubletree Hotel Washington, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Cantact Persan: William J. Johnson, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *jahnsanwj@nhlbi.nih.gov.*

Name af Cammittee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Research Development and Dissemination Projects (R18 and R21).

Date: September 24, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Cantact Persan: Holly Patton, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892–7924, 301–435–0280, *pattanh@nhlbi.nih.gav.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutues of Health, HHS)

Dated: August 22, 2007.

Jennifer Spaeth,

Directar, Office af Federal Advisary Committee Policy.

[FR Doc. 07–4217 Filed 8–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Aging, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name af Cammittee: Board of Scientific Counselors, NIA.

Date: October 16, 2007.

Clased: 8 a.m. to 8:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Open: 8:30 a.m. to 12:15 p.m.

Agenda: Committee Discussion.

Place: National Institute on Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Closed: 12:15 p.m. to 1:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Open: 1:45 p.m. to 5:15 p.m.

Agenda: Committee Discussion.

Place: National Institute on Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Closed: 5:30 p.m. to 6:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Contact Person: Dan L. Longo, MD, Scientific Director, National Institute on Aging, Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825, 410–558–8110. *dl14q@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 22, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4214 Filed 8–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Genetic Modification of Aged and Diseased Muscle.

Date: October 2–3, 2007.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Elaine Lewis, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov.*

Name of Committee: National Institute on Aging Initial Review Group, Neuroscience of Aging Review Committee.

Date: October 4–5, 2007.

Time: 4 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Louise L. Hsu, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–7705, *hsul@exmur.nia.nih.gov.*

Name of Committee: National Institute on Aging Initial Review Group, Behavior and Social Science of Aging Review Committee.

Date: October 11–12, 2007.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jon E. Rolf, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue/Room 2C212, Bethesda, MD 20814. (301) 402–7703, *rolfj@nia.nih.gov.*

Name of Committee: National Institute on Aging Initial Review Group, Clinical Aging Review Committee.

Date: October 11–12, 2007.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavillion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Alicja L. Markowska, PhD, DSC, National Institute on Aging, National Institutes of Health, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, T–32.

Date: October 17–18, 2007.

Time: 5:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Jon E. Rolf, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Bethesda, MD 20814 (301) 402–7703, *rolfj@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Claude D. Pepper Older Americans Independence Centers.

Date: October 30–31, 2007

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 740 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alicja L. Markowska, PhD. DSC, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HS)

Dated: August 22, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4216 Filed 8–27–2007; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, The Research Core Center P30.

Date: September 28, 2007.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Christine A. Livingston, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 22, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4218 Filed 8–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, MBRS Support of Competitive Research.

Date: September 17, 2007.

Time: 8 a.m. to 5 p.m.

Agenda; To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John J Laffan, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, 301–594–2773.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: August 21, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4219 Filed 8–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Unsolicited Immunology Single Project Application.

Date: September 19, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3123, Bethesda, MD 20817 (Telephone conference Call).

Contact Person: Alec Ritchie, PhD, Scientific Review Administrator, DHHS/NIH/NIAID/DEA Scientific Review Program, 6700B Rockledge Drive MSC 7616, Room 3123, Bethesda, MD 20892, 301–435–1614, *aritchie@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 21, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4220 Filed 8–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of meetings of the Board of Scientific Counselors, National Center for Biotechnology Information.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual other conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Center for Biotechnology Information, Working Group on Chemical Information Resource Coordination.

Date: October 1, 2007.

Open: 1 p.m. to 5 p.m.

Agenda: Discussion on NLM/NCBI PubChem Database.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: David J. Lipman, MD, Director, National Center for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Building 38A, Room 8N805, Bethesda, MD 20894, 301–435–5985. *dlipman@mail.nih.gov.*

Name of Committee: Board of Scientific Counselors, National Center for Biotechnology Information.

Date: October 2, 2007.

Open: 8:30 a.m. to 12 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: 12 p.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: 2 p.m. to 5 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: David J. Lipman, MD, Director, National Center for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Building 38A, Room 8N805, Bethesda, MD 20894, 301–435–5985. *dlipman@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statements to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one

form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assisance, National Institutes of Health, HHS)

Dated: August 22, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4215 Filed 8–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel; G08–R01–R21.

Date: October 15, 2007.

Time: 1 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Zoe E. Huang, MD, Health Scientific Administrator, Extramural Programs, National Library of Medicine, Rockledge 1 Building, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–594–4937, *huangz@mail.nih.gov.*

Name of Committee: Biomedical Library and Informatics Review Committee.

Date: November 6–7, 2007.

Time: November 6, 2007, 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 9000 Rockville Pike, Bethesda, MD 20894.

Time: November 7, 2007, 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 9000 Rockville Pike, Bethesda, MD 20894.

Contact Person: Arthur A. Petrosian, PhD, Scientific Review Administrator, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–496–4253, *petrosia@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs. hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 22, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4223 Filed 8–27–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: FDA Cleared Pediatric Cancer Diagnostics and Prognostics

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the invention embodied in Patent Applications U.S. 10/133,937, filed 04/25/2002, entitled "Methods for Analyzing High Dimensional Data for Classifying, Diagnosing, Prognosticating and/or Predicting Diseases and Other Biological States"; and U.S. 10/159,563, filed 05/31/2002, entitled "Selections of Genes And Methods of Using The Same For Diagnosis And For Targeting The Therapy of Select Cancers"; to Althea Technologies, Inc. having a place of business in San Diego, California. The patent rights in this invention have been assigned to the United States of America (PHS ref E–324–2001/0,1).

DATE: Only written comments and/or application for a license that are received by the NIH Office of Technology Transfer on or before October 29, 2007 will be considered.

ADDRESS: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Cristina Thalhammer-Reyero, Ph.D., M.B.A., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; e-mail: *ThalhamC@mail.nih.gov;* Telephone: 301–435–4507; Facsimile: 301–402–0220.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention relates to a method of using supervised pattern recognition methods for classifying, diagnosing, predicting, or prognosticating various diseases. The method includes obtaining high dimensional experimental data, such as gene expression profiling data, filtering the data, reducing the dimensionality of the data through use of one or more methods, training artificial neural networks (ANN, a supervised pattern recognition method), ranking individual data points from the data, choosing multiple data points from the data based on the relative ranking, and using the multiple data points to determine if an unknown set of experimental data indicates a diseased condition, a predilection for a diseased condition, or a prognosis about a diseased condition. Further, the invention relates to sets of genes expressed in cancer cells that function to characterize each cancer type, and methods of using the sets of genes for diagnosis and for targeting the therapy of selected cancers. In particular, the methods apply to classify cancers which often present diagnostic dilemmas in clinical practice, such as the pediatric small round blue cell tumors (SRBCTs), including neuroblastoma (NB), rhabdomyosarcoma (RMS), Burkitt's lymphoma (BL), and the Ewing family of tumors (EWS). Specifically, the invention is an application of ANNs for

the diagnostic classification of cancers based on gene expression profiling data derived from cDNA microarrays. The ANNs were first trained to be used as models, and then correctly classified all samples tested and identified the genes most relevant to the classification. Their study demonstrated the potential applications of these methods for tumor diagnosis and for the identification of candidate targets for therapy. The uniqueness of this method is taking gene expression data generated by microarrays, minimizing the genes from the original 1000s to less than 100, identifying which genes are the most relevant to a classification, which gives an immediate clue to the actual biological processes involved, not just surrogate markers which have no bearing on the biology.

The field of use may be limited to "FDA Cleared Pediatric Cancer Diagnostics and Prognostics".

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: August 20, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–16930 Filed 8–27–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Method for Determining the Redox Status of a Tissue

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in: PCT Application No. PCT/US2006/031208 (E–258–2005/0–PCT–02) filed August 10, 2006 claiming priority to U.S. Provisional Application No. 60/707,518 (E–258–2005/0–US–01), titled "Method for Determining the Redox Status of a Tissue" (Inventors: Dr James Mitchell *et al.*) to Mitos Pharmaceutical, Inc. (hereafter Mitos), having a place of business in Newport Beach, California. The patent rights in these inventions have been assigned to the United States of America.

DATES: Only written comments and/or application for a license, which are received by the NIH Office of Technology Transfer on or before October 29, 2007 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Chekesha Clingman, PhD, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; e-mail: *clingmac@mail.nih.gov;* Telephone: (301) 435–5018; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: The present invention relates to a method of determining the redox status of tissues by administering a cell-permeable nitroxide, such as 4-hydroxy-2,2,6,6-tetramethylpiperidine-1-oxyl (or Tempol), as a contrast agent and employing magnetic resonance imaging (MRI). Also provided by the invention are a method for diagnosing a tumor and other pathologies associated with oxidative stress and a method for determining a cancer treatment protocol. Tumor tissues exhibit viable but hypoxic regions that allow them to reduce nitroxide compounds more efficiently than normal tissue. The paramagnetic relaxivity of nitroxide compounds makes it possible to use standard MRI scanners to determine the redox status of tissue in vivo. By determining the redox status of a tumor it is possible to not only diagnose a tumor due to its enhanced reduction of intracellular nitroxide contrast agent, but also to determine appropriate radiation treatment fields spatially to deliver therapeutic doses of radiation, and to determine appropriate timing sequences after the administration of a nitroxide contrast agent such that the maximum difference between normal and tumor tissue with respect to the radioprotective form of the nitroxide is present in the normal tissue, thereby limiting collateral damage to the normal tissue.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to methods for determining the redox status of tissues by utilizing nitroxide contrast agents in combination with MRI for diagnosis of cancer and other pathologies.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: August 20, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–16931 Filed 8–27–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Policy for Sharing of Data Obtained in NIH Supported or Conducted Genome-Wide Association Studies (GWAS)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

Background

The NIH is interested in advancing genome-wide association studies (GWAS) to identify common genetic factors that influence health and disease. For the purposes of this policy, a genome-wide association study is defined as any study of genetic variation across the entire human genome that is designed to identify genetic associations with observable traits (such as blood pressure or weight), or the presence or absence of a disease or condition.[1] Whole genome information, when combined with clinical and other phenotype data, offers the potential for increased understanding of basic biological processes affecting human health, improvement in the prediction of disease and patient care, and

[1] To meet the definition of a GWAS, the density of genetic markers and the extent of linkage disequilibrium should be sufficient to capture (by the r^2 parameter) a large proportion of the common variation in the genome of the population under study, and the number of samples (in a case-control or trio design) should provide sufficient power to detect variants of modest effect.

ultimately the realization of the promise of personalized medicine. In addition, rapid advances in understanding the patterns of human genetic variation and maturing high-throughput, cost-effective methods for genotyping are providing powerful research tools for identifying genetic variants that contribute to health and disease.

For these reasons, the NIH announced in May 2006 that it planned to: (1) Update NIH data sharing policies for research applications involving GWAS data; (2) initiate a public consultation process to inform policy development activities; and (3) track GWAS applications and awards at a central level (NOT–OD–06–071—*http://grants.nih.gov/grants/guide/notice-files/NOT-OD-07-071.html*). A call for public comments on a proposed GWAS policy was issued on August 30, 2006 (NOT–OD–06–094—*http://grants.nih.gov/grants/guide/notice-files/NOT-OD-06-094.html*). Between August 30 and November 30, 2006, the NIH solicited public comments from a range of public sectors (see Preamble below). Following the comment period, NIH convened a Town Hall Meeting in Bethesda, Maryland, on December 14, 2006, to provide an opportunity for direct interaction with interested stakeholders on the important policy questions raised through the proposed policy (NOT–OD–06–022—*http://grants.nih.gov/grants/guide/notice-files/NOT-OD-06-022.html*).

This Notice provides the NIH response to the public comments received during the public consultation activities and presents the revised GWAS policy developed by the NIH in response to the feedback received and further internal development of the issues. The policy addresses (1) Data sharing procedures, (2) data access principles, (3) intellectual property, and (4) issues regarding the protection of research participants through all phases of GWAS. Many of the principles contained in the policy reflect existing NIH polices and other NIH discussions.

The goal of the policy is to advance science for the benefit of the public through the creation of a centralized NIH GWAS data repository. Maximizing the availability of resources facilitates research and enables medical science to better address the health needs of people based on their individual genetic information.

Protecting Research Participants

The potential for public benefit to be achieved through sharing GWAS data is significant. However, genotype and phenotype information generated about individuals, such as data related to the presence or risk of developing particular diseases or conditions and information regarding paternity or ancestry, may be sensitive. Therefore, protecting the privacy of the research participants and the confidentiality of their data is critically important. Risks to individuals, groups, or communities should be balanced carefully with potential benefits of the knowledge to be gained through GWAS. The sensitive nature of GWAS information about participants and the broad data distribution goals of the NIH GWAS data repository highlight the importance of the informed consent process to this research.

The NIH recognizes that scientific, ethical and societal issues relevant to this policy are evolving, and the agency has established on-going mechanisms to oversee GWAS policy implementation across the agency and to monitor whole genome association data use practices. The NIH will revisit and revise the policy and related practices as appropriate.

Preamble: Summary of Public Comments on Proposed Policy

On August 30, 2006, the NIH published the *Proposed Policy for Sharing of Data Obtained in NIH Supported or Conducted Genome-Wide Association Studies (GWAS)* (*http://grants.nih.gov/grants/guide/notice-files/NOT-OD-06-094.html*) for public comment in the **Federal Register** and the *NIH Guide for Grants and Contracts*. The comment period ended with a Town Hall meeting held in Bethesda, Maryland on December 14, 2006, that was attended by a total of 374 people (on-site and via webcast).

Overall the NIH received 196 written comments from professional societies, patient advocacy groups, privacy groups, individual scientists, and private citizens. The comments reflected a variety of interests and perspectives. In developing policies, the NIH strives to be respectful of the diversity of individual and group interests, incorporating appropriate protections while promoting maximum public benefit from the research it sponsors. The NIH GWAS policy and its implementation are expected to evolve in response to advances in scientific knowledge, available technologies, and the legal and ethical issues they raise.

I. Rationale for a Centralized Data Repository

Respondents asked for clarification of the rationale for creation of a central data repository instead of distributed repositories under the control of individual (and non-governmental) institutions and investigators. Concerns expressed about a central data repository included, for example, the resources required to maintain it and the extent to which it would duplicate efforts and resources already invested by multiple institutions.

The advantages and limitations of central versus distributed data repositories have been discussed extensively at the NIH. From a scientific standpoint, a central repository offers a number of important advantages: Tighter and more consistent control over the standards and quality of the genotype and phenotype data included; the ability to standardize and update terminology and format as technology and methodology improve; consistent, defined and transparent security and standards for access to data; a long-term commitment to maintenance of data after studies have been completed; a common point of entry for all investigators who use the data; a consistent and defined approach to removal of data in the event of withdrawal of participant consent; facilitation of meta-analyses and analyses that use data from multiple studies; and the ability to implement consistent participant protections at the level of data submission and data access. Individual investigators and many institutions may lack sufficient resources to ensure consistency and quality control, or a long-term commitment to data storage and access. One of the potential disadvantages of a central repository residing at NIH is that the data may be accessible through the Federal Freedom of Information Act (FOIA), unless they are exempt from release under one of the FOIA exemptions. This is further discussed in the Protection of Research Participants section below.

As clinical and genomics research progresses, genotype and phenotype data are being collected into databases maintained by a variety of investigators, studies, and institutions. The NIH is concerned that the present situation may provide less consistent standards for the protection of research participants, data quality, and data access than would a central repository. However, the NIH recognizes that other databases will be designed to achieve different scientific aims or to integrate different analytic capacities, and the NIH GWAS policy is not intended to constrain the development of such databases or to curtail the deposition of NIH-supported GWAS data into other databases (as may be appropriate or required for some research programs). Among the on-going charges to the trans-NIH Technical Standards Steering

Committee established through the GWAS governance structure (see Oversight and Governance section below) will be explicit consideration of the evolving technical capacities and interoperability needed to facilitate the submission of data into the NIH GWAS data repository [2] through other major database systems (e.g., the NCI caBIG network). This committee also will provide a forum for inter-IC coordination of data structures and standards to maintain interoperability of NIH databases.

II. Protection of Research Participants

Non-Research Use of Data

Respondents noted that data held by the Government are subject to the FOIA, and thus could be obtained outside of the Controlled Access data request process described in the GWAS policy. Respondents expressed concern that data could be obtained for non-research purposes (e.g., by law enforcement agencies, employers, or insurance companies) or for purposes beyond the scope of the research uses envisioned within the GWAS policy.

As an agency of the Federal Government, the NIH is required to release Government records in response to a request under the FOIA, unless they are exempt from release under one of the FOIA exemptions. Although the NIH-held data will be coded and the NIH will not hold direct identifiers to individuals within the NIH GWAS data repository, the agency recognizes the personal and potentially sensitive nature of the genotype-phenotype data. Further, the NIH takes the position that technologies available within the public domain today, and technological advances expected over the next few years, make the identification of specific individuals from raw genotype-phenotype data feasible and increasingly straightforward.

The agency believes that release of unredacted GWAS datasets in response to a FOIA request would constitute an unreasonable invasion of personal privacy under FOIA Exemption 6, 5 U.S.C. 552(b)(6). Therefore, among the safeguards that the NIH foresees using to preserve the privacy of research participants and confidentiality of genomic data is the redaction of individual-level genotype and phenotype data from disclosures made in response to FOIA requests and the denial of requests for unredacted datasets.

In addition, the NIH acknowledges that legitimate requests for access to data made by law enforcement offices to the NIH may be fulfilled. The NIH will not possess direct identifiers within the NIH GWAS data repository, nor will the NIH have access to the link between the data keycode and the identifiable information that may reside with the primary investigators and institutions for particular studies. The release of identifiable information may be protected from compelled disclosure by the primary investigator's institution if a Certificate of Confidentiality is or was obtained for the original study. Within the final GWAS policy, the NIH explicitly encourages investigators to consider the potential appropriateness of obtaining a Certificate of Confidentiality as an added measure of protection against future compelled disclosure of identities for studies planning to collect genome-wide association data.

Stigmatization

Respondents commented that some data to be included in the repository may be highly sensitive because they may suggest the existence either of individually identifiable or socially undesirable traits. These data have implications for both participants and family members.

Tools for analysis of genomic data increasingly are able to make inferences about some individual traits (e.g., height, weight, skin and hair and eye color) and to identify predilections for characteristics (e.g., risk of developing some diseases) and behaviors with social stigma. In recognition of these risks, the NIH policy includes steps to protect the interests and privacy concerns of individuals, families and identifiable groups who participate in GWAS research. The NIH is asking institutions submitting GWAS datasets to certify that an Institutional Review Board (IRB) and/or Privacy Board (as applicable) has considered such risks and that investigators have stripped the data of all identifiers before the data are submitted. The NIH Data Access Committees (DACs) will approve access only for research uses that are consistent with an individual's consent as defined by the submitting institution. In addition, in the event that requests raise questions or concerns related to privacy and confidentiality, risks to populations or groups, or other relevant topics, the DACs will consult with other experts as appropriate.

Informed Consent

Respondents asked for clarification regarding appropriate informed consent processes and consent documentation for individuals participating in studies for which data are to be submitted to the NIH GWAS data repository. Concern was raised that participants may not be aware of the potential privacy risks associated with placement of their genotype and phenotype data in a central repository at the NIH. Respondents also commented that adequate consent for data sharing requires participants to understand both the risks and potential benefits of the proposed sharing. Key stakeholders in these considerations are: Research participants (both those who have participated in on-going or prior studies for which GWAS were not anticipated and those who may participate in prospective GWAS); investigators developing informed consent processes; institutions approving the submission of datasets to the NIH GWAS data repository; and IRBs asked to review studies proposing genome-wide association analysis. Respondents commented that additional institutional resources are likely to be required if additional consent is needed for data sharing.

As noted elsewhere and reflected in the GWAS oversight structure established to manage implementation of the GWAS policy (see Oversight and Governance section below), the NIH recognizes that the ethical considerations relevant to GWAS data sharing are complex and dynamic. Therefore, the NIH is developing informational materials as a resource for IRBs and institutions for their consideration of the issues relevant to reviewing and approving individual studies proposing data submission to the NIH GWAS data repository. The NIH intends to continue to engage the Office for Human Research Protections, the research community, and the public to explore the participant protection issues related to GWAS and to identify best practices for the consideration and risk-benefit analysis of genotype and phenotype data sharing under this policy. These efforts will include discussion of the optimal methods for communicating with participants about relevant issues through the informed consent process for prospective studies, and discussion of issues to consider in the institutional review of consent materials for use of existing samples or data proposed for GWAS. Participant interests relevant to GWAS data sharing extend beyond individual participants to families, communities, and their respective cultural sensitivities. The NIH believes that institutional deliberations regarding data submission

[2] Currently named the NIH database of Genotypes and Phenotypes (dbGaP) (*http://www.ncbi.nlm.nih.gov/entrez/query/Gap/gap_tmpl/about.html*).

to the NIH GWAS data repository should include these broader interests. Further, especially complex issues exist with regard to GWAS where participant consent has been provided by proxy (e.g., pediatric research or some studies involving mental health disorders). Discussion of this topic will be included in the informational materials [3] that the NIH is developing for submitting institutions and IRBs asked to review proposed GWAS.

The GWAS policy applies to genome-wide association research utilizing genetic materials and data collected both prospectively and retrospectively. For prospective studies, in which GWAS are conceived within the study designs at the time research participants provide their consent, the NIH expects specific discussion within the informed consent process and documentation that participants' genotype and phenotype data will be shared for research purposes through the NIH GWAS data repository. For retrospective studies performed using existing genetic materials and previously collected data, the NIH anticipates considerable variation in the extent to which data sharing and future genetic research have been addressed within the informed consent documents. As described in the policy, the submitting institution will determine whether a study is appropriate for submission to the NIH GWAS data repository (including an IRB and/or Privacy Board review of specific study elements, such as participant consent). The NIH anticipates that a number of GWAS proposing to include pre-existing data or samples may require additional consent of the research participants. The NIH may give programmatic consideration to requests for funds or other resources needed to conduct additional participant consent when appropriate.

In the event that participants withdraw consent for sharing of their individual-level genotype and phenotype data through the NIH GWAS data repository, the submitting institution will be responsible for alerting the NIH GWAS data repository and requesting that the specific record be removed from future data distributions. However, data that have been distributed to researchers will not be retracted.

[3] The NIH anticipates releasing additional GWAS implementation documents, including a Points to Consider document on informed consent issues related to the submission of data to the repository.

Return of Results

Respondents asked for clarification of plans for return of results to study participants.

The NIH does not anticipate that participants will be able to obtain individual results of secondary analyses on data obtained from their participation in primary studies. Because the NIH GWAS data repository and secondary data users will not have access to identifying information or to the link to the keycode within the data, neither will be able to return individual results directly to subjects. Secondary investigators may share their findings with primary investigators, who may determine whether it is appropriate to return individual or aggregate research results to participants whose health may be affected, following established institutional procedures (*e.g.*, IRB approval) and specific parameters defined within the original study.

Oversight and Governance of the NIH GWAS Data Repository, Submission and Access

Some respondents commented on the importance of adequate oversight of policies for data submission and access, and on the details of the repository. A need for oversight of the quality control measures for genotype and phenotype data and of the security measures for the repository was noted by many respondents. Some respondents commented on the importance of the policies established by the Data Access Committees, and their function within the Institutes and Centers.

The NIH has developed a governance structure for GWAS that provides oversight tailored to the specific role involved. The NIH Director will oversee the GWAS policy and its implementation. In carrying out this responsibility, the NIH Director will be informed by a Senior Oversight Committee composed of Institute and Center (IC) Directors and appropriate leadership from within the Office of the Director. The Senior Oversight Committee will be responsible for the on-going management and stewardship of GWAS policy and operating implementation procedures across ICs. Reporting to the Senior Oversight Committee will be two Steering Committees charged with the implementation, communication, and development of specific procedures related to the conduct, submission and data release practices for GWAS supported by the NIH. One of these groups, the Research Participant Protection and Data Management Steering Committee, will include among its members the chairs of all Data Access Committees at the NIH as well as appropriate staff from NIH policy and oversight offices (e.g., the Office of Science Policy and the Office of Human Subjects Research). This committee will work to promote consistent and robust participant protections across relevant NIH programs. The second group, the Technical Standards Steering Committee, will include membership from scientific programs across the NIH as well as staff from the National Center for Biotechnology Information. This committee will focus on the challenges and needs associated with building and maintaining the NIH GWAS data repository and on formulating or stimulating the consideration of data standards (for genotype or phenotype data) where appropriate. Critical input from individual genome-wide association research programs and studies will be provided to the two Steering Committees through the ICs' Data Access Committees or other project oversight bodies created for specific studies, e.g., community representative groups, scientific advisory boards.

In order to maintain GWAS policy consistent with evolving technological and ethical considerations, the NIH Director will solicit recommendations on the policy from external experts representing public and scientific stakeholders through the Advisory Committee to the Director.

III. Scientific Publication

Some respondents commented on the considerable logistical difficulties posed by limiting the period of publication exclusivity, particularly considering the complexity of many of the studies and the lag time between submission and publication of peer-reviewed scientific papers. Some respondents were concerned that submitting investigators would not receive appropriate credit for their work and would have insufficient control over use of their data. Concern was expressed about enforcing compliance with publication policies. Some respondents commented that the limited period of exclusivity could stimulate a rush to publish initial analyses prematurely, deterring subsequent studies and reducing the overall quality of the reports.

The NIH initially proposed that GWAS datasets be made available as soon as appropriate quality control measures (as defined for a given NIH program) were complete and that a 9-month period of exclusivity would exist for primary investigators to submit analyses of GWAS datasets for publication. The NIH believes that an extended period of exclusivity would

undermine the potential benefits of data sharing. However, in response to concerns raised through the public comment process, the NIH has lengthened this exclusivity period to 12 months in the final policy. The publication exclusivity period will commence on the date that a GWAS dataset is first made available through the NIH GWAS data repository, and the expiration date of this time period will be featured prominently in all descriptions and overviews of the dataset provided through both the public and controlled access pathways of the NIH GWAS data repository. The policy now is explicit on the inclusion within this exclusivity period of electronic and other means of information dissemination beyond peer-reviewed publications. As part of an overarching desire for transparency in the use of GWAS datasets, the names, institutional affiliations, and Data Access Committee-approved research uses for all GWAS data users will be available to the public within the NIH GWAS data repository. GWAS data users will be encouraged to collaborate with the primary investigators for GWAS as appropriate. The period of exclusivity is consistent with existing practices for other genome-wide association programs already available or in the pipeline for deposition into the NIH GWAS data repository, and is intended only as an upper limit as some NIH programs may stipulate shorter (or no) publication exclusivity timelines. The NIH anticipates that over time investigators will become more comfortable with the GWAS data sharing policy as the benefits of greater research access to the data are realized.

IV. Intellectual Property

Respondents raised concerns that the policy might diminish the intellectual property rights of the submitting investigators, as well as their ability to obtain patents. Some respondents questioned whether the proposed policy text is a violation of the Bayh-Dole Act.

The NIH believes that the intellectual property section of the policy presents no conflict with, or infringement upon, rights granted by the Bayh-Dole Act or any other federally-created intellectual property rights. Funding recipients are still able to elect title to any inventions or discoveries developed under the respective federal funding agreements that are or may be patentable, consistent with the Bayh-Dole Act and NIH policies. The NIH expects that intellectual property issues or questions that may occur will be resolvable through appropriate negotiations under the rubrics provided previously in NIH guidance to the research community within the Research Tools Policy (*http://ott.od.nih.gov/policy/research_tool.html*) and the Best Practices for the Licensing of Genomic Inventions (*http://www.ott.nih.gov/policy/genomic_invention.html*). The NIH encourages development of new diagnostics, therapeutics, or other interventions building on basic discoveries, and believes they will be enabled through the NIH GWAS data repository. The NIH anticipates that downstream technology development opportunities will increase as a result of broad research access to genotype-phenotype associations provided through the GWAS policy. The NIH has engaged in informal discussions with academic and private sector experts in intellectual property; these interactions, as well as formal responses received from stakeholders through the GWAS public consultation process, have suggested that the GWAS policy is consistent with existing practices and can be expected to better promote the development of exciting new discoveries for the public benefit.

Policy for Genome-Wide Association Studies (GWAS)

Effective Date: January 25, 2008.

I. Principles

The NIH is interested in advancing genome-wide association studies (GWAS) to identify common genetic factors that influence health and disease. For the purposes of this policy, a genome-wide association study is defined as any study of genetic variation across the entire human genome that is designed to identify genetic associations with observable traits (such as blood pressure or weight), or the presence or absence of a disease or condition.[4] Whole genome information, when combined with clinical and other phenotype data, offers the potential for increased understanding of basic biological processes affecting human health, improvement in the prediction of disease and patient care, and ultimately the realization of the promise of personalized medicine. In addition, rapid advances in understanding the patterns of human genetic variation and maturing high-throughput, cost-effective methods for genotyping are providing powerful research tools for identifying genetic variants that contribute to health and disease.

Consistent with the NIH mission to improve public health through research, the NIH believes that the full value of GWAS to the public can be realized only if the genotype and phenotype datasets are made available as rapidly as possible to a wide range of scientific investigators. Rapid and broad data access is particularly important for GWAS because of the significant resources they require; the challenges of analyzing large datasets; and the extraordinary opportunities for making comparisons across multiple studies.

Protection of research participants is a fundamental principle underlying biomedical research. The NIH is committed to responsible stewardship of data throughout the research process, which is essential to protecting the interests of study participants and to maintaining public trust in biomedical research.

In consideration of the evolving scientific, ethical, and societal issues related to this policy, the NIH is establishing a governance structure for NIH GWAS activities that will:

- Ensure ongoing, high-level agency oversight; and
- Obtain regular input from public representatives, including those with expertise in bioethics, privacy, data security, and appropriate scientific and clinical disciplines; and
- Revisit and revise the policy as appropriate.

II. Applicability

This NIH policy applies to:

- Competing grant applications that include GWAS and are submitted to the NIH for the January 25, 2008, and subsequent receipt dates;
- Proposals for contracts that include GWAS and are submitted to the NIH on or after January 25, 2008; and
- NIH intramural research projects that include GWAS and are approved on or after January 25, 2008.

An application or proposal will be identified as GWAS by applicants and/or NIH staff (see NOT–OD–06–071—*http://grants.nih.gov/grants/guide/notice-files/NOT-OD-07-071.html*).

III. Data Management

Data Repository

To facilitate broad and consistent access to NIH-supported GWAS datasets, the NIH has developed a central NIH GWAS data repository[5] at

[4] To meet the definition of a GWAS, the density of genetic markers and the extent of linkage disequilibrium should be sufficient to capture (by the r^2 parameter) a large proportion of the common variation in the genome of the population under study, and the number of samples (in a case-control or trio design) should provide sufficient power to detect variants of modest effect.

[5] Currently named the NIH database of Genotypes and Phenotypes (dbGaP) (*http://www.ncbi.nlm.nih.gov/entrez/query/Gap_tmpl/about.html*).

the National Center for Biotechnology Information (NCBI), National Library of Medicine. The repository will provide a single-point of access to basic information about NIH-supported GWAS and to available genotype-phenotype datasets for GWAS. Although the NIH envisions that access to all NIH-supported GWAS datasets will be possible through this repository, it does not intend the repository to become the exclusive point of data submission for these data, nor does it intend the central database to delimit the structures or tools that may be appropriate for other similar databases. The repository also will accept GWAS datasets contributed from other sources.

To ensure the security of the data held by the repository, the NCBI will employ multiple tiers of data security (such as sequential firewalls and independent networks) based on the content and level of risk associated with the data. The NIH will establish and maintain operating policies and procedures for the repository to address issues including, but not limited to, the privacy and confidentiality of GWAS research participants, the interests of individuals and groups, data access procedures, and data security mechanisms. These will be reviewed periodically by the GWAS oversight bodies.

Data Submission

All investigators who receive NIH support to conduct genome-wide analysis of genetic variation in a study population are expected to submit to the NIH GWAS data repository descriptive information about their studies for inclusion in an open access portion of the NIH GWAS data repository. All data and information will be submitted to a high security network within the NCBI through a secure transmission process. Submissions should include the following:

- The protocol,
- Questionnaires,
- Study manuals,
- Variables measured, and
- Other supporting documentation.

In addition, the NIH strongly encourages the submission of curated and coded phenotype, exposure, genotype, and pedigree data, as appropriate, to the NIH GWAS data repository as soon as quality control procedures have been completed at the local institution. These detailed data will be made available through a controlled access process according to the GWAS Data Access procedures (described in Data Access section below). Investigators who elect to submit their GWAS data to additional data repositories or networks should verify that appropriate data security, confidentiality, and privacy measures are in place for protection of GWAS participants. Irrespective of where the data are submitted, researchers submitting GWAS data are encouraged to consider whether a Certificate of Confidentiality might be appropriate for their data as an additional safeguard with regard to involuntary disclosure of the research participant identities. Further information about Certificates of Confidentiality is available at the following Web site: *http://grants2.nih.gov/grants/policy/coc/*.

In order to minimize risks to study participants, data submitted to the NIH GWAS data repository will be de-identified and coded using a random, unique code. Data should be de-identified according to the following criteria: the identities of data subjects cannot be readily ascertained or otherwise associated with the data by the repository staff or secondary data users (45 CFR 46.102(f)); the 18 identifiers enumerated at section 45 CFR 164.514(b)(2) (the HIPAA Privacy Rule) are removed; and the submitting institution has no actual knowledge that the remaining information could be used alone or in combination with other information to identify the subject of the data.[6] Keys to codes will be held by submitting institutions. Submissions of GWAS data should be accompanied by a written certification (detailed below) stating that the identities of research participants will not be disclosed to the NIH GWAS data repository. Therefore, the NIH GWAS data repository will be unable to provide individual research results derived from analyses of submitted data to participants. General information regarding known publications analyzing GWAS datasets will be made available through the repository.

All submissions to the NIH GWAS data repository should be accompanied by a certification by the responsible Institutional Official(s) of the submitting institution that they approve submission to the NIH GWAS data repository.

The certification should assure that:

- The data submission is consistent with all applicable laws and regulations,[7] as well as institutional policies;
- The appropriate research uses of the data and the uses that are specifically excluded by the informed consent documents are delineated;
- The identities of research participants will not be disclosed to the NIH GWAS data repository; and
- An IRB and/or Privacy Board, as applicable, reviewed and verified that:
  - The submission of data to the NIH GWAS data repository and subsequent sharing for research purposes are consistent with the informed consent of study participants from whom the data were obtained;
  - The investigator's plan for de-identifying datasets is consistent with the standards outlined above;
  - It has considered the risks to individuals, their families, and groups or populations associated with data submitted to the NIH GWAS data repository; and
  - The genotype and phenotype data to be submitted were collected in a manner consistent with 45 CFR part 46.

While the NIH encourages data sharing through this policy,

[6] The identities of data subjects cannot be readily ascertained or otherwise associated with the data by the repository staff or secondary data users (Common Rule); and the following data elements have been removed (HIPAA Privacy Rule).

1. Names.

2. All geographic subdivisions smaller than a state, including street address, city, county, precinct, ZIP Code, and their equivalent geographical codes, except for the initial three digits of a ZIP Code if, according to the current publicly available data from the Bureau of the Census: a. The geographic unit formed by combining all ZIP Codes with the same three initial digits contains more than 20,000 people. b. The initial three digits of a ZIP Code for all such geographic units containing 20,000 or fewer people are changed to 000.

3. All elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, date of death; and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older.

4. Telephone numbers.

5. Facsimile numbers.

6. Electronic mail addresses.

7. Social Security numbers.

8. Medical record numbers.

9. Health plan beneficiary numbers.

10. Account numbers.

11. Certificate/license numbers.

12. Vehicle identifiers and serial numbers, including license plate numbers.

13. Device identifiers and serial numbers.

14. Web universal resource locators (URLs).

15. Internet protocol (IP) addresses numbers.

16. Biometric identifiers, including fingerprints and voiceprints.

17. Full-face photographic images and any comparable images.

18. Any other unique identifying number, characteristic, or code, unless otherwise permitted by the Privacy Rule for re-identification.

In addition, the submitting institution should have no actual knowledge that the remaining information could be used alone or in combination with other information to identify the individual who is the subject of the information.

[7] Applicable federal regulations may include HHS human subjects regulations (45 CFR part 46), FDA human subjects regulations (21 CFR parts 50 and 56), and the Health Insurance Portability and Accountability Act Privacy Rule (45 CFR part 160 and part 164, Subparts A and E).

circumstances beyond the control of investigators may preclude submission of GWAS data to the NIH GWAS data repository. Applications submitted to the NIH for support of GWAS in which the above expectations for data submission cannot be met will be considered for funding on a case-by-case basis by the appropriate IC.

Submitting investigators and their institutions may request removal of data on individual participants from the NIH GWAS data repository in the event that a research participant withdraws his or her consent. However, data that have been distributed for approved research use will not be retrieved.

Data Access

The basic descriptive and aggregate summary information submitted to the NIH GWAS data repository for each NIH-supported or conducted GWAS will be available publicly through the NIH GWAS data repository. Access to the genotype and phenotype datasets submitted and stored in the NIH GWAS data repository, along with appropriate automated calculations (e.g., quality control measures, simple genotype-phenotype associations, or a listing of all variants known to be in linkage disequilibrium [8] with variants measured in the genotype), will be provided for research purposes through an NIH Data Access Committee (DAC). Membership of the DACs will include Federal staff with relevant expertise in areas such as the relevant particular scientific disciplines, research participant protection, and privacy. The NIH anticipates that individual DACs may be established based on programmatic areas of interest and the relevant needs for technical and ethics expertise. All DACs will operate according to common principles and follow similar procedures to ensure the consistency and transparency of the GWAS data access process.

Investigators and institutions seeking data from the NIH GWAS data repository will be expected to meet data security measures (such as physical security, information technology security, and user training) and will be asked to submit a data access request, including a Data Use Certification, that is co-signed by the investigator and the designated Institutional Official(s). Data access requests should include a brief description of the proposed research use of the requested GWAS dataset(s). Within a Data Use Certification investigators will agree, among other things,[9] to:

- Use the data only for the approved research;
- Protect data confidentiality;
- Follow appropriate data security protections;
- Follow all applicable laws, regulations and local institutional policies and procedures for handling GWAS data;
- Not attempt to identify individual participants from whom data within a dataset were obtained;
- Not sell any of the data elements from datasets obtained from the NIH GWAS data repository;
- Not share with individuals other than those listed in the request any of the data elements from datasets obtained from the NIH GWAS data repository;
- Agree to the listing of a summary of approved research uses within the NIH GWAS data repository along with his or her name and organizational affiliation;
- Agree to report, in real time, violations of the GWAS policy to the appropriate DAC;
- Acknowledge the GWAS policy with regard to publication and intellectual property; and
- Provide annual progress reports on research using the GWAS dataset.

Data Access Committees or their designees will review requests for access to determine whether the proposed use of the dataset is scientifically and ethically appropriate and does not conflict with constraints or informed consent limitations identified by the institutions that submitted the dataset to the NIH GWAS data repository. In the event that requests raise concerns related to privacy and confidentiality, risks to populations or groups, or other concerns, the DAC will consult with other experts as appropriate.

IV. Publication

The NIH expects that investigators who contribute data to the NIH GWAS data repository will retain the exclusive right to publish analyses of the dataset for a defined period of time following the release of a given genotype-phenotype dataset through the NIH GWAS data repository (including the pre-computed analyses of the data). During this period of exclusivity, the NIH will grant access through the DACs to other investigators, who may analyze the data, but are expected not to submit their analyses or conclusions for publication during the exclusivity period. The maximum period of exclusivity is twelve months from the date that the GWAS dataset is made available for access through the NIH GWAS data repository, although a shorter period of exclusivity may be determined by the NIH funding IC. Contributing investigators are encouraged to shorten the period of publication exclusivity at their own discretion. Publication exclusivity is expected to extend to all forms of public disclosure, including meeting abstracts, oral presentations, and publicly accessible electronic submissions (e.g., Web sites, web blogs). Following expiration of the exclusive publication period for a given GWAS dataset, the NIH expects that all investigators with access to the data may submit publications or present analyses for any purpose consistent with the practices and policies of their institutions and the NIH. The NIH also expects all investigators who access GWAS datasets to acknowledge the Contributing Investigator(s) who conducted the original study, the funding organization(s) that supported the work, and the NIH GWAS data repository in all resulting oral or written presentations, disclosures, or publications of the analyses.

V. Intellectual Property

It is the hope of the NIH that genotype-phenotype associations identified through NIH-supported and NIH-maintained GWAS datasets and their obvious implications will remain available to all investigators, unencumbered by intellectual property claims. The NIH discourages premature claims on pre-competitive information that may impede research, though it encourages patenting of technology suitable for subsequent private investment that may lead to the development of products that address public needs.

The NIH will provide approved GWAS data users with certain automated calculations (described under the Data Access section) as a component of the GWAS datasets distributed through the NIH GWAS data repository.

The NIH expects that NIH-supported genotype-phenotype data made available through the NIH GWAS data repository and all conclusions derived directly from them will remain freely available, without any licensing requirements, for uses such as, but not necessarily limited to, markers for developing assays and guides for identifying new potential targets for

[8] Linkage disequilibrium information will be based on data from the International HapMap Project (*http://www.hapmap.org/*).

[9] Investigators requesting access to GWAS datasets who also have access to identifying information for the individuals within the dataset will require IRB approval.

drugs, therapeutics, and diagnostics. The intent is to discourage the use of patents to prevent the use of or block access to any genotype-phenotype data developed with NIH support. The NIH encourages broad use of NIH-supported genotype-phenotype data that is consistent with a responsible approach to management of intellectual property derived from downstream discoveries, as outlined in the NIH's Best Practices for the Licensing of Genomic Inventions (*http://www.ott.nih.gov/policy/genomic_invention.html*) and its Research Tools Policy (*http://ott.od.nih.gov/policy/research_tool.html*).

The filing of patent applications and/or the enforcement of resultant patents in a manner that might restrict use of NIH-supported genotype-phenotype data could diminish the potential public benefit they could provide. Approved users and their institutions, through the execution of an NIH Data Use Certification, will acknowledge the goal of ensuring the greatest possible public benefit from NIH-supported GWAS.

Expectations Defined in the Policy for Investigators

The detailed expectations are enumerated in the individual sections of this policy, and summarized as follows:

Investigators Submitting GWAS Data Are Expected To

- Provide descriptive information about their studies;
- Submit coded genotypic and phenotypic data to the NIH GWAS data repository; and
- Submit certification by the Institutional Official(s) of the responsible submitting institution that it has reviewed and approved submission to the NIH, noting any limitations on data use based on the relevant informed consents and providing assurance that all data are submitted to the NIH in accord with applicable laws and regulations and that the identities of research participants will not be disclosed to the NIH GWAS data repository.

Investigators Requesting and Receiving GWAS Data Are Expected To

- Submit a description of the proposed research project;
- Submit a data access request, including a Data Use Certification co-signed by the designated Institutional Official(s) at their sponsoring institution;
- Protect data confidentiality;
- Ensure that data security measures are in place;
- Notify the appropriate Data Access Committee of policy violations; and
- Submit annual progress reports detailing significant research findings.

Inquiries

Specific questions about this Notice should be directed to: Laura Lyman Rodriguez, PhD, Special Advisor to the Director, National Human Genome Research Institute, 31 Center Drive, Room 4B09, Bethesda, MD 20892, Phone: 301–496–0844. Sam Shekar, M.D., M.P.H., Assistant Surgeon General and Director, Office of Extramural Programs, Office of Extramural Research, 1 Center Drive, Bethesda, MD 20892, Phone: 301–435–3492.

E-mail inquiries should be directed to *GWAS@nih.gov*.

Additional information and detailed implementation guidance related to the NIH GWAS Policy will be provided at *http://grants.nih.gov/grants/gwas/index.htm*.

Dated: August 22, 2007.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. E7–17030 Filed 8–27–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2007–0061]

Science and Technology Directorate; Submission for Review; New Information Collection Request for Support of TechSolutions New Account Request Data Form, New Capability Gap Data Form, and Feedback Data Form

AGENCY: Science and Technology Directorate, DHS.

ACTION: 30-day notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS) TechSolutions program is responsible for providing information, technology, and training to the first responder community. The TechSolutions program will use web-based technology to collect submitter and capability gap information. DHS is soliciting public comment on the New Account Request Data (DHS Form 10015), New Capability Gap Data (DHS Form 10011), and Feedback Data (DHS Form 10012) forms and instructions (hereinafter "Forms Package") designed to collect submitter and capability gap information from first responders (federal, state, local, and tribal police, firefighters, and Emergency Medical Service) through the TechSolutions Web site. This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until September 27, 2007. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: You may submit comments, identified by docket number [DHS–2007–0061], by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: ken.rogers@dhs.gov.* Include docket number [DHS–2007–0061] in the subject line of the message.
- *Mail:* Science and Technology Directorate, ATTN: OCIO/Ken Rogers, 245 Murray Drive, Bldg 410, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Ken Rogers (202) 254–6185 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: This request for comment was previously published in the **Federal Register** on May 30, 2007, for a 60-day public comment period ending July 31, 2007. No comments were received by DHS during the 60-day comment period. The purpose of this notice is to allow an additional 30 days for public comments. This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DHS invites the general public to comment on the proposed "Forms Package", as described below.

Interested parties can obtain copies of the Forms by calling or writing to the point of contact listed above.

Please note that the Forms Package include three forms for collecting submitter and capability gap information from first responders (federal, state, local, and tribal police, firefighters, and Emergency Medical Service). As explained herein, these separate forms are intended to be flexible and permit DHS S&T to address reported capability gaps, leading to improved safety and productivity without undue bureaucratic burden. The Department is committed to improving its TechSolutions processes and urges all interested parties to suggest how these materials can further reduce burden while seeking necessary information under the Act.

DHS is particularly interested in comments that:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Suggest ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Suggest ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* TechSolutions New Account Request Data Form, New Capability Gap Data Form, and Feedback Data Form.

(3) *Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* New Account Request Data Form (DHS Form 10015), New Capability Gap Data Form (DHS Form 10011), and Feedback Data Form (DHS Form 10012).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Business or other for-profit, not-for-profit institutions, and state, local or tribal government; the data collected through the TechSolutions Forms Package will be used to address reported capability gaps, leading to improved safety and productivity for first responders.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* New Account Request Data Form—75,000 respondents annually/30 minutes per respondent, New Capability Gap Data Form—500 respondents annually/2 hours per respondent, and Feedback Data Form—500 respondents annually/30 minutes per respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 38,750 burden hours.

Dated: August 15, 2007.

Kenneth D. Rogers,

Chief Information Officer, Science and Technology Directorate.

[FR Doc. E7–17027 Filed 8–27–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[CBP Dec. 07–65]

Re-Accreditation and Re-Approval of SGS North America Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of SGS North America Inc., of Corpus Christi, TX, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, SGS North America Inc., 925 Corn Products Road, Corpus Christi, Texas 78409, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/inport/operations_support/labs_scientific_svcs/org_and_operations.xml.*

DATES: The re-approval of SGS North America Inc., as a commercial gauger and laboratory became effective on November 2, 2006. The next triennial inspection date will be scheduled for November 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, PhD, or Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 21, 2007.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E7–17031 Filed 8–27–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–72]

Notice of Submission of Proposed Information Collection to OMB; Requirements for Designating Housing Projects

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection is required by the Housing and Community Development Act of 1992. Public Housing Agencies (PHAs) will submit an application which is composed of an Allocation Plan and a Supportive Services Plan to designate a project for occupancy by elderly and disabled families. HUD will use the information in the Plans to evaluate a PHA's request for designated housing.

DATES: *Comments Due Date:* September 27, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0192) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is

necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Requirements for Designating Housing Projects.

OMB Approval Number: 2577–0192.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: This information collection is required by the Housing and Community Development Act of 1992. Public Housing Agencies (PHAs) will submit an application which is composed of an Allocation Plan and a Supportive Services Plan to designate a project for occupancy by elderly and disabled families. HUD will use the information in the Plans to evaluate a PHA's request for designated housing.

Frequency of Submission: On Occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	205	1		14		2,872

Total Estimated Burden Hours: 2,872.

Status: Extension of a Currently Approved Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 21, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–16925 Filed 8–27–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–71]

Notice of Submission of Proposed Information Collection to OMB; Consolidated Public Housing Certification of Completion

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Public Housing Agencies (PHAs) certify to HUD that contract requirements and standards have been satisfied in project development and HUD may authorize payment of funds due the contractor/developer. The Certification is submitted by a Public Housing Agency (PHA) to indicate to HUD that contract requirements have been satisfied for a specific project. The information is supplied by the project architect to assure the PHA and HUD that construction, which meets codes and HUD standards, has been incorporated into the project. Upon determining a proposed project is completed and that all contract requirements have been satisfied, HUD returns the certification to the PHA authorizing Payment to the contractor.

DATES: *Comments Due Date:* September 27, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0021) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Consolidated Public Housing Certification of Completion.

OMB Approval Number: 2577–0021.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use

Public Housing Agencies (PHAs) certify to HUD that contract requirements and standards have been satisfied in project development and HUD may authorize payment of funds due the contractor/developer. The Certification is submitted by a Public Housing Agency (PHA) to indicate to HUD that contract requirements have been satisfied for a specific project. The information is supplied by the project architect to assure the PHA and HUD that construction, which meets codes and HUD standards, has been incorporated into the project. Upon determining a proposed project is completed and that all contract requirements have been satisfied, HUD returns the certification to the PHA authorizing Payment to the contractor.

Frequency of Submission: On Occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	58	1		1		58

Total Estimated Burden Hours: 58
Status: Extension of a Currently Approved Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 21, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–16926 Filed 8–67–07; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–70]

Notice of Submission of Proposed Information Collection to OMB; The Final Impact Evaluation for the Moving to Opportunity Demonstration

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The MTO for Fair Housing Demonstration provides a unique opportunity to definitively measure the impacts of an important change in neighborhood opportunity on the employment, income, education achievement, and social well-being of low-income public housing families. Between 1994 and 1998 families living in high poverty public housing in Boston, New York, Baltimore, Chicago, and Los Angeles were given an opportunity to move to lower poverty neighborhoods with a Housing Choice Voucher. This program was designed with a long-range research goal to measure how this move affected these families over time. This data collection request is for the final evaluation, measuring impacts after 10 years.

DATES: *Comments Due Date:* September 27, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–NEW) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: The Final Impact Evaluation for the Moving to Opportunity Demonstration.

OMB Approval Number: 2528–NEW.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use

The MTO for Fair Housing Demonstration provides a unique opportunity to definitively measure the impacts of an important change in neighborhood opportunity on the employment, income, education achievement, and social well-being of low-income public housing families. Between 1994 and 1998 families living in high poverty public housing in Boston, New York, Baltimore, Chicago, and Los Angeles were given an opportunity to move to lower poverty neighborhoods with a Housing Choice Voucher. This program was designed with a long-range research goal to measure how this move affected these families over time. This data collection request is for the final evaluation, measuring impacts after 10 years.

Frequency of Submission: On Occasion, Other One-Time Collection.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	10,274	1		1.68		17,288

Total Estimated Burden Hours: 17,288.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 21, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–16927 Filed 8–27–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–07–1232–EA–NV15; Closure Number: NV–030–07–002]

Temporary Closure of Public Lands During Competitive Special Recreation Permitted Events: Nevada, Carson City Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of affected public lands in Lyon, Storey, Churchill, Carson, Douglas, Mineral, Washoe and Nye Counties.

SUMMARY: The Bureau of Land Management (BLM), Carson City Field Office, announces the temporary closure of selected public lands under its administration in Lyon, Storey, Churchill, Carson, Douglas, Mineral, Washoe, and Nye Counties. This action is taken to provide for public and participant safety and to protect adjacent natural and cultural resources during the conduct of permitted special recreation events.

EFFECTIVE DATES: March through November 2007. Events may be canceled or rescheduled with short notice due to weather, sudden change in resource conditions, emergency actions, or at the discretion of the authorizing officer.

FOR FURTHER INFORMATION CONTACT: Fran Hull or Arthur Callan, Outdoor Recreation Planners, Carson City Field Office, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, Nevada 89701, Telephone: (775) 885–6000.

SUPPLEMENTARY INFORMATION: This notice applies to public lands directly affected by and adjacent to competitive special events for which a BLM Special Recreation Permit (SRP) has been authorized. Examples of events include: Motorized Off Highway Vehicle (OHV) races, mountain bike races; horse endurance rides and field dog trials. Race and ride events are conducted along dirt roads, trails, and washes approved for such use; field dog trials occur over specified acreages. One or more special events occur monthly from March through November. Unless otherwise posted, race closure periods are from 5 a.m. race day until race finish or until the event has cleared between affected check point locations. Closures may occupy 2 to 24 hour periods. The general public will be advised of event and closure specifics via on-the-ground signage, public letters, e-mail, or local newspaper notices. The public may call to confirm or discuss closures at anytime prior to an announced event date. Locations commonly used for permitted events include, but are not limited to:

1. *Lemmon Valley MX Area:* Washoe Co., T.21N R.19E Sec. 8.
2. *Hungry Valley Recreation Area:* Washoe Co., T.20–24N R.18–21E.
3. *Pine Nut Mountains—Carson, Douglas & Lyon Counties:* T.11–16N R.20–24E.
4. *Virginia City/Jumbo Areas—Storey & Washoe Counties:* T.16–17N R.20–21E.
5. *Yerington / Weeks Areas—Lyon Co.:* T.12–16N R.23–27E.
6. *Fallon Area (Including Sand Mtn.)—Churchill Co.:* T.14–18N R.27–32E.
7. *Hawthorne Area—Mineral County:* T.5–14N R.311/2–36E.
8. *Vegas to Reno OHV Race Route:* Nye, Mineral, Churchill, and Lyon.

Counties: In the vicinity of Highway 95 from south to north.

Marking and effect of closure: BLM lands to be temporarily closed to public use include the length, width and certain lands adjacent to those roads, trails or areas identified as the race route or event area by colorful flagging, chalk arrows in the dirt and directional arrows attached to wooden stakes. The authorized applicants or their representatives are authorized and required to post warning signs, control access to, and clearly mark the event routes and areas, common access roads and road crossings during closure periods.

Spectator and support vehicles may be driven on open roads only. Spectators may observe motorized race events from specified locations (such as designated spectator, pit and check point areas) or as directed by event and agency officials.

Other permitted and recreational uses generally affected by a Temporary Closure include: Road and trail uses for livestock management and mineral exploration, utility maintenance, casual public land exploration, camping, hunting, or shooting of any kind of weapon including paint ball.

Exceptions: Closure restrictions do not apply to event officials, medical/rescue, law enforcement, and agency personnel monitoring the events.

Authority: 43 CFR 8364.1 and 43 CFR, part 2930.

Penalties. Any person failing to comply with the closure orders may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both.

Dated: March 20, 2007.

Bryant Smith,

Acting Manager, Carson City Field Office.

[FR Doc. E7–16992 Filed 8–27–07; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–0777–XZ–241A]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATE: The meeting will be held September 26, 2007 from 9:15 a.m. to 4 p.m.

ADDRESSES: Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Ken Smith, (719) 269–8500.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Royal Gorge Field Office and San Luis Valley, Colorado. Planned agenda topics include: Manager updates on current land management issues including; a summary of current Environmental Analysis in the Royal Gorge Field Office, Travel Management Planning in the San Luis Valley and a tour, for RAC members, of the Wild Horse and Burro facility in Canon City. All meetings are open to the public. The

public is encouraged to make oral comments to the Council at 9:30 a.m. or written statements may be submitted for the Councils consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Meeting Minutes and agenda (10 days prior to each meeting) are also available at: *http://www.blm.gov/rac/co/frrac/co—fr.htm.*

Dated: August 20, 2007.

Roy L. Masinton,

Royal Gorge Field Manager.

[FR Doc. 07–4224 Filed 8–27–07; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–5853–ES; N–77814, N–77815, N–77816, N–77818, N–77819; 7–08807]

Notice of Realty Action: Recreation and Public Purposes Act Classification of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for lease or subsequent conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 37.5 acres of public land in five individual parcels in Clark County, Nevada. The United States Postal Service proposes to use the land for five post offices.

DATES: Interested parties may submit written comments concerning the proposed lease/conveyance or classification of the lands until October 12, 2007.

ADDRESSES: Send written comments to the Field Manager, Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130.

FOR FURTHER INFORMATION CONTACT: Brenda Warner, BLM Las Vegas Field Office, at (702) 515–5084.

SUPPLEMENTARY INFORMATION: In response to five applications submitted by the United States Postal Service, the BLM has examined and found suitable for classification for lease or subsequent conveyance for public postal facilities under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*). In accordance with Section 7 of the Taylor Grazing Act (43 U.S.C. 317f) and Executive Order 6910, the BLM has examined and hereby found suitable for classification for purposes of [lease and/or conveyance] under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*). These five parcels of land located in the Las Vegas metropolitan area are classified accordingly and described below:

N–77814, 10-acre postal facility located at the northwest corner of the intersection of Hickham Avenue and Fort Apache Road, legally described as:

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E.,
Sec. 06, SE¼NE¼SE¼.

N–77815, 10-acre postal facility located generally south of the intersection of South Las Vegas Blvd. and Larson Lane, legally described as:

Mount Diablo Meridian, Nevada

T. 23 S., R. 61 E.,
Sec. 17, NE¼NE¼NE¼.

N–77816, 5-acre postal facility located at the southwest corner of the intersection of Jones Blvd. and Pyle Avenue, legally described as:

Mount Diablo Meridian, Nevada

T. 22 S., R. 60 E.,
Sec. 26, E½NE¼NE¼SE¼.

N–77818, 5-acre postal facility located at the southeast corner of the intersection of Durango Avenue and Bob Fisk Avenue, legally described as:

Mount Diablo Meridian, Nevada

T. 22 S., R. 60 E.,
Sec. 21, S½NW¼SW¼SW¼.

N–77819, 7.5-acre postal facility located at the northwest corner of the intersection of Rainbow Blvd. and Torino Avenue, legally described as:

Mount Diablo Meridian, Nevada

T. 22 S., R. 60 E.,
Sec. 15, N½NE¼SE¼SE¼,
SE¼NE¼SE¼SE¼.

The areas described above contain 37.5 acres, more or less, in Clark County, Nevada.

The design and architecture of the postal facilities will be single story and similar to the facility constructed at Jones Avenue and Azure Drive. Each of the proposed post offices include a 24,532 square foot building, a carrier loading slab, public, employee and carrier parking and low water use landscaping. Construction of each facility will take approximately one year. N–77816 and N–77818 will be constructed shortly after the lease is authorized. The remaining sites will be constructed approximately three to six years later. The land is not required for any federal purpose. The lease/conveyance is consistent with the Las Vegas Resource Management Plan, dated October 5, 1998, and would be in the public interest. The lease/conveyance, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and

2. All minerals together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

N–77814:

1. Valid and existing rights;

2. Right-of-way N–60735 for road purposes granted to Clark County, its successors or assigns, pursuant to the Act of December 5, 1924 (43 Stat. 0672);

3. Right-of-way N–61629 for transmission line purposes granted to Nevada Power Co., its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761); and

4. Right-of-way N–76536 for road purposes granted to Clark County, its successors or assigns, pursuant to the Act of December 5, 1924 (43 Stat. 0672).

N–77815:

1. Valid and existing rights;

2. Right-of-way NVCC–019435 for Federal Aid Highway purposes granted to Nevada Dept. of Transportation, its successors or assigns, pursuant to the Act of August 27, 1958 (72 Stat. 0892);

3. Right-of-way Nev–056213 for oil and gas pipeline granted to CalNev Pipeline Co., its successors or assigns, pursuant to the Act of February 25, 1920 (30 U.S.C. 185 sec. 28);

4. Right-of-way N–07100 for oil and gas pipeline purposes granted to CalNev Pipeline Co., its successors or assigns, pursuant to the Act of February 25, 1920 (30 U.S.C. 185 sec. 28);

5. Right-of-way N–43923 for fiber optic facility purposes granted to MCI WorldCom Network Inc., its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

6. Right-of-way N–47888 for fiber optic facility purposes granted to Central Telephone Co., its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

7. Right-of-way N–43923 for fiber optic facility purposes granted to AT&T R/W RM PA165., its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761); and

8. Right-of-way N–76066 for road purposes granted to Clark County, its

successors or assigns, pursuant to the Act of December 5, 1924 (43 Stat. 0672).

N–77816:

1. Valid and existing rights;

2. Right-of-way N–73694 for water facility purposes granted to Clark County Water Reclamation District, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

3. Right-of-way N–74485 for water facility purposes granted to Las Vegas Valley Water Distict, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

4. Right-of-way N–75392 for oil and gas pipeline purposes granted to Southwest Gas Corp., its successors or assigns, pursuant to the Act of February 25, 1920 (30 U.S.C. 185 sec. 28);

5. Right-of-way N–76755 for water facility purposes granted to Clark County, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761); and

6. Right-of-way N–81384 for water facility purposes granted to Clark County Water Reclamation District, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

N–77818:

1. Valid and existing rights;

2. Right-of-way N–75246 for road purposes granted to Clark County, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

3. Right-of-way N–77199 for water facility purposes granted to Clark County Water Reclamation District, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

4. Right-of-way N–77507 for water facility purposes granted to Las Vegas Valley Water District, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

5. Right-of-way N–77554 for telephone line purposes granted to Central Telephone Co., its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

6. Right-of-way N–77845 for transmission line purposes granted to Nevada Power Co., its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

7. Right-of-way N–77953 for oil and gas pipeline purposes granted to Southwest Gas Corp., its successors or assigns, pursuant to the Act of February 25, 1920 (30 U.S.C. 185 sec. 28); and

8. Right-of-way N–78923 for drainage facility purposes granted to Clark County, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

N–77819:

1. Valid and existing rights;

2. Right-of-way N–61873 for road purposes granted to Clark County, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

3. Right-of-way N–74322 for road purposes granted to Clark County, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761); and

4. Right-of-way N–77199 for water facility purposes granted to Clark County Water Reclamation District, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

Additional detailed information concerning this action is available for review at the Bureau of Land Management, Las Vegas Field Office, at the above address.

On August 28, 2007, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the R&PP Act, leasing under the mineral leasing laws, and disposal under the mineral material disposal laws.

Classification Comments: Interested parties may submit comments involving the suitability of the land for postal facility sites. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision to lease/convey under the R&PP Act, or any other factor not directly related to the suitability of the land for post offices.

Comments, including names and addresses of respondents, will be available for public review. Before including your address, phone number, e-mail address, or other personal identifying information in your comments, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The BLM will make available for public review, in their entirety, all comments submitted by businesses or organizations, including comments by individuals in their capacity as an official or representative of a business or organization. Any adverse comments will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective on October 29, 2007. The lands will not be available for lease/conveyance until after the classification becomes effective.

(Authority: 43 CFR part 2741)

Dated: August 17, 2007.

Kimber Liebhauser,

Acting Assistant Field Manager, Lands.

[FR Doc. E7–17007 Filed 8–27–07; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Notice of Submission to the Office of Management and Budget; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites public comments on a proposed new collection of information (OMB #1024–XXXX).

DATES: Public comments on this Information Collection Request (ICR) will be accepted on or before September 27, 2007.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1024–XXXX), Office of Information and Regulatory Affairs, OMB, by fax at 202/395–6566, or by electronic mail at *oira_docket@omb.eop.gov*. Please also send a copy of your comments to Patricia A. Taylor, University of Wyoming, Department of Sociology/Dept. 3293, 1000 E. University Ave., Laramie, Wyoming 82071; or via phone at 307/766–6870; or via e-mail at *gaia@uwyo.edu*.

FOR FURTHER INFORMATION CONTACT: Dr. James Gramann, NPS Social Science Program, 1201 I. St., NW., Washington, DC 20005; or via phone at 202/513–7189; or via e-mail at *James_Gramann@partner.nps.gov.*, or by

fax at 979/845–4792. You are entitled to a copy of the entire ICR package free-of-charge.

Comments Received on the 60-Day Federal Register Notice: The NPS published a 60-Day Notice to solicit public comments on this ICR in the **Federal Register** on December 6, 206 (Vol. 71, 234, Page 70786–70787). The comment period closed on February 5, 2007. After multiple notifications to stakeholders requesting comments, the NPS received five comments as a result of the publication of this 60-Day **Federal Register** Notice.

One respondent was concerned over the number of surveys the NPS conducts and the potential for bias in all surveys. However, there is no duplication of information with this study, as the Comprehensive Survey of the American Public is the one national survey that focuses on issues of importance to the NPS. Moreover, it is the only national survey that contacts non-visitors to National Park System units. In addition to visitors, non-visitors comprise a population of vital interest to the NPS. Two of the respondents wanted to be reassured that the results of the survey would be communicated to them directly (American Recreation Coalition and National Parks Conservation Association). One respondent suggest a number of questions, which were, or are now, part of the survey, with one exception. America Outdoors suggested a question on attitudes toward fees to enter the park. This question is quite "layered" in that there are several different kinds of fees (the annual parks pass, the specific fee for one park, additional access fees for special areas, and passes for the disabled). Moreover, the recent national survey for the Departments of the Interior and Agriculture for the Interagency America the Beautiful Pass addressed these issues only one year earlier. Therefore, this question is not included in the 2007 NPS Comprehensive Survey. Finally, the National Park Hospitality Association was fundamentally concerned with the "creation" of resources such as soundscape, and suggested that such questions be removed from the survey. The General Authorities Act of 1970 and the 1978 amendment to the Act known as the Redwood amendment, as well as the National Parks Omnibus Management Act of 1998, contain the basis of the NPS management policies on natural resources, including soundscapes. The soundscape management policy of the NPS is detailed in section 4.9 of "Management Policies 2006" of the NPS, which states (NPS 206:56) that "Using appropriate management planning, superintendents will identify what levels and types of unnatural sound constitute acceptable impacts on park natural soundscapes." This survey will assist in that planning process.

SUPPPLEMENTARY INFORMATION:

Title: 2007 National Park Service Comprehensive Survey of the American Public.

Bureau Form Number(s): None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of Request: New Collection.

Description of Need: The NPS conducted its last comprehensive survey of the American public in 2000. That survey provided valuable information on patterns of use and non-use of parks and on the demographic characteristics of visitors and non-visitors that have been used to inform NPS decision-making. However, since 2000 many events and actions have occurred with the potential to affect the public's knowledge, behavior, and opinions regarding the NPS and the National Park System. Examples include the terrorist attacks of September 11, 2001, higher fuel prices, and several catastrophic hurricanes and wildfires. In addition, the U.S. population has aged and become more racially and ethnically diverse since the last comprehensive survey.

Although the NPS and its research partners regularly survey visitors to selected National Park System Units, these separate surveys cannot be rolled up into a description of visitors at the national and regional levels, nor do they describe the knowledge, attitudes, and behaviors of non-visitors and former visitors. Furthermore, individual park visitor surveys are not able to show trends in the knowledge, opinions, and behavior of the U.S. population over time. This information is essential to informing many important planning and management decisions of the NPS, ranging from visitor services, fee policy, and resource management actions to civic engagement and visitors and non-visitors over time can also provide a perspective on how national and regional populations are changing in their knowledge of the National Park System and in their use of parks, including leisure travel patterns, perceived service quality, and constraints to park visitation.

The method of information collection for the 2007 survey will be a nationwide telephone survey of households conducted using a random-digit-dial (RDD) telephone sample, disproportionately stratified by the seven NPS administrative regions (including the states of Alaska and Hawaii). In each of the seven regions, 500 completed interviews of about 15 minutes length will be obtained, for a total of 3,500 completions. The data collected from the comprehensive survey will profile patterns in visitation and non-visitation to the National Park System. These findings will be described in a national technical report and in reports for each of the seven NPS regions. Thematic reports on specific policy and management issues included in the survey will be produced, and a summary report tracking changes in key variables between 2000 and 2007 will be written. In order to produce the best survey possible, the NPS has been and will continue to conduct development work in the form of pre-testing, cognitive interviews, and focus groups to inform survey design.

The increase in the popularity of cell phone calls into question the adequacy of conventional land-line sampling frames from which households are selected through random digit dialing (RDD). Looking to the future, survey methodology will need a mechanism to sample additional cell users. In this survey, an add-on of a cell phone user sample will form a benchmark to compare sampling differences with the RDD results. The cell suer sample will be compared to the land-line sample, looking at demographic characteristics of respondents, park visitation rates, and attitudinal variables. This information is needed by NPS to determine whether changes in measures racked over time represent actual shifts in knowledge, attitudes, or behavior or are instead artifacts of differences in responses between cell-only households and households with land-lines.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including sue of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—may be made publicly available at any time. While you can ask us in your foment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Frequency of collection: Once.

Description of Respondent: United States residents.

Estimated average number of respondents: 4042 per year (Final Survey: 4,000; Developmental work: focus = 12, cognitive interview = 12, pre-test calling = 20).

Estimated average number of responses: 4042 per year.

Estimated average time burden per respondent: 4 hours per respondent (Final Survey: 15 minutes/respondent; Developmental work: focus group = 90 minutes/respondent, cognitive interview = 120 minutes/respondent, pre-test calling = 15 minutes/respondent).

Frequency of response: 1 time per respondent.

Estimated total annual reporting burden: 1047 hours per year.

Dated: July 25, 2007.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. 07–4204 Filed 8–27–07; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Notice of Submission to the Office of Management and Budget; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites public comments on a proposed new collection of information (OMB #1024–XXXX).

DATES: Public comments on this Information Collection Request (ICR) will be accepted on or before September 27, 2007.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1024–XXXX), Office of Information and Regulatory Affairs, OMB, by fax at 202/395–6566, or by electronic mail at *oira_docket@omb.eop.gov*. Please also send a copy of your comments to Patricia A. Taylor, University of Wyoming, Department of Sociology/Dept. 3293; 1000 E. University Ave., Laramie, WY 82071; or via phone 307/766–6870; or via e-mail at *gaia@uwvo.edu*.

FOR FURTHER INFORMATION CONTACT: Dr. James Gramann, NPS Social Science Program, 1201 "Eye" St., NW., Washington, DC 20005; or via phone 202/513–7189; or via e-mail at *James_Gramann@partner.nps.gov*. You are entitled to a copy of the entire ICR package free-of-charge.

Comments Received on the 60-Day **FEDERAL REGISTER** *Notice:* The NPS published a 60-Day Notice to solicit public comments on this ICR in the **Federal Register** on December 6, 2006 (Vol. 71, No. 234, Page 70786–70787). The comment period closed on February 5, 2007. After multiple notifications to stakeholders requesting comments, the NPS received five comments as a result of the publication of this 60-Day **Federal Register** Notice.

One respondent was concerned over the number of surveys the NPS conducts and the potential for bias in all surveys. However, there is no duplication of information with this study, as the Comprehensive Survey of the American Public is the only national survey that focuses on issues of importance to the NPS. Moreover, it is the only national survey that contacts non-visitors to National Park System units. In addition to visitors, non-visitors comprise a population of vital interest to the NPS. Two of the respondents wanted to be reassured that the results of the survey would be communicated to them directly (American Recreation Coalition and National Parks Conservation Association). One respondent suggested a number of questions, which were, or are now, part of the survey, with one exception. America Outdoors suggested a question on attitudes toward fees to enter the park. This question is quite "layered" in that there are several different kinds of fees (the annual parks pass, the specific fee for one park, additional access fees for special areas, and passes for the disabled). Moreover, the recent national survey for the Departments of the Interior and Agriculture for the Interagency America the Beautiful Pass addressed these issues only one year earlier. Therefore, this question is not included in the 2007 NPS Comprehensive Survey. Finally, the National Park Hospitality Association was fundamentally concerned with the "creation" of resources such as soundscape, and suggested that such questions be removed from the survey. The General Authorities Act of 1970 and the 1978 amendment to the Act known as the Redwood amendment, as well as the National Parks Omnibus Management Act of 1998, contain the basis of the NPS management policies on natural resources, including soundscapes. The soundscape management policy of the NPS is detailed in section 4.9 of "Management Policies 2006" of the NPS, which states (NPS 2006:56) that "Using appropriate management planning, superintendents will identify what levels and types of unnatural sound constitute acceptable impacts on park natural soundscapes." This survey will assist in that planning process.

SUPPLEMENTARY INFORMATION:

Title: 2007 National Park Service Comprehensive Survey of the American Public.

Bureau Form Number(s): None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of request: New Collection.

Description of Need: The NPS conducted its last comprehensive survey of the American public in 2000. That survey provided valuable information on patterns of use and nonuse of parks and on the demographic characteristics of visitors and non-visitors that have been used to inform NPS decision-making. However, since 2000 many events and actions have occurred with the potential to affect the public's knowledge, behavior, and opinions regarding the NPS and the National Park System. Examples include the terrorist attacks of September 11, 2001, higher fuel prices, and several catastrophic hurricanes and wildfires. In addition, the U.S. population has aged and become more racially and ethnically diverse since the last comprehensive survey.

Although the NPS and its research partners regularly survey visitors to selected National Park System units, these separate surveys cannot be rolled up into a description of visitors at the national and regional levels, nor do they describe the knowledge, attitudes, and behaviors of non-visitors and former visitors. Furthermore, individual park visitor surveys are not able to show trends in the knowledge, opinions, and behavior of the U.S. population over time. This information is essential to informing many important planning and management decisions of the NPS, ranging from visitor services, fee policy, and resource management actions to civic engagement and visitors and non-visitors over time can also provide a perspective on how national and regional populations are changing in their knowledge of the National Park System and in their use of parks, including leisure travel patterns, perceived service quality, and constraints to park visitation.

The method of information collection for the 2007 survey will be a nationwide telephone survey of households conducted using a random-digit-dial (RDD) telephone sample,

disproportionately stratified by the seven NPS administrative regions (including the states of Alaska and Hawaii). In each of the seven regions, 500 completed interviews of about 15 minutes length will be obtained, for a total of 3,500 completions. The data collected from the comprehensive survey will profile patterns in visitation and non-visitation to the National Park System. These findings will be described in a national technical report and in reports for each of the seven NPS regions. Thematic reports on specific policy and management issues included in the survey will be produced, and a summary reported tracking changes in key variables between 2000 and 2007 will be written. In order to produce the best survey possible, the NPS has been and will continue to conduct development work in the form of pretesting, cognitive interviews, and focus groups to inform survey design.

The increase in the popularity of cell phones calls into question the adequacy of conventional land-line sampling frames from which households are selected through random digit dialing (RDD). Looking to the future, survey methodology will need a mechanism to sample additional cell users. In this survey, an add-on of a cell phone user sample will form a benchmark to compare sampling differences with the RDD results. The cell user sample will be compared to the land-line sample, looking at demographic characteristics of respondents, park visitation rates, and attitudinal variables. This information is needed by NPS to determine whether changes in measures tacked over time represent actual shifts in knowledge, attitudes, or behavior or are instead artifacts of differences in responses between cell-only households and households with land-lines.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time.

While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Frequency of collection: Once.

Description of Respondents: United States residents.

Estimated average number of respondents: 4044 respondents (Final Survey: 4,000; Developmental Work: focus group = 12, cognitive interview = 12, pre-test calling = 20).

Estimated average number of responses: 4044 responses.

Estimated average time burden per respondent: Final Survey: 15 minutes/respondent; Developmental Work: focus group = 90 minutes/respondent, cognitive interview = 120 minutes/respondent, pre-test calling = 15 minutes/respondent.

Frequency of response: 1 time per respondent.

Estimated total annual reporting burden: 1047 hours.

Dated: August 22, 2007.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. 07–4205 Filed 8–27–07; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Emergency Approval of a New Information Collection; 30-Day Notice of Intent To Request an Extension for the Collection of Information; Interagency Access Pass Application Process

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) has requested and received emergency approval on the collection of information; Interagency Access Pass Application Process (OMB #1024–0252). The NPS invites public comments on the extension of this currently approved collection.

DATES: Public comments on this Information Collection Request (ICR) will be accepted on or before September 27, 2007.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1024–0252), Office of Information and Regulatory Affairs, OMB, by fax at 202/395–6566, or by electronic mail at *oira_docket@omb.eop.gov*. Please also send a copy of your comments to Brandon Flint, NPS, WASO Recreation Fee Program Office, 1849 C St., NW., (2608), Washington, DC 20240; or by e-mail at *brandon_flint@nps.gov*, or by fax at 202/371–2401.

FOR FURTHER INFORMATION CONTACT: Brandon Flint, NPS, WASO Recreation Fee Program Office, 1849 C St., NW., (2608) Washington, DC 20240; phone: 202/513–7096; e-mail: *brandon_flint@nps.gov*, or by fax at 202/371–2401.

Comments Received on the 60-Day Federal Register Notice: The NPS published the 60-Day **Federal Register** Notice to solicit comments on this ICR on May 25, 2007 (Vol. 72, pages 29351–29352). The comment period ended on July 24, 2007. There were no public comments received as a result of publishing this notice.

SUPPLEMENTARY INFORMATION:

Title: The Interagency Access Pass Application Process.

Bureau Form Number: None.

OMB Number: 1024–0252.

Expiration Date: 10/31/2007.

Type of Request: Extension of a currently approved information collection.

Description of Need: The currently approved information collection responds to The Federal Lands Recreation Enhancement Act (FLREA) which requires the Secretary of Agriculture, and the Secretary of the Interior, to make the America the Beautiful—The National Parks and Federal Recreational Lands Pass available, for free, to any United States citizen or person domiciled in the United States who has been medically determined to be permanently disabled for purposes of section 7(20)(B)(i) of the Rehabilitation Act of 1973 (29 U.S.C. 705(20)(B)(i)). The Act further requires that the applicant provide adequate proof of the disability and such citizenship or residency. The Act specifies that the Pass shall be valid for the lifetime of the pass holder. The America the Beautiful—The National Parks and Federal Recreational Lands Access Pass (Interagency Access Pass) was created to meet the requirements of the FLREA. An Interagency Access Pass is a free, lifetime permit that is issued without charge by the Bureau of Land Management, Bureau of Reclamation, United States Fish and Wildlife Service, United States Forest Service, and the National Park Service to citizens or persons who are domiciled (permanent residents) in the United States, regardless of age, and who have a medical determination and

documentation of permanent disability. Furthermore, the Pass is to be non-transferable and entitles the permittee and any person accompanying him in a single, private, non-commercial vehicle, or alternatively, the permittee and 3 adults to enter with him where entry to the area is by any means other than private, non-commercial vehicle. The Pass must be signed by the holder.

In order to issue the Interagency Access Pass only to persons who have been medically determined to be permanently disabled, in accordance with the FLREA direction and in order to clarify, simplify, and to provide uniform guidance for the public on the process for obtaining the Interagency Access Pass, the Secretaries of Agriculture and Interior established eligibility and required documentation guidelines for issuing the Interagency Access Pass and published them within the America the Beautiful—The National Parks and Federal Recreational Lands Pass Standard Operating Procedures. The procedures require the individual to appear in person and sign the Pass in the presence of the issuing agency officer. Acceptable documentation to verify that the individual had been medically determined to have a permanent disability has been identified and includes:

A statement signed by a licensed physician attesting that the applicant has a permanent physical, mental, or sensory impairment that substantially limits one or more major life activities, and stating the nature of the impairment; or

A document issued by a Federal agency, such as the Veteran's Administration, which attests that the applicant has been medically determined to be eligible to receive Federal benefits as a result of blindness or permanent disability. Other acceptable Federal agency documents include proof of receipt of Social Security Disability Income (SSDI) or Supplemental Security Income (SSI); or

A document issued by a State agency such as the vocational rehabilitation agency, which attests that the applicant has been medically determined to be eligible to receive vocational rehabilitation agency benefits or services as a result of medically determined blindness or permanent disability. Showing a State motor vehicle department disability sticker, license plate or hang tag is not acceptable documentation;

Information available to the general public through agency websites and publications will inform potential Pass applicants of the documentation requirements. However, there are instances where applicants learn about the Pass when arriving at a recreation site and do not have the required documentation available. For those instances, a fourth option is made available at recreation sites. If a person claims eligibility for the Access Pass but cannot produce any of the documentation outlined, that person must read, sign, and date the Statement of Disability Form in the presence of the officer issuing the Pass. If the applicant cannot read and/or sign, someone else may read, date, and sign the statement on his/her behalf in the applicant's presence, and the presence of the officer issuing the Pass. The Interagency Access Pass replaces the Golden Access Passport that was established in 1980 by an amendment to the Land and Water Conservation Fund Act (L&WCFA) of 1965. Previously issued Golden Access Passports will remain valid for the lifetime of the Passport holder. The requested information and Statement of Disability have been collected and used since the creation of the Golden Access Passport in 1980 to verify that the individual had been medically determined to have a permanent disability for the issuance of the Golden Access Passport under OMB control number 0596–0173, under the authority of the L&WCFA.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Description of respondents: United States citizens or persons domiciled in the United States who have been medically determined to be permanently disabled for the purposes of section 7(20)(B)(i) of the Rehabilitation Act of 1973 (29 U.S.C. 705(20)(B)(i)).

Estimated average number of respondents: 73,400 per year.

Estimated average number of responses: 73,400 per year.

Estimated average time burden per respondent: 5 minutes.

Frequency of response: Once per respondent.

Estimated total annual reporting burden: 6117 hours.

Dated: August 1, 2007.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. 07–4206 Filed 8–27–07; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/Final Environmental Impact Statement, Valley Forge National Historical Park, Pennsylvania

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement for the General Management Plan, Valley Forge National Historical Park.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of an Final Environmental Impact Statement for the General Management Plan (GMP/EIS) for Valley Forge National Historical Park, Pennsylvania.

The Final GMP/EIS is comprised of the NPS' responses to public comments, errata detailing editorial changes to the *Draft GMP/EIS*, and copies of agency and substantive comment letters. The Draft GMP/EIS evaluated alternatives to guide the development and future management of the park over the next 20 years. Alternative A (No Action) provides a baseline evaluation of existing resource conditions, visitor use, facilities, and management at the park. The Action Alternatives (B and C) would enhance the preservation of the park's cultural and natural resources, while providing new opportunities for visitors. Alternative B would provide a range of new options for visitors to tailor visits and experiences to best meet their own needs and interest. Experiences would focus on exploration and self-discovery of the full cultural and natural history of Valley Forge. Alternative C, the agency's preferred alternative, would provide visitors the opportunity to decide what kind of experience they want, depending on learning style, interest, and time. The

park would provide a core message and experience for all visitors that are primarily immersive and focus on the encampment and the American Revolution. A self-discovery approach would illustrate additional areas of the park, as well as historical and natural resources themes and topics.

The Draft GMP/EIS was available for public and agency review from November 3, 2006 through April 10, 2007. Copies of the document were sent to individuals, agencies, organizations, and local libraries. The document was also made available for review at the park and on the NPS Planning, Environment, and Public Comment Web site (*http://parkplanning.nps.gov*). Public meetings were held on February 21 and 22, 2007. Eight presentations of the plan were made to civic and interest groups and local governments.

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the Notice of Availability of the Final Environmental Impact Statement.

ADDRESSES: Information will be available for public review and comment online at *http://parkplanning.nps.gov*, at the Valley Forge NHP Welcome Center, 1400 North Outer Line Drive, King of Prussia, Pennsylvania, 610–783–1099 and at the following locations: Lower Providence Community Library, 50 Parklane Drive, Eagleville, PA 19403–1171. Tredyffrin Public Library, 582 Upper Gulph Rd., Strafford-Wayne, PA 19087–2052. Phoenixville Public Library, 183 Second Avenue, Phoenixville, PA 19460. Montgomery County-Norristown Public Library, 1001 Powell Street, Norristown, PA 19401. Upper Merion Township Library, 175 West Valley Forge Road, King of Prussia, PA 19406.

FOR FURTHER INFORMATION CONTACT: Deirdre Gibson, Valley Forge NHP, 1400 North Outer Line Drive, King of Prussia, Pennsylvania 19406, *Deirdre_gibson@nps.gov*.

Dated: August 1, 2007.

John A. Latschar,

Acting Regional Director, Northeast Region, National Park Service.

[FR Doc. E7–16993 Filed 8–27–07; 8:45 am]

BILLING CODE 4310–DJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/Wilderness Study, Final Environmental Impact Statement, Great Sand Dunes National Park and Preserve, Colorado

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of a record of decision on the Final Environmental Impact Statement for the General Management Plan/Wilderness Study, Great Sand Dunes National Park and Preserve.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Record of Decision for the General Management Plan, Great Sand Dunes National Park and Preserve. Colorado. On July 19, 2007, the Regional Director, Intermountain Region approved the Record of Decision for the project. As soon as practicable, the National Park Service will begin to implement the Preferred Alternative contained in the FEIS issued on June 15, 2007. The NPS preferred alternative was developed with substantial public, interagency, and staff participation between 2002 and 2006. The NPS preferred option includes options for new trails to allow for dispersed hiking and horseback riding and educational opportunities on the expansion lands. Cooperative or joint facilities, such as future access routes and trailheads with the U.S. Forest Service, U.S. Fish and Wildlife Service, and private partners are emphasized. A large portion of the park expansion lands was studied and will be recommended for future wilderness designation. Additional wilderness in the Great Sand Dunes National Park was very popular with the public.

This course of action and three alternatives were analyzed in the Draft and Final Environmental Impact Statements. The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures were identified.

The Record of Decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding of no impairment of park resources and values, a listing of measures to minimize environmental harm, an overview of public involvement in the decision-making process, and a Statement of Findings.

FOR FURTHER INFORMATION CONTACT: Art Hutchinson, Superintendent, Great Sand Dunes National Park and Preserve, 11500 Highway 150, Mosca, CO 81146–9798, phone: (719) 378–6311.

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision may be obtained from the contact listed above or online at *http://parkplanning.nps.gov*.

Dated: August 9, 2007.

Michael D. Snyder,

Director, Intermountain Region, National Park Service.

[FR Doc. E7–16994 Filed 8–27–07; 8:45 am]

BILLING CODE 4312–CL–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0114

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to renew authority to collect information for a series of customer surveys to evaluate OSM's performance in meeting the performance goals outlined in its annual plans developed pursuant to the Government Performance and Results Act (GPRA). The Office of Management and Budget (OMB) previously approved the collection and assigned it clearance number 1029–0114.

DATES: Comments on the proposed information collection must be received by October 29, 2007, to be assured of consideration.

ADDRESSES: Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease, at (202) 208–2783 or electronically at *jtrelease@osmre.gov*.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to

comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. This notice identifies information collections that OSM will be submitting to OMB for approval. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029–0114 and is on the forms along with the expiration date. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Technical Evaluations Series.

OMB Control Number: 1029–0114.

Summary: The series of surveys are needed to ensure that technical assistance activities, technology transfer activities and technical forums are useful for those who participate or receive the assistance. Specifically, representatives from State and Tribal regulatory and reclamation authorities, representatives of industry, environmental or citizens groups, or the public, are the recipients of the assistance or participants in these forums. These surveys will be the primary means through which OSM evaluates its performance in meeting the performance goals outlined in its annual plans developed pursuant to the Government Performance and Results Act.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: 26 State and Tribal governments, industry organizations and individuals who request information or assistance.

Total Annual Responses: 750.

Total Annual Burden Hours: 63.

Dated: August 22, 2007.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 07–4202 Filed 8–27–07; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1124 and 1125 (Preliminary)]

Electrolytic Manganese Dioxide From Australia and China

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigation Nos. 731–TA–1124 and 1125 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Australia and China of electrolytic manganese dioxide, provided for in subheading 2820.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by October 9, 2007. The Commission's views are due at Commerce within five business days thereafter, or by October 16, 2007.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: August 22, 2007.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on August 22, 2007, by Tronox LLC, Oklahoma City, OK.

Participation in the investigations and public service list. Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference. The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on September 12, 2007, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Cynthia Trainor (202–205–3354) not later than September 10, 2007, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A

nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before September 17, 2007, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: August 22, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–16962 Filed 8–27–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–449 and 731–TA–1118–1121 (Preliminary)]

Light-Walled Rectangular Pipe and Tube From China, Korea, Mexico, and Turkey

Determination

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured [2] or threatened with material injury [3,4] by reason of imports from China, Korea, Mexico, and Turkey of light-walled rectangular pipe and tube, provided for in subheading 7306.61.50 of the Harmonized Tariff Schedule of the United States,[5] that are alleged to be subsidized by the Government of China and that are alleged to be to be sold in the United States at less than fair value (LTFV) from China, Korea, Mexico, and Turkey.[6]

Commencement of Final Phase Investigations

Pursuant to § 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On June 27, 2007, a petition was filed with the Commission and Commerce by twelve U.S. producers,[7] alleging that an industry in the United States is materially injured by reason of subsidized imports of light-walled rectangular pipe and tube from China and LTFV imports from China, Korea, Mexico, and Turkey. Accordingly, effective June 27, 2007, the Commission instituted countervailing duty investigation No. 701–TA–449 (Preliminary) and antidumping investigation Nos. 731–TA–1118–1121 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 3, 2007 (72 FR 36479). The conference was held in Washington, DC, on July 18, 2007, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Charlotte R. Lane determines that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of light-walled rectangular pipe and tube from China, Korea, Mexico, and Turkey.

[3] Vice Chairman Shara L. Aranoff, Commissioner Deanna Tanner Okun, and Commissioner Irving A. Williamson determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of light-walled rectangular pipe and tube from China, Korea, Mexico, and Turkey.

[4] Chairman Daniel R. Pearson determines that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of light-walled rectangular pipe and tube from China, Korea, and Turkey, but that there is not a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of light-walled rectangular pipe and tube from Mexico.

[5] Prior to February 3, 2007, the merchandise subject to these investigations was properly classified under subheading 7306.60.50 of the Harmonized Tariff Schedule of the United States.

[6] Commissioner Dean A. Pinkert recused himself to avoid any conflict of interest or appearance of a conflict.

[7] Allied Tube and Conduit, Harvey, IL; Atlas Tube, Plymouth, MI; California Steel and Tube, City of Industry, CA; EXLTUBE, Kansas City, MO; Hannibal Industries, Los Angeles, CA; Leavitt Tube Company LLC, Chicago, IL; Maruichi American Corporation, Sante Fe Springs, CA; Searing Industries, Rancho Cucamonga, CA; Southland Tube, Birmingham, AL; Vest Inc., Los Angeles, CA; Welded Tube, Concord, Ontario (Canada); and Western Tube and Conduit, Long Beach, CA.

13, 2007. The views of the Commission are contained in USITC Publication 3941 (August 2007), entitled *Light-Walled Rectangular Pipe and Tube From China, Korea, Mexico, and Turkey: Investigation Nos. 701–TA–449 and 731–TA–1118–1121 (Preliminary).*

By order of the Commission.

Issued: August 22, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–16964 Filed 8–27–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–583]

In the Matter of Certain Wireless Communication Devices, Components Thereof, and Products Containing the Same; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 38) of the presiding administrative law judge ("ALJ") terminating the above-captioned investigation under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The Commission has terminated the investigation based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 6, 2006, based on a complaint filed by Ericsson, Inc., of Plano, Texas, and Telefonaktiebolaget LM Ericsson of Stockholm, Sweden (collectively "Ericsson"). 71 FR 52579–52580. The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless communication devices, components thereof, and products containing same by reason of infringement of U.S. Patent No. 5,758,295 ("the '295 patent"); U.S. Patent No. 5,783,926 ("the '926 patent"); U.S. Patent No. 5,864,765; U.S. Patent No. 6,009,319; U.S. Patent No. 6,029,052; U.S. Patent No. 6,198,405; U.S. Patent No. 6,387,027 ("the '027 patent"); U.S. Patent No. 6,839,549; and U.S. Patent No. 6,975,686. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named Samsung Telecommunications America, LLP of Richardson, Texas; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; and Samsung Electronics Co., Ltd. of Seoul, Korea as respondents (collectively "Samsung").

On December 8, 2006, Respondent Samsung moved to terminate part of the investigation as to certain products. On December 20, 2006, Complainant Ericsson filed an opposition to the motion, and the Commission investigative attorney (IA) filed a response in partial support of the motion. On February 12, 2007, the ALJ granted the motion insofar as it concerned Samsung's single mode CDMA/WCDMA cellular phones. The Commission determined on March 9, 2007, not to review this ID.

On March 14 and March 29, 2007, respectively, complainant Ericsson moved to terminate the investigation as to the '926 patent and claim 11 of the '295 patent. On May 1, 2007, the ALJ granted both motions in an ID (Order No. 30), and on May 17, 2007, the Commission determined not to review that ID. On May 4, 2007, complainant Ericsson moved to terminate the investigation as to the '027 patent. On May 22 and June 7, 2007, respectively, the ALJ granted the motion in an ID (Order No. 36), and the Commission determined not to review that ID.

On July 23, 2007, complainant Ericsson and respondent Samsung filed a joint motion to terminate the investigation on the basis of a settlement agreement. The Commission investigative attorney filed a response in support of the motion on July 31, 2007.

The ALJ issued the subject ID on August 3, 2007, granting the joint motion for termination. No party petitioned for review of the ID pursuant to 19 CFR 210.43(a), and the Commission found no basis for ordering a review on its own initiative pursuant to 19 CFR 210.44. Accordingly, the Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in §§ 210.21(a)(2), (b) and 210.42(h)(3) of the Commission's Rules of Practice and Procedure.

By order of the Commission.

Issued: August 22, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–16963 Filed 8–27–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0008]

Office on Violence Against Women; Agency Information Collection Activities; Extension of a Currently Approved Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Semi-Annual Progress Report for the Enhanced Training and Services to End Violence and Abuse of Women Later in Life Program.

The Department of Justice, Office on Violence Against Women (OVW), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 72, Number 117, page 33772 on June 19, 2007, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 27, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of

Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Semi-Annual Progress Report for Grantees from the Enhanced Training and Services to End Violence and Abuse of Women Later in Life Program (Training Program).

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: 1122–0008. U.S. Department of Justice, Office on Violence Against Women.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: The affected public includes the approximately 18 grantees of the Training Program. Training Program grants may be used for training programs to assist law enforcement officers, prosecutors, and relevant officers of Federal, State, tribal, and local courts in recognizing, addressing, investigating, and prosecuting instances of elder abuse, neglect, and exploitation and violence against individuals with disabilities, including domestic violence and sexual assault, against older or disabled individuals. Grantees fund projects that focus on providing training for criminal justice professionals to enhance their ability to address elder abuse, neglect and exploitation in their communities.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that it will take the approximately 18 respondents (Training Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Training Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual hour burden to complete the data collection forms is 36 hours, that is 18 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 22, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7–16938 Filed 8–27–07; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0009]

Office on Violence Against Women; Agency Information Collection Activities; Extension of a Currently Approved Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review; Semi-Annual Progress Report for the Safe Havens; Supervised Visitation and Safe Exchange Grant Program.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume Number 72, Number 117, page 33773 on June 19, 2007, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 27, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Semi-Annual Progress Report for Grantees from the Safe Havens: Supervised Visitation and Exchange Grant Program (Supervised Visitation Program).

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: 1122–0009.

U.S. Department of Justice, Office on Violence Against Women.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: The affected public includes the approximately 33 grantees of the Supervised Visitation Program who are States, Indian tribal governments, and units of local government. The Supervised Visitation Program provides an opportunity for communities to support the supervised visitation and safe exchange of children, by and between parents, in situations involving domestic violence, child abuse, sexual assault, or stalking.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that it will take the approximately 33 respondents (Supervised Visitation Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Supervised Visitation Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual hour burden to complete the data collection forms is 66 hours, that is 33 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Bryant, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 22, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7–16942 Filed 8–27–07; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0010]

Office on Violence Against Women; Agency Information Collection Activities; Extension of a Currently Approved Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Semi-Annual Progress Report for the Grants to State Sexual Assault and Domestic Violence Coalitions Program.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume Number 72, Number 117, page 33773 on June 19, 2007, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 27, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Semi-Annual Progress Report for Grantees from the Grants to State Sexual Assault and Domestic Violence Coalitions Program (State Coalitions Program).

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: 1122–0010. U.S. Department of Justice, Office on Violence Against Women.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: The affected public includes the 88 grantees from the State Coalitions Program. The State Coalitions Program provides federal financial assistance to state coalitions to support the coordination of state victim services activities, and collaboration and coordination with federal, state, and local entities engaged in violence against women activities.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that it will take the approximately 88 respondents (State Coalitions Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A State Coalitions Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual hour burden to complete the data collection forms is 176 hours, that is 88 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 22, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7–16943 Filed 8–27–07; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0005]

Office on Violence Against Women; Agency Information Collection Activities Extension of a Currently Approved Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Semi-Annual Progress Report for the Grantees from the Grants to Reduce Violent Crimes Against Women on Campus Program.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume Number 72, Number 117, page 33771 on June 19, 2007, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 27, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Extension of a currently approved collection

(2) Title of the Form/Collection: Semi-Annual Progress Report for Grantees from the Grants to Reduce Violent Crimes Against Women on Campus Program (Campus Program).

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: 1122–0005. U.S. Department of Justice, Office on Violence Against Women.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: The affected public includes the approximately 100 grantees (institutions of higher education) of the Grants to Reduce Violent Crimes Against Women on Campus Program whose eligibility is determined by statute. Campus Program grants may be used to enhance victim services and develop programs to prevent violent crimes against women on campuses. The Campus Program also enables institutions of higher education to develop and strengthen effective security and investigation strategies to combat violent crimes against women on campuses, including domestic violence, dating violence, sexual assault, and stalking.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that it will take the approximately 100 respondents (Campus Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Campus Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual hour burden to complete the data collection forms is 200 hours, that is 100 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 22, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7–16944 Filed 8–27–07; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0090]

Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: ATF F 5630.5R, NFA Special Tax Renewal Registration and Return ATF F 5630.5RC, NFA Special Tax Location Registration Listing ATF F 5630.7, NFA Special Tax Registration and Return National Firearms Act.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 29, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kathleen M. Downs, Financial Management Division, Room 4450, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: ATF F 5630.5R, NFA Special Tax Renewal Registration and Return, ATF F 5630.5RC, NFA Special Tax Location Registration Listing, ATF F 5630.7, NFA Special Tax Registration and Return National Firearms Act.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: ATF F 5630.5R, ATF F 5630.5RC, ATF F 5630.7. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit. Other: None. ATF F 5630.7, NFA Special Tax Registration and Return National Firearms Act is completed and returned by businessês that are subject to Special Occupation Taxes under the National Firearms Act for either initial tax payment or business information changes. This form serves as both a return and a business registration. ATF F 5630.5R, NFA Special Tax Renewal Registration and Return and ATF F 5630.5RC, NFA Special Tax Location Registration Listing are preprinted forms sent to taxpayers who Special Occupational Taxes under the National Firearms Act. Taxpayers validate/correct the information and send the forms back with payment for the applicable tax year.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 2,800 taxpayers will complete forms ATF F 5630.5R and ATF F 5630.5RC in approximately 20 minutes (10 minutes for each form). It is also estimated that 200 new taxpayers will complete ATF F 5630.7 in its entirety in approximately 15 minutes. The total number of respondents for this information collection is 3,000.

(6) An estimate of the total public burden (in hours) associated with the collection: The total burden for ATF F 5630.5R and ATF F 5630.5RC is 933 hours. The total burden for ATF F 5630.7 is 50 hours. The estimated total public burden associated with this information collection is 983 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 22, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E7–16969 Filed 8–27–07; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 20, 2007, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78664, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590).	I
Gamma Hydroxybutyric acid (2010).	I
Methaqualone (2565)	I
Alpha-Ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401).	I
N-Hydroxy-3,4-methylendioxyamphetamine (7402).	I
3,4-Methylendioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Alpha-methyltryptamine (7432)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Acetyldihydrocodeine (9051)	I
Benzylmorphine (9052)	I
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Hydromorphinol (9301)	I
Methyldihydromorphine (9304)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Acetylmethadol (9601)	I
Allylprodine (9602)	I
Alphacetylmethadol except levo-alphacetylmethadol (9603).	I
Alphameprodine (9604)	I
Alphamethadol (9605)	I
Betacetylmethadol (9607)	I
Betameprodine (9608)	I
Betamethadol (9609)	I
Betaprodine (9611)	I
Hydroxypethidine (9627)	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I
Normethadone (9635)	I
Trimeperidine (9646)	I
Phenomorphan (9647)	I
Para-Fluorofentanyl (9812)	I
3-Methylfentanyl (9813)	I
Alpha-Methylfentanyl (9814)	I
Acetyl-alpha-methylfentanyl (9815).	I
Beta-hydroxyfentanyl (9830)	I
Beta-hydroxy-3-methylfentanyl (9831).	I
Alpha-Methylthiofentanyl (9832)	I
3-Methylthiofentanyl (9833)	I
Thiofentanyl (9835)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenmetrazine (1631)	II
Methylphenidate (1724)	II
Ambobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Nabilone (7379)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II

Drug	Schedule
1-Piperidinocyclohexane carbonitrile (8603).	II
Alphaprodine (9010)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Racemethorphan (9732)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture small quantities of the listed controlled substances to make reference standards which will be distributed to their customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537; or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than October 29, 2007.

Dated: August 16, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–16937 Filed 8–27–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 07–36]

Spirit Pharmaceuticals, L.L.C., c/o Novelty, Inc; Denial of Request for Hearing

On June 22, 2007, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Suspend Shipment to Spirit Pharmaceuticals, L.L.C., of Fairless Hills, Pennsylvania. *See* 21 U.S.C. 971(c). The Order suspended Spirit's proposed importation of 2,000 kilograms of Ephedrine Hydrochloride to be purchased from Emmellen Biotech Pharmaceuticals, LTD., of Mumbai, India. Order at 1.

The factual basis of the Order was that Spirit, a registered importer, had identified AAA Pharmaceuticals, Inc. (AAA), as the customer, on the Import Declaration (DEA Form 486) that it filed. *Id.* at 2. DEA personnel subsequently contacted AAA and determined that the ephedrine was to be used to manufacture tablets that would be sold to Novelty, Inc. *Id.* at 2.

The Order related that ephedrine is a list I chemical, which while having a legitimate use as a bronchodilator, is also a precursor chemical which is used in the illicit manufacture of methamphetamine, a schedule II controlled substance. *Id.* The Order also related that DEA has found that non-traditional (or gray-market) retailers, which include such entities as gas stations, convenience stores, mini-marts, and liquor stores, "purchase and sell ephedrine * * * OTC products in quantities that exceed what would be necessary to meet legitimate demand" at these establishments, and that the products "are often sold to persons for use in the illicit manufacture of methamphetamine." *Id.* Finally, the Order related that "AAA manufactures and Novelty distributes" ephedrine products which are "not widely-advertised and are distributed to 'non-traditional' retail outlets * * * such as convenience stores and gas stations." *Id.* at 3. Based on DEA's experience with similar ephedrine products which were distributed to non-traditional retailers, I found that "the proposed importation of ephedrine may be diverted to the clandestine manufacture of controlled substances." *Id.*

The Order notified Spirit that it could request a hearing by filing a written request within thirty days of its receipt of the Order, and that if it failed to do so, it would be deemed to have waived its right to a hearing. *Id.* Spirit did not, however, request a hearing. Nor did AAA.

Instead, on July 5, 2007, Novelty filed a request for a hearing asserting that it is "a regulated person to whom an order applies" under 21 U.S.C. 971(c)(2). ALJ Memorandum at 1; *see also* Ltr. of Novelty's Counsel (June 28, 2007), at 1. Novelty also contended that it "is directly harmed, both in its property and liberty interests," and that it "has an independent due process right to a hearing under the Fifth Amendment * * * regardless of whether Spirit also requests a hearing on the order of suspension." Ltr. of Novelty's Counsel at 1. *Id.*

Upon receipt of Novelty's letter, the matter was assigned to Administrative Law Judge (ALJ) Gail Randall, who initiated pre-hearing procedures. Shortly thereafter, the Government filed a motion to deny Novelty a hearing on various grounds including that it is a downstream distributor and thus not entitled to a hearing under the statute. *See* Mot. to Deny Novelty, Inc. an Adjudicatory Hearing Under 21 U.S.C. 971(c)(2) (hereinafter, Mot. to Deny).

Upon review of the Government's motion, the ALJ concluded "that the usual manner of handling an administrative hearing is not appropriate here." ALJ Memorandum at 2. Noting that "[t]he entity asking for a hearing, Novelty, is not the entity addressed in the Order to Suspend Shipment, Spirit Pharmaceuticals," and that the Government had objected to granting Novelty a hearing on the validity of the suspension order, the ALJ concluded that "the designation of this matter for a hearing is not clear." *Id.* The ALJ thus transmitted the issue to me for resolution. *Id.* at 2–3.

For the reasons set forth below, I conclude that Novelty is not "a regulated person to whom an order applies under [21 U.S.C. 971(c)(1)]." 21 U.S.C. 971(c)(2). Accordingly, I deny Novelty's request for a hearing to challenge the suspension order. I further order that the proceedings currently pending before the ALJ be terminated.

Discussion

Under 21 U.S.C. 971(a), "[e]ach regulated person *who imports* * * * a listed chemical shall notify the Attorney General of the importation * * * not later than 15 days before the transaction is to take place." (emphasis added).[1] In

[1] In subsection (b), Congress directed that the Attorney General issue regulations "for circumstances in which the requirement of subsection (a) * * * does not apply to a transaction between a regulated person and a regular customer or to an importation by a regular importer." 21 U.S.C. 971(b)(1).

addition, in subsection (c)(1), Congress granted the Attorney General the authority to "order the suspension of any importation * * * of a listed chemical * * * on the ground that the chemical may be diverted to the clandestine manufacture of a controlled substance." *Id.* § 971(c)(1). Subsection (c)(1) further provides that "[f]rom and after the time when the Attorney General provides written notice of the order * * * to the regulated person, the regulated person may not carry out the transaction." *Id.*

In the event that the Agency orders the suspension of an importation, Congress provided that "[u]pon written request to the Attorney General, *a regulated person to whom an order applies under paragraph(1)* is entitled to an agency hearing on the record in accordance with" subchapter II of the Administrative Procedure Act. *Id.* § 971(c)(2) (emphasis added). It is this provision which is at issue in this proceeding.

Relying on *PDK Labs.* v. *Reno*, 134 F. Supp.2d 24 (D.D.C. 2001), Novelty contends that as a wholesale distributor, it "is a 'regulated person' within the meaning of 21 U.S.C. 802(38) and, as such, is entitled to a hearing under" subsection (c)(2). Novelty's Resp. to Mot. to Deny at 7. Novelty also maintains that it "is a party within the 'zone of interests' designedly protected by" the hearing provision and thus entitled to a hearing on this alternative ground. *Id.* Relatedly, Novelty contends that to deny it a hearing would violate the rule of law because *PDK Labs.* v. *Reno* "remain[s] the law governing this agency's construction of the hearing provision," *id.* at 5, and that "DEA possesses no lawful power to act against the holding of the District Court in" that case. *Id.* at 6.

In *PDK Labs.* v. *Reno*, the district court addressed the question of whether a manufacturer (PDK) was entitled to a hearing to challenge this Agency's refusal to issue a Letter of No Objection (LONO) to Indace, Inc., an importer which had notified the Agency of its intent to import bulk ephedrine on behalf of PDK. 134 F.Supp.2d at 28. When the Agency refused to grant the LONO, PDK filed suit raising various claims including that the Agency had violated the Administrative Procedure Act and had "failed to perform its statutory duties."[2] *Id.* at 27.

In the course of discussing whether PDK had standing to bring its APA claims, the district court addressed the Government's arguments that PDK was "not an intended beneficiary of § 971's procedures," and that "the interests underlying [its] claims [were] not within the 'zone of interests' protected by" the statute. *Id.* at 29–30. In rejecting these arguments, the court began by noting that under 21 U.S.C. 802(38), "'regulated persons' included manufactures [sic], distributors, importers, and exporters of listed chemicals," and that "as both a manufacturer and distributor PDK is a regulated person within the meaning of § 802." *Id.* at 30. Observing that "[s]ection 971 uses both the terms 'importers' and 'regulated persons.'" the court reasoned that "Congress easily could have limited the right to a hearing in § 971(c)(2) exclusively to 'importers to whom an order applies,' but chose not to do so—instead extending this right to 'regulated persons.'" *Id.* The court then concluded that "[t]he specific use of the term 'regulated persons' in § 971(c)(2) at least suggests that Congress intended to permit a regulated entity to whom an order applies—*including a manufacturer like PDK*—to obtain judicial review." *Id.* (emphasis added)

The court buttressed its reasoning asserting that this Agency "itself previously adopted a similar reading in *Yi Heng Enterprises Dev. Co.*, 64 FR 2234, 2235 (1999)." *Id.* While noting that "*Yi Heng* arose in a different context * * * because it involved the interests of two importers rather than an importer and a manufacture [sic]," the court noted that the "decision recognized that 'the statute provides the opportunity for a hearing to "a regulated person to whom an order (suspending shipment) applies," not necessarily the person to whom the order was issued.'" *Id.*

After discussing the zone of interests test for review under the APA—a separate inquiry from that of who is entitled to an agency hearing under the statute—the court further concluded that "the phrase 'regulated person to whom any [sic] order applies' is evidence that a manufacturer affected by a suspension order is protected under § 971's review provision." *Id.* at 31. The court also noted that because PDK was specifically listed on the DEA Form 486 as "the intended recipient of" the proposed importation and that the suspension order "hinge[d] largely on the identity of the eventual purchaser," PDK was "entitled to a hearing." *Id.*

Most of the district court's analysis of the hearing provision occurred in the course of its discussion of whether PDK had standing under the APA. The court nonetheless clearly incorporated this reasoning in granting PDK's motions for injunctive and declaratory relief. *See id.* at 36 ("PDK is a 'regulated person to whom an order applies' within the meaning of § 971. As such, it is entitled to an expedited hearing of formal suspension orders that apply to it."). *See also id.* at 38. DEA did not appeal the court's decision, which ordered the Agency to either issue a LONO or a suspension order. *Id.* Instead, the Agency complied with the court's order by issuing orders suspending the importations. *See Indace, Inc., c/o Seegott, Inc.*, 67 FR 77805 (2002). Thereafter, PDK requested a hearing and "DEA complied with the court's ruling" by granting PDK a hearing. *Id.*

The Government disagrees with Novelty as to the precedential weight of *PDK Labs.* v. *Reno*. First, the Government argues that *Yi Heng*, upon which the district court relied, does not support granting Novelty a hearing because there, both entities were deemed to be importers and thus the case did not address "the question of whether someone other than an importer could obtain a hearing." Motion to Deny at 9. The Government further argues that "Novelty is a step further removed from the importation than the plaintiff in *PDK Labs.*," and that to grant a hearing "to any downstream regulated person affected by a suspension order is a considerable expansion of the flawed reasoning in *PDK Labs.* v. *Reno*." Mot. to Deny at 10. Relatedly, the Government contends that "under Novelty's reasoning, any one of [its] thousands of customers," which are also "regulated persons" under the statute, "could receive [a hearing] regardless of whether Spirit, AAA, or even Novelty was interested in pursuing the importation." *Id.* at 11.

Having considered the parties' arguments, I agree with the Government that *PDK Labs* v. *Reno* is not controlling authority in this matter. The statutory scheme, reasonably read, grants a hearing only to those who are properly deemed to be importers. While in some circumstances, a manufacturer may also be deemed to be an importer because it is the real party in interest in an import transaction, Novelty is neither an importer nor a manufacturer. Rather, it is the purchaser and distributor of a new and different product combining the ephedrine with guaifenesin, which has been manufactured in the United States.

[2] At the time PDK filed suit, Indace had indicated that it planned to pursue the matter by having DEA issue a suspension order. 134 F.Supp.2d at 28. The day after PDK filed suit, Indace notified the Agency that it considered the matter as being "solely between" DEA and PDK and that it no longer intended to pursue the matter. *Id.* DEA then notified Indace that it considered the request for importation to have been withdrawn. *Id.*

To be sure, a distributor such as Novelty falls within the definition of a "regulated person." 21 U.S.C. 802(38). In subsection (c)(2), however, Congress did not extend the hearing right to all "regulated persons." Rather, it limited the right to only "a regulated person to *whom an order applies under paragraph(1).*" *Id.* § 971(c)(2) (emphasis added). And as paragraph (1) (subsection (c)(1)) makes plain, the "regulated person to whom an order applies" is the regulated person that is seeking to "*carry out the transaction*" of the importation and which is the same regulated person that has previously notified the Agency of the proposed transaction. *Id.* § 971(c)(1) (emphasis added). *See also id.* § 971(a) ("Each regulated person *who imports* * * * a listed chemical shall notify the Attorney General of the importation * * * not later than 15 days before *the transaction* is to take place.") (emphasis added). As section 971's text and structure demonstrate, an entity's entitlement to a hearing is not based solely on its status as a "regulated person," but rather, as a "regulated person" seeking to carry out an import transaction.

As explained above, the transaction which is the subject of the suspension order is the importation of bulk ephedrine by Spirit Pharmaceuticals from Emmellen Biotech Pharmaceuticals of Mumbai, India. Novelty is not a party to this transaction.

My predecessor's decision in *Yi Heng* (which the district court relied on in *PDK*) provides no comfort to Novelty. In *Yi Heng*, my predecessor apparently adopted the ALJ's interpretation that "the statute does not specify that only one party in a transaction is entitled to a hearing. * * * [T]he statute provides the opportunity for a hearing to 'a regulated person to whom an order (suspending shipment) applies,' not necessarily the person to whom the order was issued." 64 FR at 2235 (int. quotations omitted).

In the decision, my predecessor relied on the Agency's regulation which defines a "chemical importer" as "a regulated person who, as *"the principal party in interest in the import transaction"*, has the power and responsibility for determining and controlling the bringing in or introduction of the listed chemical into the United States." *Id.* (quoting 21 CFR 1300.02(b)(8)). Because title to the chemical had passed to *Yi Heng's* customer "before the chemical entered the United States," the customer was also "a regulated person to whom the suspension order applies." *Id.*

Unlike *Yi Heng's* customer, Novelty is not "the principal party in interest in the import transaction." 21 CFR 1300.02(b)(8). Indeed, as explained above, it is not even a party to the import transaction. Novelty thus stands on a different footing than a manufacturer (such as PDK did) which lacks an import registration and which must therefore import by entering into an agency relationship with a registered importer.[3] Novelty does not have "the power and responsibility for determining and controlling the bringing in or introduction of the listed chemical into the United States." *Id.* As the Government points out, even were Novelty to prevail at a hearing, it cannot "compel Spirit to import the ephedrine." Mot. to Deny at 8. Nor does Novelty identify any consequence that would attach to it were Spirit to violate the suspension order. *See* 21 U.S.C. 960(d).

Furthermore, here, in contrast to the PDK case, not even the manufacturer (AAA) filed a request for a hearing. Moreover, under Novelty's construction of the statute, any one of a manufacturer's wholesale-distributor customers (and some manufacturers have numerous wholesaler customers) would be entitled to a hearing even if the manufacturer had decided that it no longer desired to pursue the importation and manufacture the product. I will not adopt a construction of the statute that would lead to such an absurd result.[4] *Cf. Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982).

The text and structure of section 971 thus provide ample evidence that Congress intended to grant a hearing only to those regulated persons who are principal parties to a proposed import transaction. Because Novelty is not such a party but rather the purchaser of a new and different product, which has been manufactured in the United States, it is not "a regulated person to whom an order applies." 21 U.S.C. 971(c)(2). It is therefore not entitled to a hearing.[5]

Novelty further argues that to deny it a hearing would deprive it of liberty and property interests in violation of the Due Process Clause. Novelty's Resp. at 16–17. Relatedly, Novelty argues that under the avoidance doctrine, DEA must construe the statute to provide it with a hearing.

Novelty has not established that the suspension order has deprived it of either a liberty or property interest. Novelty maintains that it "has a liberty interest in avoiding damage to its reputation * * * that will result from the stigmatizing suspension DEA creates by its effective import ban." Novelty Resp. at 17. This contention is easily dismissed because in *Paul* v. *Davis*, 424 U.S. 693, 712 (1976), the Supreme Court held that one's "interest in reputation" is "neither 'liberty' nor 'property' " under the Due Process Clause.

Novelty further asserts that "the stigmatizing effects" of the suspension order will "preclude[it] from obtaining 10–15% of its revenue." Novelty Resp. at 17. The Suspension Order does not, however, prevent Novelty from obtaining product from any one of the numerous other manufacturers of these products and thus does not preclude Novelty "from pursuing its core business." *PDK Labs.* v. *Reno*, 134 F.Supp.2d at 33. As for Novelty's claimed property interest, the *PDK* court held that "[n]othing in the overall scheme of the [Chemical Diversion and Trafficking Act] justifies the finding that [a manufacturer] has an entitlement to import List I chemicals." *Id.* at 33. The same is equally true with respect to a distributor. I therefore conclude that construing the statute to deny Novelty a hearing—as Congress intended—does not raise any constitutional question.[6]

Order

Pursuant to the authority vested in me by 28 CFR 0.100(b) & 0.104, I hereby order that the request of Novelty, Inc., for a hearing to challenge the Order to Suspend Shipment issued to Spirit Pharmaceuticals, Inc., be, and it hereby is, denied. I further order that the proceedings in this matter be, and they

[3] As our regulation makes clear, a manufacturer is an importer only when the registered importer acts as the manufacturer's agent in importing the chemical and the manufacturer is the principal party in interest in the transaction. When an importer proposes to import a listed chemical for its own account, its future customers are not importers.

[4] Novelty also argues that importers "have little interest or incentive to do battle in a hearing with DEA," and that "the importer has no way of discerning the intricacies of its client's business." Novelty's Resp. at 8 n.3. Novelty ignores, however, that in an agency relationship, the "principal has the right to control the conduct of the agent with respect to matters entrusted to him." 1 American Law Institute, *Restatement (Second) of Agency* § 14, at 60 (1958). Presumably, the principal's right to control its agent should be sufficient to induce the agent to request a hearing, at which the manufacturer would intervene and litigate the basis for the order.

[5] For the same reasons, I also reject Novelty's contention that it is entitled to a hearing because it is within the zone of interests protected by section 971.

[6] Novelty also argues that "DEA's refusal to grant [it] a hearing violates the DEA Administrator's oath of office to uphold the Constitution and the laws of the United States," Novelty Resp. at 19, and kindly reminds me that "[v]iolation of the oath is an offense punishable by judicial action." *Id.* at 20. Novelty can be assured that both I and the Administrator fully appreciate our obligation to faithfully discharge the duties of our offices.

hereby are, terminated. This Order is effectively immediately.

Dated: August 17, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–16936 Filed 8–27–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

August 22, 2007.

The Department of Labor has submitted the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). Copies of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: Carolyn Lovett, OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not a toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Revision and Extension of currently approved collection.

Title: Employer's First Report of Injury or Occupational Disease; Physician's Report on Impairment of Vision; and Employer's Supplementary Report of Accident or Occupational Illness.

OMB Control Number: 1215–0031.

Estimated Number of Respondents: 26,381.

Estimated Total Burden Hours: 6,595.

Affected Public: Private Sector: Business or other for-profits.

Description: The Forms LS–202 and LS–210 are used to report injuries, periods of disability, and medical treatment under the Longshore and Harbor Workers' Compensation Act.

Agency: Employment Standards Administration.

Type of Review: Revision and Extension of currently approved collection.

Title: Operator Controversion, Operator Response, Operator Response to Schedule for Submission of Additional Evidence, and Operator Response to Notice of Claim.

OMB Control Number: 1215–0058.

Estimated Number of Respondents: 8,000.

Estimated Total Burden Hours: 2,333.

Affected Public: Private Sector: Business or other for-profits.

Description: The Forms CM–2790 & CM–2970a are used for claims filed after January 19, 2001 and indicate that the coal mine operator will submit additional evidence or respond to the notice of claim.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–16961 Filed 8–27–07; 8:45 am]

BILLING CODE 4510–CF–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Renewal of Advisory Committee on Electronic Records Archives

This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.) and advises of the renewal of the National Archives and Records Administration's (NARA) Advisory Committee on Electronic Records Archives. In accordance with Office of Management and Budget (OMB) Circular A–135, OMB approved the inclusion of the Advisory Committee on Electronic Records Archives in NARA's ceiling of discretionary advisory committees.

NARA has determined that the renewal of the Advisory Committee on Electronic Records Archives is in the public interest due to the expertise and valuable advice the Committee members provide on technical, mission, and service issues related to the Electronic Records Archives (ERA). NARA will use the Committee's recommendations on issues related to the development, implementation, and use of the ERA system. NARA's Committee Management Officer is Mary Ann Hadyka. She can be reached at 301–837–1782.

Dated: August 21, 2007.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. E7–16991 Filed 8–27–07; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit modification received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 27, 2007. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Description of Permit Modification Requested: The Foundation issued a permit (2007–003) to Dr. Rennie S. Holt on December 26, 2006. The issued permit allows the applicant to census, tag, collect samples and instrument mammals (Antarctic Fur, Leopard, Southern Elephant, Ross, Weddell and Crabeater seals) and seabirds (Chinstrap and Gentoo penguins, Cape Petrels, Giant Petrels, Brown Skuas, South Pole Skuas, Sheathbills, Kelp gulls, and Blue-eyed Shag).

The applicant requests a modification to his permit to collect a single whisker from each captured Fur or Leopard seal for measuring stable isotope ratios to infer trophic levels. Collection will occur while the animal is anesthetized for tagging or instrumentation.

Location: Cape Shirreff, Livingston Island (including San Telmo islands), Seal Island and King George Island.

Dates: November 1, 2007 to April 30, 2011.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. E7–16918 Filed 8–27–07; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modification Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45, Part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 27, 2007. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Description of Permit Modification Requested: The Foundation issued a permit (2007–007) to Dr. Markus Horning on October 12, 2006. The issued permit allows the applicant to restrain/immobilize up to 48 Weddell seals over a 2 year period, tag, collect samples and temporarily apply instrumentation.

The applicant requests modifications to his permit to:

(1) Pre-tag adult females >21 years (non-pregnant, non-lactating) only if they are encountered at a time when they cannot be properly instrumented (bad weather or all instruments already deployed). Pre-tagging would involve up to 2–6 adult females and would allow for easier tracking and location for further instrumentation.

(2) Increase the number of Weddell seals sampled from 48 to 60.

(3) Opportunistically collect and export to the U.S. up to 100 Weddell seal fecal samples for future assessment of the cumulative effect of research activities on Weddell seals, by way of analysis of stress hormone levels (corticosteroids).

(4) Enter the Cape Royds Antarctic Specially Protected Area (ASPA 121) only on a contingency basis should a seal wander into the area and the applicant needs to retrieve an instrument package.

Location: McMurdo Sound sea ice.

Dates: October 1, 2007 to February 28, 2008.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. E7–16932 Filed 8–27–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission—new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR Part 19, "Notices, Instructions, and Reports to Workers: Inspection and Investigations."

3. The form number if applicable: N/A.

4. How often the collection is required: As necessary in order that adequate and timely reports of radiation exposure be made to individuals involved in NRC-licensed activities.

5. Who will be required or asked to report: Licensees authorized to receive, possess, use, or transfer material licensed by the NRC.

6. An estimate of the number of annual responses: 4,906 responses (256 plus 4,650 recordkeepers).

7. The estimated number of annual respondents: 4,650 licensees.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 35,674 hours (4,553 hours for reporting and 31,121 hours for recordkeeping).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: N/A.

10. Abstract: Title 10 of the Code of Federal Regulations, Part 19, requires licensees to advise workers on an annual basis of any radiation exposure they may have received as a result of

NRC-licensed activities or when certain conditions are met. These conditions apply during termination of the worker's employment, at the request of a worker, former worker, or when the worker's employer (the NRC licensee) must report radiation exposure information on the worker to the NRC. Part 19 also establishes requirements for instructions by licensees to individuals participating in licensed activities and options available to these individuals in connection with Commission inspections of licensees to ascertain compliance with the provisions of the Atomic Energy Act of 1954, as amended, Title II of the Energy Reorganization Act of 1974, and regulations, orders and licenses thereunder regarding radiological working conditions.

The worker should be informed of the radiation dose he or she receives because: (a) That information is needed by both a new employer and the individual when the employee changes jobs in the nuclear industry; (b) the individual needs to know the radiation dose received as a result of an accident or incident (if this dose is in excess of the 10 CFR Part 20 limits) so that he or she can seek counseling about future work involving radiation, medical attention, or both, as desired; and (c) since long-term exposure to radiation may be an adverse health factor, the individual needs to know whether the accumulated dose is being controlled within NRC limits. The worker also needs to know about health risks from occupational exposure to radioactive materials or radiation precautions or procedures to minimize exposure, worker responsibilities and options to report any licensee conditions which may lead to or cause a violation of Commission regulations, and individual radiation exposure reports which are available to him.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 27, 2007. 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.

Nathan Frey, Desk Officer, Office of Information and Regulatory Affairs (3150–0044), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Nathan_Frey@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Margaret A. Janney, 301–415–7245.

Dated at Rockville, Maryland, this 21st day of August, 2007.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–16996 Filed 8–27–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR Part 34—Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations.

3. The form number if applicable: N/A.

4. How often the collection is required: Applications for new licenses and amendments may be submitted at any time. Applications for renewal are submitted every 10 years. Reports are submitted as events occur.

5. Who will be required or asked to report: Applicants for and holders of specific licenses authorizing the use of licensed radioactive material for radiography.

6. An estimate of the number of annual responses: 778 (NRC licensees 60 plus 113 recordkeepers and Agreement State licensees 198 plus 407 recordkeepers).

7. The estimated number of annual respondents: 253 (55 NRC Licensees and 198 Agreement State Licensees).

8. An estimate of the total number of hours needed annually to complete the requirement or request: The number of hours needed annually to complete the requirement or request: 199,125 hours. The NRC licensees total burden is 43,397 hours (72 reporting hrs [an average of 1.2 hours per response] plus 43,325 recordkeeping hrs [an average of 383 hours per recordkeeper]). The Agreement State licensees total burden is 155,728 hours (269 reporting hrs [an average of 1.4 hour per response] plus 155,459 recordkeeping hrs [an average of 382 hours per recordkeeper]).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: N/A.

10. Abstract: 10 CFR Part 34 establishes radiation safety requirements for the use of radioactive material in industrial radiography. The information in the applications, reports and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of source and byproduct material is in compliance with license and regulatory requirements.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 27, 2007. 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.

Nathan Frey, Desk Officer, Office of Information and Regulatory Affairs (3150–0007), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Nathan_Frey@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Margaret A. Janney, 301–415–7245.

Dated at Rockville, Maryland, this 20th day of August, 2007.

For the Nuclear Regulatory Commission.

Christopher Colburn,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–16997 Filed 8–27–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR part 39—Licenses and Radiation Safety Requirements for Well Logging.

3. The form number if applicable: N/A.

4. How often the collection is required: Applications for new licenses and amendments may be submitted at any time. Applications for renewal are submitted every 10 years. Reports are submitted as events occur.

5. Who will be required or asked to report: Applicants for and holders of specific licenses authorizing the use of licensed radioactive material for radiography.

6. An estimate of the number of annual responses: 1,899 (NRC licensees—376 plus 37 recordkeepers and Agreement State licensees—1,353 plus 133 recordkeepers).

7. The estimated number of annual respondents: 170 (37 NRC Licensees and 133 Agreement State Licensees).

8. An estimate of the total number of hours needed annually to complete the requirement or request: 36,890 hours. The NRC licensees total burden is 8,037 hours (116 reporting hrs plus 7,921 recordkeeping hrs). The Agreement State licensees total burden is 28,853 hours (423 reporting hrs plus 28,430 recordkeeping hrs). The average burden per response for both NRC licensees and Agreement State licensees is 3.2 hours, and the burden per recordkeeper is 214 hours.

9. An indication of whether section 3507(d), Public Law 104–13 applies: N/A.

10. Abstract: 10 CFR part 39 establishes radiation safety requirements for the use of radioactive material in well logging operations. The information in the applications, reports and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of source and byproduct material is in compliance with license and regulatory requirements.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 27, 2007. 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.

Nathan Frey, Desk Officer, Office of Information and Regulatory Affairs (3150–0130), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Nathan_Frey@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Margaret A. Janney, 301–415–7245.

Dated at Rockville, Maryland, this 20th day of August, 2007.

For the Nuclear Regulatory Commission.

Christopher Colburn,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–16998 Filed 8–27–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–424 and 50–425]

Southern Nuclear Operating Company Vogtle Electric Generating Plant, Units 1 and 2

Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

Southern Nuclear Operating Company (SNC) has submitted an application for renewal of Facility Operating Licenses Nos. NPF–68 and NPF–81 for an additional 20 years of operation at the Vogtle Electric Generating Plant (VEGP), Units 1 and 2. VEGP is located outside of Waynesboro, Georgia.

The current operating licenses for the VEGP, Units 1 and 2, expire on January 16, 2027, and February 9, 2029, respectively. The application for renewal, dated June 27, 2007 was submitted pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Part 54. A notice of receipt and availability of the application, which included SNC's environmental report (ER), was published in the **Federal Register** on August 3, 2007 (72 FR 43296). A notice of acceptance for docketing of the application for renewal of the facility operating license was published in the **Federal Register** on August 21, 2007 (72 FR 46680). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) related to the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29. In addition, as outlined in 36 CFR 800.8, "Coordination with the National Environmental Policy Act," the NRC plans to coordinate compliance with Section 106 of the National Historic Preservation Act in meeting the requirements of the National Environmental Policy Act of 1969 (NEPA).

In accordance with 10 CFR 51.53(c) and 10 CFR 54.23, SNC submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR part 51 and is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at *http://adamswebsearch.nrc.gov/dologin.htm*. The Accession Number for the ER is ML071840357. Persons who

do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or via e-mail at *pdr@nrc.gov*. The ER may also be viewed on the Internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/vogtle.html*. In addition, the ER is available for public inspection near VEGP at the Burke County Library, 130 Highway 24 South, Waynesboro, Georgia 30830.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the Commission's "Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants," (NUREG–1437) related to the review of the application for renewal of the VEGP, Units 1 and 2, operating licenses for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. The NRC is required by 10 CFR 51.95 to prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with NEPA and the NRC's regulations found in 10 CFR part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment.

Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of, the scope of the supplement to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies.

h. Describe how the supplement to the GEIS will be prepared, and include any contractor assistance to be used.

The NRC invites the following entities to participate in scoping:

a. The applicant, SNC.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

f. Any person who has petitioned or intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold public scoping meetings for the VEGP, Units 1 and 2, license renewal supplement to the GEIS. The scoping meetings will be held at the Augusta Technical College, Waynesboro Campus Auditorium, 216 Highway 24 South, Waynesboro, Georgia 30830. There will be two sessions to accommodate interested parties on September 27, 2007. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include: (1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions one hour before the start of each session at the Augusta Technical College, Waynesboro Campus Auditorium.

No formal comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below.

Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting NRC Environmental Project Manager, Mr. Justin P. Leous, at 1–800–368–5642, extension 2864, or via e-mail to the NRC at *Vogtle_LR_EIS@nrc.gov* no later than September 20, 2007. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. Mr. Leous will need to be contacted no later than September 17, 2007, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scope of the VEGP, Units 1 and 2, license renewal review to: Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to the NRC, Room T–6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852, from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered in the scoping process, written comments should be postmarked by October 24, 2007. Electronic comments may be sent by e-mail to the NRC at *Vogtle_LR_EIS@nrc.gov*, and should be sent no later than October 24, 2007, to be considered in the scoping process. Comments will be available electronically and accessible through ADAMS at *http://adamswebsearch.nrc.gov/dologin.htm*.

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Notice of

opportunity for a hearing regarding the renewal application was the subject of the aforementioned **Federal Register** notice (72 FR 46680). Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection in ADAMS at *http://adamswebsearch.nrc.gov/dologin.htm*. The staff will then prepare and issue for comment the draft supplement to the GEIS, which will be the subject of a separate notice and separate public meeting. Copies will be available for public inspection at the Burke County Library, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Mr. Leous at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 21st day of August 2007.

For the Nuclear Regulatory Commission.

Rani Franovich,

Branch Chief, Environmental Branch B, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E7–16995 Filed 8–27–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of August 27, September 3, 10, 17, 24, October 1, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Matters to be Considered

Week of August 27, 2007

Thursday, August 30, 2007

9 a.m. Affirmation Session (Public Meeting) (Tentative).

a. *Final Rule:* 10 CFR parts 30, 31, 32, and 150—Exemptions from Licensing, General Licenses, and Distribution of Byproduct. *Material:* Licensing and Reporting Requirements (RIN 3150–AH41) (Tentative).

b. Pacific Gas and Electric Co. (Diablo Canyon ISFSI), Docket No. 72–26–ISFSI, San Luis Obispo Mothers for Peace's Contentions and Request for Hearing Regarding Diablo Canyon Environmental Assessment Supplement (Tentative).

c. Southern Nuclear Operating Co. (Early Site Permit for Vogtle ESP Site—Certified Question Regarding Conduct of Mandatory Hearing (Tentative).

Week of September 3, 2007—Tentative

Tuesday, September 4, 2007

2:30 p.m. Briefing on Radioactive Materials Security and Licensing (Public Meeting) (Contact: Robert Lewis, 301–415–8722).

Week of September 10, 2007—Tentative

There are no meetings scheduled for the Week of September 10, 2007.

Week of September 17, 2007—Tentative

There are no meetings scheduled for the Week of September 17, 2007.

Week of September 24, 2007—Tentative

There are no meetings scheduled for the Week of September 24, 2007.

Week of October 1, 2007—Tentative

Tuesday, October 2, 2007

9:30 a.m. Periodic Briefing on Security Issues (Closed—Ex. 1 & 3).

Wednesday, October 3, 2007

2 p.m. Briefing on NRC's International Programs, Performance, and Plans (Public Meeting) (Contact: Karen Henderson, 301–415–0202).

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1291. Contact person for more information: Michelle Schroll, (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/about-nrc/policy-making/schedule.html*.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in theses public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: August 23, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–4237 Filed 8–24–07; 10:29 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27933; File No. 812–13267]

Hartford Life Insurance Company, et al.; Notice of Application

August 22, 2007.

AGENCY: U.S. Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940, as amended (the "Act").

APPLICANTS: Hartford Life Insurance Company ("Hartford Life"), Hartford Life Insurance Company Separate Account DC–I ("Account DC–I"), Hartford Life Insurance Company Separate Account Two ("Account Two"), Hartford Life Insurance Company Separate Account Eleven ("Account Eleven") (together with Account DC–I and Account Two, the "Registered Accounts"), and Hartford Securities Distribution Company, Inc. ("HSD").

SUMMARY: Applicants request an order of the Commission pursuant to section 11(a) of the Act approving the terms of the proposed offers of exchange described in this application. Applicants propose to make the following exchange offers: (1) Group variable annuity contracts issued by Hartford Life offering interests in Account Eleven (the "New Contracts") for certain group variable annuity contracts issued by Hartford Life (the "Modified Old Contracts") offering interests in both Account DC–I and Account Two as well as certain other separate accounts not registered as investment companies under the Act; (2) interests in Account DC–I and Account Two, as originally offered to contract owners, ("Original Old Contracts") for interests in the

Unregistered DC Accounts under Modified Old Contracts; (3) New Contracts for certain group variable annuity contracts issued by Hartford Life ("457 Contracts") offering interests in Hartford Life Insurance Company Separate Account 457 ("Account 457"); and (4) Original Old Contracts offering interests in Account DC–I and Account Two for 457 Contracts offering interests in Account 457.

DATES: The application was filed on March 2, 2006, and amended on August 21, 2007.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 17, 2007, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, 200 Hopmeadow Street, Simsbury, Connecticut 06089; copies to David S. Goldstein, Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Michael L. Kosoff, Staff Attorney, at (202) 551–6754, or Harry Eisenstein, Branch Chief, at (202) 551–6795, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the SEC's Public Reference Branch, 100 F Street, NE., Washington, DC 20549 ((202) 551–8090).

Applicants' Representations

1. Hartford Life is a stock life insurance company originally incorporated under the laws of the Commonwealth of Massachusetts on June 5, 1902, and subsequently re-domiciled to the state of Connecticut. Hartford Life is engaged in the business of writing individual and group life insurance and annuity contracts in the District of Columbia and all States. As of December 31, 2006, Hartford Life had assets of approximately $214 billion. For purposes of the Act, Hartford Life is the depositor and sponsor of Account DC–I, Account Two and Account Eleven, as those terms have been interpreted by the Commission with respect to variable annuity separate accounts registered under the Act as unit investment trusts.

2. Hartford Life established Account DC–I on or about March 31, 1988, Account Two on June 2, 1986 and Account Eleven on December 1, 2000, as segregated asset accounts under Connecticut law. Under Connecticut law, the assets of Account DC–I and Account Two, including assets attributable to the Original Old Contracts and the Modified Old Contracts, are owned by Hartford Life, but are held separately from all other assets of Hartford Life for the benefit of the owners of, and the persons entitled to payment under, variable annuity contracts issued by Hartford Life through Account DC–I and Account Two, including the Original Old Contracts and Modified Old Contracts. Likewise, the assets of Account Eleven, including assets attributable to the New Contracts, are owned by Hartford Life, but are held separately from all other assets of Hartford Life for the benefit of the owners of, and the persons entitled to payment under variable annuity contracts issued by Hartford Life through Account Eleven, including the New Contracts. Consequently, assets in each Account are not chargeable with liabilities arising out of any other business that Hartford Life may conduct. Income, gains and loses, realized and unrealized, from the assets of each Account are credited to or charged against that Account without regard to the income, gains or loses arising out of any other business that Hartford Life may conduct. Each Registered Account is a "separate account" as defined by Rule 0–1(e) under the Act, and is registered with the Commission as a unit investment trust.

3. The assets of Account DC–I and Account Two support Original Old Contracts as well as Modified Old Contracts. Hartford Life issued the Original Old Contracts to, among other parties, (a) Sponsors of non-qualified deferred compensation plans established by certain tax-exempt organizations ("tax-exempt plan sponsors") pursuant to section 457(b) and section 457(e)(1)(B) of the Internal Revenue Code of 1986, as amended (the "IRC"), as well as (b) trustees of trusts created to hold assets for non-qualified deferred compensation plans established by state and municipal governments, or instrumentalities thereof, pursuant to section 457(b) and section 457(e)(1)(A) of the IRC ("government plan trustees"). Interests in Account DC–I and Account Two offered through Original Old Contracts have been registered under the Securities Act of 1933 (the "1933 Act") on Form N–4.[1]

4. The New Contracts will be issued through Account Eleven. Hartford Life currently issues other group variable annuity contracts similar to the New Contracts through Account Eleven to a variety of applicants including tax-exempt plan sponsors, government plan trustees, retirement plans qualified under sections 401(a) and 403(a) of the IRC, and annuity purchase plans adopted by public school systems and certain tax-exempt organizations pursuant to section 403(b) of the IRC. Interests in Account Eleven offered through such group variable annuity contracts have been registered under the 1933 Act on Form N–4.[2] Likewise, interests in Account Eleven to be issued through the New Contracts will be registered under the 1933 Act on a Form N–4 registration statement to be filed shortly with the Commission.

5. HSD is a Connecticut corporation registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the Financial Industry Regulatory Authority, Inc. HSD is the principal underwriter for the Original Old Contracts, Modified Old Contracts, 457 Contracts and New Contracts and for other Hartford Life variable annuity contracts. HSD is an affiliated person of Hartford Life.

6. Hartford Life established Separate Account DC–III, Separate Account DC–IV, Separate Account DC–V and Separate Account DC–VI, as segregated asset accounts under Connecticut law ("Unregistered DC Accounts"). Each of the Unregistered DC Accounts is divided into several sub-accounts. Hartford Life added endorsements to the Original Old Contracts to make available to owners of such contracts one or more sub-accounts of the Unregistered DC Accounts as investment options. The Modified Old Contracts are those Original Old Contracts issued to tax-exempt plan sponsors to which the endorsements were added.

7. Under Connecticut law, the assets of each Unregistered DC Account attributable to Modified Old Contracts are owned by Hartford Life, but are held separately from all other assets of

[1] *See* 1933 Act File Nos. 33–19944, 33–19946, 33–19947 and 33–19949.

[2] *See* 1933 Act File No. 333–72042.

Hartford Life for the benefit of the owners of, and the persons entitled to payment under the Modified Old Contracts. Consequently, such assets in each Unregistered DC Account are not chargeable with liabilities arising out of any other business that Hartford Life may conduct. Income, gains and loses, realized and unrealized, from the assets of each Unregistered DC Account are credited to or charged against that Account without regard to the income, gains or loses arising out of any other business that Hartford Life may conduct. Hartford Life has not registered any Unregistered DC Account as an investment company under the Act in reliance upon the exclusion from the definition of investment company found in section 3(c)(11) of the Act.

8. Hartford Life established Account 457 on December 1, 1998, as a segregated asset account under Connecticut law. Under Connecticut law, the assets of Account 457, including assets attributable to the 457 Contracts, are owned by Hartford Life, but are held separately from all other assets of Hartford Life for the benefit of the owners of, and the persons entitled to payment under variable annuity contracts issued by Hartford Life through Account 457, including the 457 Contracts. Consequently, such assets in Account 457 are not chargeable with liabilities arising out of any other business that Hartford Life may conduct. Income, gains and loses, realized and unrealized, from the assets of Account 457 are credited to or charged against the separate account without regard to the income, gains or loses arising out of any other business that Hartford Life may conduct. Hartford Life has not registered Account 457 as an investment company under the Act in reliance upon the exclusion from the definition of investment company found in section 3(c)(11) of the Act.

9. Hartford Life has not registered interests in the Unregistered DC Accounts offered through Modified Old Contracts as securities under the 1933 Act in reliance upon the exemption from registration found in section 3(a)(2) of the 1933 Act. Likewise, Hartford life has not registered interests in Account 457 offered through the 457 Contracts as securities under the 1933 Act.

Description of the Contracts

10. During the accumulation period, the Original Old Contracts, Modified Old Contracts, 457 Contracts, and New Contracts (together, the "Contracts") each provides for the allocation of purchase payments and transfer of Contract values between and among various sub-accounts of the separate account through which each is issued. Each sub-account invests in shares of a particular open-end management investment company (a "mutual fund") which serves as an investment option under the Contract. The Contracts also offer a "fixed" interest investment option supported by Hartford Life's general account. During the annuity payment period, the Contracts all provide a variety of settlement or annuity payment options on a variable basis, fixed basis, or both. Owners of Contracts may withdraw some or all of their Contract's value at any time during the accumulation period or apply such values to the "purchase" of a settlement or annuity payment option. The Contracts incorporate many other features, including "death benefits" payable upon the death of a plan participant (or beneficiary) and certain fees and charges.

11. The Original Old Contracts, Modified Old Contracts and New Contracts do not impose any fees or charges in connection with purchase payments. The tables below describe the fees and charges deducted from separate account assets on an ongoing basis during both the accumulation and annuity payment periods, and the fees and charges payable by a Contract owner upon the withdrawal or surrender of Contract value during the accumulation period. The tables also indicate the annual rate of interest guaranteed for the "fixed" option under each Contract and identify the number of sub-accounts available as investment options under the Contract, along with the minimum and maximum total annual operating expenses for the mutual funds in which such sub-accounts invest as of December 31, 2006. The letter designation in the left-hand column represents different Contract variations.

ORIGINAL OLD CONTRACTS

[Account DC–I and Account Two]

Type of contract	Number of mutual funds	M&E risk and administrative charge (payout period) (% of average daily sub-account assets)	M&E risk and administrative charge (pay-in period) (% of average daily sub-account assets)	Minimum guaranteed annual interest rate	CDSC (% of amount surrendered)	Minimum total annual portfolio expenses (% of average daily net asset value)	Maximum total annual portfolio expenses (% of average daily net asset value)
A	10	1.25	0.75 to 0.90	4	N/A	0.34	0.91
B	10	1.25	0.75 to 0.90	4	N/A	0.34	0.91
C	10	1.25	0.75 to 0.90	4	N/A	0.34	0.91
D	10	1.25	0.75 to 0.90	4	N/A	0.34	0.91
E	10	1.25	0.75 to 0.90	4	N/A	0.34	0.91
F	10	1.25	0.75 to 0.90	4	N/A	0.34	0.91
G	10	1.25	0.75 to 0.90	4	N/A	0.34	0.91
H	10	1.25	0.75 to 0.90	4	N/A	0.34	0.91
I	10	1.25	0.75 to 0.90	4	N/A	0.34	0.91
J	10	1.25	0.75 to 0.90	4	N/A	0.34	0.91
K	10	1.25	0.75 to 0.90	4	N/A	0.34	0.91
L	10	1.25	0.75 to 0.90	4	N/A	0.34	0.91
M	10	1.25	0.75 to 0.90	4	12 YR	0.34	0.91
N	10	1.25	0.75 to 0.90	4	12 YR	0.34	0.91
O	10	1.25	0.75 to 0.90	3	7 YR	0.34	0.91
P	10	1.25	0.75 to 0.90	4	7 YR	0.34	0.91
Q	10	1.25	0.75 to 0.90	4	N/A	0.34	0.91

MODIFIED OLD CONTRACTS

[Account DC–I, Account Two and Unregistered DC Accounts]

Type of contract	Number of mutual funds	M&E risk and administrative charge (payout period) (% of average daily sub-account assets)	M&E risk and administrative charge (pay-in period) (% of average daily sub-account assets)	Minimum guaranteed annual interest rate	CDSC (% of amount surrendered)	Minimum total annual portfolio expenses (% of average daily net asset value)	Maximum total annual portfolio expenses (% of average daily net asset value)
A	23	1.25	0.75 to 0.90	4	N/A	0.34	1.73
B	24	1.25	0.75 to 0.90	4	N/A	0.34	1.73
C	24	1.25	0.75 to 0.90	4	N/A	0.34	1.73
D	24	1.25	0.75 to 0.90	4	N/A	0.34	1.73
E	25	1.25	0.75 to 0.90	4	N/A	0.34	1.73
F	25	1.25	0.75 to 0.90	4	N/A	0.34	1.73
G	25	1.25	0.75 to 0.90	4	N/A	0.34	1.73
H	25	1.25	0.75 to 0.90	4	N/A	0.34	1.73
I	26	1.25	0.75 to 0.90	4	N/A	0.34	1.73
J	26	1.25	0.75 to 0.90	4	N/A	0.34	1.73
K	26	1.25	0.75 to 0.90	4	N/A	0.34	1.73
L	27	1.25	0.75 to 0.90	4	N/A	0.34	1.73
M	23	1.25	0.75 to 0.90	4	12 YR	0.34	1.73
N	26	1.25	0.75 to 0.90	4	12 YR	0.34	1.73
O	23	1.25	0.75 to 0.90	3	7 YR	0.34	1.73
P	23	1.25	0.75 to 0.90	4	7 YR	0.34	1.73
Q	24	1.25	0.75 to 0.90	4	N/A	0.34	1.73

NEW CONTRACTS

[Account Eleven]

Type of contract	Number of mutual funds	M&E risk and administrative charge (payout period) (% of average daily sub-account assets)	M&E risk and administrative charge (pay-in period) (% of average daily sub-account assets)	Minimum guaranteed annual interest rate	CDSC (% of amount surrendered)	Minimum total annual portfolio expenses (% of average daily net asset value)	Maximum total annual portfolio expenses (% of average daily net asset value)
New Contract	48	0.70	0.70	4	N/A	0.34	1.49

12. Hartford Life does not assess a CDSC under Modified Old Contracts A, B, C, D, E, F, G, H, I, J, K, L and Q and corresponding Original Old Contracts A, B, C, D, E, F, G, H, I, J, K, L and Q. Under Modified Old Contracts M, N, O and P and corresponding Original Old Contracts M, N, O and P, a contingent deferred sales charge ("CDSC") may be assessed against the amount withdrawn or surrendered by a Contract owner. However, those who will be moved to the Original Old Contracts or from the Modified Old Contracts will not be subject to a CDSC.

13. As the tables indicate, the mortality and expense risk and administrative charge during the accumulation period under the New Contracts is less than that imposed under the Original Old Contracts and the Modified Old Contracts. The mortality and expense risk and administrative charge during the annuity payment period under the New Contracts is substantially less than that imposed under the Original Old Contracts and the Modified Old Contracts.

14. Hartford Life may deduct a charge corresponding to any applicable state or municipal premium taxes under each Contract. Hartford Life may deduct the charge for premium taxes at the time of payment of such taxes to the appropriate taxing authority, surrender of the Contract, upon payment of a death benefit or upon the commencement of annuity payments to a participant (or beneficiary).

15. Under the Original Old Contracts and the Modified Old Contracts, Hartford Life reserves the right to deduct a $5 fee for each transfer of Contract value between or among sub-accounts in a Contract year. Under New Contracts, Hartford Life reserves the right to deduct a $5 fee for each transfer in excess of twelve transfers of Contract value within a participant account by a participant between or among the sub-accounts in any participant account year. Currently, the Company does not assess a transfer fee under any Contract.

16. The sub-accounts of Account Eleven offered by the New Contracts invest in all of the mutual funds in which the sub-accounts of Account DC–I and Account Two offered by the Original Old Contracts and the Modified Old Contracts invest, and many of the mutual funds (or variable insurance fund counterpart) in which sub-accounts of the Unregistered DC Accounts offered by the Modified Old Contracts invest. In most cases, where a particular mutual fund available under a Modified Old Contract (or its variable insurance fund counterpart) is not available as an investment option under the New Contract, a mutual fund with substantially identical or closely comparable investment objectives and principal strategies would be available under the New Contract. In all but four

cases, these alternative mutual funds had the same or lower total expenses during their most recent fiscal year. Notwithstanding this, for each sub-account available under the New Contract that has a counterpart under an Original Old Contract or a Modified Old Contract, the annual mortality and expense risk and administrative charge when combined with the annual expense ratio of the mutual in which such sub-account invests, is less under the New Contract than under either the Original Old Contract or the Modified Old Contract.

17. The Original Old Contracts, 457 Contracts and New Contracts do not impose any fees or charges in connection with purchase payments. The tables below describe the fees and charges deducted from separate account assets on an ongoing basis during both the accumulation and annuity payment periods, and the fees and charges payable by a Contract owner upon the withdrawal or surrender of Contract value during the accumulation period. The tables also indicate the annual rate of interest guaranteed for the "fixed" option under each Contract and identify the number of sub-accounts available as investment options under the Contract, along with the minimum and maximum total annual operating expenses for the mutual funds in which such sub-accounts invest as of December 31, 2006. The letter designation in the left-hand column represents different Contract variations, with type A corresponding to type U and type B corresponding to type V, etc.

457 CONTRACTS

[Account 457]

Type of contract	Number of mutual funds	M&E risk and administrative charge (payout period) (% of average daily sub-account assets)	M&E risk and administrative charge (pay-in period) (% of average daily sub-account assets)	Minimum guaranteed annual interest rate	CDSC (% of amount surrendered)	Minimum total annual portfolio expenses (% of average daily net asset value)	Maximum total annual portfolio expenses (% of average daily net asset value)
A	27	1.25	0.75 to 0.90	4	N/A	0.34	1.73
B	24	1.25	0.75 to 0.90	4	12 YR	0.34	1.73
C	47	1.25	0.75 to 0.90	4	12 YR	0.34	1.73
D	47	1.25	0.75 to 0.90	4	7 YR	0.34	1.73
E	51	1.25	0.45	4	N/A	0.34	1.73
F	47	1.25	0.75 to 0.90	4	N/A	0.34	1.73

ORIGINAL OLD CONTRACTS

[Account DC–I and Account Two]

Type of contract	Number of mutual funds	M&E risk and administrative charge (payout period) (% of average daily sub-account assets)	M&E risk and administrative charge (pay-in period) (% of average daily sub-account assets)	Minimum guaranteed annual interest rate	CDSC (% of amount surrendered)	Minimum total annual portfolio expenses (% of average daily net asset value)	Maximum total annual portfolio expenses (% of average daily net asset value)
U	10	1.25	0.75 to 0.90	4	N/A	0.34	0.91
V	10	1.25	0.75 to 0.90	4	12 YR	0.34	0.91
W	10	1.25	0.75 to 0.90	4	12 YR	0.34	0.91
X	10	1.25	0.75 to 0.90	4	7 YR	0.34	0.91
Y	10	1.25	0.45	4	N/A	0.34	0.91
Z	10	1.25	0.75 to 0.90	4	N/A	0.34	0.91

NEW CONTRACTS

[Account Eleven]

Type of contract	Number of mutual funds	M&E risk and administrative charge (payout period) (% of average daily sub-account assets)	M&E risk and administrative charge (pay-in period) (% of average daily sub-account assets)	Minimum guaranteed annual interest rate	CDSC (% of amount surrendered)	Minimum total annual portfolio expenses (% of average daily net asset value)	Maximum total annual portfolio expenses (% of average daily net asset value)
New Contract	48	0.70	0.70	4	N/A	0.34	1.49

18. Hartford Life does not assess a CDSC under Original Old Contracts U, Y and Z and 457 Contracts A, E and F. Likewise, Hartford Life does not assess a CDSC under the New Contract. Under the Original Old Contracts V, W and X,

and the 457 Contracts B, C and D, a CDSC may be assessed against the amount withdrawn or surrendered by a Contract owner. However, those who will be moved to the Original Old Contracts or from the Modified Old Contracts will not be subject to a CDSC.

19. As the tables indicate, with two exceptions, the mortality and expense risk and administrative charge during the accumulation period under the New Contracts is less than that imposed under the Original Old Contracts and the 457 Contracts. The mortality and expense risk and administrative charge during the annuity payment period under the New Contracts is substantially less than that imposed under the Original Old Contracts and the 457 Contracts.

20. Hartford Life may deduct a charge corresponding to any applicable state or municipal premium taxes under each Contract. Hartford Life may deduct the charge for premium taxes at the time of payment of such taxes to the appropriate taxing authority, surrender of the Contract, upon payment of a death benefit or upon the commencement of annuity payments to a participant (or beneficiary).

21. Under the Original Old Contracts and the 457 Contracts, Hartford Life reserves the right to deduct a $5 fee for each transfer Contract value between or among sub-accounts in a Contract year. Under New Contracts, Hartford Life reserves the right to deduct a $5 fee for each transfer in excess of twelve transfers of Contract value within a participant account by a participant between or among the sub-accounts in any participant account year. Currently, the Company does not assess a transfer fee under any Contract.

22. The sub-accounts of Account Eleven offered by the New Contracts invest in all but a few of the mutual funds (or variable insurance fund counterparts) in which the sub-accounts of Account 457 invest. In most cases, where a particular mutual fund available under a 457 Contract (or its variable insurance fund counterpart) is not available as an investment option under the New Contract, a mutual fund with substantially identical or closely comparable investment objectives and principal strategies would be available under the New Contract. In all but five cases, these alternative mutual funds had the same or lower total expenses during their most recent fiscal year. In all but four cases, these alternative mutual funds have the same investment adviser as the fund they would "replace." Notwithstanding this, with two exceptions, for each sub-account available under the New Contract that has a counterpart under an Original Old Contract or a 457 Contract, the annual mortality and expense risk and administrative charge when combined with the annual expense ratio of the mutual fund in which such sub-account invests, is less under the New Contract than under either the Original Old Contract or the 457 Contract.

23. As explained in more detail immediately below, this Application relates to Modified Old Contracts and 457 Contracts sold to tax-exempt plan sponsors. In each case, a tax-exempt plan sponsor purchased a Contract to fund its obligations to participants in a non-qualified deferred compensation plan established by it pursuant to IRC sections 457(b) and 457(e)(1)(B).[3] Also, in each case, the plan participants are employees, past employees, or beneficiaries of employees or past employees of the tax-exempt plan sponsor.

24. Taken together, IRC sections 457(b) and 457(e)(1)(B) permit a tax-exempt employer to enter into an agreement with one or more of its employees pursuant to which compensation otherwise payable to the employee is withheld by the employer and paid to the employee at a future time. By this mechanism, the employee defers receipt of the compensation for federal income tax purposes until such time as the employer actually pays the compensation to the employee. Typically, deferred compensation agreements between tax-exempt employers and their employees provide for the employer to pay the deferred amount plus interest at a specified rate to the employee at specific date in the future or, subject to certain limitations, within a specified period time after the employee requests payment. In lieu of paying interest on the deferred amount, the agreement may call for payment of the deferred amount plus or minus the performance of a specified measure, such as a securities index or a mutual fund. Under sections 457(b) and 457(e)(1)(B), the employer is fully responsible for making the payments required by the deferred compensation agreement. In this regard, the deferred compensation agreements are, in effect, promissory notes issued by the employer, and the employees to whom the deferred compensation is owed are general creditors of the employer. Employees having deferred compensation agreements with a tax-exempt employer are not preferred creditors of the employer and have no security interest in the deferred amounts held by the employer.

25. Tax-exempt plan sponsors are not required to invest the compensation deferred by their employees pursuant to deferred compensation agreements. They are free to bear the risk that they will not have sufficient assets to make payment of the deferred amounts plus earnings (or minus losses) owed to employees under the deferred compensation agreements. Many tax-exempt employers, however, choose to invest the deferred amounts in a manner that will ensure that they can make payment under deferred compensation agreements which they have entered into. The Original Old Contracts, Modified Old Contracts and the 457 Contracts were designed as investment vehicles for this purpose and the tax-exempt plan sponsors use their Original Old Contract, Modified Old Contract or 457 Contract to fund their obligations to their employees (or employees' beneficiaries) or to past employees (or beneficiaries of past employees) under the sponsors' non-qualified deferred compensation plans.

26. Consistent with the foregoing, the Modified Old Contracts and the 457 Contracts provide the owner with all the rights and privileges of ownership and do not reserve any such rights and privileges to the employees with whom the employer has deferred compensation agreements (*i.e.*, the participants in the non-qualified deferred compensation plan).

27. During the period from the early 1980s through April 2001, Hartford Life issued the Original Old Contracts to both tax-exempt plan sponsors and government plan trustees. Beginning in May 1992, Hartford Life began offering endorsements to the Original Old Contracts to make available to owners of such Contracts sub-accounts of one or more of the Unregistered DC Accounts as investment options. At that time and thereafter, Hartford Life intended only to issue the Unregistered DC Account endorsements to Original Old Contracts held by government plan trustees and not to Contracts held by tax-exempt plan sponsors. Unfortunately, Hartford Life inadvertently issued endorsements offering the sub-accounts of one or more of the Unregistered DC Accounts as investment options to certain tax-exempt plan sponsors in connection with their Original Old Contracts. In most cases, tax-exempt plan sponsors

[3] In contrast, issuers may rely on section 3(a)(2) of the 1933 Act in connection with the offer and sale of unregistered securities to government plan trustees, because non-qualified deferred compensation plans established by state and municipal governments, or instrumentalities thereof, pursuant to IRC sections 457(b) and 457(e)(1)(A) come within the definition of a "governmental plan" in section 3(a)(2)(C) of the 1933 Act. *See Mass Mutual Life Insurance Company, et al.*, (Aug. 10, 1998).

holding Modified Old Contracts have (usually pursuant to participant instructions) invested some or all of their tax-exempt plan's assets in one or more sub-accounts of the Unregistered DC Accounts. As of the date of this Application, seventy-one Modified Old Contracts held by tax-exempt plan sponsors have Contract value allocated to sub-accounts of one or more of the Unregistered DC Accounts.

28. Unfortunately, issuers, such as insurance companies and their separate accounts, may not rely on the exemption from registration provisions of the 1933 Act provided by section 3(a)(2) of the 1933 Act when offering and selling securities to tax-exempt plan sponsors as funding vehicles for such sponsors' non-qualified deferred compensation plans established pursuant to IRC sections 457(b) and 457(e)(1)(B). As a result, through the seventy-one Modified Old Contracts, Separate Account DC–III, Separate Account DC–IV, Separate Account DC–V and Separate Account DC–VI issued interests to the tax-exempt plan sponsors holding such Contracts that should have been registered under the 1933 Act, but were not.

29. In addition, from the time Hartford Life invested the first purchase payment under a Modified Original Contract held by a tax-exempt plan sponsor in an Unregistered DC Account, that Account has failed to meet the requirements for relying on section 3(c)(11) of the Act. This is because reliance on section 3(c)(11) requires, among other things, that the assets of the separate account be derived solely from:

- Contributions from pension and profit sharing plans meeting the requirements of IRC section 401, or the requirements for the deduction of the employer's contribution under IRC section 404(a)(2);
- Contributions under government plans in connection with which interests, participations, or securities are exempted from the registration provisions of the 1933 Act by section 3(a)(2)(C) thereof; and
- Advances made by the insurance company in connection with the operation of the separate account.

Some of each Unregistered DC Account's assets were derived from contributions from tax-exempt plans rather than the specified pension and profit-sharing plans or government plans. As a result, each of the Unregistered DC Accounts should have been registered as an investment company under the Act, but was not.

30. Applicant's state that in order to restore the ability of the Unregistered DC Accounts to rely on section 3(c)(11) of the Act, as well as to mitigate any potential liability under the 1933 Act and the Act, Hartford Life proposes to remove from each Unregistered DC Account all assets attributable to purchase payments under Modified Old Contracts held by tax-exempt plan sponsors via the rescission offer described below.

31. From August 11, 2001 through November 15, 2003, Hartford Life inadvertently issued fourteen 457 Contracts to tax-exempt plan sponsors that owned Original Old Contracts or Modified Old Contracts. The 457 Contracts were new contracts and not endorsements to either an Original Old Contract or a Modified Old Contract. During the period that Hartford Life issued the 457 Contracts, it was undergoing a conversion from one electronic data processing system used to administer its group variable annuity contracts business to a new and better system. Among other things, the conversion involved the replacement of most Original Old Contracts and Modified Old Contracts held by government plan trustees with 457 Contracts. The replacement of Original Old Contracts and Modified Old Contracts with 457 Contracts entailed the transfer of Contract value from sub-accounts of Account DC–I, Account Two, and one or more of the Unregistered DC Accounts, to corresponding sub-accounts of Account 457. The replacement of Original Old Contracts and Modified Old Contracts with the 457 Contracts also entailed the investment of subsequent purchase payments in sub-accounts of Account 457 rather than sub-accounts of Account DC–I, Account Two, and one or more of the Unregistered DC Accounts.

32. Hartford Life did not intend to permit, in connection with the system conversion, tax-exempt plan sponsors to replace their Original Old Contracts or Modified Old Contracts with 457 Contracts. Nevertheless, during the period when approximately 1,000 government plan trustees replaced their Old Original Contracts and Modified Old Contracts with 457 Contracts, fourteen tax-exempt plan sponsors did likewise. As in the case of interests in the Unregistered DC Accounts made available to tax-exempt plan sponsors under Modified Old Contracts, Account 457 issued interests to tax-exempt plan sponsors through 457 Contracts that should have been registered as securities under the 1933 Act but were not. Similarly, from the time Hartford Life invested the first purchase payment under a 457 Contract held by a tax-exempt plan sponsor in Account 457, that Account has failed to meet the requirements for relying on section 3(c)(11) of the Act. As a result, Account 457 should have been registered as an investment company under the Act, but was not.

33. Applicants believe that in order to restore the ability of Account 457 to rely on section 3(c)(11) of the Act, as well as to mitigate any potential liability under the 1933 Act and the Act, Hartford Life proposes to remove from the Account 457 all assets attributable to purchase payments under the 457 Contracts held by tax-exempt plan sponsors via the rescission offer described below.

Proposed Rescission Offers

34. Hartford Life believes that it must take all action reasonably practicable to mitigate or reverse any adverse consequences to tax-exempt plan sponsors and their participants arising from investment in the Unregistered DC Accounts under Modified Old Contracts. Therefore, Hartford Life proposes to offer each affected tax-exempt plan sponsor the opportunity to (1) Exchange its Modified Old Contract for a New Contract, or (2) surrender the endorsement attached to the Modified Old Contracts and either (a) exchange its interests in the Unregistered DC Accounts for interests in Account DC–I and/or Account Two by transferring all contract value from the sub-accounts of the Unregistered DC Accounts to the sub-accounts of Account DC–I and/or Account Two, or (b) exchange its interests in the Unregistered DC Accounts for interests in Account DC–I and/or Account two by accepting a new contract value equal to the contract value as of a stated reinstatement date plus interest invested in Account DC–I and/or Account two, as described below. The second option would have the effect, more or less, of "restoring" the Original Old Contract. Alternatively, each tax-exempt plan sponsor may elect to surrender its Modified Old Contract. Expressed in more detail, the options are:

- To exchange their Modified Old Contract for a New Contract ("Option 1");
- To transfer contract values under their Modified Old Contract that are invested in Separate Account DC–III, Separate Account DC–IV, Separate Account DC–V and Separate Account DC–VI to corresponding or sponsor-designated investment options under their Modified Old Contract in Account DC–I and/or Account Two or, if it would result in a greater contract value, to "reinstate" all contract values as they were under their Original Old Contract at the time contract values were first

invested in Separate Account DC–III, Separate Account DC–IV, Separate Account DC–V or Separate Account DC–VI (the "Option 2 reinstatement date") and crediting such contract values with interest for the period from the Option 2 reinstatement date until the date a plan sponsor elects Option 2 at an annual rate of 3%, as described below ("Option 2"); or

• To surrender their Modified Old Contract for its full contract value without the imposition of any surrender or withdrawal charges ("Option 3").

If a sponsor does not elect one of the foregoing options, Hartford Life would consider Option 1 as the default option.

35. Hartford Life would credit interest under Option 2 in a manner that makes appropriate adjustments to take into account purchase payments and withdrawals made after the Option 2 reinstatement date by crediting interest each month at a rate of 0.247% (the monthly equivalent of an annual rate of 3%) on the amount equal to the total contract value under a Modified Old Contract as of the Option 2 reinstatement date, and for each subsequent month until the date on which the sponsor elects an Option:

• Plus purchase payments allocated to the contract during the prior month;

• Less withdrawals from the contract during the prior month.

Purchase payments made under the contract and withdrawals from the contract would be treated as if each occurred in the middle of the month and will be credited with interest for one-half of the month in which the transaction occurs.

36. As in the case of the Modified Old Contracts, Hartford Life believes that it must take all action reasonably practicable to mitigate or reverse any adverse consequences to tax-exempt plan sponsors and their participants arising from investment in Account 457 under the 457 Contracts. Therefore, Hartford Life proposes to offer each affected tax-exempt plan sponsor the opportunity to (1) Exchange its 457 Contract for a New Contract, (2) exchange its 457 Contract for its Original Old Contract and transfer all contract value from sub-accounts of Account 457 under its 457 Contract to sub-accounts of Account DC–I and/or Account Two, or (3) exchange its 457 Contract for its Original Old Contract with contract value equal to the contract value under the Original Old Contract at the time it was first invested in (a) an Unregistered DC Account, or (b) Account 457, plus interest, as described below. The second option would have the effect, more or less, of reinstating the Original Old Contract. Alternatively, each tax-exempt plan sponsor may elect to surrender its 457 Contract. Expressed in more detail, the options are:

• To exchange their 457 Contract for a New Contract ("Option 1");

• To exchange their 457 Contract for (or "reinstate") their Original Old Contract by having their 457 Contract values transferred to corresponding or sponsor-designated investment options under their Original Old Contract in Account DC–I and/or Account Two or, if it would result in a greater contract value, to "reinstate" all contract values under their Original Old Contract by reinstating such values as they were at the time that contract values were first invested in Separate Account DC–III, Separate Account DC–IV, Separate Account DC–V, Separate Account DC–VI, or Account 457 (the "Option 2 reinstatement date") and crediting such contract values with interest for the period from the Option 2 reinstatement date until the date a plan sponsor elects Option 2 at an annual rate of 3%, as described below ("Option 2"); or

• To surrender their 457 Contract for its full contract value without the imposition of any surrender or withdrawal charges ("Option 3").

If a sponsor does not elect one of the foregoing options, Hartford Life would consider Option 1 as the default option.

37. Hartford Life would credit interest under Option 2 in a manner that makes appropriate adjustments to take into account purchase payments and withdrawals made under the 457 Contracts (or under the Modified Old Contracts and the 457 Contracts) after the Option 2 reinstatement date by crediting interest each month at a rate of 0.247% (the monthly equivalent of an annual rate of 3%) on the amount equal to the contract value as of the Option 2 reinstatement date, and for each subsequent month until the date on which the sponsor elects an Option:

• Plus purchase payments made during the prior month;

• Less withdrawals of contract value from during the prior month.

Purchase payments and withdrawals would be treated as if each occurred in the middle of the month and will be credited with interest for one-half of the month in which the transaction occurs.

38. Hartford Life proposes to make each of the above offers to essentially "rescind" the Modified Old Contracts and 457 Contracts issued to tax-exempt plan sponsors and put each tax-exempt plan sponsor and plan (including plan participants) in at least as favorable a position as each would have been had no Modified Old Contract or 457 Contract been issued. Unlike many conventional rescission offers, Hartford Life would not offer an option whereby the tax-exempt plan sponsor could elect to retain its current investment (*i.e.*, a Modified Old Contract or 457 Contract). In this regard, Hartford Life's goal is to remove from the Unregistered DC Accounts all of the assets represented by Modified Old Contracts held by tax-exempt plan sponsors and from Account 457 all of the assets represented by 457 Contracts held by tax-exempt plan sponsors. Hartford Life believes that the offers described in this Application are necessary to restore the status of each Unregistered DC Account and Account 457 as a separate account excluded from the definition of an investment company pursuant to section 3(c)(11) of the Act. Similarly, Hartford Life believes that the offers described in this Application are necessary to mitigate any potential liability to itself, the Unregistered DC Accounts and Account 457 that may arise under the 1933 Act and/or the Act as a result of the events described above.

39. Hartford Life proposes to make the exchange offers through a supplement to the prospectuses for the New Contracts to be included with such prospectuses in the Form N–4 registration statement for the New Contracts and Separate Account Eleven. Hartford Life intends to use two such supplements: One to make an exchange offer to tax-exempt plan sponsors that currently own Modified Old Contracts, and another to make an exchange offer to tax-exempt plan sponsors that own 457 Contracts (including such tax-exempt plan sponsors that previously owned Modified Old Contracts). The supplements will notify tax-exempt plan sponsors of the exchange offer being made to them and explain the terms of the offer in detail. Among other matters, each supplement will describe the following:

• The purpose of the exchange offer;

• The material terms of the exchange offer, such as the expiration date and the specifics of each option a tax-exempt sponsor may elect;

• The material differences between the Contract held by the tax-exempt plan sponsor and the New Contract or Original Old Contract, as applicable, including but not limited to, fees and charges, number of sub-accounts available under each Contract and the mutual funds in which each invests, and the minimum and maximum total annual operating expenses for such funds;

• Procedures for electing an exchange offer option; and

• The advantages and disadvantages of each of the exchange offer options.

40. Each supplement will clearly disclose the fact that Option 1 will apply in the event the tax-exempt plan sponsor fails to elect another option by the expiration date. If an election form is incomplete, Hartford Life will contact the tax-exempt plan sponsor by telephone and facsimile for instructions. Included in either the supplement or an accompanying letter will be each tax-exempt plan sponsor's Option 2 reinstatement date and Option 2 reinstatement value. Also included with the accompanying letter will be information identifying each mutual fund available under the Modified Old Contracts or the 457 Contracts that is not available under the New Contract along with an explanation that if a tax-exempt plan sponsor does not provide instructions as to reallocating contract value in sub-accounts invested in such funds, then such contract value will be allocated under the New Contract by default to a sub-account investing in a money market mutual fund. In addition, the letter will also identify each fund offered under the New Contract that is a variable insurance product "clone" of a fund available under the Modified Old Contracts or the 457 Contracts.

41. Tax-exempt plan sponsors and their plans will not incur any fees or charges in connection with any of the proposed exchange offer options. Hartford Life will bear all costs associated with administering the exchange offers. In addition, tax-exempt plan sponsors that elect an exchange offer option or have Option 1 imposed on them by default, will not thereby subject their plans to any adverse tax consequences. Hartford Life will not compensate any broker-dealer or agent in connection with the proposed exchange offers.

42. Under each Option 1, the exchange of Modified Old Contracts for New Contracts or 457 Contracts for New Contracts would occur at the relative net asset value of the Contracts with no change in aggregate contract value, the number or size of annuity payments being made under a Contract, or the amount or value of death benefits available under a Contract. Hartford Life would waive any CDSC otherwise applicable upon the exchange of a Modified Old Contract or a 457 Contract for a New Contract.

43. Upon exchange of a Modified Old Contract or 457 Contract for a New Contract, Hartford Life would transfer contract value from each sub-account under a Modified Old Contract or a 457 Contract ("old sub-account") to a sub-account under the New Contract that invests in the same underlying mutual fund as the old sub-account ("corresponding new sub-account"). If there is no corresponding new sub-account for one or more old sub-accounts under the Modified Old Contract or 457 Contract, Hartford Life would transfer Contract value from the old sub-accounts under the Modified Old Contract or 457 Contract to sub-accounts under the New Contract upon the direction of the tax-exempt plan sponsor. If the tax-exempt plan sponsor does not provide such direction, Hartford Life would transfer contract value from old sub-accounts under the Modified Old Contract or 457 Contract to a sub-account under the New Contract that invests in a money market mutual fund.

44. Under Option 2 relating to the Modified Old Contract offers, the transfer of contract value from sub-accounts of the Unregistered DC Accounts to sub-accounts of Account DC–I and/or Account Two would occur at the relative net asset value of the Contracts with no change in aggregate contract value, the number or size of annuity payments being made under a Contract, or the amount of death benefits available under a Contract. Hartford Life also would waive any CDSC remaining under the Modified Old Contract in the future. Under Option 2 relating to the 457 Contract offers, the exchange of 457 Contracts for reinstated Original Old Contracts and the related transfer of contract value from sub-accounts of Account 457 to sub-accounts of Account DC–I and/or Account Two under Original Old Contracts would occur at the relative net asset value of the Contracts with no change in aggregate contract value, the number or size of annuity payments being made under a Contract, or the amount of death benefits available under a Contract. Hartford Life would waive any CDSC otherwise applicable upon the exchange of 457 Contracts for reinstated Original Old Contracts and the related transfer of contract value from sub-accounts of Account 457 to sub-accounts of Account DC–I and/or Account Two. Likewise, Hartford Life would waive any CDSC under the reinstated Original Old Contract that would otherwise apply in the future.

45. Under Option 2 relating to both the Modified Old Contract offers and the 457 Contract offers, Hartford Life would transfer contract value from each sub-account under a Modified Old Contract or 457 Contract to a sub-account of Account DC–I and/or Account Two that invests in the same underlying mutual fund as the sub-account from which such value was transferred. If there is no corresponding sub-account for one or more sub-accounts under the Modified Old Contract or 457 Contract, Hartford Life would transfer contract value from the sub-accounts under the Modified Old Contract or 457 Contract to sub-accounts of Account DC–I and/or Account Two upon the direction of the tax-exempt plan sponsor. If the tax-exempt plan sponsor does not provide such direction, Hartford Life would transfer contract value from sub-accounts under the Modified Old Contract or 457 Contract to a sub-account of Account DC–I and/or Account Two that invests in a money market mutual fund.

46. Alternatively, under Option 2 relating to both the Modified Old Contract offers and the 457 Contract offers, Hartford Life would reinstate contract value under the Original Old Contract at the amount existing in sub-accounts of Account DC–I and/or Account Two immediately before the tax-exempt plan sponsor first invested contract value in one of the Unregistered DC Accounts or Account 457 and credit such contract value with interest at an annual effective rate of 3% for the period from that date until the date of the tax-exempt plan sponsor's election of Option 2. As described above, adjustments would be made to reflect subsequent purchase payments and withdrawals made since the reinstatement date. With regard to Option 2, Hartford Life would only implement the interest rate alternative if a tax-exempt plan sponsor elects Option 2 and the interest rate alternative would result in a greater reinstated contract value for the tax-exempt plan sponsor than the primary Option 2 alternative.

47. Under the interest rate alternative for Option 2, Hartford Life would waive any CDSC otherwise applicable upon the exchange of a 457 Contract for a reinstated Original Old Contract and would waive any CDSC under the reinstated Original Old Contract that would otherwise apply in the future.

48. Under Options 1 and 2, for Contracts pursuant to which Hartford Life maintains individual participant accounts, exercise of the exchange offer options would not alter the value of such accounts, the number or size of annuity payments being made in connection with such accounts, or the amount of death benefits available in connection with such accounts.

49. For the reasons set forth below, Applicants believe the proposed exchanges will benefit the tax-exempt plan sponsors and their plans. Except for: (1) The number of sub-accounts available and the particular mutual funds in which such sub-accounts

invest; and (2) small variations in the fees and charges, the Original Old Contracts, Modified Old Contracts, 457 Contracts and New Contracts are substantially the same in most material respects. In particular, all four types of Contracts offer the same surrender, withdrawal, dollar cost averaging, general account investment option, death benefit and annuity payment option features. Therefore, except as described below in connection with mutual fund investment options and fee and charge variations, the tax-exempt plan sponsors and their plans should be in at least as favorable a position after electing an exchange offer option (or defaulting into Option 1) as they were before the proposed exchange offers. Moreover, for tax-exempt plan sponsors that elect a New Contract, they and their plans should be better off than they would have been had they continued to hold their Modified Old Contract or 457 Contract.

50. The mortality and expense risk and administrative charge under the New Contracts is lower than the mortality and expense risk and administrative charges assessed under the Modified Old Contracts and, with one exception, lower than the mortality and expense risk and administrative charges assessed under the 457 Contracts.[4] Under Modified Old Contracts and 457 Contracts, Hartford Life assesses a mortality and expense risk charge during the accumulation period at annual rates ranging from .75% to .90% of average daily sub-account net assets. (The rate for any Modified Old Contract or 457 Contract may also be a function of reductions due either to experience rating or reductions negotiated by the tax-exempt plan sponsor with Hartford Life.) Under Modified Old Contracts and 457 Contracts, the mortality and expense risk charge during the annuity payment period is at an annual rate of 1.25% of average daily sub-account net assets. Under New Contracts, the mortality and expense risk and administrative charge is a flat annual rate of 0.70% of average daily sub-account net assets during both the accumulation period and the annuity payment period.[5] Reductions in the mortality and expense risk and administrative charge charges due to experience rating and negotiated rates are available under the New Contracts on the same basis as the same are available under the Modified Old Contracts and the 457 Contracts.

51. The vast majority of underlying mutual funds available under the New Contracts have total operating expenses that are lower (in many cases, substantially lower) than the total operating expenses of the corresponding underlying mutual funds available under the Modified Old Contracts and the 457 Contracts. Most significantly, as a result of the lower mortality and expense risk and administrative charge rates under the New Contracts, for any sub-account of Account Eleven available under the New Contracts, the aggregate of such charges on an annual basis and the total annual expenses of the mutual fund in which that sub-account invests, will be less than the same aggregate for the corresponding sub-account of either Account DC–I or Account Two available under the Modified Old Contracts or the corresponding sub-account of Account 457 available under the 457 Contracts.

52. If a tax-exempt plan sponsor elects Option 1 under either the Modified Old Contract exchange offer or the 457 Contract exchange offer, it will have available as investment options for itself and participants in its plan, 48 sub-accounts offering an indirect investment in 48 mutual funds. This array of mutual funds represents the most attractive line-up of funds offered by Hartford Life to government plan trustees, tax-exempt plan sponsors and other retirement plan sponsors in its latest and most attractive group variable annuity contracts. In the event that a tax-exempt plan sponsor elects Option 2 under an offer, the sponsor and its plan (including plan participants) would be in the same position vis-a-vis available sub-account investment options as they would have been had no 457 Contracts or Modified Old Contracts been issued.

53. Under Options 1 and 2 relating to the Modified Old Contract offers, a tax-exempt plan sponsor would replace interests in one or more of the Unregistered DC Accounts that are not registered as securities under the 1933 Act with interests in Account DC–I, Account Two or Account Eleven which would be registered as securities under the 1933 Act. Likewise, under Options 1 and 2 relating to the 457 Contract offers, a tax-exempt plan sponsor would replace interests in Account 457 that are not registered as securities under the 1933 Act with interests in Account DC–I, Account Two or Account Eleven which would be registered as securities under the 1933 Act. As a result, such tax-exempt plan sponsors would, among other things, receive prospectuses and other disclosure documents at regular intervals in a prescribed format and otherwise obtain the protections of the 1933 Act and rules and regulations thereunder. Similarly, such tax-exempt plan sponsors would be exchanging interests in one or more of the Unregistered DC Accounts or Account 457 which are not registered as investment companies under the Act, for interests in Account DC–I, Account Two or Account Eleven which are each registered as an investment company under the Act and thereby obtain for themselves and the participants in their plans the considerable protections of the Act.

Applicants' Legal Analysis

1. Section 11(a) of the Act makes it unlawful for any registered open-end investment company, or any principal underwriter for such an investment company, to make an offer to the holder of a security of such investment company, or of any other open-end investment company, to exchange his or her security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities, unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with Commission rules adopted under section 11. Section 11(c) of the Act provides the provisions of section 11(a) are applicable to any offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company regardless of the basis of the exchange. As a result, the Commission must approve any such offer unless the offer satisfies an applicable rule adopted under section 11.

2. Applicants state that the primary purpose of section 11 of the Act is to prevent "switching"—the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company "solely for the purpose of exacting additional selling charges." In the 1930s prior to adoption of the Act, Congress found evidence of widespread "switching" operations. The legislative history of section 11 makes it clear that the potential for harm to investors perceived in switching was its use to extract additional sales charges from those investors. Accordingly, applications under section 11(a) and orders granting those applications appropriately have focused on sales loads or sales load differentials and administrative fees to be imposed for effecting a proposed exchange and have

[4] The exception is the type E 457 Contract, which has a charge of 0.45% of average daily sub-account net assets. The rate for type E Contracts was the result of experience ratings or negotiation, or both. There are two type E 457 Contracts outstanding.

[5] However, to preserve prior experience ratings and/or negotiated rates, any New Contract issued to a holder of a type E 457 Contract will have a mortality and expense risk and administrative charge of 0.45% of average daily sub-account net assets.

ignored other fees and charges, such as the respective advisory fee charges of the exchanged and acquired securities.

3. The Applicant states that section 11(c) of the Act requires Commission approval (by order or by rule) of any exchange, regardless of its basis, involving securities issued by a unit investment trust, because Congress found investors in unit investment trusts to be particularly vulnerable to switching operations. As noted by the Commission, "In order to earn another sales commission, a [unit investment trust] sponsor would often pressure unitholders into exchanging their units for those of another of the sponsor's trusts."

4. The Commission adopted Rule 11a–2 under Section 11 of the Act in 1983. By its terms, the Rule permits certain offers of exchange of one variable annuity contract for another or interests in one registered separate account through which variable annuity contracts are issued for interests in another registered separate account. More specifically, Rule 11a–2 permits exchange offers involving variable annuity contracts provided that the only variance from a relative net asset value exchange is an administrative fee disclosed in the registration statement of the offering separate account and/or a sales load or sales load differential calculated according to methods prescribed in the rule.

5. Under Option 1 of the Modified Old Contract offers, a tax-exempt plan sponsor that exchanges a Modified Old Contract for a New Contract would effect a transfer of assets held in Account DC–I, Account Two and/or the Unregistered DC Accounts to Account Eleven. Likewise, under Option 1 of the 457 Contract offers, a tax-exempt plan sponsor that exchanges a 457 Contract for a New Contract would effect a transfer of assets from Account 457 to Account Eleven. Along with the transfer of assets to Account Eleven, such a tax-exempt plan sponsor would receive an interest in Account Eleven equal to the contract value in its New Contract.

6. Election of Option 2 of the Modified Old Contract offers by a tax-exempt plan sponsor would result in a transfer of assets representing contract value under the sponsor's Modified Old Contract from one or more of the Unregistered Accounts to Account DC–I and/or Account Two. Likewise, election of Option 2 of the 457 Contract offers by a tax-exempt plan sponsor would result in a transfer of assets representing contract value under the sponsor's 457 Contract from Account 457 to Account DC–I and/or Account Two. Along with the transfer of assets to Account DC–I and/or Account Two, such a tax-exempt plan sponsor would receive an interest in Account DC–I and/or Account Two equal to the contract value in its New Contract.

7. Account DC–I, Account Two and Account Eleven is each registered with the Commission under the Act as a unit investment trust. Each of the Unregistered Accounts and Account 457, not currently being able to rely on the section 3(c)(11) exclusion from the definition of an investment company, are investment companies; though not registered as such under the Act. Accordingly, Hartford Life's proposed offer to exchange interests in each for interests held by the tax-exempt plan sponsors in the Unregistered Accounts or Account 457, would constitute an offer to exchange securities of a registered unit investment trust for securities of another investment company. Thus, unless the terms of each proposed offer are consistent with those permitted by a Commission rule, Applicants may only make the proposed offers pursuant to a Commission order under section 11(a) approving the terms of the offers.

8. Applicants assert that the terms of the exchange offers proposed in this application are such that the offers would not involve any of the practices section 11 of the Act was designed to prevent and are otherwise fair and equitable to the tax-exempt plan sponsors and their plans (including plan participants) because:

- Tax-exempt plan sponsors would receive full disclosure of all material aspects of the proposed exchange offers including:
  - Complete discussion of each Option available;
  - A complete discussion of their rights in connection with the offers; and
  - Prospectuses for New Contracts and Original Old Contracts;
- No charges (including any CDSC) would be imposed in connection with the proposed exchange offers and therefore the exchanges would be made on the basis of the relative net asset value;
- Tax-exempt plan sponsors and their plans (including plan participants) would not be subject to a CDSC or any other sales charge under the New Contracts or Original Old Contracts;
- In all material respects, the New Contracts would be at least as favorable, if not more favorable, to tax-exempt plan sponsors and their plans (including plan participants) as either the 457 Contracts or the Modified Old Contracts;
- Most of the mutual funds available to tax-exempt plan sponsors and their plans (including plan participants) as investment options under Modified Old Contracts and 457 Contracts would be available under the New Contracts (or their variable insurance fund counterparts would be available), and to the extent that some funds, or their variable insurance fund counterparts, are not available under the New Contracts, alternative mutual funds with substantially the same or similar investment objectives and strategies would be available as investment options;
- Tax-exempt plan sponsors that do not elect another Option, may elect to surrender their Modified Old Contract or 457 Contract without the imposition of any surrender or withdrawal charge; and
- Based on their review of existing federal income tax laws and regulations, Applicants believe that tax-exempt plan sponsors and their plans (including plan participants) would not suffer any adverse tax consequences as a result of electing any Option in connection with the proposed exchange offers.

9. Applicants believe that the terms of the exchange offers proposed in this application meet the standards established by the Commission for exchange offers to holders of group variable annuity contracts issued through separate accounts registered as unit investment trusts under the Act. The conditions of Rule 11a–2 reflect theses standards and the terms of the proposed exchange offers meet the conditions of the Rule. In fact, Applicants would be able to rely on Rule 11a–2 if the Unregistered DC Accounts and Account 457 were registered with the Commission as investment companies under the Act. Applicants submit that, in making exchange offers proposed herein, they should not be subject to conditions more stringent than those found in Rule 11a–2.

10. Applicants further submit that the specific terms of the process by which tax-exempt plan sponsors would elect an Option in response to the proposed offers, including the implementation of Option 1 as a default option in the event that a tax-exempt plan sponsor does not affirmatively elect any Option, would satisfy the standards of section 11. The Commission has broad authority to approve the terms of an exchange offer under Section 11 that is fair and does not result in switching or the other types of potential abuses at which Section 11 is directed. There are no statutory standards relating to requirements for, or the manner of obtaining, elections or approvals from parties in situations similar to those of the Applicants explained above when

conducting an exchange subject to section 11. This is supported by Rule 11a–2 which sets forth a number of specific requirements under which exchanges offers involving variable annuity contracts (and interests in separate accounts through which such contracts are issued) are permissible. All of the applicable requirements of the Rule concern the basis of the exchange and/or the fees that may be imposed, but the Rule does not regulate the manner by which investors may elect an option under an exchange offer. Accordingly, the Commission may find, and in the past has found, that a default election in an exchange offer is permissible if the application sets forth facts that demonstrate that the offeror cannot permit an offeree to retain its current investment and that the overall terms of the offer are otherwise fair and equitable to investors.

11. Moreover, Applicants state that the Commission staff has consistently taken "no-action" positions under section 22(e) of the Act with respect to the analogous issue of forced redemptions of mutual fund shares when certain conditions were met. In these situations, a basic investment decision (*i.e.*, the decision to redeem) was permitted to be made on behalf of investors on the basis of informed, implied consent. These letters, in effect, permit such forced redemptions on the basis of notice to shareholders and prospectus disclosure of those events which may trigger such a redemption (*i.e.*, account falling below a certain value, failure to provide a taxpayer identification number, negative balances in other accounts, etc.) and the absence of any action by a shareholder to take an available alternative route within a specified time period. Applicants submit that the communications which will be made to tax-exempt plan sponsors with respect to their rights under all of the Options to provide for timely and extensive disclosure comparable to that which is required for these automatic redemptions of mutual fund shares.

12. Applicants believe that the legislative history of section 11 makes it clear that Congress believed the potential harm to investors from "switching" was its use to extract additional sales charges from those investors. Consequently, prior applications under section 11(a) (and orders granted in response to those applications) appropriately focused on sales loads or sales load differentials and administrative fees to be imposed in connection with a proposed exchange offer. In granting approval orders requested in prior section 11 applications involving the exchange of one variable annuity contract for another, or the exchange of interests in one registered separate account for another, the Commission staff has considered whether or not the consummation of the exchange would have inequitable results for contract owners, and has viewed the absence of duplication of sales loads and administrative fees in effecting the exchanges as persuasive evidence that the proposed exchange does not present the abuses section 11 of the Act designed to prevent.

13. Applicants state that in the event that the Commission does not issue an order under section 11 approving the proposed exchange offers, Hartford Life will be forced, at great expense, to register the Unregistered DC Accounts and Account 457 as investment companies under the Act and to register interests issued in such Accounts issued through Modified Old Contracts and the Tax-Exempt 457 Contracts as securities under the 1933 Act. Registration of the Unregistered DC Accounts and Account 457 as investment companies would be particularly burdensome because each would have to comply with the extensive regulatory regime imposed by the Act. Applicants submit that any benefit to the government plan trustees and their plans (including plan participants) from such registration could not justify the great expense and other considerable burdens attendant to such registration. Because the government plan trustees and their plans make up the overwhelming majority of investors in each Unregistered DC Account and Account 457, Applicants believe that the proposed exchange offers represent a far more efficient, reasonable and balanced response to the inadvertent issuance of the Modified Old Contracts and the 457 Contracts to tax-exempt plan sponsors.

Conclusion

Applicants submit that, for the reasons discussed above, the terms of the proposed exchange offers are such that the offers would not entail any of the practices section 11 was intended to prevent and are otherwise fair and equitable to the tax-exempt plan sponsors, their plans and participants in their plans. For these reasons, Applicants submit that the terms of the proposed offers are consistent with the protection of investors, the standards that the Commission has applied to prior applications for orders under section 11(a) of the Act, and the purposes fairly intended by the public policies underlying section 11 of the Act.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–16959 Filed 8–27–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56299; File No. SR–BSE–2007–42]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange Fees and Charges

August 22, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 15, 2007, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposal pursuant to section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Minimum Activity Charge ("MAC") contained in the Fee Schedule for the Boston Options Exchange ("BOX"). The Exchange proposes to add a seventh category to its MAC table for classes with an Options Clearing Corporation Average Daily Volume ("OCC ADV") of less than 2,000 contracts. In addition, the Exchange proposes to make a clerical correction to the BOX Fee Schedule to rectify an inadvertent omission from a previous rule filing.[5] The text of the proposed rule change is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 55197 (January 30, 2007), 72 FR 5772 (February 7, 2007) (SR–BSE–2007–02) (seeking to change the month in which the MAC reclassifications are calculated from January to July, among other proposed changes).

available at BSE, the Commission's Public Reference Room, and *http://www.bostonstock.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the MAC which is contained in the Fee Schedule for BOX. The MAC is currently determined using six "categories" of options classes listed by BOX. The category for each class is determined by its total trading volume across all U.S. options exchanges as determined by Options Clearing Corporation data. The Exchange now proposes to change the OCC ADV of Category F from less than 5,000 contracts to an OCC ADV between 2,000 and 4,999 contracts. In addition, the Exchange proposes to establish a seventh category, Category G, for options with an OCC ADV of less than 2,000 contracts, which will charge a MAC of $90 per month.

The purpose of establishing a seventh MAC category is to account for the effect that current market conditions have had on Market Maker participation in the less active options. In order to entice new and existing Market Makers to quote and trade in these less active classes, namely those trading with an OCC ADV of approximately 2,000 contracts or less, the Exchange believes it is necessary to adjust the Fee Schedule to better reflect the trading costs associated with those classes by applying a smaller MAC than what was previously charged for classes with an OCC ADV of less than 2,000 contracts.

With a more stratified Fee Schedule, Market Makers will now have greater incentive to quote and trade in those relatively less active classes. Therefore, a modified MAC Category F and the reduced MAC for new Category G will encourage more Market Makers into these markets. The Exchange believes that the proposal should promote competition in the less actively traded classes. While the Exchange recognizes that the proposal may increase quote activity in such classes, the Exchange believes that the benefits to increased competition would outweigh any concerns relating to quote capacity. The Exchange further believes that it will not experience an adverse impact on quote capacity as a result of this proposal.

In addition to refining the MAC Categories, the Exchange proposes to amend the BOX Fee Schedule to correct an inadvertent omission from a previous rule filing. The Exchange previously filed a proposed rule change to alter the month in which a class's OCC ADV category would be recalculated, from January to July.[6] The text of that proposed rule change did not include all of the necessary edits to the BOX Fee Schedule, and the Exchange now proposes to correct this omission.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(4) of the Act,[8] in particular, which requires that an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2)[10] thereunder, because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–BSE–2007–42 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BSE–2007–42. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-

[6] *See id.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

BSE–2007–42 and should be submitted on or before September 18, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–16956 Filed 8–27–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56297; File No. SR–NASD–2007–041]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Notice of Filing of Proposed Rule Change To Amend the Minimum Price-Improvement Standards Set Forth in NASD IM 2110–2, Trading Ahead of Customer Limit Order

August 21, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2007, the National Association of Securities Dealers, Inc. ("NASD") (n/k/a Financial Industry Regulatory Authority, Inc.) filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA proposes to amend the minimum price-improvement standards set forth in NASD Interpretive Material ("IM") 2110–2, Trading Ahead of Customer Limit Order. The text of the proposed rule change is available on FINRA's Web site (*http://www.finra.org*), at FINRA, and at the Commission's Public Reference Room.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *See* Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007) (SR–NASD–2007–053).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 26, 2007, the Commission approved SR–NASD–2005–146,[4] which expanded the scope of IM–2110–2[5] to apply to over-the-counter ("OTC") equity securities.[6] The amendments relating to OTC equity securities are scheduled to become effective on November 26, 2007.[7] Among other changes, SR–NASD–2005–146 amended the minimum level of price-improvement that a member must provide to trade ahead of an unexecuted customer limit order ("price-improvement standards") as follows. For customer limit orders priced greater than or equal to $1.00 that are at or inside the best inside market, the minimum amount of price improvement required is $0.01. For customer limit orders priced less than $1.00 that are at or inside the best inside market, the minimum amount of price improvement required is the lesser of $0.01 or one-half (1/2) of the current inside spread. For customer limit orders priced outside the best inside market, the member is required to execute the incoming order at a price at or inside the best inside market for the security. Lastly, for customer limit orders in securities for which there is no published inside market, the minimum amount of price improvement required is $0.01.

For example, if the best inside market for a security is $10 to $10.05 and a member is holding a customer limit order to buy priced at $10.01, the member would be permitted to buy at $10.02 or higher, without triggering the customer limit order. If the best inside market for a security is $.50 to $.51 and the member is holding a customer limit order to buy priced at $.50, the member would be permitted to buy at $.505 ($.50 + ½ ($.51–$.50)) or higher, without triggering the customer limit order.

FINRA is proposing to revise the minimum price improvement standards to address three issues. First, because the minimum price improvement standard is determined based on the lesser of a specified amount ($.01) or ½ of the inside spread, the specified amount acts as an "upper limit" on the minimum price improvement requirement. FINRA is concerned that the specified amount or upper limits on the minimum price improvement requirement (*i.e.*, $.01) is disproportionately high for securities trading below $.01 and should vary proportionately with the amount of the limit order price. To address this inconsistency, FINRA is proposing to add the following maximum upper limits for each price level: For customer limit orders priced less than $.01 but greater than or equal to $0.001, the minimum amount of price improvement required is the lesser of $0.001 or one-half (½) of the current inside spread. For customer limit orders priced less than $.001 but greater than or equal to $0.0001, the minimum amount of price improvement required is the lesser of $0.0001 or one-half (½) of the current inside spread. For customer limit orders priced less than $.0001 but greater than or equal to $0.00001, the minimum amount of price improvement required is the lesser of $0.00001 or one-half (½) of the current inside spread.[8] Lastly, for customer limit orders priced less than $.00001, the minimum amount of price improvement required is the lesser of

[4] *See* Securities Exchange Act Release No. 55351 (February 26, 2007), 72 FR 9810 (March 5, 2007) (order approving SR–NASD–2005–146).

[5] Currently, IM–2110–2 generally prohibits a member from trading for its own account in an exchange-listed security at a price that is equal to or better than an unexecuted customer limit order in that security, unless the member immediately thereafter executes the customer limit order at the price at which it traded for its own account or better.

[6] *See* NASD Rule 6610(d) for definition of "OTC equity security."

[7] *See* Securities Exchange Act Release No. 56103 (July 19, 2007), 72 FR 40918 (July 25, 2007) (SR–NASD–2007–039).

[8] The proposed minimum price-improvement provisions in this proposed rule change do not supersede, alter or otherwise affect any of the minimum pricing increment restrictions under Rule 612 of Regulation NMS. Rule 612 of Regulation NMS prohibits market participants from displaying, ranking, or accepting bids or offers, orders, or indications of interest in any NMS stock priced in an increment smaller than $0.01 if the bid or offer, order, or indication of interest is priced equal to or greater than $1.00 per share. If the bid or offer, order, or indication of interest in any NMS stock is priced less than $1.00 per share, the minimum pricing increment is $0.0001. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04) (Regulation NMS Adopting Release).

$0.000001 or one-half (½) of the current inside spread.[9] FINRA believes these proposed requirements are better aligned with the value of the limit order and continue to require an appropriate amount of minimum price improvement over a customer limit order before a member can trade for its own account.

Second, the current minimum price improvement standard for limit orders priced over $1.00 is $.01 and applies uniformly to NMS stocks [10] and OTC equity securities. However, given that subpenny quoting and trading is permissible in OTC equity securities priced over $1.00 (and therefore subpenny spreads are possible), FINRA believes that the minimum price improvement standard should be adjusted to also include a measure based on the inside spread, consistent with the standards below $1.00. Accordingly, FINRA is proposing that for customer limit orders in OTC equity securities priced greater than or equal to $1.00, the minimum amount of price improvement required is the lesser of $0.01 or one-half (½) of the current inside spread.[11]

Finally, FINRA is proposing to change the minimum price improvement standard for limit orders priced outside the inside market. Although typically trades occur at or inside the best inside market, firms may trade proprietarily outside the best inside market for a variety of reasons, such as where there is little or no depth at the inside market or the inside market is manual or not easily accessible. Under the current requirements, such trades would trigger all limit orders priced outside the inside market, no matter how far outside the inside market the limit order is priced. For example, the best inside market for a security is $.50 to $.51. The member is displaying a quote to buy at $.49 and also is holding a customer limit order to buy priced at $.45. The member's quotation is accessed by another broker-dealer and the member buys at $.49. Under the current requirements, the member would be required to fill the customer's purchase order at $.45 because it had not purchased at the inside market of $.50.

FINRA does not believe this is an appropriate result, and is therefore proposing that, where the limit order is priced outside the inside market for the security, the minimum amount of price improvement required must either meet the same tiered minimum price improvement standards set forth above or the member must trade at a price at or inside the best inside market for the security. FINRA believes this will continue to require an appropriate amount of price improvement for a member to trade ahead of a customer limit order, irrespective of whether the limit order is priced inside or outside the best inside market.

As noted above, FINRA proposes to implement the proposed rule change on the final implementation date of SR–NASD–2005–146, November 26, 2007.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[12] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change better reflects trading in low-priced securities and the application of IM–2110–2.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The original filing, SR–NASD–2005–146, which proposed the recently approved price-improvement standards, was subject to notice and comment.[13] No comments were received in response to the **Federal Register** publication of that filing. However, following Commission approval, several broker-dealers raised concerns regarding the application of the amended price-improvement standards, in particular for securities trading below $.01 and those trading outside the best inside market. One broker-dealer indicated that the inside market may not be a good reflection of trading in certain OTC equity securities. With respect to these low-priced OTC equity securities, the broker-dealer indicated that the amended price-improvements standards could result in a minimum price improvement that is significantly greater than the value of the security. In addition, certain broker-dealers indicated that, under the amended minimum price improvement standards, firms that trade proprietarily outside the best inside market would trigger all customer limit orders outside the best inside market. These broker-dealers recommended that FINRA revisit the amended price-improvement standards to better address trading in low-priced securities and trading outside the best inside market.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2007–041 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2007–041. This file

[9] For customer limit orders in securities for which there is no published inside market, the minimum amount of price improvement required would default to the same tiered minimum price improvement standards described herein. FINRA believes that the minimum price improvement requirement of $.01 for customer limit orders in securities for which there is no published inside market is disproportionately high for lower-priced securities and, therefore, the proposed tiered requirements are more appropriate.

[10] *See* Rule 600(b)(47) of Regulation NMS for definition of "NMS stock." 17 CFR 242.600(b)(47).

[11] Other than the proposed distinction to address permissible subpenny quoting and trading in OTC equity securities priced over $1.00, the proposed price-improvement standards will apply uniformly to NMS stocks and OTC equity securities. *See supra* note 8.

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] *See* Securities Exchange Act Release No. 54705 (November 3, 2006), 71 FR 65863 (November 9, 2006) (Notice of filing of SR–NASD–2005–146).

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2007–041 and should be submitted on or before September 18, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–16955 Filed 8–27–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56303; File No. SR–FICC–2007–08]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Resume Interbank Clearing for the General Collateral Finance Repo Service

August 22, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 11, 2007, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FICC is seeking to resume interbank clearing for the General Collateral Finance ("GCF") Repo service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Background

The GCF Repo service allows FICC Government Securities Division ("GSD") dealer members to trade general collateral repos throughout the day with inter-dealer broker netting members ("brokers") on a blind basis without requiring intraday, trade-for-trade settlement on a delivery-versus-payment (DVP) basis. Standardized, generic CUSIP numbers have been established exclusively for GCF Repo processing and are used to specify the acceptable type of underlying Fedwire book-entry eligible collateral, which includes Treasuries, Agencies, and certain mortgage-backed securities.

The GCF Repo service was developed as part of a collaborative effort among FICC's predecessor, the Government Securities Clearing Corporation ("GSCC"), its two clearing banks, The Bank of New York ("BNY") and The Chase Manhattan Bank, now JP Morgan Chase Bank, National Association ("Chase"), and industry representatives.[3] GSCC introduced the GCF Repo service on an intraclearing bank basis in 1998.[4] Under the intrabank service, dealer members could engage in GCF Repo transactions only with other dealers that clear at the same clearing bank.

In 1999, GSCC expanded the GCF Repo service to permit dealer members to engage in GCF Repo trading on an interclearing bank basis, which allowed dealers using different clearing banks to enter into GCF Repo transactions on a blind brokered basis.[5] Because dealer members that participate in the GCF Repo service do not all clear at the same clearing bank, expanding the service to be interclearing bank necessitated the establishment of a mechanism to permit after-hours movements of securities between the two clearing banks because GSCC would probably have unbalanced net GCF securities and unbalanced net cash positions within each clearing bank. (In other words, it was probable that at the end of GCF Repo processing each business day, the dealers in one clearing bank would be net funds borrowers while the dealers at the other clearing bank would be net funds lenders.) To address this issue, GSCC and its clearing banks established a legal mechanism by which securities would "move" across the clearing banks without the use of the securities Fedwire.[6] At the end of the day after the GCF Repo net results were produced, securities were pledged using a tri-party-like mechanism, and the interbank cash component was moved through Fedwire. In the morning, the pledges were unwound with the funds being returned to the net funds lenders and the securities being returned to the net funds borrowers.

However, as use of the service increased, certain payment systems' risk issues from the interbank funds settlements arose. In 2003, FICC shifted the service back to intrabank status to enable it to study the risk issues presented and to devise a satisfactory solution to those issues in order that it could bring the service back to interbank status.[7]

2. Proposal

FICC is now seeking to return the GCF Repo service to interbank status. The proposed rule change would address the

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by FICC.

[3] BNY and Chase remain the two clearing banks approved by FICC to provide GCF Repo settlement services. In the future, other banks that FICC in its sole discretion determines to meet its operational requirements may be approved to provide GCF Repo settlement services.

[4] Securities Exchange Act Release No. 40623 (October 30, 1998), 63 FR 59831 (November 5, 1998) (SR-GSCC–98–02).

[5] Securities Exchange Act Release No. 41303 (April 16, 1999), 64 FR 20346 (April 26, 1999) (SR–GSCC–99–01).

[6] Movements of cash did not present the same need because the cash Fedwire is open later than the securities Fedwire.

[7] Securities Exchange Act Release No. 48006 (June 10, 2003), 68 FR 35745 (June 16, 2003) (SR–FICC–2003–04).

risk issues raised by the interbank funds movement by placing a security interest on a dealer's "net free equity" ("NFE") at the clearing bank to collateralize its GCF Repo cash obligation to FICC on an intraday basis [8] and by making changes with respect to the morning "unwind" period. No changes are being proposed with respect to the after-hours movement of securities occurring the previous day, which was used when the interbank service was first introduced.

Specifically, the interbank funds payment would not move during the GCF morning unwind process. In lieu of making funds payments, each interbank dealer ("Interbank Pledging Member") at the GCF net funds borrower bank would grant to FICC a security interest in its NFE–Related Collateral [9] in an amount equal to its pro rated share of the total interbank funds debit ("Prorated Interbank Cash Amount"). FICC's lien on this collateral would be pari passu to any lien created by the dealer in favor of the relevant GCF clearing bank.

FICC would in turn grant to the other clearing bank that was due to receive the funds a security interest in the NFE–Related Collateral to support the debit in the FICC account. The debit in the FICC account ("Interbank Cash Amount Debit") would occur because the dealers that are due to receive funds in the morning must receive those funds in return for their release of collateral. The clearing banks would agree to manage the collateral value of the NFE–Related Collateral as they do today.

The debit in the FICC account at the clearing bank referred to in the previous paragraph would be satisfied during the end of day GCF settlement process. Specifically, that day's new activity would yield a new interbank funds amount that would move at end of day; however, this new interbank funds amount would be netted with the amount that would have been due in the morning, thus further reducing the interbank funds movement. The NFE security interest would be released when the interbank funds movement is made at end of day.

As described above, on an intraday basis, FICC would have a security interest in the dealers' NFE–Related Collateral. In the unlikely event of an intraday GCF participant default, FICC would need to have the NFE–Related Collateral liquidated and have use of the proceeds. FICC would enter into an agreement with each of the clearing banks whereby each bank would agree to liquidate the NFE–Related Collateral both for itself as well as on behalf of FICC. FICC and each bank would agree to share pro rata in the liquidation proceeds.

Due the fact that the liquidation of the NFE–Related Collateral might take longer than one day, GSD's typical collateral liquidation timeframe, to be completed due to the nature of the various assets that may be part of a particular dealer's NFE–Related Collateral, FICC would establish standby liquidity facilities or other financing arrangements with each of the clearing banks to be invoked as needed in the event of the default of an interbank pledging member.

FICC is also proposing to impose a collateral premium ("GCF Premium Charge") on the GCF portion of the Clearing Fund deposits of all GCF participants to further protect FICC in the event of an intraday default of a GCF participant. FICC would require GCF participants to submit a quarterly "snapshot" of their holdings by asset type to enable FICC Risk Management staff to determine the appropriate Clearing Fund premium. GCF participants that do not submit this required information by the deadlines established by FICC would be subject to a fine and an increased Clearing Fund premium.

Because the NFE–Related Collateral is held at the clearing banks and because the clearing banks monitor the activity of their dealer customers, FICC would have the right, using its sole discretion, to cease to act for a member that is a GCF Repo participant in the event that a clearing bank ceases to extend credit to such member.

The proposal results in the need for the following specific GSD rule changes.

1. The new terms referred to above (GCF Premium Charge, Interbank Cash Amount Debit, Interbank Pledging Member, NFE–Related Collateral, and Prorated Interbank Cash Amount) would be added to Rule 1 (Definitions). A new term, "NFE–Related Account," which is referred to in the definition of "NFE–Related Collateral," would also be added.

2. Section 3 (Collateral Allocation) of Rule 20 (Special Provisions for GCF Repo Transactions), which governs the GCF Repo collateral allocation process, would be amended to reflect the new process that would occur on the morning of the unwind (to be referred to as the morning of "Day 2" in the Rules).

3. Section 3 of Rule 20 would be further amended to provide for the following:

(a) The granting of the security interest in the NFE–Related Collateral to FICC by the dealers;

(b) The granting of authority for FICC to provide instructions to the clearing banks regarding the NFE–Related Collateral by the dealers;

(c) The granting of the security interest in the NFE–Related Collateral to the clearing banks by FICC; and

(d) FICC's right to enter into agreements with the clearing banks regarding the collateral management of the NFE–Related Collateral, the liquidation of the NFE–Related Collateral, and the standby liquidity facilities or other financing arrangements.

4. Rule 4 (Clearing Fund, Watch List, and Loss Allocation) would be amended to provide for the Clearing Fund premium that would be imposed on GCF Repo participants. Rule 3 (Ongoing Membership Requirements) would be amended to include the quarterly NFE reporting requirement which, if not followed timely by the members, would result in fines and Clearing Fund premium consequences.

5. Rules 21 (Restrictions on Access to Services) and 22 (Insolvency of a Member) would be amended to provide that FICC may, in its sole discretion, cease to act for a member in the event that the member's clearing bank has ceased to extend credit to the member.

6. The schedule of GCF time frames would be amended to reflect technical changes.

3. Statutory Basis

FICC believes that the proposed rule change is consistent with the requirements of section 17A of the Act [10] and the rules and regulations thereunder applicable to FICC because it should allow GCF Repo participants to expand their use of the GCF Repo service to include repos done with dealers that clear at a different clearing bank in a manner that will support the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change would have any impact or impose any burden on competition.

[8] NFE is a methodology that clearing banks use to determine whether an account holder, such as a dealer, has sufficient collateral to enter a specific transaction. NFE allows the clearing bank to place a limit on its customers' activity by calculating a value on the customers' balances at the bank. Bank customers have the ability to monitor their NFE balance throughout the day.

[9] "NFE–Related Collateral" is the total amount of collateral that a dealer has at its clearing bank.

[10] 15 U.S.C. 78q–1.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments have not been solicited with respect to the proposed rule change, and none have been received. FICC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FICC–2007–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FICC–2007–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F. Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.ficc.com/gov/gov.docs.jsp?NS-query*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2007–08 and should be submitted on or before September 18, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–16958 Filed 8–27–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56295; File No. SR–NYSEArca–2007–82]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Amending Fees for the Entry of Mid-Point Passive Liquidity or Primary Sweep Orders

August 21, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 3, 2007, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange"), through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On August 20, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the section of its Schedule of Fees and Charges for Exchange Services (the "Fee Schedule") as it applies to orders submitted by Users[6] designated as a (1) Mid-Point Passive Liquidity Order ("MPL Order")[7] or (2) Primary Sweep Order ("PSO").[8] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The Exchange has prepared summaries set forth in sections A, B, and C below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule as it applies to Users submitting any order that is designated as either an MPL Order or PSO.

First, with the adoption of the MPL Order and the changes to the Fee Schedule proposed herein, any order designated as an MPL Order shall not be eligible for a per share credit, if such order executes against an incoming marketable order, regardless of order

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

[6] *See* NYSE Arca Rule 1.1(yy) for the definition of "User."

[7] *See* NYSE Arca Equities Rule 7.31(h)(5). *See also* Securities Exchange Act Release No. 56072 (July 13, 2007), 72 FR 39867 (July 20, 2007) (SR–NYSEArca–2007–61).

[8] *See* NYSE Arca Equities Rule 7.31(kk). *See also* Securities Exchange Act Release No. 55896 (June 11, 2007), 72 FR 33795 (June 19, 2007) (SR–NYSEArca–2007–50)

type. According to the proposal, MPL Orders will be exempted from credits that currently appear in the following sections of the Exchange's Fee Schedule: NYSE ARCA MARKETPLACE: TRADE RELATED CHARGES, NYSE ARCA MARKETPLACE: MARKET MAKER FEES AND CHARGES, and the ETP Holder Transaction Credit and Market Data Revenue Sharing Credit under NYSE ARCA MARKETPLACE: OTHER FEES AND CHARGES. Consistent with the proposal to exempt MPL Orders from any credits, the Exchange will not assess fees to ETP Holders submitting MPL Orders for execution, as such orders shall not be viewed as removing liquidity from the NYSE Arca book.

Secondly, consistent with the proposal to exempt Users submitting MPL Orders from any credits, the Exchange will not assess fees to Users submitting MPL Orders for execution, as such orders shall not be viewed as removing liquidity from the NYSE Arca book. Accordingly, MPL Orders will be exempted from fees that currently appear in the following sections of the Exchange's Fee Schedule: NYSE ARCA MARKETPLACE: TRADE RELATED CHARGES and NYSE ARCA MARKETPLACE: MARKET MAKER FEES AND CHARGES.

Finally, the Exchange proposes to amend the Fee Schedule to exempt Users from the $0.001 per share fee for any order routed to the New York Stock Exchange, L.L.C. ("NYSE") if such order is for a security listed on the NYSE and is designated as a PSO. Accordingly, PSOs will be exempted from the $0.001 per share fee for orders routed outside the book to the NYSE that currently appears in the following section of the Exchange's Fee Schedule: NYSE ARCA MARKETPLACE: TRADE RELATED CHARGES.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act[9] in general and furthers the objectives of section 6(b)(4)[10] in particular that it is intended to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is subject to section 19(b)(3)(A)(ii) of the Act[11] and subparagraph (f)(2) of Rule 19b–4 thereunder[12] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by a self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–82 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F. Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–82. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F. Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–82 and should be submitted on or before September 18, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–16908 Filed 8–27–07; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56300; File No. SR–NYSEArca–2007–63; SR–NYSEArca–2007–64]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Relating to Conforming Amendments Involving the Deletion of Rule 10a–1 Under the Securities Exchange Act of 1934

August 22, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2007, NYSE Arca, Inc. (the "Exchange"), through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission (the "Commission") the proposed rule changes as described in Items I and II

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

below, which Items have been prepared by the Exchange. The Exchange filed the proposals as "non-controversial" rule changes under Rule 19b–4(f)(6) under the Act,[3] which rendered the proposals effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

A. NYSE Arca Equities Rule 4.5(e), Rule 7.16, Rule 7.18, and Rule 7.37

The Exchange proposes to make certain conforming amendments to NYSE Arca Equities Rule 4.5(e), Rule 7.16, Rule 7.18, and Rule 7.37 to address the impending deletion of Rule 10a–1 under the Securities Exchange Act of 1934. These conforming "housekeeping" changes will replace references to Rule 10a–1 and, where appropriate, add references to relevant rules in Regulation SHO. The text of the proposed rule change is available at the Exchange, on the Exchange's Web site at *http://www.nyse.com*, and at the Commission's Public Reference Room.

B. NYSE Arca Rule 4.5(f) and Rule 11.8

The Exchange also proposes to make certain conforming amendments to NYSE Arca Rule 4.5(f) and Rule 11.8 to address the impending deletion of Rule 10a–1 under the Act. These conforming "housekeeping" changes will replace references to Rule 10a–1 and, where appropriate, add references to relevant rules in Regulation SHO. The text of the proposed rule change is available at the Exchange, on the Exchange's Web site at *http://www.nyse.com*, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

a. *NYSE Arca Equities Rule 4.5(e), Rule 7.16, Rule 7.18, and Rule 7.37*

On June 28, 2007, the SEC released final rules deleting the price test of Rule 10a–1 and amending Regulation SHO to prohibit any SRO from having a price test in place. The Exchange proposes to make certain conforming amendments to NYSE Arca Equities Rule 4.5(e), Rule 7.16, Rule 7.18, and Rule 7.37 to address the deletion of Rule 10a–1. This rule filing proposes to delete the Exchange's current price test restrictions and remove requirements relating to marking sell orders "exempt" based on exceptions set forth in Rule 10a–1. In addition, other conforming and "housekeeping" changes are also proposed to replace references to Rule 10a–1 in certain Exchange rules and, where appropriate, add references to relevant rules in Regulation SHO.

b. *NYSE Arca Rule 4.5(f) and Rule 11.8*

On June 28, 2007, the SEC released final rules deleting the price test of Rule 10a–1 and amending Regulation SHO to prohibit any SRO from having a price test in place. The Exchange proposes to make certain conforming amendments to NYSE Arca Rule 4.5(f) and Rule 11.8 to address the deletion of Rule 10a–1. This rule filing proposes to delete the Exchange's current price test restrictions and remove requirements relating to marking sell orders "exempt" based on exceptions set forth in Rule 10a–1. In addition, other conforming and "housekeeping" changes are also proposed to replace references to Rule 10a–1 in certain Exchange rules and, where appropriate, add references to relevant rules in Regulation SHO.

2. Statutory Basis

The Exchange believes the proposed rule changes are consistent with section 6(b) of the Act[4] in general and further the objectives of section 6(b)(5)[5] in particular in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

Written comments on the proposed rule changes were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing proposed rule changes have become effective upon filing pursuant to section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6)[7] thereunder because they do not (i) Significantly affect the protection of investors or the public interest, (ii) impose any significant burden on competition, and (ii) become operative within 30 days after the date of the filing.

The Exchange has asked the Commission to waive the 30-day operative delay. The Commission believes such waiver is consistent with the protection of investors and the public interest because it would allow the proposed rule changes to be effective on July 6, 2007, the compliance date for the amendments to Rule 10a–1 and Regulation SHO.[8] For this reason, the Commission designates the proposals to be operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule changes, the Commission may summarily abrogate such rule changes if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are consistent with the Act. Comments may be submitted by any of the following methods:

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 19b–4(f)(6).

[8] For purposes only of waiving the 30-day pre-operative period, the Commission has considered the impact of the proposed rule changes on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NYSEArca–2007–63 or SR–NYSEArca–2007–64 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

All submissions should refer to File No. SR-NYSEArca-2007–63 or SR-NYSEArca-2007–64. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2007–63 or SR–NYSE–2007–64 and should be submitted on or before September 18, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–16957 Filed 8–27–07; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before October 29, 2007.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Gail Hepler, Chief 7a Loan Policy Branch, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW., Suite 8300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gail Hepler, Chief 7a Loan Policy Branch, Office of Financial Assistance, 202–205–7530, *gail.hepler@sba.gov;* Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The SBA has continued to hear from many lenders, particularly rural/small lenders, that despite recent efforts to streamline its loan processes through such initiatives as SBAExpress, the Agency is not meeting the needs of these lenders for small SBA guaranteed loans. This is supported by the limited number of SBA loans produced by smaller lenders. As a result, SBA is moving forward to redesign its standard 7(a) loan application form and re-engineer its standard 7(a) loan process for loans of $350,000 or less, which will be processed through a centralized and highly automated and streamlined loan facility. The proposed information collection thus represents the first phase of the redesign of an existing SBA loan form (SBA Form 4 and Form 4–I), initially for loans of $350,000, with the redesign intended to reduce the time and paperwork of lenders and the public to prepare an SBA loan application. This redesign of the SBA loan application process for loans of $350,000 or less will be the first phase of what ultimately will become a tiered loan application process that will require less information for smaller loans but appropriately more information from a borrower or lender as the size and/or complexity of a loan increases.

Title: "Application for Community Lender Initiative and Instructions Community Lender Initiative Eligibility Questionnaire."

Description of Respondents: SBA Lenders and SBA loan applicants.

Form No.'s: N/A.

Annual Responses: 4,000.

Annual Burden: 24,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E7–16939 Filed 8–27–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration # 10989 and # 10990; Pennsylvania Disaster # PA–00011

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 08/21/2007.

Incident: Severe Storms And Flooding

Incident Period: 08/06/2007 through 08/09/2007.

Effective Date: 08/21/2007.

Physical Loan Application Deadline Date: 10/22/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 05/21/2008.

ADDRESSES: Submit Completed Loan Applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Allegheny, Westmoreland

Contiguous Counties:

Pennsylvania, Armstrong, Beaver, Butler, Cambria, Fayette, Indiana, Somerset, Washington

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere:	6.250.
Homeowners Without Credit Available Elsewhere:	3.125.
Businesses With Credit Available Elsewhere:	8.000.
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere:	4.000.
Other (Including Non-Profit Organizations) With Credit Available Elsewhere:	5.250.
Businesses and Non-Profit Organizations Without Credit Available Elsewhere:	4.000.

The number assigned to this disaster for physical damage is 10989 6 and for economic injury is 10990 0.

The State which received an EIDL Declaration # is Pennsylvania.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

Dated: August 21, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–16989 Filed 8–27–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration # 10919 and # 10920; Texas Disaster Number TX–00254

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 8.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–1709–DR), dated 06/29/2007.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 06/16/2007 through 08/03/2007.

Effective Date: 08/21/2007.

Physical Loan Application Deadline Date: 10/29/2007.

EIDL Loan Application Deadline Date: 03/31/2008.

ADDRESSES: Submit Completed Loan Applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Texas, dated 06/29/2007 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:

Atascosa, Liberty, Refugio, San Patricio, Taylor, Upshur.

Contiguous Counties:

Texas, Camp, Chambers, Fisher, Hardin, Harris, Harrison, Jefferson, Jones, Marion, Morris, Polk.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

Herbert L. Mitchell,

Associate Administrator, for Disaster Assistance.

[FR Doc. E7–16988 Filed 8–27–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10919 # 10920]

Texas Disaster Number TX–00254

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 7.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–1709–DR), dated 06/29/2007.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 06/16/2007 through 08/03/2007.

EFFECTIVE DATE: 08/18/2007.

Physical Loan Application Deadline Date: 10/29/2007.

EIDL Loan Application Deadline Date: 03/31/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Texas, dated 06/29/2007 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 10/29/2007.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–16990 Filed 8–27–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5914]

Culturally Significant Objects Imported for Exhibition; Determinations: "Dali & Film."

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Dali & Film," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Los Angeles County Museum of Art, Los Angeles, CA, from on or about October 14, 2007, until on or about January 6, 2008; Salvador Dali Museum, St. Petersburg, FL, beginning on or about February 1, 2008, until on or about June 1, 2008, Museum of Modern Art, New York, NY, beginning on or about June 29, 2008, until on or about September 15, 2008 and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 17, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–17018 Filed 8–27–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5915]

Culturally Significant Objects Imported for Exhibition Determinations: "Jasper Johns: Gray"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Jasper Johns: Gray," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Art Institute of Chicago, Chicago, Illinois, from on or about November 3, 2007, until on or about January 6, 2008; Metropolitan Museum of Art, New York, New York, beginning on or about February 5, 2008, until on or about May 5, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 17, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–17017 Filed 8–27–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5917]

Culturally Significant Object Imported for Exhibition Determinations: "Painted With Words: Vincent van Gogh's Letters to Emile Bernard"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition "Painted with Words: Vincent van Gogh's Letters to Emile Bernard," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Morgan Library & Museum, New York, New York, from on or about September 28, 2007, until on or about January 6, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a description of the exhibit object, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8052). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 16, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–17022 Filed 8–27–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5916]

Culturally Significant Objects Imported for Exhibition; Determinations: "Renoir Landscapes"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Renoir Landscapes," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Philadelphia Museum of Art, Philadelphia, PA, from on or about October 4, 2007, until on or about January 6, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 17, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–17020 Filed 8–27–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, Canyon and Ada Counties, ID State Highway 44 (SH–44) Corridor Preservation Study

AGENCY: Federal Highway Administration (FHWA), U.S. DOT.

ACTION: Letter of Project Initiation; Notice of Intent to prepare an Environmental Impact Statement (EIS); for the preservation of right-of-way to construct additional travel lanes and other improvements to approximately 17 miles of SH–44 from Exit 25 at Interstate 84 (I–84) in Canyon County to Ballantyne Lane in Ada County.

SUMMARY: The FHWA hereby gives notice that it intends to prepare an EIS for the proposed preservation of right-of-way for the construction of projects that would increase surface transportation capacity (additional travel lanes, intersection improvements) and improve operating conditions and safety (access management improvements) for both near-term and long-term needs. This EIS is being prepared and considered in accordance with the National Environmental Policy Act (NEPA) of 1969, regulations of the Council on Environmental Quality (40 CFR parts 150–1508), and FHWA regulations, guidance and policy.

Anticipated Federal approvals/actions needed for this project to be constructed include permits for sections 401 and 404 of the Clean Water Act (U.S. Army Corps of Engineers) and compliance with section 4(f) of the Department of Transportation Act, section 7 of the Endangered Species Act and section 106 of the national Historic Preservation Act.

Cooperating Agencies: There are no cooperating agencies identified for this project.

DATES: Public comments and questions are welcome anytime during the NEPA process and should be directed to the address listed below. Additional formal opportunities for public participation are tentatively scheduled as follows:

Review and comment of Draft EIS (including a public hearing): Fall 2008. Review of Final EIS: Spring 2009.

Notices of availability for the Draft EIS, Final EIS and Record of Decision will be provided through direct mail, the **Federal Register** and other media. Notification also will be sent o Federal, State, local agencies, persons, and organizations that submit comments or questions. Precise schedules and locations for public meetings will be announced in the local news media. Interested individuals and organizations may request to be included on the mailing list for the distribution of meeting announcements and associated information.

FOR FURTHER INFORMATION CONTACT: Edwin Johnson, Field Operations Engineer; Federal Highway Administration, 3050 Lake Harbor Lane, Suite 126, Boise, Idaho 83703, Telephone: (208) 334–9180.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register**'s home page at *http://nara.gov/fedreg* and the Government Printing Office's database at: *http://access.gpo.gov.nara.*

Background

Recommendations for improvements along this corridor are identified in the regional long-range transportation plan, "Communities in Motion," prepared by the Boise-Nampa Metropolitan Planning Organization, Community Planning Association of Southwest Idaho (COMPASS) and adopted by the COMPASS board in August 2006.

SH–44 lies in an important east/west corridor connecting Ada and Canyon counties from the city of Eagle to the highway's junction with I–84 in Canyon County. The once rural areas along the highway are changing from farms and orchards to subdivisions and businesses. The highway runs through the central business districts of the cities of Star and Middleton. The speed is gradually decreased from 55 to 25 mph within city limits. It is one of only three main highways that carry traffic directly from the city of Caldwell to Boise. Growth and development have resulted in higher traffic volumes and congestion.

The city of Middleton has identified a need for a bypass of its downtown area and has preliminary plans for a route south of town. There has been discussion about a bypass for the city of Star, but the level of support for this has not been determined.

Public scoping meetings on this project were held from 4 p.m. to 8 p.m. on May 24, 2006 in Middleton, ID, and May 25, 2006 in Eagle, ID, to solicit public comment regarding the full spectrum of issues and concerns, including the need for the project, alternate routes around the cities of Middleton and Star, access management, and environmental issues to be considered in the analysis. Attendees were informed at the meeting that an EIS would be prepared for the corridor preservation study.

The EIS will examine the short and long-term impacts of a reasonable range of alternatives, including the no action alternative, on the natural, physical, and human environments. The impacts assessment will include, but not be limited to, impacts on wetlands, wildlife; social environment; changes in land use; noise, aesthetics; changes in traffic; and economic impacts. Environmental Justice (as outlined in Executive Order 12898) will also be addressed as part of the impact assessment. The EIS will also examine measures to mitigate adverse impacts resulting from the proposed action.

Comments are being solicited from Federal, State, and local agencies and from private organizations and citizens who have interest in this proposal. Public information meetings will be held in the project area to discuss the potential alignments and alternatives. The draft EIS will be available for public and agency review, and a public hearing will be held to receive comments. Public notice will be given of the time and place of all meetings and hearings.

Comments and/or suggestions from all interested parties are requested, to ensure that the purpose and need for the project, the full range of all issues, and significant environmental issues in particular, are identified and reviewed. Comments or questions concerning this proposed action and/or its EIS should be directed to the FHWA at the addresses listed previously.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action.)

Authority: 23 U.S.C. 315; 23 CFR 771.123; 49 CFR 1.48.

Peter J. Hartman,

Idaho Division Administrator, FHWA.

[FR Doc. 07–4195 Filed 8–27–07; 8:45 am]

BILLING CODE 4190–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Indexing the Annual Operating Revenues of Railroads

This Notice sets forth the annual inflation adjusting index numbers which are used to adjust gross annual operating revenues of railroads for classification purposes. This indexing methodology will insure that regulated carriers are classified based on real business expansion and not from the effects of inflation. Classification is important because it determines the extent of reporting for each carrier.

The railroad's inflation factors are based on the annual average Railroad's Freight Price Index. This index is developed by the Bureau of Labor Statistics (BLS). This index will be used to deflate revenues for comparison with established revenue thresholds.

The base year for railroads is 1991. The inflation index factors are presented as follows:

RAILROAD FREIGHT INDEX

Year	Index	Deflator
1991	409.50	[1] 100.00
1992	411.80	99.45
1993	415.50	98.55
1994	418.80	97.70
1995	418.17	97.85
1996	417.46	98.02
1997	419.67	97.50
1998	424.54	96.38
1999	423.01	96.72
2000	428.64	95.45
2001	436.48	93.73
2002	445.03	91.92
2003	454.33	90.03
2004	473.41	86.40
2005	522.41	78.29
2006	567.34	72.09

EFFECTIVE DATE: January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Scott Decker (202) 245–0330. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

[1] Ex Parte No. 492, *Montana Rail Link, Inc., and Wisconsin Central Ltd., Joint Petition for Rulemaking With Respect to 49 CFR 1201*, 8 I.C.C. 2d 625 (1992), raised the revenue classification level for Class I railroads from $50 million to $250 million (1991 dollars), effective for the reporting year beginning January 1, 1992. The Class II threshold was also revised to reflect a rebasing from $10 million (1978 dollars) to $20 million (1991 dollars).

By the Board, Leland L. Gardner, Director, Office of Economics, Environmental Analysis, and Administration.

Vernon A. Williams,

Secretary.

[FR Doc. E7–16967 Filed 8–27–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds; FCCI Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 1 to the Treasury Department Circular 570, 2007 Revision, published July 2, 2007, at 72 FR 36192.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following company: FCCI Insurance Company (NAIC #10178). Business Address: 6300 University Parkway, Sarasota, FL 34240. Phone: (800) 226–3224 xt 7632. Underwriting Limitation b/: $39,014,000. Surety Licenses c/: AL, AZ, FL, GA, IL, IN, IA, KS, KY, MI, MS, MO, NE, NC, OK, PA, SC, TN. Incorporated in: Florida.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 ("Circular"), 2007 Revision, to reflect this addition.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (*see* CFR part 223). A list of qualified companies is published annually as of July 1st in the Circular, which outlines details as to underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: August 14, 2007.

Vivian L. Cooper,

Director, Financial Accounting and Service Division, Financial Management Service.

[FR Doc. 07–4203 Filed 8–27–07; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register
Vol. 72, No. 166
Tuesday, August 28, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No FAA–2005–23437; Airspace Docket No. 05–AWA–2]

RIN 2120–AA66

Modification of the Phoenix Class B Airspace Area; Arizona

Correction

In rule document 07–3818 beginning on page 44372 in the issue of Wednesday, August 8, 2007, make the following corrections:

§ 71.1 [Corrected]

1. On page 44376, in the second column, in § 71.1, in the third full paragraph, in the sixth and seventh lines, "long. 112°26′7″ W." should read "112°26′07″ W.".

2. On the same page, in the third column, in the same section, in the first full paragraph, in the fifth line, "lat. 33°24′″ N." should read "lat. 33°24′00″ N.".

[FR Doc. C7–3818 Filed 8–27–07; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Tuesday,
August 28, 2007

Part II

Nuclear Regulatory Commission

10 CFR Parts 1, 2, 10, et al.
Licenses, Certifications, and Approvals for Nuclear Power Plants; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 10, 19, 20, 21, 25, 26, 50, 51, 52, 54, 55, 72, 73, 75, 95, 140, 170, and 171

RIN 3150–AG24

Licenses, Certifications, and Approvals for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations by revising the provisions applicable to the licensing and approval processes for nuclear power plants (i.e., early site permit, standard design approval, standard design certification, combined license, and manufacturing license). These amendments clarify the applicability of various requirements to each of the licensing processes by making necessary conforming amendments throughout the NRC's regulations to enhance the NRC's regulatory effectiveness and efficiency in implementing its licensing and approval processes. The NRC has considered and resolved the public comments.

DATES: The effective date is September 27, 2007.

FOR FURTHER INFORMATION CONTACT: Nanette V. Gilles, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1180, e-mail *nvg@nrc.gov*.

SUPPLEMENTARY INFORMATION:

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. On March 13, 2006 (71 FR 12781), the NRC issued a revised proposed rule that would rewrite part 52, make changes throughout the Commission's regulations to ensure that all licensing processes in part 52 are addressed, and 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). This proposed rule superseded 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 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 four nuclear power plant designs under subpart 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), the AP600 (64 FR 72002; December 23, 1999), and the AP1000 (71 FR 4464; January 27, 2006). These design certifications are codified in appendices A, B, C, and D of 10 CFR part 52, respectively.

The NRC planned to update 10 CFR part 52 after using the standard design certification process. The proposed rulemaking action began with the issuance of SECY–98–282, "Part 52 Rulemaking Plan," on December 4, 1998. The Commission issued a staff requirements memorandum (SRM) on January 14, 1999 (SRM on SECY–98–282), approving the NRC staff's plan for revising 10 CFR part 52. Subsequently, the NRC obtained considerable stakeholder 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 July 2003 proposed rule.

B. Publication of Revised Proposed Rule

A number of factors led the NRC to question whether the July 2003 proposed rule would meet the NRC's objective of improving the effectiveness of its processes for licensing future nuclear power plants. 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 July 2003 proposed rulemaking was desirable so that the agency may more effectively and efficiently implement the licensing and approval processes for future nuclear power plants under part 52.

Accordingly, the Commission decided to revise the July 2003 proposed rule and published a revised proposed rule for public comment on March 13, 2006. This revised proposed rule contained 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. 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 decided that developing responses to comments received on the July 2003 proposed rule would not be an effective use of agency resources. The NRC requested that commenters on the July 2003 proposed rule who believed that their earlier

comments were not adequately addressed in the March 2006 proposed rule resubmit their comments.

II. Overview of Public Comments

The public comment period for the March 2006 revised proposed rule expired on May 30, 2006. The NRC received 19 comment letters from industry stakeholders, other Federal agencies, and individuals during the public comment period. The NRC has considered and resolved all of the public comments received during the comment period and has made modifications to the rule language, as appropriate. The NRC has prepared a separate report, entitled *Comment Summary Report: 10 CFR Part 52, Licenses, Certifications, and Approvals for Nuclear Power Plants*, in which it summarizes the public comments received and discusses the agency's disposition of each comment. This report is available to the public as discussed in Section VII of the Supplementary Information of this document. The resolution of significant public comments is also discussed in Section IV, Responses to Specific Requests for Comments and, Section V, Discussion of Substantive Changes and Responses to Significant Comments in this document.

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

Since the adoption of 10 CFR part 52 in 1989, the NRC and its external stakeholders identified a number of interrelated issues and concerns with the licensing process. One significant concern was that the overall regulatory relationship between part 50 and part 52 was not always clear. In the former rules, it was 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 I 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 subpart 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 did 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 for the facility" required by § 50.34(a)(3)(i), may be regarded as not required to be submitted for a combined license application under the former version of part 52.

Another potential source of confusion is that the different subparts of part 52 and the appendices on standard design approvals and manufacturing licenses are not organized using the same format of individual sections (e.g., "Scope of subpart," followed by "Relationship to other subparts," followed by "Filing of application"). Moreover, the organization and textual content of identically-titled sections differs among the subparts, and with appendices M, N, O, and Q, which establish additional licensing and approval processes. While these differences do not constitute an insurmountable problem to their use and application, it became apparent to the Commission that adoption of a common format, organization, and textual content would enhance usability and result in increased regulatory effectiveness and efficiency.

In the 2003 proposed rule, the NRC proposed several changes that were intended to address some (but not all) of these issues. However, based upon comments received on the 2003 proposed rule, the NRC's experience to date with early site permit applications, interactions with external stakeholders concerning NRC guidance for combined license applications, and NRC's screening of 10 CFR Chapter I requirements following the receipt of public comments on the 2003 proposed rule, the NRC concluded that the 2003 proposed rule would not adequately address and resolve these issues.

Accordingly, in the March 13, 2006, proposed rule the NRC took a more comprehensive approach to addressing these issues by reorganizing part 52, implementing a uniform format and content for each of the subparts in part 52, using consistent wording and organization of sections in each of the subparts, and making conforming changes throughout 10 CFR Chapter I to reflect the licensing and approval processes in part 52. The NRC also coordinated and reconciled differences in wording among provisions in parts 2, 50, 51, and 52 to provide consistent terminology throughout all of the regulations affecting part 52. Under the NRC's reorganization of part 52, the existing appendices O and M on standard design approvals and manufacturing licenses, respectively, have been redesignated as new subparts in part 52. Redesignating these appendices as subparts in part 52 has resulted in a consistent format and organization of the requirements applicable to each of the licensing and approval processes. In addition, the redesignation clarifies that each of the licensing and approval processes in these appendices are available to potential applicants as an alternative to the processes in part 50 (construction permit and operating license) and the existing subparts A through C of part 52. The Commission does not, by virtue of this redesignation, either favor or disfavor the processes in the former appendices M and O of part 52. Rather, the Commission is standardizing the format and organization of part 52, and clarifying the full range of alternatives that are available under part 52 for use by potential applicants. Consistent with the broad scope of part 52, the NRC has retitled 10 CFR part 52 as "Licenses, Certifications, and Approvals for Nuclear Power Plants."

The NRC has also reorganized and expanded the scope of the administrative and general regulatory provisions that precede the part 52 subparts by adding new sections on written communications (analogous to § 50.4), employee protection (analogous to § 50.7), completeness and accuracy of information (analogous to § 50.9), exemptions (analogous to § 50.12), combining licenses (analogous to

§ 50.52), jurisdictional limits (analogous to § 50.53), and attacks and destructive acts (analogous to § 50.13). The NRC believes that adding the new sections to part 52 rather than revising the comparable sections in part 50 is more consistent with the general format and content of the Commission's regulations in each of the parts of Title 10. The NRC considered whether the numbering of the newly-added sections to part 52—in particular, the provisions on deliberate misconduct, employee protection, and completeness and accuracy of information—should match the numbering of the comparable sections in part 50. While this may have some benefit, the NRC ultimately decided not to adopt such a course for several reasons. First, other parts of the NRC's regulations in 10 CFR Chapter I do not maintain the same numbering scheme. Rather, it appears that the NRC attempted to maintain the order in which these sections are listed in each part. Second, there are other provisions in part 50 for which a comparable provision needed to be added to the general and administrative provisions in part 52, but for which it would be impossible to maintain the same numbering (for example, § 50.13 (attacks and destructive acts); § 50.32 (elimination of repetition); § 50.52 (combining licenses)), unless the substantive provisions of part 52, beginning with § 52.12, were changed.[1] Maintaining in part 52 the numbering scheme for some, but not all, comparable sections from part 50 ultimately would be viewed as haphazard and arbitrary. Finally, the NRC does not believe that external stakeholders who must constantly refer to part 52 will be confused by any difference in numbering of the three sections, given that there are other comparable provisions for which the numbering is necessarily different between parts 50 and 52. For these reasons, the NRC did not attempt to match in the final part 52 rule the numbering of the comparable sections in part 50.

Appendix N, which addresses duplicate design licenses, has been retained in both part 52 and part 50 to afford future applicants flexibility and to retain the possibility of achieving regulatory efficiencies in part 52 combined license proceedings. Since the preparation of the March 2006 proposed rule, several industry groups have announced their intention to seek combined licenses utilizing the same design. In view of this industry development, the NRC believes that there is potential utility to keeping the option of appendix N open to potential combined license applicants. Accordingly, the NRC is retaining in part 52 the procedural alternative provided in appendix N, and revising its language to make its provisions applicable to combined licenses using identical designs. Appendix Q, which addresses early staff review of site suitability issues, is being removed from part 52 but retained in part 50. Appendix Q provides for NRC staff issuance of a staff site report on site suitability issues with respect to a specific site for which a potential applicant seeks the NRC staff's views. The staff site report is issued after receiving and considering the comments of Federal, State, and local agencies and interested persons, as well as the views of the Advisory Committee on Reactor Safeguards (ACRS), but only if site safety issues are raised. The staff site report does not bind the Commission or a presiding officer in any hearing under part 2. This process is separate from the early site permit process in subpart A of part 52. The NRC recognizes the apparent redundancy between the early review of site suitability issues and the early site permit process. Accordingly, the NRC is removing appendix Q from part 52 and retaining it only in part 50.

Inasmuch as the NRC may, in the future, adopt other regulatory processes for nuclear power plants, the NRC has reserved several subparts in part 52 to accommodate additional licensing processes that may be adopted by the NRC. The NRC used a standard format and content for revising the regulations in the existing subparts and developing the new subparts that address the former appendices M and O. The standard format and content was modeled on the existing organization and content of subparts A and C. Appendix N of part 52, however, has not been revised in that fashion because of time constraints in developing the final rule.

Perhaps most importantly, the NRC has reviewed the existing regulations in 10 CFR Chapter I to determine if the existing regulations must be modified to reflect the licensing and approval processes in part 52. First, the NRC determined whether an existing regulatory provision must, by virtue of a statutory requirement or regulatory necessity, be extended to address a part 52 process, and, if so, how the regulatory provision should apply. Second, in situations where the NRC has some discretion, the NRC determined whether there were policy or regulatory reasons to extend the existing regulations to each of the part 52 processes. Most of the conforming changes in this final rule occur in 10 CFR part 50. In making conforming changes involving 10 CFR part 50 provisions, the NRC has adopted the general principle of keeping the technical requirements in 10 CFR part 50 and maintaining all applicable procedural requirements in part 52. However, due to the complexity of some provisions in 10 CFR part 50 (e.g., § 50.34), this principle could not be universally followed. A description of, and bases for, the substantive conforming changes for each affected part is provided in Section V of this document.

To highlight the relationship between the requirements in part 52 of this final rule and the requirements in existing part 52, the NRC is making two cross-reference tables available to the public. These tables can be found on NRC's Agencywide Documents Access and Management System (ADAMS) at accession number ML062550U0246. Table 1 matches each part 52 requirement in this final rule with its counterpart in the existing rule. Table 2 is a reverse cross-reference table which identifies the section of the existing part 52 requirements from which each part 52 requirement in this final rule was derived.

IV. Responses to Specific Requests for Comments

In Section V of the Statements of Consideration for the March 13, 2006, proposed rule, the NRC posed 15 questions for which it solicited stakeholder comments. In the following paragraphs, these questions are restated, comments received from stakeholders are summarized, and the NRC resolution of the public comments is presented.

Question 1: General Provisions. Create new subpart for part 50. In response to several commenters' concerns about the clarity of the applicability of part 50 provisions to part 52, the Commission has added provisions to part 52 (§§ 52.0 through 52.11) that are analogues to comparable provisions in part 50. Another possible way of addressing the commenters' concerns would be to transfer all the provisions in part 52 to a new subpart (e.g., subpart M) of part 50, and retain the existing numbering sequence for the current part 52 with the addition of a prefix (e.g., proposed

[1] The NRC notes, in this regard that nuclear industry stakeholders adversely commented on the revised numbering scheme as set forth in the 2003 proposed part 52 rule. They suggested that the NRC retain, to the greatest extent posible, the numbering of the then existing part 52. Inasmuch as § 52.12 is the first substantive provision of the former party 52, this placed an upper bound on the number of sections available for general provisions—that is § 52.0 through 52.11.

50.1001 = current 52.1). The Commission is considering adopting this alternative proposal in the final rule and is interested in whether stakeholders regard this as a more desirable approach for minimizing the ambiguity of the relationship between part 50 and part 52.

Commenters' Response: Some commenters stated the clarity of the regulations would not be enhanced by moving provisions from part 52 to a new subpart of part 50. The commenters argued that in addition to not eliminating existing confusion, such a content shift would create new confusion because current documents referencing part 52 would become "obsolete."

NRC Response: The NRC has decided not to transfer provisions from part 52 to a new subpart in part 50, inasmuch as: (1) no commenter favored transferring provisions from part 52 to a new subpart in part 50, (2) the approaches are legally equivalent, and (3) nearly 17 years has passed since the Commission adopted the approach of establishing early site permits, standard design certifications, and combined licenses in a new part 52, and a reorganization of the regulations at this time may engender confusion without any compensating benefits in clarity, regulatory stability and predictability, or efficiency.

Question 2: Currently, §§ 52.17(b) of subpart A of 10 CFR part 52 requires that an early site permit application identify physical characteristics that could pose a significant impediment to the development of emergency plans. An early site permit application may also propose major features of the emergency plans or propose complete and integrated emergency plans in accordance with the applicable standards of § 50.47 and the requirements of appendix E of 10 CFR part 50. The requirements in § 52.17 do not further define major features of emergency plans. Section 52.18 of subpart A requires the Commission to determine, after consultation with the Federal Emergency Management Agency, whether any major features of emergency plans submitted by the applicant under § 52.17(b) are acceptable. Section 52.18 does not provide any further explanation of the Commission's criteria for judging the acceptability of major features of emergency plans.

The Commission has concluded, after undergoing the review of the first three early site permit applications, that Commission review and acceptance of major features of emergency plans may not achieve the same level of finality for emergency preparedness issues at the early site permit stage as that associated with a reasonable assurance finding of complete and integrated plans. Therefore, the Commission is considering modifying in the final rule the early site permit process in proposed subpart A to remove the option for applicants to propose major features of emergency plans in early site permit applications and requests public comment on this alternative. The NRC believes that, if the option for early site permit applicants to include major features of emergency plans is to be retained, it would be useful to further define in the final rule what a major feature is and establish a clearer level of finality associated with the NRC's review and acceptance of major features of emergency plans. If the option to include major features of emergency plans is retained in the final rule, the NRC would define major features of emergency plans as follows:

Major features of the emergency plans means the aspects of those plans necessary to: (1) address one or more of the sixteen standards in § 50.47(b), and (2) describe the emergency planning zones as required in §§ 50.33(g), 50.47(c)(2), and appendix E to 10 CFR part 50.

In addition, the NRC is considering adopting in the final rule the requirement that major features of emergency plans must include the proposed inspections, tests, and analyses that the holder of a combined license referencing the early site permit shall perform, and the acceptance criteria that are necessary and sufficient to provide reasonable assurance that, if the inspections, tests, and analyses are 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 (AEA), and the NRC's regulations, insofar as they relate to the major features under review.

The NRC believes that, under this alternative, 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 inspections, tests, analyses, and acceptance criteria (ITAAC), at the early site permit stage.

Commenters' Response: Several commenters suggested the current process for addressing major features of emergency plans (EP) in the early site permit (ESP) be retained without modification. Some commenters expressed a fear that the loss of this option would result in a loss of flexibility to achieve "finality" without producing a comprehensive EP. Some commenters identified a need to clarify the definition of "major features" of the EP to make it less restrictive. Some commenters believed that the approved major features were acceptable elements of a "complete and integrated emergency plan that would be considered later." Some commenters believed the information should not be reviewed again during the COL process, which would instead focus on (1) the integration of these major features with information necessary to support the "reasonable assurance finding," and (2) the updating of EP information required by § 52.39(b).

NRC Response: Based on the commenters' feedback, the NRC has decided to retain the current process for addressing major features of emergency plans in an ESP without modification. The NRC agrees that it should clarify the definition of "major features" and has done so by adding the definition suggested by the commenters to § 52.1 in the final rule. For a detailed discussion of the basis for this change, see Section V.C.5.b of the Supplementary Information section of this document which discusses changes to § 52.1, "Definitions."

Question 3: As indicated in Section IV, *Discussion of Substantive Changes* (in the March 13, 2006, proposed rule), 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's views. The NRC is also considering removing, in the final rule, the early site review process in appendix Q to part 52 in its entirety from the NRC's regulations and is interested in stakeholder feedback on this alternative. 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 A 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.

Commenters' Response: Some commenters expressed concern about the loss of flexibility to assess site suitability that would result from the deletion of appendix Q from parts 50 and 52. These commenters believed that appendix Q to parts 50 and 52 (in conjunction with subpart F of 10 CFR part 2) was important for allowing "critical path issues" to be reviewed prior to submission of a combined license (COL) application in instances where prior completion of an ESP was not feasible. Some commenters argued for the efficiency of appendix Q to parts 50 and 52 and subpart F of part 2 because only applicant-selected issues would be reviewed during these processes. Some commenters recommended changes be made to specifically allow ESP and COL applicants to reference an early site review conducted in accordance with appendix Q or subpart F. The commenters stated that the NRC should not delete the option for a part 52 applicant to reference a review performed under appendix Q to 10 CFR part 52.

NRC Response: After considering these comments the NRC has decided to go forward with removal of appendix Q from part 52 in the final rule.

However, the NRC agrees that § 2.101(a–1) and subpart F of part 2 should be modified to allow applicants for early site permits and combined licenses under part 52 to take advantage of those provisions. Both § 2.101(a–1) and subpart F of part 2 have been revised in the final rule, albeit somewhat differently than the approach recommended by the commenter. Inasmuch as the revisions are to the Commission's rules of procedure and practice, the Commission may adopt them in final form without further notice and comment, under the rulemaking provisions of the APA, 5 U.S.C. 553(b)(A). The Commission believes that sufficient flexibility will be retained for future combined license applicants with the preservation of the provisions in § 2.101(a–1) and subpart F of part 2 and that there is little value in also retaining the provisions in appendix Q.

Question 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 manufacturing license. While the NRC will also review the acceptability of the manufacturing license applicant's organization responsible for design and manufacturing, as well as the quality assurance (QA) program for design and manufacturing, the proposed rule does not provide a regulatory structure for further extending the scope of NRC review and issue finality to the manufacturing process itself. The NRC is considering extending regulatory review approval, and consequently expand issue finality, to the manufacturing itself in the final rule. There are two models that the Commission is considering adopting if it were to move in this direction. The first would be an analogue to the subpart C of part 52 combined license process, whereby the NRC would review and approve manufacturing ITAAC to be included in the manufacturing license. During the manufacturing of each reactor, the NRC would verify at the manufacturing location whether the ITAAC have been conducted and the acceptance criteria met. A NRC finding of successful completion of all the ITAAC would preclude any further inspection of the acceptability of the manufacture of the reactor at the site where the manufactured reactor is to be permanently sited and operated. The NRC's inspections and findings for the combined license or operating license would be limited to whether the reactor had been emplaced in undamaged condition (or damage had been appropriately repaired) and all interface requirements specified in the manufacturing license had been met. The NRC believes that it has authority to issue a manufacturing license under Section 161.h of the AEA.

The other model that the NRC could adopt would be a combination of the approval processes used by the Federal Communications Commission (FCC) and Federal Aviation Administration (FAA) in approving the manufacture of electronic devices and airplanes. The NRC's manufacturing license would approve: (1) the design of the nuclear power reactor to be manufactured; (2) the specific manufacturing and quality assurance/quality control processes and procedures to be used during manufacture; and (3) tests and acceptance criteria for demonstrating that the reactor has been properly manufactured. To be completely consistent 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 extended in the final rule 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 manufacturing ITAAC have been successfully completed.

Commenters' Response: Some commenters requested that applicants for manufacturing licenses be allowed, but not required, to use ITAAC to ensure that an "as-manufactured plant conforms to the important design characteristics specified in the application for the manufacturing license." Some commenters stated that a manufacturing license for evolutionary designs should be subject to proposed § 50.43(e) and should not require a prototype. Some commenters stated that manufacturing licenses should not be subject to more stringent requirements than design certifications.

NRC Response: The NRC has decided to defer consideration of this alternative on ITAAC, for several reasons. First, one commenter's proposal to allow ITAAC for assuring that the as-manufactured reactor "conforms to the important design characteristics specified in the application for the manufacturing license," raises questions about what those "important design characteristics" might be, and why the ITAAC would be so narrowly limited. The Commission did not receive any in-depth comments presenting arguments one way or the other on the feasibility of developing such ITAAC, and the potential legal implications of, and technical considerations with respect to, such a finding by the manufacturer. Moreover, it is clear that any regulatory process that the Commission may adopt in rulemaking would require further opportunity for public comment, and therefore could not be adopted in a final part 52 rulemaking without substantial delay. In light of the lack of any near-term interest by any entity in obtaining a manufacturing license, the Commission has decided not to adopt any provisions for ITAAC governing approval of manufacturing in the final part 52 rule. However, the Commission would address these issues in a timely fashion if raised in a rulemaking

petition which demonstrated near-term interest in an application for a manufacturing license.

The Commission agrees with the commenters" suggestions that manufacturing licenses for evolutionary designs should be subject to new § 50.43(e), and that under those provisions a prototype would not be prerequisite to issuance of a manufacturing license for an evolutionary design. Further discussion is provided below in Testing Requirements for Advanced Reactors.

Question 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 (DC) under subpart B of part 52. Specifically, § 52.11 states that 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 intention to seek a construction permit for the construction of a future nuclear power plant. In addition, the NRC recommends that future applicants who want to construct and operate a commercial nuclear power facility use the combined license process in subpart C of part 52. Therefore, the NRC is considering removing from part 52, in the final rule, the provisions allowing a construction permit applicant to reference an early site permit or a design certification and is interested in stakeholder feedback on this alternative.

Commenters' Response: Some commenters stated the deletion of provisions allowing a construction permit applicant to reference an ESP or DC was ill-advised given the untested nature of the COL process and the resulting need to retain "regulatory flexibility" to deal with unexpected issues. As a contingency plan to buffer against difficulties with COL process, the commenters proposed the addition of a provision in part 50 to specify that a construction permit applicant could reference a DC without the inclusion of ITAAC. The commenters suggested that in these instances, "the operating license proceeding would need to find under 10 CFR 50.57(a)(1) that construction of the facility has been substantially completed, in conformity with the construction permit and the application as amended, the provisions of the Act, and the rules and regulations of the Commission." Commenters stated that standard design should be final and not open to review in the construction permit and operating licenses proceeding. Commenters requested a construction permit applicant be able to reference an ESP in the same way as would a COL applicant.

NRC Response: Based on some of the commenters' responses to this question and further consideration of the issue, the NRC has decided not to make any changes in the final rule to delete provisions allowing a construction permit applicant to reference an early site permit or a design certification. The NRC has also decided not to add any additional provisions to part 50 or part 52 to address a construction permit applicant's ability to reference either a design certification or an early site permit. The NRC believes it is unlikely that such a construction permit application will be submitted, and the NRC will handle any such applications on a case-by-case basis. If such an application were submitted, there are many process issues that would need to be carefully considered and would need to be discussed with the applicant and other stakeholders. In particular, the previously certified designs all used design acceptance criteria in lieu of detailed design information. A process for completing that design information without using ITAAC would have to be developed.

Question 6: The NRC is considering revising § 52.103(a) in the final rule to require the combined license holder to notify the NRC of the licensee's scheduled date for loading of fuel into a plant no later than 270 days before the scheduled date, and to advise the NRC every 30 days thereafter if the date has changed and if so, the revised scheduled date for loading of fuel. The initial notification would facilitate timely NRC publication of the notice required under § 52.103(a) and NRC staff scheduling of inspection and audit activities to support NRC staff determinations of the successful completion of ITAAC under § 52.99. The proposed updating would also facilitate NRC staff scheduling of those inspection and audit activities, Commission completion of hearings within the time frame allotted under § 52.103(e), and any Commission determinations on petitions as provided under § 52.103(f). The NRC requests public comment on the benefits and impacts (including information collection and reporting burdens) that would occur if the proposed requirements were adopted.

Commenters' Response: Some commenters agreed with this concept. However, they do not support a rule change because they believe a rule change is not necessary. Rather, they believe that the concept should be implemented via guidance rather than a rule change. Additionally, following the initial notification, a licensee should be required to submit a follow-up 30-day notification only if the schedule in the prior notification has changed. It would be unnecessarily burdensome to require a licensee to submit notifications every 30 days stating that the schedule has not changed.

NRC Response: The NRC has decided to amend § 52.103(a) in the final rule to ensure that the combined license holder will notify the NRC of its scheduled date for initial loading of fuel into a plant no later than 270 days before the scheduled date, and will notify the NRC of updates to its schedule every 30 days thereafter. The notification will facilitate timely NRC publication of the notice required under § 52.103(a), completion of hearings within the time frame allotted under § 52.103(e), and completion of any Commission determinations on petitions filed under § 52.103(f). The NRC believes that the update notifications when the schedule has not changed will not be burdensome. Additional discussion on this issue is provided in Section V.C.8.b of the supplementary information in this final rule.

Question 7: As discussed in Section IV.C.6.f of the March 13, 2006, proposed rule, the NRC is proposing to modify § 52.79(a) to add requirements for descriptions of operational programs that need to be included in the final safety analysis report (FSAR) to allow a reasonable assurance finding of acceptability. This proposed amendment is in support of the Commission's direction to the staff in SRM–SECY–02–0067 dated September 11, 2002, "Inspections, Tests, Analyses, and Acceptance Criteria for Operational

Programs (Programmatic ITAAC)," that a combined license applicant was not required to have ITAAC for operational programs if the applicant fully described the operational program and its implementation in the combined license application. In this SRM, the Commission stated:

> [a]n ITAAC for a program should not be necessary if the program and its implementation are fully described in the application and found to be acceptable by the NRC at the COL stage. The burden is on the applicant to provide the necessary and sufficient programmatic information for approval of the COL without ITAAC.

Accordingly, the NRC is proposing in the final part 52 rulemaking to add requirements to § 52.79 that combined license applications contain descriptions of operational programs. In doing so, the Commission has taken into account NEI's proposal to address SRM–SECY–04–0032 in its letter dated August 31, 2005 (ML052510037). However, the NRC is concerned that there may be operational program requirements that it has not captured in its proposed § 52.79. Therefore, the NRC is requesting public comment on whether there are additional required operational programs that should be described in a combined license application that are not identified in proposed § 52.79. If additional required operational programs are identified, the Commission is considering adding them to § 52.79 in the final rule.

Commenters' Response: Some commenters believed that requirements for operational programs were sufficient as proposed, and that no additional operational programs needed to be described in the COL application.

NRC Response: The NRC does not agree that no additional operational programs need to be described in a COL application. During the preparation of the final rule, the NRC discovered that several of the operational programs listed in SECY–05–0197 (October 28, 2005) were not addressed in proposed § 52.79. To ensure the list of requirements for the contents of applications is complete, the NRC is adding several new provisions to address operational programs in the final rule. Specifically, the NRC is adding requirements to § 52.79 for COL applicants to include a description of: (1) the process and effluent monitoring and sampling program required by appendix I to 10 CFR part 50 [§ 52.79(a)(16)(ii)]; (2) a training and qualification plan in accordance with the criteria set forth in appendix B to 10 CFR part 73 [§ 52.79(a)(36)(ii)]; (3) a description of the radiation protection program required by § 20.1101 [§ 52.79(a)(39)]; (4) a description of the fire protection program required by § 50.48 [§ 52.79(a)(40)]; and (5) a description of the fitness-for-duty program required by 10 CFR part 26 [§ 52.79(a)(44)]. During the preparation of the final rule, the NRC also noticed that it had not completely implemented the Commission's direction regarding the treatment of operational programs in a COL application because it had failed to add requirements to address program implementation in its revisions to § 52.79(a). Therefore, in the final rule, the NRC has added requirements to address the implementation of all operational programs required to be described in a COL application. This is consistent with the Commission's direction to the staff in SRM–SECY–02–0067 (September 11, 2002, ML022540755) that a combined license applicant was not required to have ITAAC for operational programs if the applicant fully described the operational program and its implementation in the combined license application.

Question 8: Backfitting—reproduce backfitting requirements in part 52. The NRC notes that the backfitting provisions applicable to various part 52 processes are contained in both part 50 and part 52 and, therefore, the proposed language for § 50.109 cross-references to applicable provisions of part 52, which may be confusing. The NRC is considering adopting in the final rule an alternative which would remove from § 50.109 the backfitting provisions applicable to the licensing and approval processes in part 52, and place them in part 52. There are two possible approaches for doing so: the first would be for the NRC to establish a general backfitting provision in part 52 applicable exclusively to the licensing and approval processes in part 52. Under this approach, each licensing and approval process in part 52 would be the subject of a backfitting section in a new subpart of part 52 (*e.g.*, § 52.201 for standard design approvals, etc.). The existing backfitting provisions applicable to early site permits and design certification would be transferred to the relevant sections in the new subpart. The second approach would be to ensure that each subpart of part 52 contains the backfitting provisions applicable to the licensing or approval process in that subpart. The NRC is considering adopting these alternative approaches in the final rule and requests public comment on whether either of these administrative approaches is preferable to the approach in the proposed rule.

Commenters' Response: Some commenters stated that NRC's alternative approach to addressing backfitting was unnecessary to clarify the application of the backfit rule to part 52 actions. Commenters stated that the proposed rule included adequate references to § 50.109 and in the various subparts of part 52, making replication of this language elsewhere unnecessary. If the NRC deemed the inclusion of such information necessary, several commenters suggested each subpart in part 52 include its own standards for backfitting to avoid confusion.

NRC Response: The NRC has decided to revise § 50.109 to include the conforming changes necessary to reflect part 52, rather than adopting a backfitting provision in part 52, because no commenter favored the alternative approach of adopting a backfitting provision in part 52, and both approaches are legally equivalent.

Question 9: The Commission is considering adopting in the final part 52 rulemaking an alternative to the re-proposed rule's approach for addressing new and significant environmental information with respect to matters addressed in the ESP environmental impact statement (EIS) which require supplementation.[2] As a separate matter, the Commission is also considering adopting in the final part 52 rulemaking an analogous requirement for addressing new information necessary to update and correct the emergency plan approved by the ESP, the ITAAC associated with EP, or the terms and conditions of the ESP with respect to emergency preparedness, or new information materially changing the Commission's determinations on emergency preparedness matters previously resolved in the ESP. To implement either or both of these alternatives, the Commission is also evaluating whether several additional concepts should be adopted in the final rulemaking. The two alternatives, as well as the additional implementing concepts, are described below. The Commission emphasizes that it may, with respect to the alternative addressing updating environmental information and emergency preparedness information, adopt either or both alternatives in the final part 52

[2] The scope of environmental information that must be supplemented is limited to the matters which were addressed in the original EIS for the ESP. Thus, for example, if the ESP applicant chose not to address need for power (as is allowed under § 52.18), the combined license applicant need not address need for power in its environmental report (ER) to update the ESP EIS, and the NRC need not determine whether there is new and significant information with respect to need for power as part of the updating of the ESP EIS.

rulemaking, in place of or in addition to the proposed rule's alternative of conducting the updating in each combined license proceeding. Under the option where multiple alternatives for updating environmental and emergency preparedness information would be allowed, the Commission proposes that the decision be left to the combined license applicant as to which alternative to pursue. Commenters are requested to address: (1) the advantages and disadvantages of adopting each alternative for updating environmental and emergency preparedness information in an ESP proceeding as opposed to the proposed rule's alternative of conducting the updating in each combined license proceeding; (2) whether the Commission should only allow updating of environmental and emergency preparedness information in an ESP proceeding or in a COL proceeding, but not both; and (3) if the Commission allows updating in either an ESP proceeding or in a COL proceeding, whether it should be an option for the COL applicant to decide which update process to pursue. The Commission believes it may allow COL applicants the option of deciding whether to update environmental and emergency preparedness information in either an ESP proceeding or in a COL proceeding in order to afford the COL applicant the determination which approach best satisfies their business and economic interests.

Environmental Matters Resolved in ESP

The Commission is considering requiring a combined license applicant planning to reference an ESP to submit a supplemental environmental report for the ESP. The supplemental environmental report must address whether there is any new and significant environmental information with respect to the environmental matters addressed in the ESP EIS. Based upon this information, the NRC will prepare a draft supplemental environmental assessment (EA) or EIS setting forth the agency's proposed determinations with respect to any new and significant information. In accordance with existing practice and procedure, the draft supplemental EA or EIS will be issued for public comment. After considering comments received from the public and relevant Federal and State agencies, the NRC will issue a final supplemental EA or EIS. Once the final supplemental EA or EIS is issued, the ESP finality provisions in proposed § 52.39 would apply to the matters addressed in the supplemental EA or EIS, and those matters need not be addressed in any combined license proceeding referencing the ESP. Thus, for example, if a new and significant environmental issue, for example, a newly-designated endangered species, is addressed in the supplemental ESP EIS, the matter would be resolved for all combined licenses referencing the ESP (unless, of course, there is new and significant information identified at the time of a subsequent referencing combined license with respect to that endangered species). There would be no updating of environmental information necessary in the combined license proceeding. The Commission considers this approach for updating the ESP as meeting the Agency's obligations under the National Environmental Policy Act (NEPA), without imposing undue burden on the ESP holder and the NRC through continuous or periodic updating, and preserving the distinction between the ESP and any referencing combined license proceeding. Since an ESP may be referenced more than once, this approach would provide for issue finality of the updated information and preclude the need for reconsideration of the same environmental issue in successive combined license proceedings referencing the ESP. The Commission requests public comment on this proposal, which would likely involve changes to §§ 52.39, 51.50(c), 51.75, and 51.107 (and possibly conforming changes in parts 2, 51, and 52).

Emergency Preparedness Information Resolved in ESP

The Commission is separately considering requiring a combined license applicant referencing an ESP to provide to the NRC new EP information necessary to correct inaccurate information in the ESP emergency plan, EP ITAAC, or the terms and conditions of the ESP with respect to EP. Based upon the EP information submitted by the combined license applicant, the NRC will, as necessary, approve changes to the ESP emergency plan, the EP ITAAC, or the terms and conditions of the ESP with respect to EP. Once the Commission has resolved the EP updating matters, these matters would be accorded finality under § 52.39. There would be no separate updating necessary in the combined license proceeding. Thus, for example, if an EP ITAAC in an ESP were changed by virtue of this updating process, the changed ITAAC for EP would be applicable to any combined license referencing the ESP whose ITAAC have not yet been satisfied (*i.e.*, the amended EP ITAAC would not be applicable to a combined license where the Commission has made the § 52.103(g) finding with respect to that EP ITAAC). The NRC's consideration of such EP information would be considered to be part of the ESP proceeding, and any necessary changes with respect to EP would therefore be deemed to be changes within the scope of the ESP. The Commission considers this proposal as a means for updating the ESP with respect to EP information in a timely fashion, without imposing undue burden on the ESP holder and the NRC through continuous or periodic updating, while preserving the distinction between the ESP and any referencing combined license proceeding.

Since an ESP may be referenced more than once, this approach would provide for issue finality of the updated information and preclude the need for reconsideration of the same issue in successive combined license proceedings referencing the ESP. The Commission requests comment whether this approach should be adopted by the Commission in the final rulemaking, which will likely involve changes to § 52.39 (and possible conforming changes in § 50.47, 50.54, and 10 CFR part 50, appendix E).

ESP Updating in Advance of Combined License Application Submission

To minimize the possibility that the ESP updating process may adversely affect a combined license proceeding referencing that ESP, the Commission proposes to require the combined license applicant intending to reference an ESP to submit its application to update the ESP with respect to EP and/or environmental information no later than 18 months before the submission of its combined license application. The Commission believes that the 18-month lead time is sufficient to complete the NRC's regulatory consideration of the updating, such that the combined license applicant will be able to prepare its application to reflect the updated ESP. The Commission also recognizes that there may be increased regulatory complexity under this approach, as well as the possibility that resources may be unnecessarily expended if the potential combined license applicant ultimately decides not to proceed with its application. The Commission requests public comment on whether the 18-month lead time is appropriate, whether the time should be decreased or increased, or whether the Commission should simply require that the ESP update application be filed no later than simultaneously with the filing of the combined license application. Based upon the public comments, the Commission will adopt one of these

alternatives, if it decides that updating of environmental and/or EP matters should be accomplished in an ESP proceeding, as opposed to the combined license proceeding in which the ESP is referenced.

Expanding the Scope of Resolved Issues After ESP Issuance

The Commission is also considering whether the final rule should include provisions addressing how the ESP holder may request, at any time after the issuance of the ESP, that additional issues be resolved and given finality under § 52.39. For example, the holder of the ESP which does not include an approved emergency plan, may wish to submit complete emergency plans for NRC review and approval. Such a request is not explicitly addressed in either the current or re-proposed subpart A to part 52, although it would be reasonable to treat that request as an application to amend the ESP.

The Commission requests public comment on whether the Commission should adopt in the final rule new provisions in subpart A to part 52 that would explicitly address requests by the ESP holder to amend the early site permit to expand the scope of issues which are resolved and given issue finality under § 52.39. The Commission is also considering whether, as part of the ESP updating process discussed previously, the ESP holder/combined license applicant should be allowed to request an expansion of issues which are resolved and given issue finality.

If the Commission were to allow an ESP holder/combined license applicant to expand the scope of resolved issues in the ESP update proceeding, the Commission believes that the 18-month time period for filing the updating application in the ESP proceeding may be insufficient, and is considering adopting in the final rule a 24-month (2-year) period for filing the ESP updating application, where the ESP holder/combined license applicant seeks to expand the scope of resolved issues. The Commission seeks public comment on whether, in such cases, the Commission should require in the final rule an 18- or 24-month period, or some other period, for submitting its ESP updating application.

Approval in ESP of Process and Criteria for Updating ESP After Issuance

The Commission requests public comment whether the Commission should adopt in the final rulemaking provisions affording the ESP applicant the option of requesting NRC approval of procedures and criteria for identifying and assessing new and significant environmental information, and/or new information necessary to update and correct the emergency plan approved by the ESP, the ITAAC associated with emergency preparedness (EP), or the terms and conditions of the ESP with respect to emergency preparedness, or otherwise materially changing the Commission's determinations on emergency preparedness matters previously resolved in the ESP. These procedures and criteria, if approved as part of the ESP issuance, could be used by any combined license applicant referencing the ESP to identify the need to update the ESP with respect to environmental and/or emergency preparedness information. There would be no need for the NRC to review the adequacy of the ESP holder/combined license applicant's process and criteria for determining whether new information is of such importance or significance so as to require updating; the NRC review could thereby be focused solely on whether the ESP holder's updated information, or determination that there is no change in either an environmental or emergency preparedness matter, was correct and adequate. Under this proposal, § 52.17 and/or § 51.50(b) would be amended to incorporate such a process for "pre-approval" of ESP updating procedures and criteria.

While NRC approval of updating procedures and criteria would be reflected in the ESP, the Commission does not believe that the ESP itself must contain the procedures and criteria in order to be accorded finality under § 52.39. An ESP holder/combined license applicant need not comply with any or all of the updating process and criteria, and would be free to use (and justify) other procedures or criteria in the ESP updating proceeding. Naturally, there would be no finality associated with such departures from the ESP-approved procedures and criteria.

The Commission does not believe that either subpart A of part 52 or an ESP with the contemplated approved updating procedures and criteria should contain a "change process" akin to § 50.59, allowing the ESP holder to make changes to the approved updating procedures and criteria without NRC review and approval. Any change (other than typographic and administrative corrections) should require an amendment to the ESP. However, the Commission seeks public comment on whether a different course should be adopted in the final rule.

The Commission recognizes that any NRC-approved procedures and criteria for updating environmental and/or emergency preparedness information in an ESP updating process as described previously, would be equally valid for updating such information under the updating provisions in the re-proposed rule. The Commission requests comments on whether, if the Commission adopts in the final rulemaking the re-proposed rule's concept of updating in the combined license proceeding, the Commission should provide the ESP applicant with the option of seeking NRC approval of the procedures and criteria for updating environmental and/or emergency preparedness information in a combined license proceeding which references the ESP.

Public Participation in ESP Updating Process

The Commission is considering two ways for allowing public participation in the updating process, if the updating alternative is adopted in the final rule. One approach would be to allow interested persons to challenge the proposed updating by submitting a petition, analogous to that in proposed § 52.39(c)(2), which would be processed in accordance with § 2.206. This approach would be most consistent with the existing provisions in § 52.39, inasmuch as updating of an ESP is roughly equivalent to a request that the terms and conditions of an ESP be modified. A consequence of this approach is that the potential scope of matters which may be raised is not limited to those ESP matters which the ESP holder/combined license applicant and the NRC conclude must be updated.

The other approach that the Commission may adopt is to treat any necessary updating as an amendment to the ESP, for which an opportunity to request a hearing is provided. This approach would limit the scope of the hearing to those matters for which an amendment is required. Where the ESP holder does not request an amendment on the basis that no updating is necessary with respect to a matter, an interested person could not intervene with respect to that matter. A consequence of this approach is that, under the Commission's regulations in 10 CFR part 2 and its current practice, a hearing granted on any amendment necessitated by the updating process would be more formalized than a hearing accorded under the § 2.206 petition process. The Commission requests public comment on the approach that the Commission should adopt, together with the reasons for the commenter's recommendation.

Commenters' Response: Several commenters believed an ESP holder should not be required to update the

information in the ESP application. These commenters stated that the proposal to require updating would add an unnecessary additional level of review (and possibly hearings) with little or no additional benefit (*i.e.*, the COL applicant would still be under the obligation to update the information provided by the ESP holder). Some commenters contended that an updating requirement would only serve to erode the finality and certainty provided by the ESP, thereby defeating one of the purposes of an ESP. These commenters also believed that an updated requirement would run counter to NRC regulations. Some commenters stated that while the ESP is in effect, the NRC cannot change or impose new requirements, including emergency planning requirements, unless it determines that a modification is necessary either to bring the permit or the site into compliance with the NRC's regulations and orders applicable and in effect at the time the permit was issued, or to assure adequate protection of the public health and safety or the common defense and security. Some commenters argued that the proposed 18-month updating requirement may not be feasible. A commenter gave the following example, "under the NRC's current schedule for the existing ESP applications for North Anna and Grand Gulf, the ESPs will not be issued until 2007, shortly before the planned COL applications for those sites. This would result in insufficient time for the updating envisioned by the NRC, and it would be unfair to those applicants to require them to delay their COL applications to accommodate the updating process. Additionally, the proposed updating process would be inconsistent with § 52.27(c), which permits a COL application to reference an ESP application."

Several commenters agreed with NRC's proposal to provide the ESP holder with the option of requesting an ESP amendment in order to resolve issues that were not addressed at the ESP stage or to achieve finality on updated information. These commenters also suggested that a COL applicant should be able to reference an application for an ESP amendment that is pending approval by the NRC similar to the process that already exists in 10 CFR 52.27(c).

Several commenters expressed the belief that a COL applicant should be able to make changes or updates to ESP emergency planning information without NRC approval in accordance with the criteria in 10 CFR 50.54(q) just as the remaining safety information can be revised under § 50.59 once it has been reviewed and approved. These commenters also stated that this revised information should not be considered as an "amendment" submitted under § 50.90 for review and approval, but rather should be considered to be information equivalent to that provided under § 50.71(e) for information.

NRC Response: Upon consideration of the public comments on this subject, the NRC has decided not to require updating of ESP information prior to receipt of a COL application referencing the ESP. The NRC is retaining the proposed rule structure for dealing with new EP and environmental information at the COL stage. The NRC believes this structure will provide for the most effective and efficient use of NRC and applicant resources. The NRC is, however, making revisions to the final rule to allow for voluntary changes to an ESP by the ESP holder through the license amendment process. Specifically, the NRC is making revisions to §§ 50.90 and 50.92 to include ESPs within the scope of these requirements. The NRC is also adding a new provision to § 52.39 to allow ESP holders to make changes to the ESP, including changes to the SSAR, under the license amendment process. These changes will provide ESP holders with additional flexibility to resolve issues that were not addressed in the original ESP review and to achieve finality on new information. The NRC does not believe it is necessary to add rule language to address the situation where a COL applicant references an ESP for which there is an amendment review pending before the NRC. The NRC will address these situations on a case-by-case basis.

Question 10: The Commission is considering adopting in the final part 52 rulemaking a new provision in § 50.71 that would require combined license holders to update the PRA [probabilistic risk assessment] submitted with the combined license application periodically throughout the life of the facility on a schedule similar to the schedule for final safety analysis report (FSAR) updates (i.e., at least every 24 months) or, alternatively, on a schedule to coincide with every other refueling outage. Updates would be required to ensure that the information included in the PRA contains the latest information developed. The PRA update submittal would be required to contain all the changes necessary to reflect information and analyses submitted to the Commission by the licensee or prepared by the licensee pursuant to Commission requirement since the submittal of the original PRA, or as appropriate, the last update to the PRA under this section. The submittal would be required to include the effects of all changes made in the facility or procedures as reflected in the PRA; all safety analyses and evaluations performed by the licensee either in support of approved license amendments or in support of conclusions that changes did not require a license amendment in accordance with § 50.59(c)(2) or, in the case of a license that references a certified design, in accordance with § 52.98(c); and all analyses of new safety issues performed by or on behalf of the licensee at Commission request. The Commission requests stakeholder feedback on whether such a requirement should be added to the Commission's regulations and, if so, what is an appropriate update schedule.

Commenters' Response: Several commenters noted that the proposed rule did not include a frequency for updating the PRA. These commenters noted that the Commission stated that PRA scope and methods should be addressed in guidance, not in regulations (SRM on SECY–05–0203). These commenters stated that they believed that PRA update frequency should also be addressed in guidance rather than regulations. These commenters indicated a frequency of once every two operating cycles would be reasonable and consistent with existing requirements in 10 CFR 50.69(e).

Additionally, some commenters stated the plant-specific PRA used to support a COL application that references a design certification would essentially be the design certification PRA. These commenters expressed the belief that the plant-specific PRA would be updated to be consistent with the PRA scope and quality standards 6 months before the COL was issued as plant-specific design and as-built information was developed during construction. Some commenters argued that this would allow (1) an updated plant-specific PRA that was representative of the as-built plant to be completed, and (2) an updated plant-specific PRA that would be available prior to fuel load for NRC audit and to support plant operations. These commenters suggested that the update of the plant-specific PRA during construction was a matter suitable for guidance.

Some commenters expressed confusion over the NRC proposal to require PRA updates to reflect safety analyses and evaluations performed by the licensee, and analyses of new safety issues performed by or on behalf of the licensee at the NRC's request. These commenters stated that new analyses

and evaluations were often performed using design-basis assumptions that may not be appropriate for a PRA. These commenters suggested that only new analyses that impact the PRA warrant consideration, and requested guidance and examples be developed regarding the information that should be considered when updating the plant-specific PRA.

NRC Response: As discussed in further detail in Section V.D.6.b of this document, the Commission is adopting requirements to require maintenance of a PRA, and periodic upgrades every 4 years, by a COL holder beginning at the time of initial operation. These PRAs and upgrades are not required to be submitted to the NRC, but instead should be maintained by the licensee for NRC inspection.

Question 11: In a letter dated July 5, 2005, the Nuclear Energy Institute (NEI) submitted comments on the proposed rule for the AP1000 design certification. Many of those comments have generic applicability to the three pre-existing design certification rules (DCRs) in appendices A through C of 10 CFR part 52. In the final AP1000 rulemaking (January 27, 2006; 71 FR 4464), the Commission adopted some of the NEI-recommended changes, while rejecting others (71 FR 4465–4468). For those changes that were adopted in the final AP1000 design certification, the Commission indicated that it would consider making the same changes to the existing design certifications in appendices A through C. For those changes that were not adopted in the final AP1000 design certification, the Commission stated that it would reconsider the issues in the part 52 rulemaking, and if the Commission changes its position and the change is adopted, the Commission would make the change for all four design certifications, including the AP1000.

The Commission is considering amending the appropriate sections in each DCR based on the comments below. The Commission considers most of NEI's proposed changes to be consistent with proposed § 52.63(a)(1); in particular, the Commission believes that the proposed changes would satisfy the "reduces unnecessary regulatory burden" criterion in proposed § 52.63(a)(1)(iii). The few remaining changes, constituting editorial clarifications or corrections reflecting the Commission's original intent, are not subject to the existing change restrictions in § 52.63(a)(1). Accordingly, the Commission believes that it has authority to incorporate some or all of the NEI-proposed changes into appendices A through D in the final part 52 rulemaking.

The Commission also requests comments on whether some of NEI's proposed changes accepted in the AP1000 design certification and proposed for inclusion in appendices A through C should not be included in those appendices in the final part 52 rulemaking because they are unnecessary, or because they would not meet one or more of the change criteria in proposed § 52.63(a)(1). The Commission is also assessing whether NEI's proposed changes which were not adopted in the AP1000 final rulemaking should be adopted in the final part 52 rulemaking for all four design certifications, including the AP1000. The Commission is particularly interested in whether there are reasons, other than those presented by NEI, for adopting those changes, as well as commenter's views on the Commission's reasons for rejecting the NEI proposals as stated in the final AP1000 design certification rulemaking.

a. NEI recommended modification of the generic technical specification definition in Section II.B to clarify that bracketed information is not part the DCRs for purposes of the change processes in Section VIII.C, and an exemption is not required for plant-specific departures from bracketed information. The Commission stated in the section-by-section analysis for the AP1000 DCR (71 FR 4464) that some generic technical specifications and investment protection short-term availability controls contain values in brackets. The values in brackets are neither part of the DCR nor are they binding. Therefore, the replacement of bracketed values with final plant-specific values does not require an exemption from the generic technical specifications or investment protection short-term availability controls. The Commission believes that including this guidance in each DCR is not necessary. The Commission requests comment on whether there are countervailing considerations that favor inclusion of this provision in the DCRs.

b. NEI recommended modification of the Tier 2 definition in Section II.E to clarify that bracketed information in the investment protection short-term availability controls is not part of Tier 2 and thus not subject to the Section VIII.B change controls. The Commission stated in the section-by-section analysis for the AP1000 DCR (71 FR 4464) that some generic technical specifications and investment protection short-term availability controls contain values in brackets. The values in brackets are neither part of the DCR nor are they binding. Therefore, the replacement of bracketed values with final plant-specific values does not require an exemption from the generic technical specifications or investment protection short-term availability controls. The Commission believes that including this guidance in each DCR is not necessary. The Commission requests comment on whether there are countervailing considerations that favor inclusion of this provision in the DCRs.

c. NEI recommended modification of the requirement in Section VIII.C.2 to delete the phrase "or licensee" because that phrase conflicted with the requirement in Section VIII.C.6. The Commission believes that generic technical specifications should not apply to holders of a combined license because the license will include plant-specific technical specifications. Therefore, the Commission is considering amending each of the DCRs to delete the phrase "or licensee" from Section VIII.C.2 and requests public comment on this approach.

d. NEI recommended modification of the requirement in Section VIII.C.6 to delete the last portion, which states "changes to the plant-specific technical specifications will be treated as license amendments under 10 CFR 50.90." NEI stated that this sentence is not necessary because it is redundant with § 50.90. It is not necessary to include a provision in each DCR stating that a license amendment is necessary to make changes to technical specifications in order to render this a legally-binding requirement inasmuch as Section 182.a of the AEA requires that technical specifications be part of each license. The Commission believes that clarity and understanding by the reader is enhanced by repeating this statutory requirement in each DCR. The Commission requests comment on whether there are countervailing considerations that favor non-inclusion of this provision in the DCRs, and may decide to remove this provision in the final part 52 rulemaking.

e. NEI recommended modification of the requirement in Section X.A.1 to require the design certification applicant to include all generic changes to the generic technical specifications and other operational requirements in the generic DCD. The Commission believes that inclusion of changes to the generic technical specifications and other operational requirements will enhance the generic DCD and facilitate its use by referencing applicants. The Commission is considering amending each of the DCRs to include the generic technical specifications and other operational requirements in the generic

DCD and requests public comment on this approach.

f. NEI recommended modification of the requirement in Sections IV.A.2 and IV.A.3 to be consistent with respect to inclusion of information in the plant-specific DCD, or explain the difference between "include" (IV.A.2) and "physically include" (IV.A.3). The Commission is considering amending each of the DCRs to use the same term in both provisions, and requests public comment on this approach.

g. NEI recommended modification of the definition in Section II.E.1 to exclude the design-specific probabilistic risk assessment (PRA) and the evaluation of the severe accident mitigation design alternatives (SAMDA) from Tier 2 information. The Commission believes that the PRA and SAMDA evaluations do not need to be included in Tier 2 information because they are not part of the design basis information. The Commission is considering amending each of the DCRs to modify the definition of Tier 2, and requests public comment on this approach.

h. NEI recommended modification of the requirement in Section III.E to use "site characteristics" consistently, instead of "site-specific design parameters." The Commission intends to use the term "characteristics" to refer to actual values and "parameters" to refer to postulated values. The Commission has proposed amending Section III.E of each DCR to use "site characteristics," and requests public comment on this approach.

i. NEI recommended modification of Section IV.A.2 to clarify the use of "same information" and "generic DCD" in that requirement. The Commission has proposed amending Section IV.A.2 of each DCR to use the phrase "same type of information" to avoid confusion, and requests public comment on this approach.

j. NEI recommended modification of the requirement in Section VIII.B.6.a to delete the sentence "The departure will not be considered a resolved issue, within the meaning of Section VI of this appendix and 10 CFR 52.63(a)(4)," in order to be consistent with the requirement in Section VI.B.5 of the DCRs. The Commission believes that departures from Tier 2* information should not receive finality or be treated as resolved issues within the meaning of section VI.B of the DCRs. The Commission requests comment on whether departures from Tier 2* information should be considered a resolved issue, and may decide to remove this provision from each DCR.

k. NEI recommended modification of Section VIII.C.3 to require the NRC to meet the backfit requirements of 10 CFR 50.109 in addition to the special circumstances in 10 CFR 2.758(b) (which has now been designated as § 2.335) in order to require plant-specific departures from operational requirements. The Commission believes that plant-specific departures should not have to meet the backfit requirement for generic changes. The Commission will have to demonstrate that special circumstances, as defined in § 2.335, are present in order to require a plant-specific departure. The Commission requests comment on whether there are countervailing considerations that would favor modification of this provision in the DCRs.

l. NEI recommended modification of the requirement in Section VIII.C.4 to include a requirement that operational requirements that were not completely reviewed and approved by the NRC should not be subject to any Tier 2 change controls, e.g., exemptions. However, NEI previously proposed that requested departures from Chapter 16 by an applicant for a COL require an exemption (62 FR 25808; May 12, 1997). The Commission believes that the requirement for an exemption applies to technical specifications and operational requirements that were completely reviewed and approved in the design certification rulemaking (see 62 FR 25825). The Commission requests comment on whether departures from technical specifications and operational requirements that were not completely reviewed and approved should also require an exemption.

m. NEI recommended modification of the requirement in Section VIII.C.4 to delete the sentence "The grant of an exemption must be subject to litigation in the same manner as other issues material to the license hearing," in order to be consistent with the requirement in Section VI.B.5 of the DCRs. The Commission believes that exemptions from operational requirements should not receive finality or be treated as resolved issues (refer to Section VI.C of the DCRs). The Commission requests comment on whether exemptions from operational requirements should be considered a resolved issue, and may decide to modify this provision in each DCR.

n. NEI recommended modification of the requirement in Section IX.B.1 to better distinguish between NRC staff ITAAC conclusions under proposed § 52.99(e) and the Commission's ITAAC finding under proposed § 52.103(g). The Commission believes that individual DCRs should not address the scope of the NRC staff's activities with respect to ITAAC verification. This is a generic matter that, if it is to be addressed in a rulemaking, is more appropriate for inclusion in subpart C of part 52 dealing with combined licenses. The Commission requests comment on whether there are countervailing considerations that favor clarification of this provision in the DCRs.

o. NEI recommended modification of the language in Section IX.B.3 to make editorial changes for clarity, e.g., "ITAAC will expire" vs. "their expiration will occur." The Commission believes that the original rule language is acceptable. The Commission requests comment on whether there are countervailing considerations that favor clarification of this provision in the DCRs.

p. NEI recommended modification of the language in Sections X.B.1 and X.B.3 to clarify references to the design control documents, e.g., "plant-specific" vs. "generic." The Commission agrees that the references to plant-specific and generic DCD should be clarified in Sections X.B.1 and X.B.3 to ensure that the requirements in these sections are properly implemented by applicants referencing the design certification rules. The Commission requests public comment on this prospective modification.

Commenters' Response: Several commenters recommended the NRC incorporate the NEI recommendations on the AP1000 rule, cited specific NEI recommendations (71 FR 12834–12836), and made additional suggestions and clarifications.

Regarding NEI recommendations (a) and (b), several commenters suggested it would be sufficient if the statements of considerations for the final rule provided the requested clarification, rather than the rule itself.

Regarding NEI recommendation (f), several commenters supported the use of the term "include" rather than "physically include" for requirements in Section IV of the design certification rules concerning content of COLAs. These commenters also requested clarification on the permissible method of incorporating the generic DCD into the plant-specific DCD portion of the COL application's final safety analysis report (FSAR), because the current NRC position has apparently "led to considerable confusion" among COL preparers. These commenters noted that in the statements of consideration accompanying the AP1000 final rule, NEI recommended a change to the Definitions (Section III.B of that rule, 71 FR 4466). These commenters stated the NRC staff disagreed with this

recommendation, saying that "the generic DCD should also be part of the FSAR, not just incorporated by reference, in order to facilitate the NRC staff's review of any departures or exemptions." Some commenters believed that this NRC position was in conflict with the former § 52.79(b), which states that the COL application's FSAR "may incorporate by reference the final safety analysis report for a certified standard design," and with § 50.32, which provides for incorporation by reference to eliminate repetitive information. Some commenters argued that although the wording had been altered, the ability to incorporate by reference was preserved in proposed §§ 52.79 (b) and (c), respectively. These commenters claimed this interpretation of incorporation was validated by NRC staff during the Draft Regulatory Guide (DG)–1145 workshops. These commenters stated support for this interpretation and requested the NRC explicitly describe that either approach is acceptable.

In discussing NEI recommendation (j), several commenters mentioned Section VIII.B.6.a of the design certification rules, which states that an applicant who references the design certification rule must obtain NRC approval for departures from Tier 2* information in the generic DCD. Some commenters believed that this section states the departure is not considered to be a resolved issue under Section VI of the design certification rules. Some commenters indicated this was inconsistent with Section VI.B.5 of the design certification rules, which states that license amendments are considered to be resolved. These commenters expressed support for the revision of Section VIII.B.6. of the design certification rules to make it consistent with Section VIII.B.5 of the design certification rules. These commenters stated that departures from Tier 2* information that are reviewed and approved by the NRC in the combined license proceeding should have finality for the plant in question.

With respect to NEI recommendation (k), several commenters expressed concern that Section VIII.C.3 of the design certification rules "inappropriately" allowed the NRC to make changes to operational requirements in the DCD without satisfying the backfit requirements in § 50.109. These commenters stated that the operational requirements in the design certification proceeding should be afforded the protection of the backfit rule. Some commenters supported a revision to Section VIII.C.3 of the design certification rules to include a reference to § 50.109 for these changes.

In the discussion of NEI recommendations (l) and (m), several commenters mentioned Section VIII.C.4 of the design certification rules, which states a COL applicant must request an exemption from the NRC if the applicant wants to depart from the generic technical specifications or other operational requirements. These commenters described this requirement as "unduly burdensome." These commenters noted that the operational requirements do not have finality under Section VI.C of the design certification rules, and that no basis existed for applying such a change control process to a COL applicant seeking to change operational requirements. Some commenters cited Section VIII.B.5 of the design certification rules, which states a COL applicant may depart from final design-related provisions in the design certification rule using a "§ 50.59-like" process, and argued that imposing an exemption process with respect to operational provisions was not required. Some commenters recommended Section VII.C.4 be amended to state that a departure from an operational requirement does not require an exemption.

Several commenters mentioned information from NEI's September 30, 2003, response to the 2003 part 52 notice of proposed rulemaking. These commenters expressed support for the need to add a basic definition of "departure" to the DCRs to be consistent with adding the definition of "departure from a method of evaluation," and stated that both should be based on Regulatory Guide 1.187. The commenters stated, "The basic definition of 'change or departure' should precede the definition of departure from a method of evaluation." Some commenters recommend adding the new definition as paragraph II.G and renaming the final two paragraphs as II.H and II.I.

NRC Response: In response to Question 11.a, the NRC has decided that modification of the generic technical specification definition in Section II.B of the DCRs is not necessary. As stated in the section-by-section analysis for the AP1000 DCR (71 FR 4475; January 27, 2006):

> Some generic technical specifications and investment protection short-term availability controls contain values in brackets [ ]. The brackets are placeholders indicating that the NRC's review is not complete, and represent a requirement that the applicant for a combined license referencing the AP1000 DCR must replace the values in brackets with final plant-specific values. The values in brackets are neither part of the design certification rule nor are they binding. Therefore, the replacement of bracketed values with final plant-specific values does not require an exemption from the generic technical specifications or investment protection short-term availability controls.

The NRC believes that the above guidance resolves NEI's concern regarding bracketed information in the generic technical specifications.

Regarding Question 11.b, the NRC has decided that modification of the Tier 2 definition in Section II.E of the DCRs is not necessary. The NRC believes that the previously mentioned guidance resolves NEI's concern regarding bracketed information in the investment protection short-term availability controls located in the Tier 2 information.

Regarding Question 11.c, the NRC agrees with NEI's recommendation and has decided to delete the phrase "or licensee" from Section VIII.C.2 of the DCRs because the generic technical specifications will not apply to holders of a combined license.

Regarding Question 11.d, the NRC has decided not to modify the rule language in Section VIII.C.6 of the DCRs, which states that "changes to the plant-specific technical specifications will be treated as license amendments under 10 CFR 50.90." The Commission believes that this statement provides clarity to this requirement.

Regarding Question 11.e, the NRC agrees with NEI's recommendation and has decided to modify the requirement in Section X.A.1 of the DCRs. The Commission believes that the inclusion of changes to the generic technical specifications and other operational requirements in the generic design control document (DCD) will enhance the DCD and facilitate its use by referencing applicants.

Regarding Question 11.f, the NRC has decided to modify Section IV of the DCRs to consistently use the term "include" rather than "physically include" as recommended by NEI.

Several commenters also requested clarification on the permissible method of incorporating the generic DCD in the plant-specific DCD portion of the COL application's final safety analysis report (FSAR), because the NRC position has apparently "led to considerable confusion" among COL preparers. The NRC is requiring COL applicants that reference the DCRs in appendices A through D of part 52 to include the generic DCD in the application's FSAR, in order to facilitate the NRC staff's review of any departures or exemptions. Simply incorporating the generic DCD by reference into the FSAR is not

sufficient because of the manner in which these existing DCDs were submitted to the NRC. Therefore, Section IV.A.2 of the DCRs overrides §§ 50.32 and 52.79(d). The NRC is hopeful that future DCRs will not have to use this special requirement.

Regarding Question 11.g, the NRC agrees with NEI's recommendation and has decided to modify the definition of Tier 2 in Section II.E.1 of the DCRs to exclude the design-specific probabilistic risk assessment (PRA) and the evaluation of the severe accident mitigation design alternatives (SAMDAs). The NRC believes that the PRA and SAMDA evaluations do not need to be included in Tier 2 because they are not part of the design basis information. Also, the revised Section II.E.1 is now consistent with the requirements in the new § 52.80 regarding PRA and SAMDA evaluations.

Regarding Question 11.h, the NRC agrees with NEI's recommendation to use "site characteristics" instead of "site-specific design parameters" in Section III.E of the DCRs. This modification of the rule language in Section III.E was made in the proposed rule and, therefore, no change was made to the final rule.

Regarding Question 11.i, the NRC agrees with NEI's recommendation to clarify the rule language in Section IV.A.2.a of the DCRs and adopts the phrase "same type of information" to avoid confusion. An applicant for a combined license must submit, as part of its application, a plant-specific DCD that contains the same type of information and uses the same organization and numbering as the generic DCD. This organization will facilitate the NRC staff's review of the plant-specific DCD. The NRC recognizes that the plant-specific DCD will not contain the exact, same information as the generic DCD because the plant-specific DCD will be modified and supplemented by the applicant's exemptions, departures, and COL action items.

Regarding Question 11.j, the NRC does not agree with NEI's request to modify the requirement in Section VIII.B.6.a of the DCRs. The Commission decided during the initial design certification rulemakings that departures from Tier 2* information (by an applicant) would not receive finality or be treated as a resolved issue within the meaning of Section VI of the DCR. This provision applies to applicants for a combined license and the new information is subject to litigation in the same manner as other plant-specific issues in the licensing hearing. Also, Tier 2* information has the same safety significance as Tier 1 information and would have received the Tier 1 designation, except that NRC decided to provide more flexibility for this type of information.

Regarding Question 11.k, the NRC does not agree with NEI's recommendation to modify Section VIII.C.3 of the DCRs. NEI requests that the NRC meet the backfit requirements in § 50.109 in addition to the special circumstances in § 2.335 in order to require plant-specific departures from operational requirements. In the original design certification rulemakings, the Commission decided on different standards for changes made under Section VIII.C (see Section VI.C and 62 FR 25805; May 12, 1997). The Commission has decided that plant-specific departures should not have to meet the backfit requirements in § 50.109.

Regarding Question 11.l, the NRC does not agree with NEI's recommendation to modify Section VIII.C.4 of the DCRs. The requirement in Section VIII.C.4 for an applicant to request an exemption applies to generic technical specifications and operational requirements that were comprehensively reviewed and finalized in the design certification rulemaking (see 62 FR 25825; May 12, 1997). Because this guidance is already set forth in the section-by-section discussion for the DCRs, the NRC has decided that changes to the rule language are not necessary.

Regarding Question 11.m, the NRC does not agree with NEI's recommendation to delete the last sentence from Section VIII.C.4 of the DCRs. This sentence applies to applicants for a combined license and the new information is subject to litigation in the same manner as other plant-specific issues in the licensing hearing. The Commission believes that exemptions from operational requirements should not receive finality or be treated as resolved issues (refer to Section VI.C of the DCRs).

Regarding Question 11.n, the NRC does not agree with NEI's recommendation to modify Section IX.B.1 of the DCRs. The NRC has decided that individual DCRs should not address the scope of the NRC staff's activities with respect to ITAAC verification. This is a generic matter that was addressed in § 52.99(e).

Regarding Question 11.o, the NRC does not agree with NEI's request to clarify the phrase "their expiration will occur" in Section IX.B.3 of the DCRs. The NRC has decided that the original rule language is acceptable.

Regarding Question 11.p, the NRC agrees with NEI's recommendation to clarify references to the DCDs in Sections X.B.1 and X.B.3 of the DCRs. The references to plant-specific and generic DCD were revised in Sections X.B.1 and X.B.3 to ensure that the requirements in these sections will be properly implemented by applicants and licensees that reference the design certification rules.

Question 12: The Commission is considering adopting in the final part 52 rulemaking a new provision that would either require combined license applicants to submit a detailed schedule for the licensee's completion of ITAAC or require the combined license holder to submit the schedule for ITAAC completion. Delaying submission of the schedule would allow the combined license holder to develop the schedules based on more accurate information regarding construction schedules and would allow the schedule to be submitted at a time when it would be most useful to the NRC for planning purposes. The Commission could require that applicants submit the schedule within a specified time prior to scheduled COL issuance—for example, 3 months prior to COL issuance or within some time period (e.g., 6 months or 1 year) after COL issuance. In addition, the Commission is considering an additional element to this provision that would require that the licensee submit an update to the ITAAC schedule within 12 months after combined license issuance and that the licensee update the schedule every 6 months until 12 months before scheduled fuel load, and monthly thereafter until all ITAAC are complete. The Commission is considering adopting these requirements to support the NRC staff's inspection and oversight with respect to ITAAC completion, and to facilitate publication of the **Federal Register** notices of successful completion of ITAAC as required by proposed § 52.99(e). The Commission requests stakeholder comment on whether such a provision, with or without the update element, should be added to the Commission's regulations and which time frame for submission of the schedule would be most beneficial.

The Commission is also considering adopting a provision that would establish a specific time by which the licensee must complete all ITAAC to allow sufficient time for the NRC staff to verify successful completion of ITAAC, without adversely affecting the licensee's scheduled date for fuel load and operation. The Commission considers "60 days prior to the schedule date for initial loading of fuel" to be a

reasonable time period by which all ITAAC must be completed. However, the Commission requests comments on whether this time period would provide too much or too little time prior to scheduled fuel load. Alternatively, the Commission is considering a 30-day or a 90-day time period prior to scheduled fuel load. The 30-day option would allow more flexibility for the licensee to complete ITAAC late in construction but would require immediate action on the part of the NRC (to determine if the final ITAAC were completed successfully and, if so, for the Commission to make its finding under § 52.103(g)) so as not to delay scheduled fuel load. The 90-day option would reduce licensee flexibility to complete ITAAC late in construction but would ensure that the NRC had ample time to make its determination on the final ITAAC for Commission review of all ITAAC under § 52.103(g). The Commission requests stakeholder comment on whether a provision requiring completion of ITAAC within a certain time period prior to scheduled fuel load should be added to the Commission's regulations.

Commenters' Response: Several commenters believed it was unnecessary to include a requirement for either the COL applicant or the COL holder to submit a detailed schedule for ITAAC completion because a COL applicant could provide only a progressively less accurate estimated completion schedule. Some commenters stated that the COL holder would have schedules at the site, and those schedules would be available for NRC review. Some commenters believed that COL holders would interact and coordinate with the NRC to ensure that NRC had sufficient information to schedule its inspection activities for ITAAC, making a regulatory requirement for submission of a schedule unnecessary. In addition, these commenters noted that a COL applicant/holder would likely consider detailed schedule information to be proprietary information, which would make its submission inappropriate.

Several commenters also stated it was "wrong" to require completion of ITAAC in a set time period prior to fuel loading and operation. These commenters indicated that a COL holder would likely complete several ITAAC within 30 days of fuel loading and argued that the NRC should not abrogate responsibility by imposing a mandatory delay on licensees. Some commenters stated the importance of the NRC providing the appropriate level of inspections and reviews to prevent delays in fuel load and emphasized the high cost (stated to be on the order of $1,000,000 per day) of such delay. Some commenters suggested the NRC should be in a position to make a § 52.103(g) finding promptly following the completion of the last ITAAC.

NRC Response: The NRC has decided to amend § 52.99 to require licensees to submit their schedules for completing the inspections, tests, or analyses in the ITAAC. The NRC has added a new paragraph (a) in § 52.99 that requires a licensee to submit to the NRC, no later than 1 year after issuance of the combined license or at the start of construction as defined in 10 CFR 50.10, whichever is later, its schedule for completing the inspections, tests, or analyses in the ITAAC. Licensees are required to submit updates to the ITAAC schedule every 6 months thereafter and, within 1 year of its scheduled date for initial loading of fuel, licensees must submit updates to the ITAAC schedule every 30 days until the final notification is provided to the NRC under § 52.99(c)(1). Although commenters did not believe that a requirement for submission of a schedule was necessary, the NRC believes it is necessary to ensure that the NRC has sufficient information to plan all of the activities necessary for the NRC to support the Commission's determination as to whether all of the ITAAC have been met prior to initial operation. In the event that licensees consider their schedule information to be proprietary, they can request that the schedule be withheld from public disclosure under § 2.390. If an applicant claims that its construction schedule information submitted to the NRC is proprietary, and requests the NRC to withhold that information under the Freedom of Information Act (FOIA), the NRC will consider that request under the existing rules governing FOIA disclosure in 10 CFR 2.309(a)(4).

The NRC has also decided to amend § 52.99(c) which requires the licensee to notify the NRC that the prescribed inspections, tests, and analyses in the ITAAC have been or will be completed and that the acceptance criteria have been met. The NRC is revising § 52.99(c)(1) in the final rule to more closely follow the language of Section 185b. of the AEA and to clarify that the notification must contain sufficient information to demonstrate that the prescribed inspections, tests, and analyses have been performed and that the prescribed acceptance criteria have been met. The NRC is adding this clarification to ensure that combined license applicants and holders are aware that (1) it is the licensee's burden to demonstrate compliance with the ITAAC and (2) the NRC expects the notification of ITAAC completion to contain more information than just a simple statement that the licensee believes the ITAAC has been completed and the acceptance criteria met. The NRC expects the notification to be sufficiently complete and detailed for a reasonable person to understand the bases for the licensee's representation that the inspections, tests, and analyses have been successfully completed and the acceptance criteria have been met. The term "sufficient information" requires, at a minimum, a summary description of the bases for the licensee's conclusion that the inspections, tests, or analyses have been performed and that the prescribed acceptance criteria have been met. The NRC plans to prepare regulatory guidance, in consultation with interested stakeholders, to explain how the functional requirement to provide "sufficient information" with regard to ITAAC submittals could be met.

The NRC is also revising § 52.99(c) by adding a new paragraph (c)(2) requiring that, if the licensee has not provided, by the date 225 days before the scheduled date for initial loading of fuel, the notification required by paragraph (c)(1) of this section for all ITAAC, then the licensee shall notify the NRC that the prescribed inspections, tests, or analyses for all uncompleted ITAAC will be performed and that the prescribed acceptance criteria will be met prior to operation (consistent with the Section 185.b requirement that the Commission, "prior to operation," find that the acceptance criteria in the combined license are met). The notification must be provided no later than the date 225 days before the scheduled date for initial loading of fuel. It is the licensee's burden to demonstrate that it will comply with the ITAAC and it must provide sufficient information to demonstrate that the prescribed inspections, tests, or analyses will be performed and the prescribed acceptance criteria for the uncompleted ITAAC will be met. The term "sufficient information" requires, at a minimum, a summary description of the bases for the licensee's conclusion that the inspections, tests, or analyses will be performed and that the prescribed acceptance criteria will be met. In addition, "sufficient information" includes, but is not limited to, a description of the specific procedures and analytical methods to be used for performing the inspections, tests, and analyses and determining that the acceptance criteria have been met.

Paragraph (e) has been revised to require that the NRC make available to

the public the notifications to be submitted under § 52.99(c)(1) and (c)(2), no later than the **Federal Register** notice of intended operation and opportunity for hearing on ITAAC under § 52.103(a). A conforming change is included in § 2.105(b)(3) to require that the § 52.103(a) notice reference the public availability of the § 52.99(c)(1) and (2) notifications. The NRC is requiring that the paragraph (c)(2) notification be made 225 days before the date scheduled for initial loading of fuel, in order to ensure that the licensee notifications are publicly available through the NRC document room and online through the NRC Web site at the same time that the § 52.103(a) notice is published in the **Federal Register**. The NRC's goal is to publish that notice 210 days before the date scheduled for fuel loading, but in all cases the § 52.103(a) notice would be published no later than 180 days before the scheduled fuel load, as required by Section 189.a(1)(B) of the AEA.

Commenters did not support addition of a requirement on completion of ITAAC in a set time period prior to fuel load and the NRC has not included a provision requiring the completion of all ITAAC by a certain time prior to the licensee's scheduled fuel load date. Instead, the NRC has decided to modify the concept slightly by requiring the licensee to submit, with respect to ITAAC which have not yet been completed 225 days before the scheduled date for initial loading of fuel, additional information addressing whether those inspections, tests, and analyses will be successfully completed and the acceptance criteria met before initial operation. In the case where the licensee has not completed all ITAAC by 225 days prior to its scheduled fuel load date, the NRC expects the information that the licensee submits related to uncompleted ITAAC to be sufficiently detailed such that the NRC can determine what activities it will need to undertake to determine if the acceptance criteria for each of the uncompleted ITAAC have been met, once the licensee notifies the NRC that those ITAAC have been successfully completed and their acceptance criteria met. In addition, the NRC is adopting the requirements in paragraphs (c)(1) and (c)(2) to ensure that interested persons will have sufficient information to address the Atomic Energy Act, Section 189.a(1), threshold for requesting a hearing with respect to both completed and as-yet uncompleted ITAAC. The NRC plans to prepare regulatory guidance providing further explanation of what constitutes "sufficient information" that must be submitted under paragraphs (c)(1) and (c)(2) demonstrating that the inspections, tests, or analyses for ITAAC have been or will be completed and the acceptance criteria for the ITAAC have been or will be met. The NRC expects that any contentions submitted by prospective parties regarding uncompleted ITAAC would focus on any inadequacies of the specific procedures and analytical methods described by the licensee under paragraph (c)(2), in the context of the findings called for by § 52.103(b)(2).[3]

The NRC notes that, even though it did not include a provision requiring the completion of all ITAAC by a certain time prior to the licensee's scheduled fuel load date, the NRC will require some period of time to perform its review of the last ITAAC once the licensee submits its notification that the ITAAC has been successfully completed and the acceptance criteria met. In addition, the Commission itself will require some period of time to perform its review of the staff's conclusions regarding all of the ITAAC and the staff's recommendations regarding the Commission finding under § 52.103(g). Therefore, licensees should structure their construction schedules to take into account these time periods. The NRC staff intends to develop regulatory guidance on the licensee's completion and NRC verification of ITAAC and will provide estimates of the time it expects to take to verify successful completion of various types of ITAAC. The NRC expects that such guidance, along with frequent communication with licensees during construction, will provide licensees with adequate information to plan initial fuel loading and related activities.

Question 13: ML Hearings. As discussed in Section IV.F.6 of the March 13, 2006, proposed rule, the Commission proposes, as a matter of policy and discretion, that the Commission hold a "mandatory" hearing (*i.e.*, a hearing which, under NRC requirements in 10 CFR part 2, is held regardless of whether the NRC receives any hearing requests or petitions to intervene) in connection with the initial issuance of every manufacturing license. The Commission believes that Section 189.a.(1)(A) of the AEA does not require that a hearing be held in connection with the initial issuance of a manufacturing license. Nonetheless, there are several reasons for the Commission to require by rule, as a matter of discretion, a mandatory hearing. A manufacturing license may be viewed as analogous to a construction permit—a regulatory approval for which Section 189 of the AEA specifically requires that a hearing be held. Even though the Commission's regulations did not address the hearing requirements for manufacturing licenses, the Commission noticed a "mandatory" hearing in connection with the only manufacturing license application ever received by the Agency. *Offshore Power Systems* (Floating Nuclear Power Plants), 38 FR 34008 (December 10, 1973). Accordingly, proposed §§ 2.104 and 52.163 require that a mandatory hearing be held in each proceeding for initial issuance of a manufacturing license. However, the Commission recognizes that there may be countervailing considerations weighing against Commission adoption of a rulemaking provision mandating that a hearing be held in connection with the initial issuance of every manufacturing license where there has been no stakeholder interest in a hearing. If there is no stakeholder interest in a hearing, transparency and public confidence would not appear to be relevant considerations in favor of holding a mandatory hearing. Considerations of regulatory efficiency and effectiveness would be paramount, and would weigh against holding of a mandatory hearing. The Commission requests comments on whether the Commission should exercise its discretion to provide by rule an opportunity for hearing, rather than a mandatory hearing, and the reasons in favor of providing an opportunity for hearing as opposed to holding a mandatory hearing. Based upon the public comments, the Commission may adopt a final rule which deletes § 2.104(f), revises § 2.105 (governing the content of a **Federal Register** notice of proposed action where a mandatory hearing is not held under § 2.104) to add, as appropriate, references to issuance of manufacturing licenses, and revised § 52.163 to provide an opportunity for hearing rather than a mandatory hearing in connection with the initial issuance of a manufacturing license.

Commenters' Response: Several commenters stated there was no need to require mandatory hearings for manufacturing licenses, or that the need for such hearings was unclear. These commenters expressed the belief that such hearings were not an appropriate method for reviewing and resolving

[3] Inasmuch as the ITAAC themselves have already been approved by the NRC and their adequacy may not be challenged except under the provisions of § 52.103(f), a contention which alleges the deficiency of the ITAAC is not admissible under § 52.103(b).

technical issues. Some commenters advised that the decision to request a hearing be left to either the NRC staff or stakeholders.

NRC Response: As stated in the statement of considerations for the March 13, 2006, proposed rule, the NRC acknowledges that hearings on initial issuances of manufacturing licenses are not required by the AEA (71 FR 12814). The NRC also agrees with the general premise of the commenters that adjudicatory hearings may not be the best approach for resolving technical design issues—especially in uncontested proceedings. Indeed, the NRC removed the opportunity for adjudicatory-style hearings for design certifications as part of the 2004 changes to 10 CFR part 2 (January 14, 2004; 69 FR 2182). The primary responsibility for determining the safety of an application is with the NRC staff, and not the presiding officer. This is true regardless of whether the proceeding is contested or uncontested. Public confidence would not seem to be enhanced in any significant manner by the holding of a hearing where there is no request that the NRC hold a hearing. Accordingly, the NRC has decided not to adopt in the final part 52 rule a requirement for a "mandatory" hearing in connection with issuance of manufacturing licenses.

Question 14: As discussed in Section IV.C.5.g of the statements of consideration of the March 13, 2006, proposed rule, the proposed rule would amend the special backfit requirement in 10 CFR 52.63(a)(1) to provide the Commission with the ability to make changes to the design certification rules (DCRs) or the certification information in the generic design control documents that reduce unnecessary regulatory burdens. The underlying rationale for this provision also forms the basis for amending the Tier 2 change process in the three DCRs (appendices A, B, and C of part 52) to incorporate the revised change criteria in 10 CFR 50.59.

The Commission is considering adopting an additional provision [§ 52.63(a)(1)(iv)] in the final rule that would allow amendments of design certification rules to incorporate generic resolutions of design acceptance criteria (DAC) or other design information without meeting the special backfit requirement in the current § 52.63(a)(1). The applicants for the current DCRs requested use of DAC in lieu of providing detailed design information for certain areas of their nuclear plant designs, for example, instrumentation and control systems. Under the proposed requirements, a generic change to design certification information would have to meet the special backfit requirement of § 52.63(a)(1) or reduce an unnecessary regulatory burden while maintaining protection to public health and safety and the common defense and security. The Commission adopted this special backfit requirement to restrict changes and to require that everyone meet the same backfit standard for generic changes, thereby ensuring that all plants built under a referenced DCR would be standardized. By allowing a DCR amendment to include generic resolutions of DAC or other design information, the Commission would enhance its goals for design certification, for example, early resolution of all design issues and finality for those issue resolutions, which would avoid repetitive consideration of design issues in individual combined license proceedings.

There are currently three ways of resolving generic design issues: (1) the combined license applicant that references a DCR could submit plant-specific resolutions in its application, which could result in loss of standardization; (2) a vendor could submit generic resolutions in topical reports that, if approved, could but would not be required to be referenced in a combined license application; or (3) the Commission could exempt itself from the special backfit requirement in § 52.63(a)(1) and amend the DCR to incorporate a generic resolution, which could result in multiple rulemakings to revise each DCR to incorporate each generic resolution. The Commission intends that any review of a proposed generic resolution would be performed under the regulations that are applicable and in effect at the time that the approval or amendment is completed.

Therefore, the NRC is requesting public comments on: (1) whether a provision should be added to § 52.63(a)(1) to allow generic amendments to design certification information that meet applicable regulations in effect at the time that the rulemaking is completed; and (2) whether the generic resolutions should be incorporated into a DCR without meeting a backfit requirement, which would provide for completion of the design certification information and facilitate standardization, or whether an application for a generic amendment should be required to meet a backfit requirement (e.g., § 50.109).

Commenters' Response: Some commenters stated that revisions to NRC regulations should include the current 10 CFR 52.63, which they believed should allow the original design certification applicant (or its successor) to obtain amendments to the design certification rule. These commenters believed current regulations prevented any amendment to a design once the design has been certified by rule (10 CFR 52.63(a)(1)). Some commenters stated that the design certification applicant should be able to petition the NRC for, and obtain, an amendment to the design certification rule to incorporate "beneficial" changes to the design certification, including: (1) Design changes that would result in significant improvements in safety; (2) design changes that would result in significant improvements in efficiency, reliability and/or economics; (3) design changes that result from continuing engineering or design work or are required because of lack of availability of components specified in the original design certification; and (4) design changes necessary to correct minor errors in the original design certification. Some commenters also suggested that where proposed changes involved changes to Tier 2, the design certification applicant should be able to make such changes using a § 50.59-like change process. One commenter noted that changes to allow an amendment to the final design certification could potentially simplify COL applications, reduce NRC staff resource burden, and help assure standardization across the industry.

NRC Response: The NRC has decided to include an amendment process in the final rule that: (1) Reduces unnecessary regulatory burden and maintains protection to public health and safety and common defense and security; (2) provides the detailed design information necessary to resolve selected design acceptance criteria; (3) corrects material errors in the certification information; (4) substantially increases overall safety, reliability, or security of a facility and the costs of the change are justified; or (5) contributes to increased standardization of the certification information, without meeting the special backfit requirement in § 52.63(a)(1)(ii). These amendments will apply to all plants that have referenced or will reference the DCR. The NRC believes that these amendments will enhance standardization by further completing or correcting the certification information. A detailed discussion of the amendment process is provided in Section V.C.7.g of the Supplementary Information of this document.

Question 15: In Section IV.J of the **SUPPLEMENTARY INFORMATION** of the March 13, 2006, proposed rule, the NRC

outlines key principles regarding its proposal for reporting requirements that implement Section 206 of the Energy Reorganization Act, as amended, for part 52 licenses, certifications, and approvals. The NRC discusses that the beginning of the "regulatory life" of a referenced license, standard design approval, or standard design certification under part 52 occurs when an application for a license, design approval, or design certification is docketed. The NRC also cautions, however, that this does not mean that an applicant is without Section 206 responsibilities for pre-application activities because there are two aspects to the reporting requirements, namely, a "backward looking" or retrospective aspect with respect to existing information, and a "forward looking" or prospective aspect with respect to future information. For an early site permit applicant, the retrospective obligation is that the early site permit holder and its contractors, upon issuance of the early site permit, must report all known defects or failures to comply in "basic components," as defined in part 21. Under the proposed part 21 requirements presented in the proposed rule, the early site permit holder and its contractors are required to meet these requirements upon issuance of the early site permit. Accordingly, applicants should procure and control safety-related design and analysis or consulting services in a manner sufficient to allow the early site permit holder and its contractors to comply with the above described reporting requirements of Section 206, as implemented by part 21. A similar argument applies to design certification applicants. Although the Commission has not proposed an explicit requirement imposing part 21 on applicants for an early site permit or design certification in the proposed rule, it is considering adopting such a requirement in the final part 52 rulemaking because, as a practical matter, the NRC has to require these applicants to implement a part 21 program before approval of the early site permit or design certification. Therefore, providing explicit part 21 requirements for applicants would clarify the Commission's intent. The Commission requests stakeholder comment on whether it should, in the final rule, impose part 21 reporting requirements on applicants for early site permits and design certifications.

Commenters' Response: Several commenters were opposed to the proposed changes to part 21. Some commenters stated part 21 had been in existence for almost 30 years, during which it was never applied to applicants. They complained that they were not aware, and the NRC had not made them aware, of problems that would warrant a change. The commenters noted that applicants take measures to ensure that they were made aware of any errors and deficiencies identified by contractors and suppliers for work performed on commercial nuclear projects, because applicants eventually become holders, and licensees and want equipment to operate correctly. Several commenters were also concerned that the proposal was contrary to the Energy Reorganization Act (ERA), which was the basis for part 21. They believed it would be inappropriate and contrary to the ERA to apply part 21 to applicants. They stated part 21 was established to implement § 206 of the ERA, which applies to "licensees" and vendors, suppliers, and contractors of licensees, not to "applicants." These commenters cited 10 CFR 21.2, stating that the existing regulations of part 21 apply only to entities licensed to possess, use, or transfer radioactive material within the United States, or to construct, manufacture, possess, own, operate, or transfer within the United States, any production or utilization facility or fuel storage facility. The commenter believed applicants did not fall within the scope of § 206 of the ERA, and it was inconsistent with the Act to expand the scope of § 21.2 to include applicants.

Some commenters also noted that it had been the standard practice for a construction permit (CP) applicant to specify part 21 requirements in its procurement contracts for a plant prior to issuance of the construction permit. Some commenters agreed with this practice because part 21 was applicable to such contracts once the CP was issued by the NRC, and expected that this "good practice" would be implemented by COL applicants as well. From a "practical perspective," the commenters believed this negated the need to expand part 21 to applicants.

Some commenters argued that the obligations for applicants to provide information to the NRC under proposed § 52.6(a) was broader than the obligation in part 21, and would require applicants to update and correct their applications to account for the types of defects and noncompliances covered by part 21. These commenters stated the industry had no objection to proposed § 52.6(a), which should therefore eliminate the need to apply part 21 to applicants.

NRC Response: The Commission proposed part 21 reporting requirements on applicants for early site permits, design certifications, and standard design approvals in the proposed rule. A detailed discussion on the Commission's rationale for imposing these requirements in the final rule is provided in Section V.J of the **SUPPLEMENTARY INFORMATION** of this document.

V. Discussion of Substantive Changes and Responses to Significant Comments

A. Introduction

The changes to 10 CFR Chapter I are further discussed by part. Changes to parts 52 and 50 are discussed first, followed by changes to other parts in numerical order. Within each part, general topics are discussed first, followed by discussion of changes to individual sections as necessary. In addition to the substantive changes, rule language was revised to make conforming administrative changes (*e.g.*, identification of regulations containing information collection requirements in § 52.11), correct typographic errors, adopt consistent terminology (*e.g.*, "makes the finding under § 52.103(g)"), correct grammar, and adopt plain English. These changes are not discussed further.

B. Testing Requirements for Advanced Reactors

This rule amends §§ 50.43, 52.47, 52.79, and 52.157 to achieve clarity and consistency in the testing requirements for advanced reactor designs and plants. This amendment requires applicants for a combined license, operating license, or manufacturing license that use new safety features but do not reference a certified advanced reactor design to also perform the design qualification testing required of certain applicants for design certification. If a combined license application references a certified design, the necessary qualification testing will have been performed under § 52.47(c)(2). The codification of testing requirements in the original § 52.47 was a principal issue during the development of 10 CFR part 52 (see Section II of 54 FR 15372; April 18, 1989). The requirement to demonstrate the performance of new safety features for nuclear power plants that differ significantly from evolutionary light-water reactors or that use simplified, inherent, passive, or other innovative means to accomplish their safety functions (advanced reactors), were included in 10 CFR part 52 to ensure that these new safety features will perform as predicted in the applicant's safety analysis report, to provide sufficient data to validate analytical codes, and that the effects of systems

interactions are acceptable. The design qualification testing requirements may be met with either separate effects or integral system tests; prototype tests; or a combination of tests, analyses, and operating experience. These requirements implement the Commission's policy on proof-of-performance testing for all advanced reactors and its goal of resolving all safety issues before authorizing construction.

Some commenters stated that it is unnecessary to apply qualification testing requirements to combined license applicants. The Commission does not agree because, when it reformed the licensing process for new nuclear plants with the issuance of part 52, the Commission required applicants to demonstrate that new safety features will perform as predicted in the final safety analysis report. Although the focus of the NRC at that time was on applications for design certification, the Commission intended that testing to qualify new design features (proof-of-performance testing) would be required for all advanced reactors, including custom designs (see Question 6 at 51 FR 24 646; July 8, 1986). Furthermore, it would make no sense for the Commission to require qualification testing for design certification applicants (so-called paper designs) and not require testing for applications to build and operate an advanced nuclear power plant. Therefore, the NRC has implemented its intent in adopting part 52 to resolve issues early 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 nuclear reactors manufactured under a manufacturing license).

This amendment also includes a requirement in § 50.43(e)(2) for licensing a prototype plant, as defined in §§ 50.2 and 52.1, if the plant is used to meet the testing requirements in § 50.43(e)(1). The new § 50.43(e) states that, if a prototype plant is used to comply with the qualification testing requirements, the NRC may impose additional requirements on siting, safety features, or operational conditions for the prototype plant to compensate for any uncertainties associated with the performance of the new or innovative safety features in the prototype plant.

Some commenters stated that it would be inappropriate to establish or impose prototype testing on combined license applicants. Although the Commission stated that it favors the use of prototypical demonstration facilities and that prototype testing is likely to be required for certification of advanced non-light-water designs (see Advanced Reactor Policy Statement at 51 FR 24646; July 8, 1986, and the statement of consideration for 10 CFR part 52, 54 FR 15372; April 18, 1989), this rule does not require the use of a prototype plant for qualification testing. Rather, this rule provides that if a prototype plant is used to qualify an advanced reactor design, then additional conditions may be required for the licensed prototype plant to compensate for any uncertainties with the unproven safety features. Also, the prototype plant could be used for commercial operation.

C. 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.U0 , 52.39, 52.47, 52.54, 52.79, 52.93, 52.157, 52.158, 52.167, 52.171, and Appendices A, B, and C to Part 52

The NRC is revising 10 CFR part 52 to clarify the use of the terms, *site characteristics, site parameters, design characteristics,* and *design parameters,* in order to ensure that the NRC's requirements governing applications for and issuance of early site permits, design approvals, design certifications, combined licenses, and manufacturing licenses are expressed in clear and unambiguous terms. This final rule adds or revises these terms where necessary to reflect this clarification. Corresponding changes are made to §§ 52.17, 52.24, 52.39, 52.47, 52.54, 52.79, 52.93, 52.157, 52.158, 52.167, 52.171, and Section III.E of appendices A, B, and C to part 52.

The NRC is also adding definitions of the terms *design characteristics, design parameters, site characteristics,* and *site parameters* to § 52.1 to clarify the use of these terms. *Design characteristics* are defined as the actual features of a reactor. Design characteristics are specified in a standard design approval, a standard design certification, a combined license application, or a manufacturing license. *Design parameters* are defined as the postulated features of a reactor or reactors that could be built at a proposed site. Design parameters are specified in an early site permit. *Site characteristics* are defined as the actual physical, environmental and demographic features of a site. Site characteristics are specified in an early site permit or in a final safety analysis report for a combined license. *Site parameters* are defined as the postulated physical, environmental and demographic features of an assumed site. Site parameters are specified in a standard design approval, standard design certification, or a manufacturing license.

In addition, the NRC is revising § 52.79 to include a requirement that a combined license application referencing a certified design must contain information sufficient to demonstrate that the design of the facility falls within the site characteristics and design parameters specified in the early site permit. Former § 52.79 included a requirement that a combined license application referencing an early site permit contain information sufficient to demonstrate that the design of the facility falls within the parameters specified in the early site permit. The NRC interprets parameters to mean the site characteristics and design parameters as defined in § 52.1. The NRC is making similar changes to §§ 52.39 and 52.93. The need for these changes became evident during NRC's review of the pilot early site permit applications. Because the NRC is relying on certain design parameters specified in the early site permit applications to reach its conclusions on site suitability, these design parameters will be included in any early site permit issued. The NRC believes that these changes, in the aggregate, will provide sufficient clarification on the use of the terms in question.

As the NRC completes its review of the first early site permit applications and prepares for the submittal of the first combined license application, it is focusing on the interaction among the early site permit, design certification, and combined license processes. The NRC believes that its review of a combined license application that references an early site permit will involve a comparison to ensure that the actual characteristics of the design chosen by the combined license applicant fall within the design parameters specified in the early site permit. NRC review of a combined license application that references a design certification will involve a comparison to ensure that the actual characteristics of the site chosen by the combined license applicant fall within the site parameters in the design certification. Similarly, if a combined license applicant references both an early site permit and a design certification, the NRC will review the application to ensure that the site characteristics in the early site permit fall within the site parameters in the referenced design certification and that the actual characteristics of the certified design fall within the design parameters in the early site permit. For these

reasons, the NRC believes it is important to make the changes described above in order to clarify these terms and their use in part 52 licensing processes.

2. Issuance of Combined and Manufacturing Licenses (§§ 52.97 and 52.167)

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 for combined licenses and manufacturing licenses. 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 provision applicable to early site permits in § 52.24. Accordingly, the NRC is adding the language in § 52.97(c) for combined licenses, and § 52.167(b) for manufacturing licenses, which are analogous to § 50.50.

3. NRC Staff Information Requests

Section 52.47(a)(3) of the 1989 part 52 rulemaking provided that the NRC staff would advise the design certification applicant on whether there was any additional information beyond that required to be submitted by that section, that must be submitted. The March 2006 proposed rule included analogous provisions (§§ 52.17(d), 52.79(a)(42), 52.137(a)(27), and 52.157(p)) for each of the other licensing and regulatory approval processes in part 52. Upon further consideration in response to a comment on the March 2006 proposed rule, the Commission has decided that these provisions are redundant to § 2.102(a), which provides the NRC staff with overall authority to request information to support their review of an application. Accordingly, §§ 52.17(d), 52.79(a)(42), 52.137(a)(27), and 52.157(p) of the proposed rule have not been adopted in the final rule, and § 52.47(a)(3) is removed from part 52.

4. Changes to a Design Certification, Departures, Variances, Exemptions

External stakeholders have expressed confusion over the years in public meetings and in written comments submitted under various circumstances with respect to the meaning of the terms, *change to a design certification, departures, variances,* and *exemptions.* To clarify the meaning of these terms, the Commission provides the following explanation of these terms.

a. Change to a Design Certification

A *change to a design certification* is a generic change to the design certification information which is approved by the Commission in a standard design certification rule under subpart B of part 52. In the four design certifications currently approved by the Commission, the design certification information which is approved by the Commission is either "certified information" and is designated as "Tier 1," or is "approved" and is designated as "Tier 2." The term "generic," means that if the Commission makes a change to the design certification, § 52.63(a) requires that the change ("modification" under § 52.63(a)(3)) be applied to each plant referencing the design certification rule.

A change to a design certification may be distinguished from a departure or variance by understanding that a change is generic. Therefore, a change to a design certification is:

(1) Requested by the original design certification applicant in accordance with 10 CFR 2.811 (see 10 CFR 2.800(c)), or by any other member of the public, in a petition for rulemaking under 10 CFR 2.802;

(2) Applies to all past nuclear power reactors (including manufactured reactors) whose applications have referenced the design certification, as well as future reactors referencing the design certification rule; and

(3) Requires the Commission provide an exemption to the applicant, if the proposed change is inconsistent with the one or more of the Commission's regulations.

b. Departure

A *departure* as a plant-specific "deviation" from design information in either a standard design certification or a manufacturing license. For a design certification, a departure is a deviation from the certification information which is certified by the Commission in a standard design certification rule (for the current four design certification rules in appendices A through D of part 52, the certification information is "Tier 1" information). For a manufacturing license, a departure is a deviation from any design information approved in the manufacturing license, including technical specifications, site parameters and design characteristics, and interface requirements.[4] A departure may be distinguished from a change to a standard design certification rule (*i.e.*, a change to Tier 1 or Tier 2 information in a design certification rule) or a change to the design approved in a manufacturing license by recalling that a departure is plant-specific. Therefore, a departure:

- Concerns certified design information or manufacturing license information.
- Is requested by the applicant/licensee referencing a design certification or the use of a manufactured reactor.
- Applies only to the design of the nuclear power reactor referencing the design certification or the manufactured reactor for which a departure is sought by the applicant/licensee.
- Requires the applicant/licensee to obtain an exemption from the referenced design certification if the proposed departure is inconsistent with one or more of the Commission's regulations. The exemption would be granted under the provisions of § 52.7 (which references the same criteria for the granting of exemptions that are set forth in § 50.12).

c. Variance

A *variance* is a plant-specific "deviation" from one or more of the site characteristics, design parameters, or terms and conditions of an early site permit, or from the site safety analysis report. A variance to an early site permit is analogous to a departure to a standard design certification, in that it is plant-specific. Therefore, a variance:

(1) Concerns information addressed in an early site permit;

(2) Is requested by the applicant referencing an early site permit;

(3) Applies only to the construction permit or combined license referencing the early site permit; and

(4) Requires the applicant to also obtain an exemption from the Commission's regulations if the proposed variance is inconsistent with one or more of the Commission's regulations.

[4] As discussed in the section-by-section discussion for § 52.171, a departure requested by a holder of a combined license referencing a manufactured reactor must be in the form of a license amendment, but the criteria for determining the request will be the exemption criteria in § 52.7 even though the departure itself may not involve an exemption.

d. Exemption

An exemption is a Commission-granted dispensation from compliance with one or more of the Commission's rules and regulations which would otherwise apply to an entity, a license, permit or other approval such as a standard design certification rule. Exemption from the requirements in part 26, or from the requirements in any particular design certification rule would be provided under § 52.7. Exemption from an underlying technical requirement in part 50 would be provided under § 50.12. This would be true even in the course of Commission adoption of a design certification rule. For example, if the design certification did not, at the time of final rulemaking, comply with a technical requirement in part 50, the Commission would provide an exemption to that requirement as part of the final design certification rulemaking. Moreover, if the nature of the technical requirement is such that a subsequent applicant referencing the design certification would need an exemption from compliance with the requirement as applied to the applicant, then the Commission would include the exemption in the design certification rule itself.

5. General Provisions

a. Section 52.0, Scope; Applicability of 10 CFR Chapter I Provisions

The Commission is redesignating former § 52.1, Scope, as § 52.0, Scope; applicability of 10 CFR Chapter I provisions, in order to add additional sections in the General Provisions portion of part 52. As discussed elsewhere, the Commission has decided general provisions, common to all substantive parts in 10 CFR Chapter I, should be added to part 52. To provide enough section numbers, it is necessary to redesignate former § 52.1 as § 52.0.

Paragraph (a) of § 52.0 is derived from the text of former § 52.1, but is revised to include standard design approvals and manufacturing licenses within the scope of part 52, and to remove references to Section 104.b of Atomic Energy Act of 1954 (AEA), thereby providing that licenses issued under part 52 are licenses issued under Section 103 of the AEA. After passage of the 1970 amendments to the AEA, all licenses for commercial nuclear power plants with construction permits issued after the date of the amendments were required to be issued as Section 103 licenses. The NRC interprets the 1970 amendment as requiring combined licenses under Section 185 to be issued as Section 103 licenses.[5] Accordingly, the NRC is revising the scope of part 52 to limit its applicability to licenses issued under Section 103 of the AEA.

Paragraph (b) of § 52.0 is a new provision that makes clear that the regulations in 10 CFR Chapter I apply to a holder of, or applicant for an approval, certification, permit, or license issued under part 52 and that any license, approval, certification, or permit, issued under 10 CFR part 52 must comply with these regulations. The need for this paragraph was determined as a result of the July 3, 2003 (68 FR 40026) proposed rule on part 52. In that proposed rule, the Commission proposed a new § 52.5 listing all of the licensing provisions in 10 CFR part 50 that also apply to all of the licensing processes in 10 CFR part 52. This proposal responded to a letter dated November 13, 2001, from the Nuclear Energy Institute (NEI), which stated:

> The industry proposes that additional General Provisions be added to Part 52 in addition to an appropriate provision on Written Communications. This approach is preferable to including cross-references in Part 52 to Part 50 general provisions because these provisions typically must be tailored to apply appropriately to the variety of licensing processes in Part 52.

Section 52.5, as proposed in 2003, would have clarified that the general provisions in 10 CFR part 50 were also applicable to the new licensing processes for early site permits, standard design certifications, and combined licenses in part 52 (as well as the licensing and approval processes in appendices M, N, O, and Q which were added to part 52 by the 1989 part 52 rulemaking). Although the general provisions in part 50 did not specifically refer to the additional licensing processes in 10 CFR part 52 (and no changes to the language of those general provisions was proposed), the Commission believed that proposed § 52.5 would make clear that a holder of, or applicant for an approval, certification, permit, or license issued under part 52 must also comply with those general provisions.

However, few commenters on the July 2003 proposed rule believed that the proposed § 52.5 would provide greater clarity. On the contrary, some commenters indicated that § 52.5 was overly broad and would impose burdensome and seemingly inappropriate new requirements on applicants for design certifications that were unwarranted.

[5] This may be an academic distinction, in light of the Energy Policy Act of 2005, Pub. L. No. 109–58, which removed the need for antitrust reviews of new utilization facilities.

Accordingly, in the March 2006 proposed rule, the Commission proposed a different approach, viz., making conforming changes to all of the regulations in 10 CFR Chapter I to specify their applicability to the relevant part 52 regulatory processes, and to add proposed § 52.0(b) to make clear that the regulations in 10 CFR Chapter I apply to the relevant part 52 regulatory processes, and holders and applicants under part 52. The Commission did not receive any comments calling into question the legality of this approach, or otherwise questioning the clarity of the proposed regulatory language. Accordingly, the Commission is adopting this approach in the final part 52, including § 52.0(b).

As discussed elsewhere in this document, the NRC is retaining appendix N in part 52, and revising this appendix to apply to part 52 combined licenses. The provisions of appendix N to part 52 concern applicants for combined licenses under part 52. Therefore, the applicability language in § 52.0, by referring to "licenses" under part 52, need not specifically refer to appendix N to part 52.

b. Section 52.1, Definitions

Section 52.1 (formerly, § 52.3) is revised by adding definitions for *decommission, license, licensee, major feature of the emergency plans, manufacturing license, modular design, prototype plant,* and *standard design approval.* A definition of decommission, which is identical to that in 10 CFR part 50, is added to part 52 because the final part 52 rulemaking addresses decommissioning of nuclear power reactors with combined licenses under part 52. Definitions of license and licensee are added to facilitate the use of these terms throughout part 52. These definitions were derived from the definitions in § 2.4, but were modified to reflect the regulatory processes in part 52. The definitions of these terms in part 2 are modified to be consistent with the definitions in part 52, and the definitions of these terms are added in part 50, to ensure consistency among parts 2, 50, and 52. Definitions of *manufacturing license* and *standard design approval* are added to part 52 so that each of these part 52 license types are defined.

A definition of *modular design* is added to explain the type of modular reactor design which is the subject of the second sentence of § 52.103(g). That provision is added to part 52 to facilitate the licensing of nuclear plants, such as the Modular High Temperature Gas-Cooled Reactor (MHTGR) and Power Reactor Innovative Small Module

(PRISM) designs, consisting of three or four nuclear reactors in a single power block with a shared power conversion system. During the period that the power block is under construction, the NRC could separately authorize operation for each nuclear reactor when each reactor and all of its necessary support systems were completed. In view of the several definitions of "modular reactor" which are used within the nuclear industry, the Commission intends to avoid future disputes regarding the intended applicability of § 52.103(g) by defining the term, *modular design*, for purposes of part 52.

The definition of *major feature of the emergency plans* is being added in the final rule, based on commenters' responses to Question 2 in Section V of the Supplementary Information of the 2006 proposed rule, to clarify what is meant by this term as it is used in §§ 52.17, 52.18, 52.39, and 52.79. The definition states that a major feature of the emergency plans means an aspect of those plans necessary to: (1) address in whole or part, one or more of the sixteen standards in § 50.47(b), or (2) describe the emergency planning zones as required in § 50.33(g). The goal of the "major features" option in § 52.17(b) is an NRC finding that the proposed major features are acceptable as elements of a complete and integrated emergency plan that would be considered later, when the early site permit is referenced in a license application. This is not the same level of finality as the "reasonable assurance" finding that would be made in connection with the approval of a completed and integrated plan. However, the NRC would not re-review, at the COL stage, information that provided the basis for the NRC approval of major features in an ESP but would address integration of approved major features with the balance of emergency planning information provided in the COL applications necessary to support the NRC's reasonable assurance finding; and updated emergency planning information required by § 52.39(b).

A definition of *prototype plant* is added to explain the type of nuclear power plant that the NRC is addressing in §§ 52.43, 52.47(b), 52.79, and 52.157. A *prototype plant* is a licensed nuclear reactor test facility that is similar to and representative of either the first-of-a-kind or standard nuclear plant design in all features and size, but may have additional safety features. The purpose of the prototype plant is to perform testing of new or innovative safety features for the first-of-a-kind nuclear plant design, as well as being used as a commercial nuclear power facility.

c. Section 52.2, Interpretations; and § 52.4, Deliberate Misconduct

The former section on interpretations in § 52.5 is retained and redesignated without change as § 52.2. The former section on deliberate misconduct in § 52.9 is retained and redesignated without change as § 52.4.

d. Section 52.3, Written Communications; § 52.5, Employee Protection; § 52.6, Completeness and Accuracy of Information; § 52.7, Specific Exemptions; § 52.8, Combining Licenses; § 52.9, Jurisdictional Limits; and § 52.10, Attacks and Destructive Acts

Section 52.3, *Written communications,* which is essentially identical with the current § 50.4, is added to address the requirements for correspondence, reports, applications, and other written communications from applicants, licensees, or holders of a standard design approval to the NRC concerning the regulations in part 52.

Section 52.5, which is largely identical with the current § 50.7, is added to make clear that discrimination against an employee for engaging in certain protected activities concerning the regulations in part 52 is prohibited. This section differs from its part 50 counterpart, in that the Commission has added a provision on coordination with the requirements in 10 CFR part 19.

Section 52.6, which is identical with the current § 50.9, is added 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 has corrected an error in the proposed rule version of paragraph (a) of § 52.6. In the proposed rule, the first sentence began, "Information provided to the Commission by a licensee (including a construction permit holder, and a combined license holder) * * *." In the final rule, this phrase has been corrected to read, "Information provided to the Commission by a licensee (including an early site permit holder, a combined license holder, and a manufacturing license holder) * * *." This provision applies to licenses issued under part 52 and not to licenses issued under part 50.

Section 52.7, which is essentially identical with current § 50.12, is added 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.

Section 52.8, which combines into a single section regulatory provisions which are addressed in separate regulations in part 50, is added to clarify that these regulatory provisions also apply to part 52 licenses.

Paragraph (a) of § 52.8, which is analogous to § 50.31, is added to make clear that an applicant for a license under part 52 may combine in one application, several applications for different kinds of licenses under various regulations in 10 CFR Chapter I. Section 50.31 currently provides that an applicant may combine in one application, several applications for different kinds of licenses under various regulations in 10 CFR Chapter I. The plain reading of this language, given that this provision is located in part 50, is that a part 50 application may contain in one application other applications for different licenses in other parts of 10 CFR Chapter I. Thus, § 50.31 would not appear to allow a part 52 application (as for a combined license) to combine in one application other applications for different license in other parts of 10 CFR Chapter I. Accordingly, paragraph (a) of § 52.8 of the final rule makes clear that a part 52 application may be combined with applications for different licenses in other parts of 10 CFR Chapter I. This provision was not included in the March 2006 proposed rule, inasmuch as the NRC determined the desirability of including in part 52 a provision analogous to § 50.31 only after the publication of the March 2006 proposed rule.

Paragraph (b) of § 52.8, which is analogous to § 50.32, is added to make clear that an applicant for a license, standard design certification, or design approval under part 52 may incorporate by reference in its application information contained in other documents provided to the Commission,

but must clearly specify the information to be incorporated. This provision was also not included in the March 2006 proposed rule, inasmuch as the NRC determined the desirability of including in part 52 a provision analogous to § 50.32 only after the publication of the March 2006 proposed rule.

Paragraph (c) of § 52.8, which is analogous to § 50.52, is added 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. Analogous to the situation with respect to § 50.31, the language in § 50.52 would not appear to allow the Commission to combine into a single part 52 license, other non-part 52 licenses. Inasmuch as these changes to § 52.8 constitute revisions to the Commission's rules of procedure and practice, the Commission may adopt them in final form without further notice and comment, under the rulemaking provisions of the APA, 5 U.S.C. 553(b)(A).

Section 52.9, which is identical with § 50.53, is added 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.

Section 52.10 is added because there is no specific provision in part 52 specifying that 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, applies to part 52 applicants. The Commission's 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 applicants in § 50.13. Although it would be possible to revise § 50.13 so that its provisions apply to applications under part 52, this would be inconsistent with the overall regulatory pattern of 10 CFR Chapter I, whereby each part is treated as a separate and independent regulatory unit. Moreover, any changes to § 50.13 might erroneously be viewed as changes to the Commission's substantive determination on this matter. For these reasons, the Commission is adding new § 52.10 to part 52, which is essentially identical with § 50.13. Inclusion of this provision in part 52 makes clear that applications for combined licenses, manufacturing licenses, design certification rulemakings, standard design approvals, and amendments to these licenses, rulemakings, and approvals under part 52 need not provide design features or other measures for protection of nuclear power plants against attacks by enemies of the United States, or the use of weapons deployed by U.S. defense activities. In adding § 52.10, the Commission emphasizes that it is not changing in any way, nor is it intending to revisit in this rulemaking, the Commission's determination with respect to the lack of need for design features or other measures for protection of nuclear power plants against attacks by enemies of the United States, or the use of weapons deployed by U.S. defense activities. The Commission is simply making it clear that its longstanding determination applies to applications under part 52 just as it applies to applications under part 50.

6. Subpart A, Early Site Permits

a. Emergency Preparedness Requirements for Early Site Permit Applicants

The NRC is amending §§ 52.17(b), 52.18, and 52.39 to address changes to emergency preparedness requirements for early site permit applicants. The NRC is amending § 52.17(b)(1), which requires that an early site permit application identify physical characteristics unique to the proposed site that could pose a significant impediment to the development of emergency plans. The NRC is adding a sentence to require that, if physical characteristics that could pose a significant impediment to the development of emergency plans are identified, the application must identify measures that would, when implemented, mitigate or eliminate the significant impediment. The NRC believes this addition is necessary to clarify the NRC's expectations in cases where a physical characteristic exists that could pose a significant impediment to the development of emergency plans. Simply identifying these physical characteristics alone does not provide the NRC with enough information to determine if these characteristics are likely to pose a significant impediment to the development of emergency plans. Similarly, the Commission is amending § 52.18 to require that the Commission determine whether the information required of the applicant by § 52.17(b)(1) shows that there is no significant impediment to the development of emergency plans *that cannot be mitigated or eliminated by measures proposed by the applicant* [emphasis added].

The NRC is amending §§ 52.17(b)(2)(i), 52.17(b)(2)(ii), and 52.18 to clarify that any emergency plans or major features of emergency plans proposed by early site permit applicants must be in accordance with the applicable standards of 10 CFR 50.47 and the requirements of appendix E to part 50. These changes clarify the standards applicable to emergency preparedness information supplied with an early site permit application. The NRC is also amending §§ 52.17(b)(1), (b)(2), and (b)(4) to indicate that the emergency preparedness information supplied in the early site permit application must be included in the site safety analysis report. This change is necessary for consistency with past practice and with the requirements for combined license applicants in § 52.79(a) that require emergency preparedness information to be included in the final safety analysis report. Note that the proposed rule only included these changes in § 52.17(b)(2). In the final rule, the NRC is making the additional conforming changes in §§ 52.17(b)(1) and (b)(4).

The NRC is adding new § 52.17(b)(3) to require that any complete and integrated emergency plans submitted for review in an early site permit application must include the proposed inspections, tests, and analyses that the holder of a combined license referencing the early site permit shall perform, and the acceptance criteria that are necessary and sufficient to provide reasonable assurance that, if the inspections, tests, and analyses are performed and the acceptance criteria met, the facility has been constructed and would operate in conformity with the license, the provisions of the AEA, and the NRC's regulations. The NRC is making these amendments for consistency with the requirements in subpart C of part 52 regarding the review of emergency plans and to provide additional finality to ESP holders. The NRC believes that its review of complete and integrated plans included in an early site permit application should be no different than its review of emergency plans submitted in a combined license application, given that the NRC must make the same findings in both cases, namely, that the plans submitted by the applicant provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. The NRC will

not be able to make the required finding without the inclusion of proposed ITAAC in an early site permit application that includes complete and integrated emergency plans. In the final rule, the NRC has added an allowance that major features of an emergency plan submitted under paragraph (b)(2)(i) of § 52.17 may include proposed ITAAC. This will give an applicant that has proposed major features additional opportunities to achieve finality on major features in cases where ITAAC can be included to address implementation aspects of the major feature.

b. Section 52.13, Relationship to Other Subparts

The title of § 52.13 is revised from "Relationship to subpart F of 10 CFR part 2 and appendix Q of this part," to "Relationship to other subparts," to reflect the revised scope of this section, which has been refocused on part 52.

c. Section 52.16, Contents of Applications; General Information and § 52.17, Contents of Applications; Technical Information

The NRC is adding § 52.16 to include the general content requirements from § 52.17(a)(1).

The title of § 52.17 is revised to read, "Contents of applications; technical information." In response to several comments on the proposed rule, the NRC is including a general grandfathering provision in § 52.17(a) that states, "For applications submitted before September 27, 2007, the rule provisions in effect at the date of docketing apply unless otherwise requested by the applicant in writing." This revision reflects the Commission's belief that ESPs currently under review or issued prior to the effective date of the final part 52 rule should not be required to be modified by this rule. Section 52.17(a)(1) is amended to state that the early site permit application must 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 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 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 combined license 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–vii (sic.), industry recommends 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 some 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 is amending § 52.17(a)(1) to eliminate all references to § 50.34. The references to § 50.34(a)(12) and (b)(10) are 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, is also being removed. All requirements related to emergency planning for early site permits are addressed in § 52.17(b) and other plans for coping with emergencies will be addressed in a combined license application. Finally, the reference to the radiological consequence evaluation factors identified in § 50.34(a)(1) is being removed and the requirements are included in § 52.17(a)(1). The NRC is modifying the existing requirement for early site permit applications to describe the seismic, meteorological, 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 addition is to ensure that future plants built at the site would be in compliance with general design criterion 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 is adding several requirements to § 52.17(a)(1). A requirement is added to § 52.17(a)(1)(x) 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)(xi) is 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 change was made for consistency with 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."

An additional requirement is added to § 52.17(a)(1) that is taken from § 50.34(h), and that the NRC believes should be applicable to early site permits. Section 52.17(a)(1)(xii) requires that early site permit applications include an evaluation of the site against the applicable sections of the standard review plan (SRP) revision in effect 6 months before the docket date of the application. The SRP requirement currently exists for applicants for construction permits, operating licenses, and combined licenses. The NRC also believes it should 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 and because it will facilitate the NRC's review of the early site permit application.

The NRC is not requiring applicants to evaluate their site against the applicable sections of Regulatory Guide (RG) 1.206, "Combined License Applications for Nuclear Power Plants." However, the NRC believes that the applicable portions of RG 1.206 can provide useful guidance to ESP applicants in preparing their

applications and that use of this guidance will facilitate the NRC's review.

The NRC is making a change to § 52.17(a)(1) based on several comments on the proposed rule. The NRC is deleting the requirement in proposed § 52.17(a)(1)(x) that required ESP applicants to address impacts on operating units of constructing new units on existing sites, as well as include a description of the managerial and administrative controls to be used to assure that the limiting conditions of operation for existing units will not be exceeded. The NRC is deleting this requirement because it was contrary to the industry-NRC understanding documented in correspondence in 2003 regarding ESP Topic ESP–19 [see NEI letter dated May 14, 2003 (ML031920U06), and NRC letter dated August 11, 2003 (ML031490478)] and because the COL applicant is in the best position to provide such information, since it will have final information regarding the facility design and construction plans. The NRC may include a condition in early site permits that would require the permit holder to notify the operating plant licensee prior to conducting any activities authorized under § 52.25. These controls should be sufficient to evaluate construction activities at a site with an existing operating unit. The NRC has deleted this provision from subpart A in the final rule. COL applicants will, however, continue to be required to meet this provision under § 52.79(a)(31).

The NRC is moving the environmental provisions in former § 52.17(a)(2) to § 51.50(b). Revised § 52.17(a)(2) simply states that an early site permit application must contain a complete environmental report as required by 10 CFR 51.50(b). A discussion of the final rule provisions related to the NRC's environmental review at the ESP stage can be found in the Supplementary Information section that discusses changes to 10 CFR part 51.

The NRC is amending § 52.21 to reflect clarifications provided in part 51 that an early site permit applicant has the flexibility of either addressing the matter of alternative energy sources in the environmental report supporting its early site permit application, or deferring consideration of alternative energy sources to the time that the early site permit is referenced in a licensing application. These changes to § 52.21 clarify that the NRC's EIS need not address the need for power or alternative energy sources (and therefore these matters may not be litigated) if the early site permit applicant chooses not to address these matters in its environmental report.

The NRC is amending § 52.17(c) to clarify that if the applicant wants to request authorization to perform limited work activities 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 activities under 10 CFR 50.10(e)(1). The submittal of this descriptive information will enable the NRC staff to perform its review of the 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 limited work activities at the site and subsequently decides to request authorization to perform activities beyond those authorized under § 52.U0(c), those additional activities will have to be requested separately under § 50.10(e)(1). Some minor changes were made to the rule language in § 52.17(c) in the final rule to remove references to information being included in either the site safety analysis report or the environmental report. The NRC concluded that it is preferable to include both the list of proposed activities and the redress plan as a separate document in the application, outside of both the site safety analysis report and the environmental report. The NRC's conclusion is based on the fact that the requirements in § 50.10(e) address both safety and environmental issues. Additional changes were made to §§ 51.50, 52.79(a), and 52.80 to implement this concept.

d. Section 52.24, Issuance of Early Site Permit

The NRC is revising § 52.24 to clarify the information that the NRC must include in the early site permit when it is issued. Section 52.24 is also being 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 conformity with the provisions of the AEA, and the NRC's regulations; that the applicant is technically qualified to engage in any activities authorized; and that issuance of the permit will not be inimical to the common defense and security or to the health and safety of the public.

Section 52.24 is being amended to provide that the early site permit must state the site characteristics and design parameters, as well as the "terms and conditions," of the early site permit, rather than the "conditions and limitations" as was formerly provided. The change provides consistency with § 52.39(a)(2), and in particular § 52.39(a)(2)(iii) of the former regulations, which also refers to "site parameters" (corrected to "site characteristics" in the final rule) and "terms and conditions." Section 52.24(c) is being added to require that the early site permit state the activities that the permit holder is authorized to perform at the site. This change is consistent with the revision to § 52.17(c) where the applicant must specify the activities that it is requesting authorization to perform at the site under § 50.10(e)(1).

The NRC is revising paragraph (b) of this section based on public comments. Paragraph (b) states that the early site permit shall specify the site characteristics, design parameters, and terms and conditions of the early site permit the NRC deems appropriate. Paragraph (b) further states that, before issuance of either a construction permit or combined license referencing an early site permit, the Commission shall find that any relevant terms and conditions of the early site permit have been met. The NRC is revising this paragraph to add a provision that any terms or conditions of the early site permit that could not be met by the time of issuance of the construction permit or combined license, must be set forth as terms or conditions of the construction permit or combined license. This provision is needed to address terms or conditions of the early site permit that are related to activities that will not take place until after issuance of the construction permit or combined license, such as construction activities. A similar change is being made to § 52.79(b)(3).

e. Section 52.27, Duration of Permit

Section 52.27 provides for the duration of an early site permit. The NRC did not propose any changes to this section in the proposed rule. However, in the final rule, the NRC is making several revisions. First, the NRC is revising former § 52.27(b)(1) [final § 52.27(b)]. This paragraph states that an early site permit continues to be valid beyond the date of expiration in any proceeding on a construction permit application or a combined license application that references the early site permit and is docketed before the date of expiration of the early site permit, or, if a timely application for renewal of the permit has been filed, before the Commission has determined whether to

renew the permit, consistent with the "Timely Renewal" doctrine of the Administrative Procedure Act. This section is changed in the final rule by deleting the term, "filing," and substituting the term, "docketing." The NRC believes that timely renewal protection should only be provided to those applications which are of sufficient quality to be docketed. This is consistent with the requirement in § 2.109(b) requiring filing of a "sufficient" application for renewal of operating licenses as a prerequisite for the applicability of the timely renewal protection. Inasmuch as the changes to former § 52.72(b)(1) constitute revisions to the NRC's rules of procedure and practice, the NRC may adopt them in final form without further notice and comment, under the rulemaking provisions of the APA, 5 U.S.C. 553(b)(A).

The NRC is also making revisions to § 52.27 based on public comments. The NRC is deleting proposed § 52.27(b)(2) because it was inconsistent with proposed § 52.39(d) and the NRC's intention that the early site permit be subsumed into the construction permit or combined license once the construction permit or combined license is issued. To make this intention clear, the NRC is also adding new § 52.27(d) in the final rule. This provision states that upon issuance of a construction permit or combined license, a referenced early site permit is subsumed, to the extent referenced, into the construction permit or combined license. By "subsumed" the NRC means that the information that was contained in the early site permit site safety analysis report (SSAR) becomes part of the referencing combined license final safety analysis report upon issuance of the combined license in the same manner as if the combined license applicant had not referenced an early site permit. The NRC is including the phrase "to the extent referenced," to indicate that it is not all of the information submitted in the early site permit application that is subsumed into the combined license, but, only that information that is contained in the SSAR and identified by the applicant as being referenced in the combined license application. This subsumption of the early site permit into the referencing license affects the way changes to the early site permit information will be handled because it breaks the tie to the finality provisions in § 52.39. After issuance of the construction permit or combined license, § 52.39 no longer applies to the early site permit information and such information will be covered by the same finality provisions as the rest of the information in the FSAR (with the exception of any referenced design certification information), as outlined in § 52.98 (*e.g.*, in accordance with §§ 50.54, 50.59, etc.).

f. Section 52.28, Transfer of Early Site Permit

Section 52.28 is being added to state that transfer of an early site permit from its existing holder to a new applicant would be processed under § 50.80, which contains provisions for transfer of licenses. In a letter dated November 13, 2001 (comment 19 on draft proposed rule text), the NEI recommended that a new section be added to part 52 to clarify the process for transfer of an early site permit. The NRC has determined that a new section is not necessary because an early site permit is a partial construction permit and, therefore, is considered to be a license under the AEA. The NRC believes that the procedures and criteria for transfer of utilization facility licenses in 10 CFR 50.80 (and the procedures in subpart M of part 2 for the conduct of any hearing) should apply to the transfer of an early site permit. Changes that the NRC has made to § 50.80 in the final rule to address comments made regarding requirements for transfer of an early site permit can be found in Section V.D.8.a of the **SUPPLEMENTARY INFORMATION** of this document.

g. Section 52.33, Duration of Renewal

Section 52.33 has been revised in the final rule to clarify that the renewal period for an early site permit includes any remaining years on the early site permit then in effect before renewal. This change was made to be consistent with the NRC's regulations concerning renewal of nuclear power plant operating licenses as specified in § 54.31 of this chapter.

h. Section 52.37, Reporting of Defects and Noncompliance; Revocation, Suspension, Modification of Permits for Cause

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

i. Section 52.39, Finality of Early Site Permit Determinations

The NRC is revising § 52.39 to address the finality of an early site permit. While some of the changes are conforming or clarifying, others represent a change from the finality provisions in the former § 52.39. Paragraph (a)(2) of the former rule distinguishes among issues alleging that: (1) 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)); (2) 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 Procedure Act (paragraph (a)(2)(ii)); and (3) 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:

(1) Questions regarding whether the site characteristics, design parameters, or terms and conditions specified in the early site permit have been met;

(2) Questions regarding whether the early site permit should be modified, suspended, or revoked; or

(3) Significant new emergency preparedness or environmental information not considered on the early site permit.

Questions about the referencing application demonstrating compliance with the early site permit are fundamentally questions of compliance with the early site permit. They do not attack the underlying validity of the permit. For example, if a person questions whether the design characteristics of the nuclear power facility that the referencing applicant proposes to construct on the site falls within the design parameters specified in the early site permit, it is a matter of compliance with the early site permit. These compliance matters are specific to the proceeding for the referencing application, and the NRC concludes that a question about whether the referencing application complies with the early site permit may be viewed as question/material to the proceeding and appropriate for consideration in the referencing application proceeding (assuming that all relevant Commission requirements in 10 CFR part 2, such as standing and admissibility, are met).

The NRC also regards new emergency preparedness information submitted in the referencing application that substantially alters the bases for a previous NRC conclusion or constitutes a sufficient basis for the Commission to modify or impose new terms and conditions related to emergency preparedness as an issue material to the

proceeding and appropriate for consideration as a contention in the referencing application proceeding (assuming that all relevant Commission requirements in 10 CFR part 2, such as standing and admissibility, are met). This is a change to the standard that was provided in the proposed rule for new emergency preparedness information and is based on public comments. The proposed rule standard for litigation of emergency preparedness matters was "new or additional information * * * which materially affects the Commission's earlier determination on emergency preparedness, or is needed to correct inaccuracies in the emergency preparedness information approved in the early site permit." Because the final rule language suggested by the commenters is the definition that the NRC gave for information that could "materially affect" the Commission's earlier decision, as indicated in the **SUPPLEMENTARY INFORMATION** section of the 2006 proposed rule, the NRC believes it appropriate to use this language in the final rule itself. The NRC has decided to drop the language that referred to information "needed to correct inaccuracies" because the language, by itself, could have allowed litigation of issues not significant to safety. The NRC believes that the final rule language encompasses all significant emergency preparedness matters that should be subject to litigation.

Any significant environmental issue that was not resolved in the early site permit proceeding, or any issue involving the impacts of construction and operation of the facility that was resolved in the early site permit proceeding for which significant new information has been identified may also be the subject of a contention during the proceeding on the referencing application. The NRC is also making a change to this standard in the final rule based on public comment. The standard in the final rule more closely reflects the NRC's obligation under NEPA to address new and significant information in a COL that references an early site permit. Additional discussion of this subject can be found in the discussion of changes in 10 CFR part 51, in the **SUPPLEMENTARY INFORMATION** section of this document.

Because new emergency planning or environmental information, if any, will be identified only at the time a license application referencing the early site permit is submitted to the NRC, the NRC believes it is appropriate to address these issues in the proceeding on the referencing application. Other questions regarding whether the permit should be modified, suspended, or revoked will be challenges to the validity of the early site permit. These challenges may be framed in many different ways, e.g., a Commission error at the time of issuance; or actual changes to the site have occurred since issuance of the permit that render some aspect of the permit irrelevant or inadequate to protect public health and safety or common defense and security. The Commission's process for challenges to the validity of a license is contained in 10 CFR 2.206. Accordingly, the Commission concludes that challenges to the validity of an early site permit should be processed in accordance with § 2.206. In the Commission's view, a variance is not fundamentally a challenge to the validity of the early site permit, because it requests dispensation from compliance with some aspect of the permit whose validity remains undisputed. Therefore, the Commission concludes that variances should be treated as proceeding-specific issues of compliance that are potentially valid subjects of a contention in a proceeding for a referencing application.

The revisions to § 52.39 are in agreement with these Commission conclusions. Section 52.39 is being divided into five paragraphs addressing different aspects of early site permit finality. Each paragraph is provided with a subtitle characterizing the subject matter addressed in that paragraph. Section 52.39(a) focuses on how the NRC accords finality to an early site permit, with § 52.39(a)(1) setting forth the circumstances under which the NRC may modify an early site permit. The rule language is based upon the existing regulation, but adds additional circumstances. Section 52.39(a)(1)(iii) provides that the NRC may modify the early site permit if it determines a modification is necessary based on an update to the emergency preparedness information under § 52.39(b). Section 52.39(a)(1)(iv) provides that the NRC may modify the early site permit if a variance is issued under proposed § 52.39(d) (paragraph (b) in the former regulations); the NRC considers this a conforming change inasmuch as the former regulation provided for issuance of variances.

The NRC is clarifying what aspects of the early site permit are subject to the change restrictions in § 52.39(a)(1) by substituting the phrase, "terms and conditions" of an early site permit for the former term, "*requirements*." Under the new language, the NRC may not change or impose new site characteristics, design parameters, or terms and conditions on the early site permit, including emergency planning requirements, unless the special backfitting criteria in § 52.39(a)(1) are satisfied. No substantive change is intended by this clarification; the language would specify more clearly the broad scope of matters in an early site permit which the NRC intended to finalize. The phrase, "site characteristics, or terms, or conditions, including emergency planning requirements," is used consistently throughout § 52.39 and corresponding provisions in the revisions to § 52.79.

Section 52.39(a)(2) describes how the NRC treats matters resolved in the early site permit proceeding in subsequent proceedings on applications referencing the early site permit, and is drawn from the former language of § 52.39(a)(2). In the final rule, the NRC has included a provision extending this finality to enforcement hearings other than those proceedings initiated by the Commission under paragraph (a)(1) of this section. This will ensure that finality of an early site permit extends to NRC-initiated enforcement proceedings and petitions for enforcement action filed under § 2.206. In addition, under §§ 52.39(a)(2)(i) and (ii), the NRC grants finality to changes to an early site permit's emergency plan (or major features of it, under § 52.17(b)(2)) that are made after the issuance of the early site permit (1) if the early site permit approved an emergency plan (or major features thereof) that is in use by a licensee of a nuclear power plant and the changes to the emergency plan (or major features thereof) are identical to changes made to the licensee's emergency plans in compliance with § 50.54(q); or (2) if the early site permit approved an emergency plan (or major features thereof) that is not in use by a licensee of a nuclear power plant, and the changes are equivalent to those that could be made under § 50.54(q) without prior NRC approval had the emergency plan been in use by a licensee. This change is premised on the view that changes to emergency plans which are properly implemented under § 50.54(q) do not require NRC review and approval before implementation. Therefore, by analogy, similar changes to an early site permit's emergency preparedness plan made with similar controls, or changes which are equivalent to those that could be made under § 50.54(q) without prior NRC approval, should not require NRC review and approval as part of the licensing process. Any issues related to compliance with § 50.54(q) should be treated as an enforcement matter. Note that the NRC is making some adjustments to this position in the final

rule based on public comments. The proposed rule would not have excepted changes to early site permit emergency plans not in use by a current licensee that could be made under § 50.54(q) without prior NRC approval had the emergency plans been in use by a licensee. The NRC is making this change in the final rule because the § 50.54(q) standard ensures adequate protection of safety, and has been accepted and used by the industry and NRC and it is appropriate to apply this same standard to changes in all emergency plans approved by the NRC in the ESP proceeding. The NRC is making similar changes to § 52.79(b)(4) in the final rule to require that all COL applicants referencing early site permits with complete and integrated emergency plans or major features of emergency plans identify changes that have been incorporated into the proposed facility emergency plans and that constitute or would constitute a decrease in effectiveness under § 50.54(q) of this chapter.

Section 52.39(b) is discussed separately under Section V.C.6.a of this document, which discusses emergency preparedness requirements for a combined license applicant referencing an early site permit.

Section 52.39(c) replaces the former criteria in §§ 52.39(a)(2)(i) through (iii), governing how the NRC will treat various issues with respect to the early site permit and its referencing in a combined license application. Matters regarding compliance with the early site permit which would be potentially valid subjects of a contention are listed in §§ 52.39(c)(1)(i) through (iii), e.g., whether the reactor proposed to be built under the referencing application fits within the site characteristics and design parameters specified in the early site permit; whether one or more of the terms and conditions of the early site permit have been met; and whether a variance requested by the referencing applicant is unwarranted or should be modified. The NRC notes that all contentions at the early site permit stage, including a contention pertaining to a variance, must meet the requirements for contentions in § 2.309(f). Matters regarding significant new emergency preparedness or environmental information material to the combined license proceeding, which would be potentially valid subjects of contention under the proposed rule, are listed in §§ 52.39(c)(1)(iv) and (v).

Other matters, including changes to the site characteristics, design parameters, or terms and conditions of the early site permit, are treated under § 52.39(c)(2) as challenges to the permit and processed in accordance with § 2.206. The NRC is retaining the former provision in § 52.39(a)(2)(iii) requiring that the Commission consider a petition filed under § 2.206, and determine whether immediate action is required before construction commences, as well as the former 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 final rule redesignates the former provision in § 52.39(b) allowing an applicant for a license referencing an early site permit to request a variance from one or more "elements" of the early site permit as § 52.39(d). The rule clarifies "elements" for which a variance may be sought by substituting the phrase, "site characteristics, design parameters, or terms and conditions of the early site permit." In addition, the NRC is revising this provision further to include an allowance for applicants to request a variance from the site safety analysis report (SSAR). The allowance for requesting variances to the SSAR was inadvertently omitted in the proposed rule. Because the majority of the early site permit information that a combined license applicant will be referencing will be the information in the SSAR, it is logical that the allowance to request variances be extended to the information in the SSAR given that the NRC is allowing variances to the permit itself. The NRC notes that the admission of a contention on a proposed variance, which was formerly addressed in § 52.39(b), is addressed in § 52.39(c)(iii). The NRC is also adding a provision that precludes the Commission from issuing a variance once a construction permit 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 construction permit or combined license.

Finally, the NRC is adding a new paragraph to the "finality" section in each subpart of part 52, in this instance § 52.39(f), entitled "Information requests," which delineates the restrictions on the NRC for information requests to the holder of the early site permit. This provision is analogous to the former 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 provision is contained in § 52.39(d), and requires 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.

7. Subpart B, Standard Design Certifications

a. Section 52.41, Scope of Subpart

This section defines the scope of subpart B of part 52. The requirements on scope and type of nuclear power plants that are eligible for design certification were moved from former § 52.45(a) to this section, to ensure a consistent format and presentation among all the subparts of part 52.

b. Section 52.43, Relationship to Other Subparts

This section defines the relationship of subpart B to other subparts in 10 CFR part 52. Conforming changes were made to make clear that an application for a manufacturing license may, but is not required to, reference a design certification rule (DCR). The requirements formerly located in §§ 52.43(c), 52.45(c), and 52.47(b)(2)(ii) were removed because the Commission decided not to require a final design approval (FDA) under subpart E as a prerequisite for certification of a standard plant design. This requirement was included in part 52, at the time of the original rulemaking, because the NRC had no experience with design certifications. By requiring an FDA as a prerequisite to design certification, the NRC indicated that the licensing processes for design certifications and FDAs were similar, even though the requirements for and finality of a design certification differ from that of an FDA. The NRC now has considerable experience with design certification reviews, and the former requirement to apply for an FDA as part of an application for design certification is no longer needed. Future applicants have the option to apply for either an FDA, a design certification, or both.

c. Section 52.45, Filing of Applications

This section presents the requirements for filing design certification applications. This section was reformatted for consistency with the other subparts in part 52 and the references to specific paragraphs within §§ 50.4 and 50.30 were replaced with references to subpart H of part 2. A new

§ 52.45(c) on design certification review fees, was moved from § 52.49.

d. Section 52.46, Contents of Applications; General Information

This section was added to set forth general content requirements from 10 CFR 50.33.

e. Section 52.47, Contents of Applications; Technical Information

This section presents the requirements for contents of a design certification application and is organized into three sections. The requirements for the final safety analysis report (FSAR) are set forth in §§ 52.47(a) and 52.47(c), and the technical requirements for the remainder of the design certification application are in § 52.47(b). The former § 52.47(a)(1)(i) required the submittal of information required for construction permits and operating licenses by parts 20, 50 (including the applicable requirements from 10 CFR 50.34), 73, and 100, which were technically relevant to the design and not site-specific. That general requirement was removed and replaced with specific requirements that describe what must be included in an FSAR. In addition, the NRC included technical positions that were developed after part 52 was originally codified in 1989, e.g., § 52.47(a)(22) which requires a description of how relevant operating experience was incorporated into the standard design (see SRM on SECY–90–377, dated February 15, 1991, ML003707892). Also, the relevant requirements were revised to clarify their applicability to design certifications and renumbered. This effort resulted in a comprehensive list of requirements for a design certification application.

Some commenters recommended that the requirement to demonstrate technical qualifications [now § 52.47(a)(7)] be deleted because the AEA only imposes that requirement on applicants for a license. Although the NRC agrees that the AEA imposes the technical qualification finding specifically for license applicants, it does not preclude the NRC from a determination that such a finding is also necessary in other contexts. The applicant creates information that may become the bases for a future license and, therefore, must be qualified to perform design, analyses, and safety determinations. Accordingly, the NRC has concluded that a technical qualification finding should also be made for design certification applicants.

Some commenters recommended that the requirement to address the standard review plan (SRP) be revised to apply to light-water reactors. The NRC agrees with this comment and has revised this requirement [now § 52.47(a)(9)] to be applicable to light-water-cooled nuclear power plants, but notes that much of the SRP review guidance and criteria are general and would also apply to reviews of gas-cooled reactor designs.

Some commenters recommended that the requirement to provide information required by § 50.49(d) [now § 52.47(a)(13)] be deleted because the applicant will not be able to establish qualification files for all applicable components. The NRC agrees that applicants may not be able to establish qualification files, but applicants can provide the electric equipment list required by § 50.49(d). Therefore, the NRC revised the wording in § 52.47(a)(13) to be consistent with the wording for the same provision in § 52.79(a), which requires that applicants provide the list of electrical equipment important to safety required by § 50.49(d).

Some commenters recommended that the requirement in § 52.47(a)(22) to demonstrate how operating experience insights have been incorporated into the plant design be deleted. The NRC disagrees with this comment. The NRC developed this requirement for future plants (see SRM on SECY–90–377) and it was implemented in past design certification applications by addressing NRC's generic letters and bulletins. The NRC agrees that insights from generic letters and bulletins should be incorporated into the latest revision of the standard review plan (SRP). Therefore, for plant designs that are based on or are evolutions of nuclear plants that have operated in the United States, the applicant should use NRC's generic letters and bulletins issued after the most recent revision of the applicable SRP and 6 months before the docket date of the application. If the application is for a nuclear plant design that is not based on or is not an evolution of a nuclear plant that operated in the United States, the applicant should address how insights from any relevant international operating experience has been incorporated into that plant design.

Some commenters recommended that the requirement to describe severe accident design features in the FSAR [now § 52.47(a)(23)] be deleted. The NRC disagrees with this comment because the Commission has determined that this requirement is necessary for future light-water reactor designs (see SRM on SECY–93–087) and was applied to previous applications. The commenters confused the meaning of design bases information (see § 50.2) with the requirements for design-basis accidents (DBAs). Postulated severe accidents are not design-basis accidents and the severe accident design features do not have to meet the requirements for DBAs (see SECY–93–087). However, the severe accident design features are part of a plant's design bases information.

A new § 52.47(b) was created to set forth the required technical contents of a design certification application that are not required to be located in the FSAR. In response to public comments on the proposed rule, the NRC has deleted proposed § 52.47(b)(1) which required design certification applicants to submit a design-specific probabilistic risk assessment (PRA). In its place, the NRC has added new § 52.47(a)(27) which requires that design certification applicants submit a description of the design-specific PRA and its results in the FSAR. The NRC agrees with some commenters that applicants should not be required to submit their complete design-specific PRA and that, instead, applicants should only be required to provide a summary description of the PRA and its results in their FSAR with the understanding that the complete PRA (e.g., codes) would be available for NRC inspection at the applicant's offices, if needed. The NRC expects that, generally, the information that it needs to perform its review of the design certification application from a PRA perspective is that information that will be contained in applicants' FSAR Chapter 19.

The rule language for ITAAC [now § 52.47(b)(1)] was conformed with the statutory language in the AEA. This clarification of the language in the former § 52.47(a)(1)(vi), which was a condensed version of the language in the former § 52.97(b)(1), was intended to avoid any misunderstandings regarding the statutory requirement. Some commenters recommended that the rule language in § 52.47(b)(1) be modified to maintain the language in the former § 52.47(a)(1)(vi) claiming the proposed language could be misconstrued as expanding the scope of ITAAC needed for design certification. The NRC disagrees with this comment and notes that it is well understood that the requirements that are applicable to design certification are limited to the scope of the certified design.

Some commenters recommended that the requirement in proposed § 52.47(b)(3) (now in 10 CFR 51.55) to evaluate severe accident mitigation design alternatives (SAMDAs) be deleted and that the NRC should initiate a rulemaking or policy statement to disposition SAMDA generically. The NRC disagrees with this comment. The

NRC has required SAMDA evaluations for previous applications in order to achieve greater finality for the design features that are resolved in design certification rulemakings. Further, the initiation of a rulemaking or policy statement for SAMDAs is outside the scope of the part 52 update rulemaking. As for the perspective that SAMDA evaluations need not be performed for current reactor designs because the severe accident risk for such designs is too remote and speculative, the NRC has already addressed this issue in other contexts. The NRC has considered petitions to eliminate the consideration of SAMDAs previously. The NRC position, both then and now is that it is not prepared to reach the conclusion that the risks of all severe accidents are so unlikely as to warrant their elimination from consideration in our NEPA reviews. As the NRC has stated in response to other requests to confine or eliminate such issues from consideration, if new information in the future provides a firm basis for concluding that severe accidents are remote and speculative, then the NRC may revisit the issue.

Former § 52.47(b) was reorganized by separating the requirements on scope of design and modular configuration [now located in § 52.47(c)] from the testing requirements. This action is part of the NRC's goal to put the procedural requirements for the licensing processes in part 52 and maintain the reactor safety requirements in part 50 (or other parts of 10 CFR Chapter I. As a result, the testing requirements were relocated to § 50.43(e). Also, see the discussion on testing for advanced nuclear reactors in Section V.B of this document.

f. Section 52.54, Issuance of Standard Design Certification

This section was amended to be 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 NRC will determine whether there is reasonable assurance that the design conforms with the provisions of the AEA, and the NRC'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) was added to state 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 was added to indicate the NRC's expectation that design certification applicants will implement the QA program that is required to be included in their application under § 52.47(a)(19), which is consistent with the requirement for licensees.

A new § 52.54(b) was added to require that a design certification specify the site parameters and design characteristics and any additional requirements and restrictions of the rule, as the Commission deems necessary and appropriate. Some commenters recommended that the requirement in § 52.54(b) to list "design characteristics" be removed and noted that the design control document will contain this information. The NRC disagrees with this comment. The NRC wants to specifically identify this information to facilitate future comparisons with "design parameters" specified in an early site permit. The NRC staff will use its experience with current early site permit reviews to determine what an appropriate list will be for future design certification reviews.

The NRC also modified § 52.54 to require that applicants for a design certification agree to withhold access to National Security Information from individuals until the requirements of 10 CFR parts 25 and/or 95, as applicable, are met. Section 52.54 was amended to include a new paragraph (c) which requires that every DCR contain a provision stating that, after the Commission has adopted the final design certification rule, the applicant for that design certification will not permit any individual to have access to, or 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 NRC believes that this amendment, along with the changes to parts 25, 95, and 10 CFR 50.37, are necessary to ensure that access to classified information is adequately controlled by all entities applying for NRC certifications.

g. Section 52.63, Finality of Standard Design Certifications

The final rule revises the finality provisions in § 52.63(a) to provide processes for amending design certification information without meeting the special backfit requirement in § 52.63(a)(1)(ii). The special backfit requirement restricted changes to certification information, thereby ensuring that all plants built under a referenced certified design would be standardized. Section 52.63(a)(1) was also revised to replace "a modification" with "the change," to clarify that the criteria for changes apply to modifications, rescissions, or imposition of new requirements. In addition, § 52.63 was revised to use the phrase "certification information" in order to distinguish the rule language in the DCRs from the design certification information (e.g., Tier 1 and Tier 2 information) that is incorporated by reference in the DCRs.

Section 52.63(a)(1)(iii) was added to provide the NRC with the ability to make generic changes to the design certification rule language that reduce unnecessary regulatory burdens. The former § 52.63(a)(1) stated that the Commission may not modify, 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. This requirement did not appear to permit changes to the rule language 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 could not be made under the former § 52.63(a)(1) was a change to the rule language 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).

In Section V of the 2006 proposed rule, Question 14, the NRC stated that it was considering adopting an additional provision in § 52.63(a)(1) that would allow amendments of DCRs to incorporate generic resolutions of design acceptance criteria (DAC) or other design information without meeting the special backfit requirement in the former § 52.63(a)(1). By allowing for an amendment to generically resolve DAC, the NRC would achieve resolution of additional design issues, would achieve finality for those issue resolutions, and would avoid repetitive consideration of those design issues in individual combined license proceedings. The final rule includes an amendment process in § 52.63(a)(1)(iv) that allows for generic resolutions of DAC without meeting the special backfit requirement. These amendments will

apply to all plants that have or will reference the DCR under § 52.63(a)(2). The NRC believes that these amendments will enhance standardization by further completing the certification information. The NRC will review the amendment application to ensure that the design acceptance criteria are met and that the new design information conforms with the applicable regulations.

Some commenters proposed that the amendment process should allow for generic resolutions of errors in the certification information. The NRC is aware that design certification applicants have discovered errors in their design information after the NRC has completed its review and even after the NRC has certified their design. The final rule includes a new provision in § 52.63(a)(1)(v) to correct material errors in the certification information. This provision is only to be used to correct a material error, which is an error that significantly and adversely affects a design function or analysis conclusion described in the design control document (certification information). The NRC wants to correct material errors by amendment so that these errors will not have to be addressed in individual licensing proceedings.

Many commenters encouraged the NRC to adopt an amendment process that would allow for "beneficial" changes to certification information, would apply the amendment to all plants referencing the certified design, and would only allow amendments prior to issuance of the first combined license that referenced the DCR. The NRC agreed with these comments and included paragraph (a)(1)(vi) to allow for amendments of certification information that will substantially increase the overall safety, reliability, or security of facility design, construction, or operation provided that the direct and indirect costs of implementation of the amendment are justified in view of this increased safety, reliability, or security. However, the NRC does not agree with precluding amendments after issuance of the first combined license. If licensees who referenced a DCR want to adopt a proposed amendment in order to achieve enhanced standardization and the beneficial changes that the amendment would bring, then the NRC may amend the DCR and apply the amendment to all plants referencing the DCR.

Also, some commenters requested that the amendment process allow for changes to the certification information for a wide variety of other reasons. These commenters claimed that the need for a design change may be discovered during detailed design work performed after the original design information was approved by the NRC (so-called first-of-a-kind-engineering) or that certain components in the original design may no longer be available for purchase due to the long duration of a DCR. The NRC's deliberations on this proposal considered the Commission's goal for design certification, which is to achieve and maintain the benefits of standardization. The NRC is still determined to maintain standardization, but has decided to allow amendments for other design changes [see paragraph (a)(1)(vii)] provided that the amendment will be applied to all plants that reference the DCR, thereby increasing standardization. In determining whether to codify a proposed amendment, the NRC will give special consideration to comments from applicants or licensees who reference the DCR regarding whether they want to backfit their plants with these additional design changes.

The final rule includes a new § 52.63(a)(2), which sets forth procedures for rulemakings conducted under § 52.63(a)(1). Paragraph (a)(2)(i) requires that for rulemakings under § 52.63(a)(1), except for rulemakings under § 52.63(a)(1)(ii) necessary to provide adequate protection, the NRC will give consideration to whether the benefits justify the costs for plants that are already licensed or for which an application for a license is under consideration.

The final rule also revised the former § 52.63(a)(2) [now § 52.63(a)(3)] to delete the reference to the former § 52.63(a)(4) [now § 52.63(a)(5)]. The reference to the former § 52.63(a)(4) was in error because this paragraph discusses the finality of the findings required for issuance of a combined license or operating license, whereas the new § 52.63(a)(3) deals with modifications that the NRC may impose on a DCR under §§ 52.63(a)(4) or 52.63(b)(1). No substantive change is intended by this revision, which merely clarifies the intent of the rule.

Finally, the NRC restates its previous decision regarding the ability of any person to request an amendment to a DCR. In Section II.1.h of the 1989 SOC for part 52 (54 FR 15372), the Commission stated that § 52.63(a)(1) places a designer on the same footing as the NRC or any other interested member of the public. Therefore, anyone may submit a petition for rulemaking to the NRC to correct an error or otherwise amend the certification information. All amendments to the certification information must be accomplished through rulemaking, with an opportunity for public comment under § 52.63(a)(2). Once a certified design is amended by rulemaking, the new rule would apply to all applications referencing the DCR as well as all plants referencing the DCR, unless the change has been rendered "technically irrelevant" through other action taken under §§ 52.63(a)(4) or (b)(1). Also, the NRC will decide whether to codify the proposed amendment based on comments from the referencing applicants and licensees. Thus, standardization is maintained by ensuring that any generic change to the certification information is imposed upon all nuclear power plants referencing the DCR. The duration of the amended DCR will be for the same period of time as the original DCR and have the same expiration date.

8. Subpart C, Combined Licenses

a. Emergency Preparedness Requirements for a Combined License Applicant Referencing an Early Site Permit

The NRC is revising former §§ 52.39 and 52.79 to require a license applicant referencing an early site permit to update and correct the emergency preparedness information provided under § 52.17(b). The issue of updating an early site permit was first raised by the Illinois Department of Nuclear Safety, who suggested in a September 28, 1994, letter that emergency plans and/or offsite certifications approved as part of an early site permit review be kept up-to-date throughout the duration of an early site permit and the construction phase of a combined license.

In SECY–95–090, "Emergency Planning Under 10 CFR Part 52" (April 11, 1995), the NRC staff stated that 10 CFR part 52 does not clearly require an applicant referencing an early site permit to submit updated information on changes in emergency preparedness information or in any emergency plans that were approved as part of the early site permit in accordance with § 52.18. SECY–95–090 indicated (p. 4) that, in view of the lack of industry interest in pursuing an early site permit, resolution of this matter could be deferred until a "lessons learned" rulemaking, updating 10 CFR part 52, was conducted after the first design certification rulemakings were issued. Following public release of a draft SECY paper setting forth the NRC staff's preliminary views on the licensing process for a combined license, NEI submitted a letter dated September 8, 1998 (comment 2.d), which expressed opposition to a requirement for updating emergency preparedness information throughout

the duration of an early site permit, absent an application referencing the early site permit. As an alternative to updating throughout the duration of an early site permit, NEI proposed that emergency planning information be updated when an application for a license referencing the early site permit is filed; portions of the emergency plans that are unchanged would continue to have finality under 10 CFR 52.39. In a September 3, 1999 letter, the NRC staff identified updating of emergency preparedness information in early site permits as a possible subject for the part 52 rulemaking.

The NRC agrees in part with the Illinois Department of Nuclear Safety. Emergency plans and/or offsite certificates in support of emergency plans, approved as part of an early site permit review, should be updated. However, emergency plans do not need to be kept up-to-date throughout the duration of an early site permit. There is no need to update the emergency plans approved in an early site permit until the time the permit is referenced in a combined license application. At that time, the emergency plans would have to be reviewed to confirm that they are up-to-date and to provide any new information that may materially affect the NRC's earlier determination on emergency preparedness, or correct inaccuracies in the emergency preparedness information approved in the early site permit in support of a reasonable assurance determination, in accordance with § 50.47 and appendix E to part 50. In addition, the NRC agrees with NEI that a "continuous" early site permit update requirement would impose burdens upon the early site permit holder without any commensurate benefit if the early site permit is not subsequently referenced. Accordingly, the Commission has determined that §§ 52.39 and 52.79 should contain an updating requirement to be imposed upon the applicant referencing an early site permit.

A new § 52.39(b) is added to require an applicant for a construction permit, operating license, or combined license, whose application references an early site permit, to update and correct the emergency preparedness information provided under § 52.17(b). In addition, the applicant must discuss whether the new information could materially change the bases for compliance with the applicable NRC requirements. A parallel requirement is included in § 52.79 to ensure that applicants for combined licenses referencing an early site permit will submit the updated emergency preparedness information. Section 52.39(a)(1)(iii) is also added stating that the Commission may modify an early site permit if it determines that a modification is necessary based on updated emergency preparedness information provided in a referencing license application. New information that materially changes the bases for compliance includes information that substantially alters the bases for a previous NRC conclusion with respect to the acceptability of a material aspect of emergency preparedness or an emergency preparedness plan, and information that would constitute a basis for the Commission to modify or impose new terms and conditions on the early site permit related to emergency preparedness in accordance with § 52.39(a)(1). New information that materially changes the NRC's determination of the matters in § 52.17(b), or results in modifications of existing terms and conditions under § 52.39(a)(1) will be subject to litigation during the construction permit, operating license, or combined license proceedings in accordance with § 52.39(c).

Not all new information on emergency preparedness will be subject to challenge in a hearing under § 52.39(c). For example, an emergency plan may have to be updated to reflect current telephone numbers, names of governmental officials whose positions and responsibilities are defined in the plan (e.g., the name of the current police chief for a municipality), or current names of hospital facilities. These corrections do not materially change the NRC's previously-stated bases for accepting the early site permit emergency plan, and a hearing contention will not be admitted under § 52.39(c) in a proceeding for a license referencing the early site permit. In contrast, if an emergency plan submitted as part of an early site permit relies upon a bridge to provide the primary path of evacuation, and that bridge no longer exists, the change could materially affect the NRC's previous determination that the emergency plan complied with the Commission's emergency preparedness regulations in effect at the time of the issuance of the early site permit. This type of information might be the basis for a change in the early site permit's terms and conditions related to emergency preparedness under § 52.39(a)(1), as well as the basis for a hearing contention under § 52.39(c), assuming that the requirements in 10 CFR part 2 for admission of a contention are met.

b. Resolution of ITAAC

Sections 52.99 and 52.103 are revised to incorporate rule language from the design certification regulations in 10 CFR part 52 regarding the completion of ITAAC (see paragraphs IX.A and IX.B.3 of appendix A to part 52). During the preparation of the design certification rules for the ABWR and System 80+ designs, the NRC staff and nuclear industry representatives agreed on certain requirements for the performance and completion of the inspections, tests, or analyses in ITAAC. In the design certification rulemakings, the NRC codified these ITAAC requirements into Section IX of the regulations. The purpose of the requirement in § 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.

Section 52.99(c) requires the licensee to notify the NRC that the prescribed inspections, tests, and analyses in the ITAAC have been or will be completed and that the acceptance criteria have been met. The NRC is revising § 52.99(c)(1) in the final rule to more closely follow the language of Section 185b. of the AEA (in response to a late-filed comment) and to clarify that the notification must contain sufficient information to demonstrate that the prescribed inspections, tests, and analyses have been performed and that the prescribed acceptance criteria have been met. The NRC is adding this clarification to ensure that combined license applicants and holders are aware that (1) it is the licensees' burden to demonstrate compliance with the ITAAC and (2) the NRC expects the notification of ITAAC completion to contain more information than just a simple statement that the licensee believes the ITAAC has been completed and the acceptance criteria met. The NRC expects the notification to be sufficiently complete and detailed for a reasonable person to understand the bases for the licensee's representation that the inspections, tests, and analyses have been successfully completed and the acceptance criteria have been met. The term "sufficient information" requires, at a minimum, a summary description of the bases for the licensee's conclusion that the inspections, tests, or analyses have been performed and that the prescribed acceptance criteria have been met. The

NRC plans to prepare regulatory guidance, in consultation with interested stakeholders, to explain how the functional requirement to provide "sufficient information" with regard to ITAAC submittals could be met.

The NRC is also revising § 52.99(c) in the final rule by adding a new paragraph (c)(2) requiring that, if the licensee has not provided, by the date 225 days before the scheduled date for initial loading of fuel, the notification required by paragraph (c)(1) of this section for all ITAAC, then the licensee shall notify the NRC that the prescribed inspections, tests, or analyses for all uncompleted ITAAC will be performed and that the prescribed acceptance criteria will be met prior to operation (consistent with the Section 189.a(1)(B) requirement governing a request for hearing on acceptance criteria, and the Section 185.b. requirement that the Commission find that the acceptance criteria in the combined license are met). The notification must be provided no later than the date 225 days before the scheduled date for initial loading of fuel. It is the licensee's burden to demonstrate that it will comply with the ITAAC and it must provide sufficient information to demonstrate that the prescribed inspections, tests, or analyses will be performed and the prescribed acceptance criteria for the uncompleted ITAAC will be met. The term "sufficient information" requires, at a minimum, a summary description of the bases for the licensee's conclusion that the inspections, tests, or analyses will be performed and that the prescribed acceptance criteria will be met. In addition, "sufficient information" includes, but is not limited to, a description of the specific procedures and analytical methods to be used for performing the inspections, tests, and analyses and determining that the acceptance criteria have been met.

Paragraph (e) has been revised to require that the NRC make available to the public the notifications to be submitted under § 52.99(c)(1) and (c)(2), no later than the **Federal Register** notice of intended operation and opportunity for hearing on ITAAC under § 52.103(a). A conforming change is included in § 2.105(b)(3) to require that the § 52.103(a) notice reference the public availability of the § 52.99(c)(1) and (2) notifications. The NRC is requiring that the paragraph (c)(2) notification be made 225 days before the date scheduled for initial loading of fuel, in order to ensure that the licensee notifications are publicly available through the NRC document room and online through the NRC Web site at the same time that the § 52.103(a) notice is published in the **Federal Register**. The NRC's goal is to publish that notice 210 days before the date scheduled for fuel loading, but in all cases the § 52.103(a) notice would be published no later than 180 days before the scheduled fuel load, as required by Section 189.a(1)(B) of the AEA.

In Section V of the Supplementary Information of the proposed rule, the NRC requested stakeholder feedback on whether a provision on completion of ITAAC in a set time period prior to fuel load should be added to the final rule. Commenters did not support addition of a requirement on completion of ITAAC in a set time period prior to fuel load and the NRC has not included a provision requiring the completion of all ITAAC by a certain time prior to the licensee's scheduled fuel load date. Instead, the NRC has decided to modify the concept slightly by requiring the licensee to submit, with respect to ITAAC which have not yet been completed 225 days before the scheduled date for initial loading of fuel, additional information addressing whether those inspections, tests, and analyses will be successfully completed and the acceptance criteria met before initial operation. In the case where the licensee has not completed all ITAAC by 225 days prior to its scheduled fuel load date, the NRC expects the information that the licensee submits related to uncompleted ITAAC to be sufficiently detailed such that the NRC can determine what activities it will need to undertake to determine if the acceptance criteria for each of the uncompleted ITAAC have been met, once the licensee notifies the NRC that those ITAAC have been successfully completed and their acceptance criteria met. In addition, the NRC is adopting the requirements in paragraphs (c)(1) and (c)(2) to ensure that interested persons will be able to meet the Atomic Energy Act, Section 189.a(1), threshold for requesting a hearing with respect to both completed and as-yet uncompleted ITAAC. The NRC therefore expects that the information submitted by licensees in the § 52.99(c)(2) notification will be sufficiently complete and detailed. Furthermore, the NRC expects that any contentions submitted by prospective intervenors regarding uncompleted ITAAC would focus on the inadequacies of the procedures and analytical methods described by the licensee for completing those ITAAC in the context of the reasonable assurance finding under § 52.103(b)(2). Therefore, the level of detail provided by the licensee should be sufficient to allow a prospective intervenor to form such judgments by reference to that information. The NRC plans to prepare regulatory guidance providing further explanation of what constitutes "sufficient information" to demonstrate that the inspections, tests, or analyses for uncompleted ITAAC will be successfully completed and the acceptance criteria for the uncompleted ITAAC will be met.

The NRC notes that, even though it did not include a provision requiring the completion of all ITAAC by a certain time prior to the licensee's scheduled fuel load date, the NRC will require some period of time to perform its review of the last ITAAC once the licensee submits its notification that the ITAAC has been successfully completed and the acceptance criteria met. In addition, the Commission will require some period of time to perform its review of the staff's conclusions regarding all of the ITAAC and the staff's recommendations regarding the Commission finding under § 52.103(g). Therefore, licensees should structure their construction schedules to take into account these time periods. The NRC intends to develop regulatory guidance on the licensee's completion and NRC verification of ITAAC and will provide estimates of the time it expects to take to verify successful completion of various types of ITAAC. The NRC expects that such guidance, along with frequent communication with licensees during construction, will provide licensees with adequate information to plan initial fuel loading and related activities.

Section 52.99(d) states 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. The NRC is revising § 52.99(d) in the final rule as a result of comments made on the proposed rule. Proposed § 52.99(d) stated that, in the event that an activity is subject to an ITAAC derived from a referenced early site permit or standard design certification and the licensee has not demonstrated that the ITAAC has been met, the licensee may take corrective actions to successfully complete that ITAAC, request a variance from the early site permit ITAAC, or request an exemption from the standard design certification ITAAC, as applicable. The language in proposed § 52.99(d) that referred to requesting variances to ESP ITAAC after the COL is issued is inconsistent with rule language in other sections of proposed part 52 (e.g., § 52.39(d)). Therefore, the NRC has adopted the commenters' suggestion to delete references to ESP ITAAC and ESP variances from § 52.99(d).

Paragraph (e)(1) requires the NRC to publish, at appropriate intervals until the last date for submission of requests for hearing under § 52.103(a), notices in the **Federal Register** of the NRC staff's determination of the successful completion of inspections, tests, and analyses. Paragraph (e)(2) provides that the NRC shall make publicly available the licensee notifications under paragraphs (c)(1) and (c)(2). In general, the NRC expects to make the paragraph (c)(1) notifications availability shortly after the NRC has received the notifications and concluded that they are complete and detailed. Furthermore, by the date of the **Federal Register** notice of intended operation and opportunity to request a hearing on whether acceptance criteria have been or will be met (under § 52.103(a)), the NRC will make available the notifications under paragraph (c)(2), and the notifications under paragraph (c)(2) for all ITAAC for which paragraph (c)(1) notifications have not been provided by the licensee.

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 § 52.97 (proposed § 52.98) and Section VIII of the design certification rules have been complied with.

In a letter dated April 3, 2001 (comment 23), NEI requested that the NRC "consider incorporating DCR [Design Certification Rule] general provisions into Subpart C as appropriate." The NRC has added these ITAAC requirements to § 52.99, consistent with NEI's proposal, because it believes that these provisions embody general principles that are applicable to all holders of combined licenses.

The NRC revised § 52.99 in the final rule to delete the requirements in proposed § 52.99(a). Proposed § 52.99(a) required holders of COLs to comply with the provisions of §§ 50.70 and 50.71. Because the language in proposed §§ 50.70 and 50.71 requires COL holders to comply with their provisions, and because of the applicability provisions in § 52.0(b), this duplicate requirement in § 52.99 is unnecessary.

The NRC has added a new paragraph (a) in § 52.99 that requires a licensee to submit to the NRC, no later than 1 year after issuance of the combined license or at the start of construction as defined in 10 CFR 50.10, whichever is later, its schedule for completing the inspections, tests, or analyses in the ITAAC. Licensees are required to submit updates to the ITAAC schedule every 6 months thereafter and, within 1 year of its scheduled date for initial loading of fuel, licensees must submit updates to the ITAAC schedule every 30 days until the final notification is provided to the NRC under § 52.99(c). In Section V of the Supplementary Information of the 2006 proposed rule, the NRC requested stakeholder feedback on whether such a provision should be added to the final rule. Although some commenters did not believe that a regulatory requirement for submission of a schedule was necessary, the NRC believes it is necessary to ensure the NRC has sufficient information to plan all of the activities necessary for the NRC to support the Commission's finding whether all of the ITAAC have been met prior to the licensee's scheduled date for fuel load.

c. Section 52.73, Relationship to Other Subparts

Section 52.73 clarifies that a design approval issued under subpart E of part 52 or a manufacturing license under subpart F of part 52 may also be referenced in an application for a combined license filed under 10 CFR part 52. The former § 52.73 only stated that a combined license may reference a standard design certification or an early site permit. The final rule incorporates into new § 52.73(b) the requirement in the current § 52.63(c) in order to clarify that this requirement applies to applicants for a combined license. This provision requires that, before granting a combined license which references a standard design certification, information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if the information is necessary for the NRC to make its safety determinations, including the determination that the application is consistent with the certified design. No substantive change is intended by the restatement of this requirement. In a letter dated April 3, 2001 (comments 3 and 3.a), NEI agreed with the proposed change but recommended that the last sentence of § 52.63(c) be deleted and the remaining provision be added to the former § 52.79 rather than the former § 52.73. The NRC agrees with NEI that 10 CFR part 52 should be modified to clarify that the requirement in former § 52.63(c) applied to applicants for a combined license, and that the last sentence be deleted. However, the Commission is adding the remaining provision to the original § 52.73(b), and not to § 52.79, as recommended by NEI.

d. Section 52.75, Filing of Applications

Section 52.75 provides requirements for the filing of combined license applications. The NRC has reformatted this section for consistency with the other subparts in 10 CFR part 52 and to replace the references to specific paragraphs within §§ 50.4 and 50.30 with general references to those sections. The specific references are no longer needed because the NRC is adopting conforming changes to §§ 50.4 and 50.30 in this final rule which clarify which provisions are applicable to combined license applications.

e. Section 52.78, Content of Applications; Training and Qualification of Nuclear Power Plant Personnel

Section 52.78 has been removed, and the requirements applicable to an applicant for, and holder of, a combined license with respect to the training program are moved to § 50.120, where the requirements currently exist for holders of operating licenses.

f. Section 52.79, Contents of Applications; Technical Information in Final Safety Analysis Report; and § 52.80, Contents of Application; Additional Technical Information

Section 52.79 is reformatted to divide the requirements for the technical contents of a combined license application into two separate provisions. Section 52.79 covers requirements for the contents of the FSAR, and § 52.80 covers requirements for the remainder of the technical content of a combined license application.

Former § 52.79 states that a combined license application must contain the technically relevant information required of applicants for an operating license by 10 CFR 50.34. The reference to 10 CFR 50.34 is removed and replaced with § 52.79(a), which contains all of the relevant requirements from 10 CFR 50.34 that describe what must be included in the FSAR for a combined license application, including requirements that are currently applicable to both construction permit and operating license applications. In addition, requirements from other sections of 10 CFR part 50 (e.g., §§ 50.48 and 50.63) are included. These requirements were issued after the current fleet of operating reactors were licensed and, therefore, were not required contents for these earlier FSARs. In making these modifications,

the NRC has attempted to capture all relevant requirements regarding contents of the FSAR for a combined license application.

In addition, § 52.79(a) contains requirements for descriptions of operational programs that need to be included in the FSAR to allow a reasonable assurance finding of acceptability. This amendment is in support of the Commission's direction to the staff in SRM–SECY–02–0067 dated September 11, 2002, "Inspections, Tests, Analyses, and Acceptance Criteria for Operational Programs (Programmatic ITAAC)," that a combined license applicant was not required to have ITAAC for operational programs if the applicant fully described the operational program and its implementation in the combined license application. In this SRM, the Commission stated:

> [a]n ITAAC for a program should not be necessary if the program and its implementation are fully described in the application and found to be acceptable by the NRC at the COL stage. The burden is on the applicant to provide the necessary and sufficient programmatic information for approval of the COL without ITAAC.

The Commission clarified its definition of *fully described* in SRM–SECY–04–0032, "Programmatic Information Needed for Approval of a Combined License Application Without Inspections, Tests, Analyses, and Acceptance Criteria," dated May 14, 2004, as follows:

> In this context, *fully described* should be understood to mean that the program is clearly and sufficiently described in terms of the scope and level of detail to allow a reasonable assurance finding of acceptability. Required programs should always be described at a functional level and at an increased level of detail where implementation choices could materially and negatively affect the program effectiveness and acceptability.

Accordingly, the NRC is adding requirements for descriptions of operational programs. In doing so, the NRC has taken into account NEI's proposal to address SRM–SECY–04–0032 in its letter dated August 31, 2005 (ML052510037). That proposal was reflected in SECY–05–0197 (October 28, 2005, ML052770225), Attachment 1, and approved by the Commission in SRM–SECY–05–0197 dated February 22, 2006 (ML060530316). During the preparation of the final rule, the NRC discovered that several of the operational programs listed in SECY–05–0197 were not addressed in proposed § 52.79. To ensure the list of requirements for the contents of applications is complete, the NRC is adding several new provisions to address operational programs in the final rule. Specifically, the NRC is adding requirements to § 52.79 for COL applicants to include a description of: (1) The process and effluent monitoring and sampling program required by appendix I to 10 CFR part 50 [§ 52.79(a)(16)(ii)]; (2) a training and qualification plan in accordance with the criteria set forth in appendix B to 10 CFR part 73 [§ 52.79(a)(36)(ii)]; (3) a description of the radiation protection program required by § 20.1101 [§ 52.79(a)(39)]; (4) a description of the fire protection program required by § 50.48 [§ 52.79(a)(40)]; and (5) a description of the fitness-for-duty program required by 10 CFR part 26 [§ 52.79(a)(44)]. During the preparation of the final rule, the NRC also noticed that the proposed rule had not completely implemented the Commission's direction regarding the treatment of operational programs in a COL application inasmuch as requirements to address operational program implementation were not included in proposed § 52.79(a). Therefore, in the final rule, the NRC has added requirements to address the implementation of all operational programs required to be described in a COL application. This is consistent with the Commission's position in SRM–SECY–02–0067 that a combined license applicant is not required to have ITAAC for operational programs if the applicant "fully describes the operational program *and its implementation*" in the combined license application [emphasis added].

In addition, the NRC added a new provision to § 52.79(a) in the final rule to address the application requirements in current § 20.1406. Section 20.1406 requires applicants for a license to describe in their application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of radioactive waste. To ensure that § 52.79 contains a complete list of the requirements for the contents of a COL application, the NRC added paragraph (a)(45) to § 52.79 to require COL applications to include the information required by § 20.1406. This is not a new requirement but merely a pointer to an existing requirement to include this information.

Section 52.79(a) requires that emergency plans submitted with a combined license application be included in the FSAR. This modification from the former rule is being made for consistency with § 50.34 which requires that emergency plans be included in the FSAR for operating license applications.

The NRC is adding a new provision in § 52.79(a)(29)(ii) that the applicant submit plans for coping with emergencies, other than the plans required by § 52.79(a)(21). Paragraph 52.79(a)(21) requires the applicant to submit emergency plans complying with the requirements of § 50.47 and 10 CFR part 50, appendix E. This requirement was drawn from the existing requirement in § 50.34(b)(6)(v) which requires applicants to submit "Plans for coping with emergencies, which shall include the items specified in appendix E." When this requirement was translated into the associated requirement for combined license applicants, the NRC inadvertently only included a portion of the requirements in § 50.34(b)(6)(v), namely, the requirement in proposed § 52.79(a)(21) to submit emergency plans. The NRC has corrected this omission in the final rule by including the new provision in § 52.79(a)(29)(ii) to include other plans for coping with emergencies. This requirement is meant to capture, for example, emergency operating procedures as discussed in SRP Section 13.5.2.1, "Operating and Emergency Operating Procedures."

The NRC has moved the requirements contained in proposed § 52.79(a)(23) that addressed a request to conduct activities under § 50.10(e) and added them in a new § 52.80(c). The NRC concluded that it is preferable to include both the list of proposed § 50.10(e) activities and the redress plan as separate documents in the application, outside of both the site safety analysis report and the environmental report. The NRC's conclusion is based on the fact that the requirements in § 50.10(e) address both safety and environmental issues. Additional changes were made to §§ 51.50 and 52.17 to implement this concept.

Some commenters recommended that the requirement in § 52.79(a)(37) to demonstrate how operating experience insights have been incorporated into the plant design be deleted. The NRC disagrees with this comment. The NRC developed this requirement for future plants (see SRM on SECY–90–377) and it was implemented in past design certification applications by addressing NRC's generic letters and bulletins. The NRC agrees that insights from generic letters and bulletins should be incorporated into the latest revision of the standard review plan (SRP). Therefore, for plant designs that are

based on or are evolutions of nuclear plants that have operated in the United States, the applicant should use NRC's generic letters and bulletins issued after the most recent revision of the applicable SRP and 6 months before the docket date of the application. If the application is for a nuclear plant design that is not based on or is not an evolution of a nuclear plant that operated in the United States, the applicant should address how insights from any relevant international operating experience has been incorporated into that plant.

Section 52.79(a)(41) requires that the applicant evaluate the facility against the standard review plan (SRP). For COL applicants that reference the same design certification rule and adopt a design-centered approach in preparing their COL applications, the NRC expects that the "reference application" will fully conform with this requirement and then any follow-on applications will not need to provide the evaluations for the application information that is identical to the reference application. The NRC did not require applicants to evaluate their facility against RG 1.206, "Combined License Applications for Nuclear Power Plants." However, the NRC believes that RG 1.206 can provide useful guidance to COL applicants in preparing their applications and that use of this guidance will facilitate the NRC's review.

The NRC has moved the requirement that COL applicants submit a plant-specific PRA that was in proposed § 52.80(a) to a new § 52.79(a)(46) in the final rule based on public comments. In addition, the NRC has revised the provision to require the applicants submit a description of their PRA and its results in their COL FSAR. The NRC agrees with some commenters who believed that applicants should not be required to submit their complete plant-specific PRA and that, instead, applicants should only be required to provide a summary description of the PRA and its results in their FSAR with the understanding that the complete PRA (e.g., codes) would be available for NRC inspection at the applicant's offices, if needed. The NRC expects that, generally, the information that it needs to perform its review of the COL application from a PRA perspective is that information that will be contained in applicants' FSAR Chapter 19. The NRC believes that COL application guidance that the NRC is developing is consistent with the industry comment in that the staff does not expect the complete PRA to be included in the COL applicant's FSAR. The guidance focuses on qualitative description of insights and uses, but also acknowledges that some quantitative PRA results should be submitted.

Section 52.79(b) describes the variant on the requirements in § 52.79(a) for a combined license application that references an early site permit. Former § 52.79(a) did not explicitly require the application to address whether the terms and conditions specified in the early site permit under § 52.24 have been or will be met by the combined license holder, although this is implicit by the inclusion of any terms and conditions in the early site permit. To remove any ambiguity in this matter, § 52.79(b)(3) requires that the FSAR demonstrate that all terms and conditions that have been included in the early site permit will be satisfied by the date of issuance of the combined license. The NRC is revising § 52.79(b)(3) in the final rule based on public comments to add an exclusion for terms and conditions imposed under § 50.36(b) because such environmental conditions should be addressed in the environmental report and not in the final safety analysis report. In addition, the Commission is revising this paragraph to add a provision that any terms or conditions of the early site permit that could not be met by the time of issuance of the combined license must be set forth as terms or conditions of the combined license. This provision is needed to address terms or conditions of the early site permit that are related to activities that will not take place until after issuance of the combined license, such as construction activities. A similar change is being made to §§ 52.79(d)(3) and (e)(3) for referenced design certifications and manufacturing licenses.

The NRC is making a revision to the language in proposed § 52.79(b)(1) in the final rule. Proposed § 52.79(b)(1) stated that the FSAR for a combined license application referencing an early site permit need not contain information or analyses submitted to the NRC in connection with the early site permit. This rule language led to a great deal of discussion both within the NRC and in public meetings on combined license application guidance as to what the NRC expected to see in a combined license application that referenced an early site permit. The NRC has concluded that the FSARs in these combined licenses applications must either include or incorporate by reference the SSAR for the early site permit. The SSAR must be included or incorporated into the COL FSAR to ensure that matters addressed in the SSAR legally become part of the FSAR upon issuance of the COL. This will also ensure that the information in the SSAR is subject to control under § 50.59 after issuance of the COL. For these reasons, the NRC is modifying the language in § 52.79(b)(1) to state that the final safety analysis report need not contain information or analyses submitted to the NRC in connection with the early site permit. However, the final safety analysis report must either include or incorporate by reference the early site permit site safety analysis report. With this modification, the NRC intends to convey that the combined license applicant referencing the early site permit does not need to resubmit, for NRC review, information or analyses that were already reviewed and resolved in the early site permit proceeding (such as information provided in responses to NRC requests for additional information). At the same time, the NRC's goal is to provide COL applicants clear guidance as to what the combined license application must contain to be considered complete. For similar reasons, the NRC is also modifying the language in proposed §§ 52.79(c)(1), (d)(1), and (e)(1) to include the provision that the FSAR in the COL application must either include or incorporate by reference the FSAR for the design approval, design certification, or manufacturing license that it is referencing. Note that each of the existing design certification rules covered in appendices A through D of part 52 prohibit the use of incorporation by reference in COL FSARs that reference them. At the time those rules were issued, the NRC was concerned that the staff would not have easy access to the final version of the design certification FSAR (i.e., DCD) if it were not included in the COL application. The NRC will continue to put restrictions in individual design certification rules (and possibly in early site permits, design approvals, or manufacturing licenses) if it does not have confidence that the safety analysis reports can be easily accessed by the staff if they are incorporated by reference in COL applications.

Section 52.79(c) describes the requirements for combined license applications that reference a standard design approval. Previously, no guidance was provided regarding a combined license application that referenced a standard design approval. The requirements in § 52.79(c) are essentially the same as those for a combined license application that references a standard design certification in § 52.79(d).

Section 52.79(d) describes the requirements for combined license applications that reference a standard

design certification. Section 52.79(d) states that the FSAR for a combined license application referencing a standard design certification need not contain information or analyses submitted to the NRC in connection with the design certification. However, the final safety analysis report must either include or incorporate by reference the standard design certification final safety analysis report (see discussion above) and must contain, in addition to the information and analyses otherwise required, information sufficient to demonstrate that the characteristics of the site fall within the site parameters specified in the design certification. In addition, paragraph (d) requires that the plant-specific PRA information must use the PRA information for the design certification and must be updated to account for site-specific design information and any design changes or departures. In the case where a COL application is referencing a design certification, the NRC only expects the design changes and differences in the modeling (or its uses) pertinent to the PRA information to be addressed to meet the submittal requirement of § 52.79(d)(1). Section 52.79(d) also requires that the FSAR demonstrate that the interface requirements established for the design under § 52.47 have been met and that all requirements and restrictions that may have been set forth in the referenced design certification rule be satisfied by the date of issuance of the combined license.

Section 52.79(e) describes the requirements for a combined license application that references a manufactured reactor. Previously, no guidance was provided regarding a combined license application that referenced a manufactured reactor. These requirements are similar to those for the content of an FSAR for a combined license referencing a design certification. Specifically, § 52.79(e) states that the FSAR need not contain information or analyses submitted to the NRC in connection with the manufacturing license. However, the final safety analysis report must either include or incorporate by reference the manufacturing license final safety analysis report and must contain, in addition to the information and analyses otherwise required, information sufficient to demonstrate that the site characteristics fall within the site parameters specified in the manufacturing license. This language was slightly different in the proposed rule and has been corrected in the final rule to be consistent with § 52.79(d). In addition, § 52.79(e) requires that the plant-specific PRA information must use the PRA information for the manufactured reactor and must be updated to account for site-specific design information and any design changes or departures. Section 52.79(e) also requires that the FSAR demonstrate that the interface requirements established for the design have been met and that all terms and conditions that have been included in the manufacturing license be satisfied by the date of issuance of the combined license.

Section 52.80 is added to cover the required technical contents of a combined license application that are not contained in the FSAR. These application contents include the ITAAC, the environmental report, and the request to perform activities under § 50.10(e) with the associated redress plan. This last item was moved to § 52.80(c) in the final rule from its location in § 52.79(a)(23) in the proposed rule. The NRC concluded that it is preferable to include both the list of proposed activities and the redress plan as separate documents in the application, outside of both the site safety analysis report and the environmental report. The NRC's conclusion is based on the fact that the requirements in § 50.10(e) address both safety and environmental issues. Additional changes were made to §§ 51.50 and 52.17 to implement this concept.

g. Section 52.81, Standards for Review of Applications

10 CFR parts 54 and 140 are added to the list of standards that the NRC will use to review combined license applications. Part 54 addresses applications for renewal of combined licenses and part 140 includes the 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.

h. Section 52.83, Finality of Referenced NRC Approvals; Partial Initial Decision of Site Suitability

The former § 52.83, Applicability of part 50 provisions, is removed and replaced by a new section addressing the finality of NRC approvals which are referenced in a combined license application. Former § 52.83 provides that, unless otherwise specifically provided for in subpart C to part 52, all provisions of 10 CFR part 50 and its appendices applicable to holders of construction permits for nuclear power reactors also apply to holders of combined licenses. Similarly, § 52.83 provides that all provisions of 10 CFR part 50 and its appendices applicable to holders of operating licenses also apply to holders of combined licenses issued under this subpart, once the Commission has made the findings required under § 52.99. The NRC believes that the former § 52.83 is not necessary because this proposed rulemaking will provide conforming changes throughout 10 CFR part 50 (as well as all other parts in Title 10 Chapter I) to identify which requirements are applicable to combined license applicants and holders. Former § 52.83 also provides provisions that address the duration of a combined license and these provisions would be moved to proposed § 52.104, Duration of combined license.

The new § 52.83 states that, if an application for a combined license references an early site permit, design certification rule, standard design approval, or manufacturing license, the scope and nature of matters resolved for the application and any combined license issued are governed by the relevant provisions addressing finality, including §§ 52.39, 52.63, 52.98, 52.145, and 52.171. This provision clarifies the relationship between a combined license application and any other license or regulatory approval that an applicant may reference in the combined license application as far as issue resolution is concerned.

i. Section 52.89, Environmental Review

Section 52.89 is removed and reserved for future use. Former § 52.89 required that, if a combined license application references an early site permit or a certified standard design, the environmental review must focus on whether the design of the facility falls within the parameters specified in the early site permit and any other significant environmental issue not considered in any previous proceeding on the site or the design. Former § 52.89 further stated that, if the application does not reference an early site permit or a certified standard design, the environmental review procedures set out in 10 CFR part 51 must be followed, including the issuance of a final environmental impact statement, but excluding the issuance of a supplement under § 51.95(a). This provision is removed because the requirements for compliance with NEPA are now captured in § 52.79(a) and in the revisions to part 51.

j. Section 52.91, Authorization To Conduct Site Activities

Section 52.91(a)(2) formerly provided requirements for a combined license application that does not reference an early site permit, but that contains a site redress plan and states that the applicant may not perform the site preparation activities allowed by 10 CFR 50.10(e)(1) without first submitting a site redress plan in accordance with § 52.79(a)(3), and obtaining the separate authorization required by 10 CFR 50.10(e)(1). This provision further states that authorization must be granted only after the presiding officer in the proceeding on the application has made the findings and determination required by 10 CFR 50.10(e)(2), and has determined that the site redress plan meets the criteria in § 52.17(c). This provision is amended to state that authorization *may* [emphasis added] be granted only after the presiding officer in the proceeding on the application has made the findings and determination required by 10 CFR 50.10(e)(2), and has determined that the site redress plan meets the criteria in § 52.17(c). This amendment is consistent with § 52.91(a)(3), which states that authorization to conduct the activities described in 10 CFR 50.10(e)(3)(i) may be granted only after the presiding officer in the combined license proceeding makes the additional finding required by 10 CFR 50.10(e)(3)(ii). The NRC believes that may is the proper term to use in both of these provisions, to reflect the NRC's residual authority to decline to authorize the ESP holder to conduct § 50.10(e)(3)(i) activities, even if the NRC's regulations are met.

k. Section 52.93, Exemptions and Variances

Paragraph (a) of § 52.93, which includes a discussion of the requirements regarding requests for an exemption from any part of a referenced design certification, is revised to state that the Commission may grant the request if it determines that the exemption complies with any exemption provisions of the referenced design certification rule, or with § 52.63 if there are no applicable exemption provisions in the referenced design certification rule. This provision formerly referred to compliance with § 50.12(a). The NRC is revising paragraph (b) of this section in the final rule to include an allowance for applicants to request a variance from the early site permit SSAR. The allowance for requesting variances to the SSAR was inadvertently omitted in the proposed rule. Because the majority of the early site permit information that a combined license applicant will be referencing will be the information in the SSAR, it is logical that the allowance to request variances be extended to the information in the SSAR given that the NRC is allowing variances to the permit itself. In the final rule, the NRC is also adding a provision to paragraph (b) of this section that precludes the NRC 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 construction permit or combined license.

Section 52.93 is also revised in the final rule to add a discussion of requests for departures from a referenced nuclear power reactor manufactured under a manufacturing license in new paragraph (c) of this section. This provision was inadvertently omitted in the proposed rule, although similar provisions were addressed in the proposed rule in §§ 52.98 and 52.171. However, the proposed rule incorrectly used the term "variance" to describe an application-specific change to a reactor manufactured under a manufacturing license. The NRC has corrected these provisions in the final rule to use the term "departure" for such changes, consistent with the terminology used for changes to a referenced design certification. New paragraph (c) of this section is consistent with these other sections and states that an applicant for a combined license who has filed an application referencing a nuclear power reactor manufactured under a manufacturing license may include in the application a request for a departure from one or more design characteristics, site parameters, terms and conditions, or approved design of the manufactured reactor. The NRC may grant a request only if it determines that the departure will comply with the requirements of 10 CFR 52.7, and that the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the departure. The criteria for granting the departure is the exemption criterion in § 52.7; however, the departure itself is not considered an exemption (unless, of course, the departure also involves a non-compliance with an underlying Commission regulatory requirement in 10 CFR Chapter I). Thus, the Commission will not approve a departure unless the Commission finds, in addition to the routine exemption criteria in § 52.7, that special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the departure. These limitations are intended to maintain the standardization of manufactured reactors in operation to the extent practicable. The licensee may not depart from the design characteristics, site parameters, terms and conditions, or approved design of the manufactured reactor through the provisions of § 50.59.

Finally, the provision contained in paragraph (c) of this section in the 2006 proposed rule (and in paragraph (b) in the former rule) has been moved to paragraph (d) of this section in the final rule. This provision states that issuance of a variance under paragraph (b) or a departure under paragraph (c) is subject to litigation during the combined license proceeding in the same manner as other issues material to that proceeding.

l. Section 52.97, Issuance of Combined Licenses

The NRC has modified § 52.97 to be more consistent with the parallel provision in § *50.50, Issuance of licenses and construction permits,* by including requirements that, after conducting a hearing and receiving the report submitted by the ACRS, the NRC finds that there is reasonable assurance that the applicant is technically and financially qualified to engage in activities authorized; and that issuance of the license will not be inimical to the common defense and security or to the health and safety of the public. Section 52.97(c) is added, consistent with § 50.50, which states that a combined license shall contain conditions and limitations, including technical specifications, as the NRC deems necessary and appropriate. Former § 52.97(b)(2) is moved to new § 52.98 because the issues addressed in this section are issues associated with finality of combined license provisions.

m. Section 52.98, Finality of Combined Licenses; Information Requests

Section 52.98, which addresses the finality associated with the issuance of combined licenses, is added to subpart C of part 52, consistent with the other subparts in 10 CFR part 52. Section 52.98(a) states that, after issuance of a combined license, the Commission may not modify, add, or delete any term or condition of the combined license, the design of the facility, the inspections, tests, analyses, and acceptance criteria contained in the license which are not derived from a referenced standard design certification or manufacturing

license, except in accordance with the provisions of §§ 52.103 or 50.109, as applicable.

Section 52.98 includes provisions to clarify the applicability of the change processes in 10 CFR part 50 and Section VIII of the design certification rules in 10 CFR part 52 to a combined license. Section 52.98(b) states that the change processes in 10 CFR part 50 apply to a combined license that does not reference a design certification rule or a reactor manufactured under a manufacturing license. Section 52.98(c) states that the change processes in Section VIII of the design certification rules apply to changes within the scope of the referenced certified design. However, if the proposed change affects the design information that is outside of the scope of the design certification rule, the part 50 change processes apply unless the change also affects the design certification information. For that situation, both change processes may apply.

Section 52.98(d) is added to address changes to a combined license that references a reactor manufactured under a manufacturing license. Section 52.98(d)(1) states that, if the combined license references a reactor manufactured under a subpart F manufacturing license, then changes to or departures from information within the scope of the manufactured reactor's design are subject to the change processes in § 52.171. Note that the proposed rule incorrectly used the term "variance" to describe an application-specific change to a reactor manufactured under a manufacturing license. The NRC has corrected this provision in the final rule to use the term "departure" for such changes, consistent with the terminology used for changes to a referenced design certification. Section 52.98(d)(2) states that changes that are not within the scope of the manufactured reactor's design are subject to the applicable change processes in 10 CFR part 50 (e.g., §§ 50.54, 50.59, and 50.90). The NRC made all of these requirements to clarify, in one location, the finality provisions applicable to all portions of a combined license.

Finally, the NRC has added a new paragraph (g) to the "finality" section in each subpart of part 52, including § 52.98, entitled "Information requests," which delineates the restrictions on the NRC for information requests to the holder of the combined license. This provision is analogous to the former 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 combined licenses, this proposed provision is in § 52.98(g), and requires the NRC to evaluate each information request of the holder of a combined license 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 exception is for information requests seeking to verify compliance with the current licensing basis of the facility. If the request is from the NRC staff, the request will first have to be approved by the EDO or his or her designee.

n. Section 52.103, Operation Under a Combined License

Section 52.103(g) formerly required the NRC to find that the acceptance criteria in the combined license are met before operation of the facility, but did not refer to loading of fuel. However, § 52.103(f) stated that fuel loading and operation under the combined license will not be affected by the granting of a petition to modify the terms and conditions of the combined license unless a Commission order is made immediately effective. In the proposed rule, this section was amended to require the NRC to find that the acceptance criteria in the combined license are met before fuel load and operation of the facility. The NRC has decided not to adopt the proposed rule language which would have precluded loading of fuel into the reactor until acceptance criteria have been met. The NRC believes that the rule should reflect, as closely as possible, the statutory requirement in Section 185.b of the AEA. The NRC has historically viewed "operation" as including loading of fuel into the reactor, however it is not necessary to change the language of § 52.103(g) to continue the historical practice. The NRC believes that this is the common interpretation of § 52.103(g).

o. Section 52.104, Duration of Combined License; § 52.105, Transfer of Combined License; § 52.107, Application for Renewal; § 52.109, Continuation of Combined License; and § 52.110, Termination of License

Five new provisions are added to subpart C of part 52 for consistency with the other subparts in 10 CFR part 52 and to parallel requirements in 10 CFR part 50 for operating licenses. Section 52.104, addresses the duration of a combined license and contains requirements that formerly existed in § 52.83. In addition, the Commission has amended these requirements to indicate that, where the Commission has allowed operation under a combined license during an interim period under § 52.103(c), the period of operation is not to exceed 40 years from the date allowing operation during the interim period.

Section 52.105 provides requirements for the transfer of a combined license that refer the applicant to § 50.80. Section 52.107 provides a reference to 10 CFR part 54 for the renewal of a combined license.

Section 52.109 provides provisions for the continuation of a combined license and § 52.110 would provide requirements for the termination of a combined license. Formerly, part 52 did not address decommissioning of combined licenses (reactors that are manufactured under a part 52 manufacturing license do not raise decommissioning concerns until they are emplaced at a site, inasmuch as a manufacturing license does not permit loading of fuel or operation) and the termination of the combined license. By contrast, §§ 50.51 and 50.82 address the permanent shutdown of a nuclear power plant, its decommissioning, and the termination of the part 50 operating license. There are two possible ways of addressing this omission: §§ 50.51 and 50.82 could be modified to reference combined licenses under part 52, or the provisions analogous to these sections could be added to part 52. The NRC believes that the second alternative is the best approach. The combined license holder's responsibilities upon expiration of its license is more a matter of regulatory authority and therefore is best placed in part 52. While the question is closer with respect to decommissioning, the NRC believes that most users would likely turn to part 52 rather than part 50 to determine the requirements for decommissioning, inasmuch as decommissioning involves questions of both procedure and technical requirements.

9. Subpart D, Reserved

10. Subpart E, Standard Design Approvals (§§ 52.131 Through 52.147)

The former appendix O to part 52 set forth the requirements for NRC staff approval of a standard design for a nuclear plant or a major portion of a nuclear plant. This licensing process was first adopted by the NRC in 1975 and has been used many times, including issuance of four final design approvals (FDAs) under appendix O to part 52 from 1994 through 2004. These FDAs were issued during previous design certification reviews when FDAs were a prerequisite to certification of a standard plant design (see SOC

discussion on 10 CFR 52.43 in this document).

When the NRC adopted part 52 in 1989, the Commission did not re-examine the regulatory scheme for standard design approvals to determine if the bases for adopting part 52 and the licensing processes codified in part 52 would also be an impetus for reorganizing the design approval process. However, the Commission did undertake a re-examination of appendix O to part 52 in the 2003 proposed rule and proposed certain changes. In view of the substantial reorganization and rewriting of part 52 in this rulemaking, the Commission gave further consideration to the licensing process in appendix O to part 52 and has made additional changes to enhance the regulatory effectiveness and efficiency of that licensing process.

The Commission continues to believe that the best approach for obtaining early resolution of design issues is through the design certification process in subpart B of part 52. Design certification will provide greater finality and standardization than the design approval process. Consequently, the Commission favors use of the design certification process, which suggests that the design approval process could be eliminated. However, given the frequent use of appendix O to part 52 in the past, the Commission has decided to retain this process and to reorganize and reformat the design approval process to be consistent with other subparts.

The design approval process, formerly located in appendix O to part 52, has been moved to subpart E of part 52 and reformatted to be consistent with other subparts. A new § 52.133 was created to describe the relationship of the design approval process with other subparts. An FDA may be referenced in an application for a construction permit or operating license under part 50 or a design certification, combined license, or manufacturing license under part 52.

The filing requirements for design approvals are consistent with other subparts of part 52. The applicants may still request approval of either the entire facility or major portions thereof, but the applications are limited to final design information. There are several reasons for this change. First, the Commission's recent experience with FDAs and design certifications demonstrates that nuclear plant designers are technically capable of developing essentially complete and final design information for NRC review and approval. Furthermore, the economic incentives with respect to design certification also apply to final design approvals. In addition, approval of final design information removes the unpredictability of issuing a construction permit that references only preliminary design information and initiating construction while the final design information is being developed. Approval of a final design ensures early consideration and resolution of technical matters before there is any substantial commitment of resources associated with the construction of the plant, which will greatly enhance regulatory stability and predictability.

The Commission has decided that the contents of applications for design approvals should contain essentially the same technical information that is required of design certification applications (e.g., demonstration of compliance with technically relevant Three Mile Island requirements, proposed technical resolutions of unresolved safety issues and medium- and high-priority generic safety issues, and design-specific probabilistic risk assessment information).

Regarding applications for a major portion of the standard plant design, such as the nuclear steam supply system, the application only needs to contain the information required for the contents of applications that are applicable to the major portion of the plant for which NRC staff approval is requested.

The requirements for contents of applications for design approvals (§ 52.137) were renumbered to be consistent with the numbering of requirements in § 52.47. Also, many of the public comments on contents of applications for design certification apply to the requirements for design approvals (see the SOC of this document for the discussion for § 52.47). Some commenters recommended that the requirement for coping with emergencies [§ 52.137(a)(11)] be deleted because applicants for design approvals will not be responsible for certain emergency planning design features. The Commission disagrees with this comment. This requirement was taken from the original appendix O of part 52, paragraph 3, and it applies to design features for coping with emergencies in the operation of the reactor, not for emergency planning.

A new § 52.139, which specifies the standards that will be used to review applications for design approvals and new §§ 52.145 and 52.147, which specify the finality and duration of design approvals was added to be consistent with other subparts. In a letter dated November 13, 2001, NEI commented that "Industry recommends FDAs be valid for 15 years." The Commission agrees with NEI's recommendation and has decided that the duration of standard design approvals should correspond to the duration of design certifications, inasmuch as both design approvals and design certifications constitute approvals of nuclear power plant 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. Some commenters recommended that § 52.147 be rewritten to provide for renewals of standard design approvals. The Commission disagrees with this comment. The original appendix O to part 52 did not contain a process for renewing design approvals and most of the design approvals issued under appendix O to part 52 were for a 5-year duration. In this rulemaking, the Commission has tripled the duration for a design approval and believes that renewals will not be necessary. Also, as stated before, the Commission favors the use of the design certification process, which includes a process for renewals.

11. Subpart F, Manufacturing Licenses

The following discussion explains the requirements in subpart F of part 52 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.

Former appendix M of parts 50 and 52 set forth the NRC's requirements governing manufacturing licenses. Appendix M, which was first adopted by the NRC in 1973 as an appendix to part 50, provided for issuance of a license authorizing the manufacture of a nuclear power reactor to be incorporated into a nuclear power plant under a construction permit and operated under an operating license at a different location from the place of manufacture. Under the licensing regime in former appendix M, the NRC did not approve a final reactor design to be manufactured as part of the issuance of the manufacturing license. Rather, analogous to the two-step construction permit/operating license process, the NRC would issue a manufacturing license based upon the review and approval of a preliminary design equivalent to that provided in a construction permit application. Upon issuance of the manufacturing license, manufacturing of the reactor can commence, although the NRC must approve the final design of the manufactured reactor by license amendment before the manufactured reactor may be transported from the

place of manufacture to the site where it is to be operated.

When the NRC adopted part 52 in 1989, it added appendix M to part 52. However, the NRC did not re-examine the regulatory scheme for manufacturing licenses in order to determine if the bases for adopting part 52 would also be an impetus for changing the regulatory scheme for manufacturing licenses. Nor did the NRC undertake such a re-examination as part of the process leading to the 2003 proposed rule. However, the NRC has reconsidered the efficacy of the manufacturing license process in former appendix M to part 52, and has decided to adopt substantial changes to those requirements in order to enhance regulatory effectiveness and efficiency. These new requirements are contained in a new subpart F to part 52.

The most important shift in the manufacturing license concept in subpart F is that a final reactor design, equivalent to that required for a standard design certification under part 52 or an operating license under part 50, must be submitted and approved before issuance of a manufacturing license. There are several reasons for this shift. First, the Commission's experience with standard design certifications demonstrates that nuclear power plant designers are technically capable of developing a complete reactor design for Commission review. Furthermore, the economic incentives and limitations with respect to approval of a standard reactor design certification also apply to the approval of a design of a manufactured reactor. Indeed, one could argue that the holder of a manufacturing license may structure the commercial transaction to reduce the economic risk associated with the application for a manufacturing license for a final reactor design, as compared to the economic risk associated with a standard design certification. Second, approval of a final reactor design removes the former awkward regulatory process of issuing a manufacturing license, and subsequently amending the license when a final design is submitted. Approval of a final design ensures early consideration and resolution of technical matters before there is any substantial commitment of resources associated with the actual manufacture of the reactor, which will greatly enhance regulatory stability and predictability. Finally, Commission approval of standardized manufacturing processes, coupled together with the potential for a stable workforce and the application of manufacturing process feedback, has great opportunities for maintaining and even improving the quality and consistency of manufacture, as compared to the traditional method of constructing reactors onsite by a variety of contractors and subcontractors.

The technical information required to be included in an application for a manufacturing license, as set forth in §§ 52.157 and 52.158, reflects both the expansion of the scope of approval to include the final design of the reactor to be manufactured, as well as lessons learned with respect to the NRC's review of early site permits. Section 52.157, which sets forth the technical information to be submitted in support of the design of a reactor, is derived from the existing requirements in current part 52, subparts B and C, governing the technical information to be submitted in support of an application for a standard design certification and combined license. In addition, § 52.157 requires that the application address the provisions with respect to the demonstration by test, analysis, experience, or a combination thereof, of simplified, inherent, passive, or other innovative means to accomplish safety functions, or the results of testing of a prototype plant, as set forth in revisions to § 50.43. As discussed separately with respect to § 50.43, these testing and prototype requirements incorporated into § 50.43 were derived from the former requirements in § 52.47(b).

Information which must be submitted as part of an application, but is not typically considered part of a final safety analysis report, is identified in § 52.158. This includes proposed ITAAC to be used by the licensee who will construct and operate a nuclear power plant at its site using the manufactured reactor and an environmental report for the manufactured reactor. Note that, in the final rule, the NRC has moved proposed § 52.158(a) to a new § 52.157(f)(31) which requires that manufacturing license applicants submit a description of the design-specific PRA and its results in the FSAR. The NRC agrees with some commenters that applicants should not be required to submit their complete design-specific PRA and that, instead, applicants should only be required to provide a summary description of the PRA and its results in their FSAR with the understanding that the complete PRA (e.g., codes) would be available for NRC inspection at the applicant's offices, if needed. The NRC expects that, generally, the information that it needs to perform its review of the manufacturing license application from a PRA perspective is that information that will be contained in applicants' FSAR Chapter 19.

The environmental report must address SAMDAs, similar to standard design certifications, because the design approval stage is usually the most cost-effective opportunity for incorporating design features for addressing severe accidents. The NRC notes that the environmental report need not address environmental impacts associated with the actual manufacture of the reactor at any manufacturing location, inasmuch as a manufacturing license does not represent NRC approval of any specific location, facility, or appurtenance for manufacturing. Rather, the NRC is approving a reactor design for manufacture and the ITAAC for verifying that it has been acceptably manufactured and integrated into a nuclear power facility so that it can be safely operated in accordance with the approved manufactured reactor design, the NRC's regulations, and the requirements of the AEA. These determinations were reflected in proposed §§ 52.158(c)(1), 51.54, and 51.75(c)(3). However, in the final rule, the Commission has removed from proposed §§ 52.158(c)(1) and (2) (final §§ 52.158(b)(1) and (2)) the rule language addressing the content of the environmental report, and integrated that language into §§ 51.54 and 51.75(c)(3). Proposed § 52.158(c)(2) (final § 52.158(b)(2)) has been revised in the final rule to address the scope of the environmental report if the manufacturing license application has referenced a standard design certification.

Section 52.163 of the March 2006 proposed rule would have required that the NRC conduct a "mandatory" hearing in connection with the initial issuance of a manufacturing license, even though the AEA does not require a mandatory hearing for issuance of manufacturing licenses. For the reasons set forth in the NRC's response to Commission Question 2, and the discussion on §§ 2.104 and 2.105, the NRC has decided not to require a "mandatory" hearing for initial issuance of a manufacturing license, and § 52.163 is revised in the final rule to refer to a publication of a notice of proposed action under § 2.105, rather than a notice of hearing under § 2.104.

In light of the NRC's review and approval of a final design as part of issuance of a manufacturing license, the final rule provides a greater degree of finality to a manufacturing license as compared with a standard design certification. Under § 52.171(a)(1), the same degree of issue finality accorded to the "certified design" applies throughout the term of the manufacturing license. Under this

provision, the NRC may not impose any change or modification to the approved design (including site parameters, or design characteristics) for the manufacturing license unless the NRC determines that the change or modification is necessary either for adequate protection or for compliance with requirements applicable and in effect at the time the manufacturing license was issued. Similarly, the manufacturing license holder may not make changes to the design under the provisions of 10 CFR 50.59. Any change to the design will require a license amendment. The Commission regards this as similar to the level of change control imposed on designs which are the subject of a standard design certification. The Commission is imposing this stringent level of change control because one of the key reasons for licensing manufactured reactors is to enhance standardization—one of the original objectives of the 1989 part 52 rulemaking. Unlike design certification, which is an approval of a "paper design," the NRC's proposed concept of a manufacturing license is pre-approval of the procurement, manufacturing, and quality assurance processes that translates the approved reactor design into a manufactured assembly in a controlled environment, with the capability to optimize techniques and procedures based upon feedback. Some of these advantages may be lost if each "manufactured" reactor were treated as a "one-off" custom product. Imposing the discipline of a license amendment process should ensure that a profusion of changes are not made to the approved design at random intervals. The Commission disagrees with commenters on the proposed rule that the design of a manufactured reactor should be subject to less-stringent change provisions than a standard design certification. The commenters have not demonstrated that there are special or unique aspects of manufacturing, as compared with the construction of a nuclear power plant based upon a referenced standard design certification, that would weigh against maintaining the high degree of design standardization achieved by design certification. One commenter correctly noted that changes in such manufacturing matters as procurement, manufacturing processes, or quality assurance are not subject to the proposed § 52.171(b)(1) change restriction, because these matters do not constitute changes to the approved design of the reactor to be manufactured. These changes would be governed by the applicable change process and restrictions already established in the Commission's regulations such as § 50.59, and § 50.54(a), and may not require license amendments.

The only relevant rationale provided by the commenters is that obsolescence of components and component manufacturers' changes would necessitate minor changes to the reactor design over a 15-year period. Although the Commission acknowledges the likelihood of these factors, the NRC staff does not see any reason why these factors are more likely to affect the design of a manufactured reactor as compared with the design approved in a design certification. It is not clear why a change in component sourcing would necessarily result in a "design change" requiring an amendment to the manufacturing license. Finally, the Commission notes that the proposed rule does not mandate "zero changes in a reactor design." As specifically stated in the SOC of the March 13, 2006 (71 FR 12801), proposed rule (second column), proposed § 52.171(b)(1) would allow the manufacturer to make changes to the approved design to be manufactured, albeit by license amendment.

The final rule provides that the term of a manufacturing license to be for no less than 5, or more than 15 years from the date of issuance. The Commission established the 15-year maximum term to be consistent with the maximum term for a standard design certification. The 5-year minimum term was established by the Commission to encourage the use of a manufacturing license for the manufacture of more than one nuclear power reactor. The language of § 52.171 has been corrected in the final rule by replacing the reference in paragraph (b)(1) to § 50.12 with a reference to § 52.7, and replacing the term, "exemption," in paragraph (b)(2) with "departure."

In proposed § 52.167(b)(3), the Commission included a provision which would have required the manufacturing license to specify the number of reactors authorized to be manufactured under the manufacturing license. Upon further consideration in response to a comment on the proposed rule, the Commission has decided that there is no valid regulatory basis for including this provision, and it may in fact serve as a disincentive for the manufacturer to improve the efficiency and productivity of the manufacturing process. Accordingly, this provision is not included in the final rule.

Under § 52.177(c), the holder of a manufacturing license may not commence manufacturing of a reactor less than 3 years before the expiration date, but may continue the manufacturing of a reactor whose manufacture commenced before the 3-year deadline up to license expiration. If, however, an application for renewal is timely-filed with the NRC, manufacturing of a reactor whose manufacture commenced before the 3-year deadline may continue until the time that the NRC completes action on the renewal application in accordance with the Timely Renewal Doctrine of the Administrative Procedure Act (APA). The Commission believes that the timely renewal period should be based upon the time reasonably needed by the agency to complete action on a renewal application, so that an applicant's reliance upon timely renewal is the rare exception rather than the rule. The NRC selected the 3-year deadline as a reasonable period for completing the manufacture of a nuclear power reactor, based in large part upon public statements by various reactor vendors that they have set goals for constructing complete nuclear power plants onsite within 3 years. It seems reasonable, therefore, that a manufactured reactor, built in a controlled environment using industrial manufacturing processes, would be able to be manufactured in the same 3-year period as the construction of an entire facility onsite. Paragraph (b) is corrected in the final rule by removing the phrase, "that the Commission may impose," in order to avoid the possible misinterpretation that the Commission could choose not to impose new adequate protection requirements identified by the Commission. In addition, paragraph (b)(2) is corrected by removing the reference to "site permit" and substituting the term, "manufacturing license."

The final rule does not require that the manufacturing license specify an earliest and latest date for completion of manufacture of any individual reactor. Section 185 of the AEA directs that "[t]he construction permit shall state the earliest and latest date for completion of the construction or modification." Inasmuch as a manufacturing license is not a construction permit, there does not appear to be any legal need for the manufacturing license to specify the earliest and latest date of completion of manufacture. The language of this section has been corrected in the final rule to make clear that the duration of the renewed manufacturing license consists of the renewed term plus any period remaining on the superseded license (analogous to the determination

of the duration of a renewed operating license under part 54).

12. Subpart G of Part 52 [Reserved]

13. Subpart H of Part 52—Enforcement

This subpart contains two provisions, § 52.301 and § 52.303, which are comparable to former § 52.111 and § 52.113, and are analogous to provisions contained in other parts of 10 CFR Chapter I imposing requirements on regulated entities. Section 52.301 reiterates, and provides notice to licensees and applicants under part 52 of the Commission's authority to obtain injunctions or other court orders for the enumerated violations. Section 52.113 provides notice to all persons and entities subject to part 52 that they are subject to criminal sanctions for willful violations, attempted violations, or conspiracy to violate certain regulations under part 52. The regulations listed in paragraph (b), for which criminal sanctions do not apply, have been updated to reflect the final part 52 rulemaking. Section 52.99 was erroneously listed in paragraph (b) in the proposed rule. Because that regulation contains substantive requirements which are promulgated under Section 161.b., i, and o of the AEA, it has been removed from the list of regulations in paragraph (b).

14. Appendices A, B, C, and D to Part 52—Design Certifications for ABWR, System 80+, AP600, and AP1000

The NRC amended paragraphs VI.B.4, 5, and 6 of the design certification rules (DCRs) in appendices A, B, and C to part 52 for the U.S. ABWR, System 80+, and AP600 designs, respectively, by substituting the phrase "but only for that *plant*" for the erroneous phrase "but only for that *proceeding*" (emphasis added). The new phrase correctly characterizes the scope of issue resolution in three situations. Paragraph VI.B.4 describes how issues associated with a DCR are resolved when an exemption has been granted for a plant referencing the DCR. Paragraph VI.B.5 describes how issues are resolved when a plant referencing the DCR obtains a license 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 obtain NRC approval for such departures. Thus, once a matter (e.g., an exemption in the case of paragraph VI.B.4) is addressed for a specific plant referencing a DCR, 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*.

Each of the DCRs includes a Section VIII on processes for changes and departures. These processes apply to changes and departures depending upon the category of certification information affected. For plant-specific Tier 2 information, the departure process established in the rule mirrors, in large part, that in the former 10 CFR 50.59. The final rule amends paragraph VIII.B.5 of the DCRs in appendices A, B, and C to conform the terminology in the § 50.59-like process to that used in the current § 50.59. This amendment deleted references to unreviewed safety questions and safety evaluations, and conformed the evaluation criteria concerning when prior NRC approval is needed. Also, a definition was added to the DCRs (paragraph II.G) for "departure from a method of evaluation" to support the evaluation criterion in paragraph VIII.B.5.b(8) of appendices A, B, and C to part 52.

In an earlier rulemaking (see 64 FR 53582; October 4, 1999), the NRC revised § 50.59 to incorporate new thresholds for permitting departures from a plant design as described in the FSAR without NRC approval. For consistency and clarity, similar changes were adopted for part 52 applicants or licensees. Because of some differences in how the requirements are structured in the DCRs, certain criteria contained in § 50.59 are not necessary for or applicable to part 52 and are not being included in this rule. One criterion definition that the NRC did include was from § 50.59 for a "Departure from a method of evaluation," which is appropriate to include in this rulemaking so that the eighth criterion in paragraph VIII.B.5.b of appendices A, B, and C to part 52 will be implemented as intended.

Each of the DCRs includes a special process in Section VIII for departures from selected severe accident issues. The Commission believes that the resolution of severe accident issues should be preserved and maintained in the same fashion as all other safety issues that were resolved during the design certification review (refer to SRM on SECY–90–377). However, because of the increased uncertainty in severe accident issue resolutions, the Commission codified separate criteria in paragraph B.5.c of Section VIII for determining if a departure from design information that resolves these severe accident issues would require a license amendment. The final rule amends paragraph B.5.c to clarify that the special process applies to ex-vessel severe accident design features that are described in the plant-specific design control document (DCD).

For purposes of applying the special criteria in paragraph B.5.c of Section VIII, severe accident resolutions are limited to those design features where the intended function of the design feature is relied upon to resolve postulated accidents when the reactor core has melted and exited the reactor vessel (ex-vessel severe accidents) and the containment is challenged. The location of the ex-vessel severe accident design information in the DCD is not important to the application of this special departure process in paragraph B.5.c. Some design features may have intended functions to meet both "design basis" requirements and to resolve ex-vessel severe accidents. If these design features are reviewed under paragraph VIII.B.5, then the appropriate criteria from either paragraph B.5.b or B.5.c are selected depending upon which function the departure is being taken from.

Each of the DCRs in appendices A, B, and C to part 52 includes a section on records and reporting. The NRC revised paragraph X.B.3.b in appendices A, B, and C to part 52 to change the reporting frequency from quarterly to semi-annually, and to extend the period of increased reporting frequency, relative to the frequency of 10 CFR 50.59(d) and 50.71(e)(4), from the date of a license application that references a DCR to the date that the Commission makes the finding under 10 CFR 52.103(g). The requirement to report plant-specific departures from, and updates to, the design control document during the interval from the application for a combined license until the Commission makes the finding under § 52.103(g) is to facilitate NRC's monitoring of changes to the nuclear power plant, to achieve a common understanding of how the as-built facility conforms to the design information, and to adjust the inspection program to reflect the design changes.

The amendment to paragraph X.B.3.b of appendices A, B, and C to part 52 reduced the frequency of reporting during the period of construction and increased the frequency of reporting during the application review period. The NRC believes that these changes in the reporting burden balance each other and provide the information needed by the NRC to fulfill its responsibilities in the licensing of future nuclear power plants. In order to make the finding

under § 52.103(g), the NRC must monitor the design changes made under Section VIII of the DCRs. Frequent reporting of design changes will be particularly important in times when the number of design changes could be significant, such as during the procurement of components and equipment, the detailed design of the plant before and during construction, and during pre-operational testing. After the facility begins operation, the frequency of reporting would revert to the requirement in paragraph X.B.3.c, which is consistent with operating plant requirements.

Additional editorial changes to the design certification rule language in appendices A, B, C, and D to part 52 are discussed in the NRC's responses to public comments on Question 11 (see Section IV of this document).

15. Appendix N to Part 52—Combined Licenses for Nuclear Power Reactors of Identical Design

Prior to this final rulemaking, appendix N in parts 50 and 52 contained the NRC's procedures governing the review and issuance of licenses for nuclear power plants of "duplicate design." Hearings for applications filed under appendix N in both parts 50 and 52 are governed by subpart D of part 2. In the March 2006 proposed rule, the NRC proposed deleting appendix N in part 52, and retaining these provisions only in part 50. Although no comment was received on this proposal, the NRC has decided to withdraw its proposal to delete appendix N in part 52. Since the preparation of the March 2006 proposed rule, several industry groups have announced their intention to seek combined licenses utilizing the same design. In view of this industry development, the NRC believes that there is potential utility to keeping the option of appendix N in part 52 open to potential combined license applicants. Accordingly, the NRC is retaining in part 52 the procedural alternative provided in appendix N to part 52, and to revise its language to make its provisions applicable to combined licenses using identical designs. As part of this revision, the NRC set forth more explicit direction on the information to be submitted, the NRC docketing review, notice, and the content of the EIS under appendix N of part 52. However, the NRC decided against a wholesale revision of appendix N to part 52, together with conforming changes in part 51, inasmuch as these changes were not the subject of public comment, and because such a course of action would have delayed the overall part 52 rulemaking. Inasmuch as the changes to appendix N of part 52 constitute, in essence, revisions to the NRC's rules of procedure and practice (albeit located within part 52), the NRC may adopt them in final form without further notice and comment, under the rulemaking provisions of the APA, 5 U.S.C. 553(b)(A).

The overall concept of the revised appendix N to part 52 is that each application is to be treated as a separate application, with the exception of the common design. Hence, appendix N to part 52 requires separate applications, separate determinations of sufficiency for docketing, separate notices of docketing, and so forth. Sections requiring further explanation are discussed below.

Paragraph 2 of appendix N to part 52 requires that each application state that the applicant wishes to have the application considered under appendix N to part 52, and to list all of the applications that are to be treated together. This requirement ensures that the NRC is clearly informed of the intentions of all applicants, and to ensure that any individual reviewing the application can easily determine all of the applications using the identical ("common") design.

Paragraph 3 of appendix N to part 52 requires that each application identify the common design, and that the FSAR either incorporate by reference or include the common design. This ensures that there will be a single physical FSAR document that may be utilized by the NRC, and viewed by members of the public.

Paragraph 5 of appendix N to part 52 provides that, upon an NRC determination that each application is acceptable for docketing under 10 CFR 2.101, each application will be separately docketed (i.e., each application will be given a separate docket number, but that docket number may include a special designator signifying that it is part of a group of applications filed under appendix N to part 52). Ordinarily, the NRC will publish in the **Federal Register** a separate notice of docketing for each application, so that delays in the docketing of one application will not delay the docketing and subsequent technical review of other applications filed in accordance with appendix N to part 52. However, if circumstances allow (e.g., sufficiency review for multiple applications are completed simultaneously), the NRC may publish a single notice of docketing for multiple applications. The notice of docketing must state that the application will be processed under the provisions of 10 CFR part 52, appendix N and subpart D of part 2. As discussed under subpart D of part 2, the NRC also has discretion to either publish a notice of hearing for each application (possibly with the period for the filing of petitions to intervene running from the notice of hearing for the last application of the group), or to publish a joint notice of hearing for multiple applications.

Paragraph 6 of appendix N to part 52 sets forth the procedures by which the NRC will fulfill its obligations under NEPA. The NRC staff will prepare a separate draft EIS for each application, but the NRC may conduct joint scoping on environmental issues related to the common design. If the applications reference a standard design certification or the use of a manufactured reactor, then the EIS must incorporate by reference the EA prepared for either the design certification or the manufacturing license, as applicable. The NRC has decided that the EA need not be included in the EIS. The Commission has required other documents to be incorporated into the FSAR in order to maximize the utility and ease of use of the FSAR, which is used repeatedly by the NRC staff over the lifetime of the licensed reactor. By contrast, the EIS is not typically utilized by the staff in such a manner; hence, the NRC deemed it unnecessary to require physical incorporation of the referenced design certification or manufacturing license EA into the referencing combined license EIS.

Paragraph 7 of appendix N to part 52 requires the ACRS to report on each of the combined license applications, as required by § 52.87. Each ACRS report is to be limited to the safety matters which are not relevant to the common design. In addition, the ACRS must issue a report on the safety of the common design—except for those matters relevant to the safety of a referenced design certification or manufactured reactor. Issuance of separate reports for each application will facilitate NRC staff internal review, consideration, and response to the ACRS report. It will also ensure that issues relevant to one application (e.g., siting) are not addressed in the proceeding and hearing for another application. Issuance of a single report on the common design will also facilitate the issuance of the presiding officer's partial initial decision on the common design, as required by paragraph 8 of appendix N to part 52, and 10 CFR 2.405 of subpart D of part 2. The NRC notes that there may be circumstances where the common design extends beyond the design matters covered in a referenced design

certification or manufactured reactor. For example, a common design could reference the use of a specific design certification and a common ultimate heat sink. In such circumstances, the ACRS would issue a common report limited to the safety matters for the ultimate heat sink.[6]

Paragraph 8 of appendix N to part 52 provides that the NRC will designate a presiding officer to conduct the portion of the hearing on matters related to the common design, and that the presiding officer must issue a partial initial decision on the common design. As discussed previously, hearing procedures for appendix N to part 52 proceedings are set forth in subpart D to part 2. To avoid duplication and possible (future) conflicts with subpart D to part 2, the NRC did not include in appendix N to part 52 further provisions addressing the conduct of hearings.

D. Changes to 10 CFR Part 50

1. General Provisions, § 50.2, Definitions

New definitions are added as conforming changes to § 50.2. A definition of an *applicant* is added to clarify that a person or entity applying for Commission "permission or approval" is an applicant. This will ensure that part 50 requirements for applicants apply to a person or entity seeking an NRC approval not constituting a license, such as a standard design approval under part 52.

Definitions for *license* and *licensee* are added to clarify that early site permits and combined licenses under part 52 are licenses, and that holders of these types of licenses are licensees for purposes of part 50.

A definition for *prototype plant* is added to describe the type of nuclear reactor that is the subject of § 50.43(e). A prototype plant is a licensed nuclear reactor test facility that is similar to and representative of the first-of-a-kind nuclear plant in all features and size, but may have additional safety features. The purpose of the prototype plant is to perform testing of new or innovative design features for the first-of-a-kind nuclear plant design, as well as being used as a commercial nuclear power facility.

2. Requirement of License, Exceptions, § 50.10, License Required

Section 50.10 addresses the circumstances under which a license for a production or utilization facility is required, and describes activities which do not constitute "construction" for purposes of obtaining a license for a nuclear power plant. Section 50.10(b) formerly prohibited a person from beginning construction of a production or utilization facility unless a construction permit has been issued. Inasmuch as activities constituting construction (as defined in § 50.10(b)) are authorized under a combined license, § 50.10(b) is revised to refer to combined licenses.

Formerly § 52.17(c) authorized an early site permit applicant to request authority to perform the activities allowed under § 50.10(e)(1). The NRC notes that the regulation did not provide for the holder of an early site permit to request authority to conduct § 50.10(e)(1) activities after the early site permit has been issued, and the NRC does not plan to change the current restriction. It will conserve the NRC's resources to consider the safety and environmental issues associated with § 50.10(e)(1) activities during the agency's consideration of the early site permit application. Late consideration of these requests after completion of the NRC's consideration of the application could entail substantial diversion of resources from other application reviews. For these reasons, the NRC does not allow an early site permit holder to request authority to perform activities allowed under § 50.10(e)(1) after issuance of the early site permit (the Commission notes that under former part 52, early site permit holders may not seek authority to perform activities allowed under § 50.10(e)(3) after issuance of the early site permit).

3. Classification and Description of Licenses

a. Section 50.23, Construction Permits

Section 50.23 formerly provided that a construction permit for the construction of a production or utilization facility must be issued before issuance of a license for the facility, and then only upon "due completion" of the facility. Section 50.23 is revised to clarify that if the NRC issues a combined license for a nuclear power plant under part 52, the construction permit and operating license are issued simultaneously (i.e., are merged into a "combined license" under subpart C of part 52). This is consistent with Section 185.b of the AEA, which provides the NRC with explicit statutory authority to combine a construction permit and an operating license for a nuclear power plant into a single combined license. The Commission notes that § 50.23 is not limited to nuclear power plants; it also allows the NRC to combine, under Section 161.h of the AEA, a construction permit and operating license for production facilities or utilization facilities other than nuclear power plants.

4. Applications for Licenses, Certifications, and Regulatory Approvals; Form; Contents; Ineligibility of Certain Applicants

a. Section 50.30, Filing of Application; Oath or Affirmation

Section 50.30 establishes the NRC's general procedural requirements on filing of applications for licenses (including construction permits) for production and utilization facilities. The NRC is making conforming changes throughout § 50.30 to include necessary references to part 52 processes other than design certification (subpart H of part 2 governs the filing of standard design certification applications), *viz.*, early site permits, combined licenses, standard design approvals, and manufacturing licenses. In addition, § 50.30(a) is revised to ensure that the submission requirements governing applications (and amendments to these applications) in § 52.3 apply to part 52 processes other than design certification.

b. Section 50.33, Contents of Applications; General Information

Section 50.33 identifies the general information that must be included in applications for licenses (including construction permits) for production and utilization facilities. Section 50.33(f) requires certain applicants for nuclear power plant licenses to submit information sufficient to determine whether the applicant has the financial qualifications to carry out, in accordance with the NRC's regulations, the activities for which a license or permit is sought. Section 50.33 is revised to require applicants for combined licenses to submit financial qualifications information. Financial qualifications information need not be submitted by applicants for early site permits, standard design certifications, standard design approvals, and manufacturing licenses. An NRC review to determine whether an applicant has adequate financial qualifications to conduct the activities authorized by an early site permit would contribute little, if anything, to providing reasonable assurance of adequate protection with respect to early site permit activities. Ordinarily, an early site permit authorizes no activities, unless the early site permit application requested

[6] The site-specific environmental impacts of the heat sink would ordinarily be addressed in each of the separate EISs prepared for each application, inasmuch as the environmental impacts would differ depending upon factors and characteristics at each site. Section 7 does not govern the scope of EISs prepared for common design elements.

authority to conduct the activities permitted under § 50.10(e)(1). The NRC has determined that no safety finding *per se* is necessary to authorize the licensee to conduct these activities. The NRC's review of a § 50.10(e)(1) application is focused on siting and environmental matters.

With respect to a standard design approval, the argument applies with even more force, inasmuch as a design approval authorizes no activities of any kind, and the finality associated with a design approval is significantly less than for an early site permit. The NRC concludes that no regulatory purpose appears to be served by a financial qualifications review for early site permits and standard design approvals. The NRC believes that there is little additional regulatory value in requiring a financial qualifications review for a manufacturing license. While it is true that a lack of sufficient financial resources could result in inadequate manufacture of a reactor, under the NRC's proposed concept of a manufacturing license under subpart F of part 52, each manufactured reactor cannot be operated until ITAAC specified in the manufacturing license are successfully completed by the licensee authorized to construct the nuclear power facility using the manufactured reactor. Successful completion of the manufactured reactor's ITAAC should ensure that any problems with manufacture attributable to lack of financial resources of the manufacturing license holder can be identified before operation. Moreover, the licensee authorized to construct the facility (either under a construction permit or a combined license) using a manufactured reactor would have been subject to a financial qualifications review. This review should be sufficient to determine if the applicant has sufficient financial resources to carry out facility construction and the completion of the manufactured reactor's inspections, tests, and acceptance criteria. Finally, the NRC notes that it does not require the fabricators of safety-related and important to safety structures, systems, and components (SSCs) to be licensed and subject to a financial qualifications review. The NRC believes that a holder of a manufacturing license conducts activities which appear to be, in large part, analogous to these current non-licensed fabricators. Accordingly, the NRC concludes that a financial qualifications review of the applicant for a manufacturing license will not add significant regulatory value to justify the cost of such a review.

Section 50.33(g) addresses radiological emergency response plans for State and local government entities that must be submitted in applications for operating licenses. The final rule makes a conforming change to ensure that applicants for combined licenses must also submit this information, as well as applicants for early site permits who decide under § 52.17(b)(2)(ii) to seek NRC review and approval of complete emergency plans. In addition, § 50.33(g) provides requirements for the plume exposure pathway emergency planning zone (EPZ) and the ingestion pathway EPZ. The NRC has made a conforming change to § 50.33(g) in the final rule to address early site permit applications that propose major features of emergency plans describing the EPZs under 10 CFR 52.17(b)(2)(i). Such provisions were inadvertently left out of the proposed rule. For an application for an early site permit that proposes major features of the emergency plans describing the EPZs, the change requires the descriptions of the EPZs, to meet the requirements of § 50.33(g). This is necessary for the NRC to be able to find that major features describing the EPZs are acceptable under § 52.18.

Section 50.33(h) formerly required applicants that propose to construct or alter a production or utilization facility to state in their application the earliest and latest dates for completion of the construction or alteration. This section is being revised in the final rule, based on public comments, to exclude combined license applicants. The NRC believes that combined license applications need not specify the earliest and latest date for completion of construction, in light of the amendment to Section 185 of the AEA that was made by the Energy Policy Act of 1992. By adding a new Section 185.b. of the AEA, the Commission believes that Congress intended that Section 185.b supersede Section 185.a of the AEA, so that the Section 185.a requirements for "stand-alone" construction permits, such as the need to specify the earliest and latest date for completion of construction, do not apply to the construction permit portion of a combined license under Section 185.b of the AEA. Accordingly, the final rule removes the requirements from §§ 50.33(h), 52.77, and 52.79(a)(39) that the combined license application specify the earliest and latest date for completion of construction.

Section 50.33(k) currently requires applicants for operating licenses to provide a report, as described in § 50.75, indicating how reasonable assurance that funds will be available for the decommissioning process is provided. The final rule makes a conforming change to add a reference to combined licenses. The content of this report, reflecting the unique considerations of a combined license, is addressed separately in the revision to § 50.75.

c. Section 50.34, Contents of Construction Permit and Operating License Applications; Technical Information

The NRC is changing the heading of § 50.34 from *Contents of applications; technical information* to read, *Contents of construction permit and operating license applications; technical information.* Section 50.34(a) currently provides the requirements for the technical contents of an application for a stationary power reactor construction permit, design certification or combined license, and § 50.34(b) provides the requirements for the technical contents of an application for a stationary power reactor operating license application. However, the former version of 10 CFR part 52 provides requirements for design certification and combined license applications that are not consistent with the current version of § 50.34. For example, former § 52.47 stated that an application for design certification must contain the technical information which is required of applicants for construction permits and operating licenses by part 50 which is technically relevant to the design and not site-specific. This would encompass requirements in both §§ 50.34(a) and (b). Also, former § 52.79 stated that applications for combined licenses must contain the technically relevant information required of applicants for an operating license by 10 CFR 50.34, which are found in § 50.34(b). In addition to the requirements for technical information in §§ 50.34(a) and (b), §§ 50.34(c) through (h) provide requirements for the contents of licensing applications related to security plans, compliance with Three Mile Island (TMI) related requirements, combustible gas control, and conformance with the standard review plan. Finally, the NRC notes that the subject of contents of an application is an administrative matter, rather than a strictly technical matter. Therefore, these administrative requirements for part 52 processes are more properly located in part 52, rather than in § 50.34. To provide maximum clarity in the requirements for the content of each of the different types of licensing applications, the NRC is revising § 50.34 to make it applicable to construction permit and operating license applications only and to provide separate sections for the technical

contents of applications for the other types of licenses or regulatory approvals in 10 CFR part 52 (early site permits in § 52.17, design certifications in § 52.47, combined licenses in § 52.79, design approvals in § 52.137, and manufacturing licenses in § 52.157). In its revisions to 10 CFR part 52, the NRC has brought forward the requirements from § 50.34 that are applicable to each of the licensing and approval processes in 10 CFR part 52. One exception to this structure is the provisions in § 50.34(f) related to compliance with TMI related requirements. Due to the length and complexity of the requirements in this paragraph, § 50.34(f) is being amended to indicate that each applicant for a design certification, design approval, combined license, or manufacturing license under part 52 of this chapter must demonstrate compliance with any technically relevant portions of the requirements in § 50.34(f)(1) through (3), except for paragraphs (f)(1)(xii), (f)(2)(ix), and (f)(3)(v). The NRC chose this approach rather than repeat the requirements in each of the relevant sections in part 52. The NRC is adding the phrase "except for paragraphs (f)(1)(xii), (f)(2)(ix), and (f)(3)(v)" in the last sentence of § 50.34(f) based on public comments. The commenters pointed out that proposed § 50.34(f) was inconsistent with proposed §§ 52.47(a)(17), 52.79(a)(17), 52.137(a)(17), and 52.157(e)(12), which included the exceptions that are being added to § 50.34(f) in the final rule.

d. Section 50.34a, Design Objectives for Equipment To Control Releases of Radioactive Material in Effluents—Nuclear Power Reactors; and § 50.36a, Technical Specifications on Effluents From Nuclear Power Reactors

Section 50.34a requires that construction permit and operating license applications include a description of the equipment and procedures for the control of gaseous and liquid effluents and for the maintenance and use of equipment installed in radioactive waste systems. Section 50.34a also requires these applications to include an estimate of (1) the quantity of each of the principal radionuclides expected to be released annually to unrestricted areas in liquid effluents produced during normal reactor operations; and (2) the quantity of each of the principal radionuclides of the gases, halides, and particulates expected to be released annually to unrestricted areas in gaseous effluents produced during normal reactor operations. In addition, § 50.34a requires a general description of the provisions for packaging, storage, and shipment offsite of solid waste containing radioactive materials resulting from treatment of gaseous and liquid effluents and from other sources. Section 50.34a is revised to clarify its applicability to the 10 CFR part 52 licensing and approval processes. Section 50.34a applies to combined licenses by virtue of the provision in former § 52.83, *Applicability of Part 50 Provisions,* which states that all provisions of 10 CFR part 50 and its appendices applicable to holders of construction permits and operating licenses also apply to holders of combined licenses. Applicants for design certification are also required to include the information required by § 50.34a in their applications by virtue of the provision in former § 52.47(a)(1)(i), which states that an application for design certification must contain the technical information which is required of applicants for construction permits and operating licenses by 10 CFR part 50 which is technically relevant to the design and not site-specific. Former appendix O to 10 CFR part 52, Section O.3, explicitly required applicants for design approvals to include the applicable technical information required by § 50.34a. Finally, former appendix M to 10 CFR 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, new provisions in § 50.34a(d) are adopted to address the applicable requirements for combined license applications that parallel the requirements for an operating license application. New provisions in § 50.34a(e) are adopted to address the applicable requirements for applications for design approvals, design certifications, and manufacturing licenses to include: (1) A description of the equipment for the control of gaseous and liquid effluents and for the maintenance and use of equipment installed in radioactive waste systems; and (2) an estimate of the quantity of each of the principal radionuclides expected to be released annually to unrestricted areas in liquid effluents produced during normal reactor operations, and the quantity of each of the principal radionuclides of the gases, halides, and particulates expected to be released annually to unrestricted areas in gaseous effluents produced during normal reactor operations.

e. Section 50.36, Technical Specifications

Section 50.36(a) currently requires that each applicant for a license authorizing operation of a production or utilization facility include in its application proposed technical specifications in accordance with the requirements of § 50.36. The existing language in § 50.36(a) encompasses combined license applicants. However, applicants for design certification are also required to include proposed technical specifications in their applications by virtue of the provision in former § 52.47(a)(1)(i) stating that an application for design certification must contain the technical information required of applicants for construction permits and operating licenses by 10 CFR part 50 that is technically relevant to the design and not site-specific. Similarly, applicants for design approvals are also required to include proposed technical specifications in their applications by virtue of the provision in former appendix O to part 52, Section O.3, which states that the submittal for review of a standard design shall include the applicable technical information under § 50.34 (a) and (b), as appropriate.

Section 50.36 is revised to clarify that design certification and manufacturing license applications must also include proposed technical specifications. The new provisions in § 50.36(c) require each applicant for a design certification or a manufacturing license to include proposed generic technical specifications in its application for the portion of the plant that is within the scope of the design certification or manufacturing license application.

f. Section 50.36a, Technical Specifications on Effluents From Nuclear Power Reactors

Section 50.36a(a) requires each licensee of a nuclear power reactor to include technical specifications to keep releases of radioactive materials to unrestricted areas during normal conditions, including expected occurrences, as low as is reasonably achievable. The former language in § 50.36a(a) encompassed combined license holders. However, applicants for design certification are also required to include proposed technical specifications on effluents in their applications by virtue of the provision in current § 52.47(a)(1)(i) which states that an application for design certification must contain the technical information which is required of applicants for construction permits and operating licenses by 10 CFR part 50

which is technically relevant to the design and not site-specific. In addition, former appendix M to 10 CFR part 50, 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 to manufacturing licenses. Therefore, Section 50.36a(a) is revised to state that each licensee of a nuclear power reactor and each applicant for a design certification or a manufacturing license will include technical specifications to keep releases of radioactive materials to unrestricted areas during normal conditions, including expected occurrences, as low as is reasonably achievable. The proposed rule did not include the provisions for manufacturing licenses. However, proposed § 52.157(e)(18) did require manufacturing license applicants to include proposed technical specifications in accordance with § 50.36a. Therefore, it was clearly the NRC's intent that the provisions of § 50.36a be applicable to manufacturing license applications and the NRC has corrected this omission in the final rule.

Some commenters on the 2006 proposed rule identified an additional conforming change needed in § 50.36a that the NRC did not make in the proposed rule. Section 50.36(a)(2) currently requires that each licensee submit a report to the Commission annually that specifies the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous 12 months, including any other information as may be required by the Commission to estimate maximum potential annual radiation doses to the public resulting from effluent releases. The NRC has modified this provision to state that each holder of a combined license is only required to begin submitting reports after the Commission has made the finding under § 52.103(g) that allows fuel load and operation. This would apply the requirements in § 50.36a consistently for part 50 and part 52 licensees, because for a part 50 licensee, the annual reporting requirement is effective only after an operating license is issued.

The NRC is also making conforming changes to appendix I to 10 CFR part 50. These changes parallel the changes to §§ 50.34a and 50.36a.

g. Section 50.36b, Environmental Conditions

Section 50.36b authorizes the Commission to include conditions to protect the environment in each license authorizing operation of a production or utilization facility and each license for a nuclear power reactor facility for which the certification of permanent cessation of operations required under § 50.82(a)(1) has been submitted. These conditions are to be derived from information contained in the environmental report and the supplement to the environmental report as analyzed and evaluated in the NRC record of decision. The conditions must identify the obligations of the licensee in the environmental area, including, as appropriate, requirements for reporting and keeping records of environmental data, and any conditions and monitoring requirement for the protection of the nonaquatic environment.

The NRC has made conforming changes to § 50.36b in the final rule to address all applicable part 52 licenses. The changes were made in response to public comments that highlighted the need for clarification in § 50.36b. The NRC provided proposed requirements for identifying environmental conditions on early site permits and combined licenses in the proposed rule in §§ 51.50(b) and (c). Requirements for identifying environmental conditions for construction permits were contained in former § 51.50 and proposed § 51.50(a). The proposed rule stated that, in an application for a construction permit, an early site permit, or a combined license, the applicant shall identify "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." However, the NRC neglected to make the additional conforming changes to § 50.36b in the proposed rule. To correct this oversight, the NRC has modified § 50.36b in the final rule to make the requirements in this section consistent with the requirements in § 51.50. In doing so, the NRC has provided separate paragraphs for imposing conditions during construction and for imposing conditions during operation and decommissioning. Paragraph 50.36b(a) addresses requirements for imposing conditions on construction permits, early site permits, and combined licenses to protect the environment during construction. Paragraph 50.36b(b) addresses requirements for imposing conditions on licenses authorizing operation and licenses for a facility in decommissioning to protect the environment during operation and decommissioning. These changes provide consistency in requirements for environmental conditions across parts 50 and 51.

h. Section 50.37, Agreement Limiting Access to Classified Information

Section 50.37 requires that a license or construction permit applicant agree in writing that it will not permit any individual to have access to or 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. Section 50.37 also requires that this agreement be part of the application for a license or construction permit and that the agreement of the applicant shall be deemed part of the license or construction permit, whether stated or not. The former language of § 50.37 encompassed early site permit, combined license, and manufacturing license applicants under 10 CFR part 52 because these products are all licenses. However, the NRC is revising § 50.37 to encompass applicants for design certification and for standard design approvals under 10 CFR part 52 for consistency with the changes to 10 CFR part 25. Part 25 sets forth the NRC's requirements governing the granting of access authorization to classified information to certain individuals, and the Commission is making modifications to part 25 to reflect the licensing and regulatory approval processes in part 52. Accordingly, the Commission is revising § 50.37. Section 50.37 is revised to require that an applicant for a license, construction permit, design certification, or design approval under part 52 agree in writing that it will not permit any individual to have access to or 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. Section 50.37 also requires that this agreement be part of the application and be deemed part of the license, or construction permit, or NRC standard design approval whether stated or not. Section 52.54 is revised to include a new provision which requires that every standard design certification rule issued contain a provision that states that, after the Commission has adopted the final standard design certification rule, the applicant will not permit any individual to have access to or 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 NRC believes that these revisions, along with the complementary changes to parts 25 and 95, are necessary to

ensure that access to classified information is adequately controlled by all entities applying for NRC licenses, design certifications, or design approvals.

5. Standards for Licenses, Certifications, and Approvals

a. Section 50.40, Common Standards

This section sets forth standards for issuance of a license. Sections 50.40(a), (b), and (c) are revised to add conforming references to the additional licensing processes issued under 10 CFR part 52 that are applicable to these standards.

b. Section 50.43, Additional Standards and Provisions Affecting Class 103 Licenses and Certifications for Commercial Power

The text and heading of this section are revised to clarify that certain additional standards and provisions for class 103 licenses apply to applications for combined licenses, design certifications, and manufacturing licenses issued under part 52, in addition to applications for construction permits and operating licenses issued under part 50. Section 50.43(e) is added to clarify that the requirements to demonstrate new safety features by testing, which were previously set forth in part 52, apply to applicants for operating licenses issued under part 50 and applicants for combined licenses, design certifications, and manufacturing licenses issued under part 52. This amendment conforms to the goal of having reactor safety requirements in part 50 and procedural requirements in part 52. Only the requirements in § 50.43(e) apply to applications for design certification. Refer to the generic discussion on testing requirements for advanced reactors in Section V.B of this document.

c. Section 50.45, Standards for Construction Permits, Operating Licenses, and Combined Licenses

This section is revised to include the standards for review of an application to alter a facility that was constructed under a combined license, after the findings under § 52.103(g) of this chapter are made by the Commission. Some commenters recommended that the proposed rule be revised to reference the applicable requirements in part 52 rather than the requirements in 10 CFR 50.31 through 50.43 and claimed that most of those requirements were moved to part 52 in the proposed rule. The Commission does not agree with that claim but does acknowledge that most of § 50.34 was moved to the contents of application section for each of the licensing processes in part 52. Therefore, § 50.45 was revised to set forth the standards for review of an application to alter a facility after the Commission makes the finding under § 52.103(g) of this chapter. The standards for issuance of a combined license are set forth in § 52.97.

d. Section 50.46, Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Reactors

Section 50.46(a)(3) contains reporting requirements for changes to or errors in emergency core cooling system (ECCS) evaluation models. Conforming references to design approvals, design certifications, and licenses issued under part 52 were made to § 50.46, so that the NRC will be notified of changes to or errors in acceptable evaluation models, or the application of such models, that were used in licenses, certifications, and approvals issued under part 52.

e. Section 50.47, Emergency Plans, § 50.54(gg), and Appendix E to Part 50, Emergency Planning and Preparedness for Production and Utilization Facilities

Section 50.47 and appendix E to 10 CFR part 50 contain emergency planning requirements for nuclear power plants. Prior to this rulemaking, these regulations did not clearly address early site permit or combined license applicants or holders. Accordingly, the NRC is making a number of changes in these regulations. Section 50.47(a)(1) states that no initial operating license for a nuclear power reactor will be issued unless a finding is made by the NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, and that no finding under § 50.47 is necessary for issuance of a renewed nuclear power reactor operating license. The NRC is revising § 50.47(a)(1) to include provisions to address combined licenses and early site permits which include either complete and integrated plans or major features of the emergency plans. The NRC inadvertently left out provisions to address early site permits that include major features of the emergency plans in the proposed rule and a new provision has been added to address applicants in the final rule.

The NRC is making some additional changes to § 50.47(a)(1) in the final rule. Proposed § 50.47(a)(1)(ii) stated that "Except as provided in paragraph (e) of this section, no initial combined license under part 52 of this chapter will be issued unless a finding is made by the NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." In the final rule, the NRC is removing the phrase "except as provided in paragraph (e)" because paragraph (e) does not address issuance of the combined license, but, rather, addresses the Commission finding under § 52.103(g). Likewise, the NRC is making a change to paragraph (e) of this section in the final rule to remove the reference to paragraph (a) of this section.

Finally, the NRC is removing the statement in proposed § 50.47(a)(1)(iii) that "No finding under this section is necessary for issuance of a renewed early site permit." The NRC included this provision in the proposed rule to be consistent with the existing requirement for operating licenses. However, upon further consideration, the NRC concludes that the basis for this exclusion for an operating license and for a combined license does not apply to an early site permit. The original license renewal rule, which limited the scope of matters to be addressed in the renewal proceeding, was based upon a determination that the regulatory process maintains and updates the licensing basis for operating licenses, that matters like the state of the emergency preparedness plans need not be addressed in license renewal. The bases for the license renewal rule described the process, in each substantive regulatory area, for maintaining and updating the current licensing basis. This logic does not directly apply to emergency preparedness information submitted in an early site permit application, because there is no maintenance or update requirement for the early site permit. Therefore, the NRC cannot exclude the need to address emergency preparedness in an early site permit renewal proceeding.

Section 50.47(c)(1) provides a process for operating license applicants that fail to meet the applicable standards of § 50.47(b). The NRC is revising § 50.47(c)(1) to clarify that this process is applicable to combined license applicants as well.

Section 50.47(d) formerly provided that no NRC or Department of Homeland Security (DHS) review, findings, or determinations concerning the state of offsite emergency preparedness or the adequacy of and capability to implement State and local or utility offsite emergency plans are required before issuance of an operating license authorizing only fuel loading or low-power testing and training (up to 5 percent of the rated power). Section 50.47(d) further stated that a license authorizing fuel loading and/or low-power testing and training may be

issued after a finding is made by the NRC that the state of onsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency and provides the standards by which the NRC will base such a finding. The NRC is adding a new § 50.47(e) to provide essentially parallel provisions for a combined license holder by stating that a combined license holder may not load fuel or operate except as provided in accordance with appendix E to part 50 and, because of the nature of the combined license process, the NRC is adding new § 50.54(gg) that would add a condition to all combined licenses. This is necessary to account for the fact that the combined license will already be issued at the time of the first full or partial participation exercise.

The NRC's findings regarding the state of emergency preparedness for a combined license holder will be taken into account in the NRC's review under § 52.103(g). The NRC will make its determination by judging whether the licensee has met the acceptance criteria in the combined license for the inspections, tests, and analyses related to the conduct of the first full or partial participation exercise under paragraph IV.F.2.a of appendix E to part 50. Paragraph 50.54(gg) states that if, following the conduct of the exercise required by paragraph IV.F.2.a of appendix E to part 50, DHS identifies one or more deficiencies in the state of offsite emergency preparedness, the holder of a combined license may operate at up to 5 percent of rated thermal power only if the Commission finds that the state of onsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. Paragraph 50.54(gg) also provides the standards by which the NRC will base such a finding.

The NRC is revising appendix E to part 50 to conform to the changes proposed for §§ 50.47 and 50.54. The introduction to appendix E to part 50 states that each applicant for an operating license is required by § 50.34(b) to include in the final safety analysis report plans for coping with emergencies. The NRC is adding a parallel statement for combined license applicants, and a statement that an early site permit applicant may submit emergency plans. The final rule also makes additional conforming changes to the second paragraph of the introduction that were inadvertently overlooked in the proposed rule. Similar modifications are proposed in Section III of appendix E to part 50 regarding the content of final safety analysis reports and site safety analysis reports for an early site permit. The NRC is making a correction to Section III in the final rule to replace references to the early site permit application with references to the site safety analysis report. The NRC is also adding a statement that the site safety analysis report for an early site permit which proposes major features must address the relevant provisions of 10 CFR 50.47 and 10 CFR part 50, appendix E, within the scope of emergency preparedness matters addressed in the major features. This is consistent with the requirements in § 52.17(b).

In Section IV of appendix E to part 50, the NRC is modifying paragraph F.2.a, to address combined licenses in addition to operating licenses. Paragraph F.2.a currently provides requirements regarding the conduct of full participation exercises and states that a full participation exercise shall be conducted within 2 years before the issuance of the first operating license for full power of the first reactor. Paragraph F.2.a also requires that, if the full participation exercise is conducted more than 1 year before issuance of an operating licensee for full power, an exercise which tests the licensee's onsite emergency plans shall be conducted within 1 year before issuance of an operating license for full power. The NRC is designating the requirements for operating licenses as paragraph F.2.a.i, and adding a new paragraph F.2.a.ii that contains the requirements for combined licenses. Paragraph F.2.a.ii states that, for a combined license, the first full participation exercise must be conducted within 2 years of the scheduled date for initial loading of fuel and operation under § 52.103. Paragraph F.2.a.ii also requires that, if the first full participation exercise is conducted more than 1 year before the scheduled date for initial loading of fuel and operation under § 52.103, an exercise which tests the licensee's onsite emergency plans must be conducted within 1 year before the scheduled date for initial loading of fuel and operation under § 52.103. The modifications further state that, if DHS identifies one or more deficiencies in the state of offsite emergency preparedness as the result of the first full participation exercise, or if the NRC finds that the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, the provisions of § 50.54(gg) will apply, as previously discussed.

The NRC is adding a new paragraph IV.F.2.a.iii to appendix E to part 50 to require that, if the applicant has an operating reactor at the site, an exercise, either full or partial participation, be conducted for each subsequent reactor constructed on the site. This exercise may be incorporated in the exercise requirements of paragraphs (2)(b) and (2)(c) of Section IV.F. If DHS identifies one or more deficiencies in the state of offsite emergency preparedness as the result of this exercise for the new reactor, or if the NRC finds that the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, the provisions of § 50.54(gg) apply just as they do for the first reactor at a site. This new provision is desirable because of the nature of ITAAC for emergency preparedness requirements. The emergency preparedness ITAAC, specifically ITAAC that will be demonstrated through an exercise, provide the necessary reasonable assurance for programs and facilities associated with the yet-unbuilt reactor. Recent agreements between the NRC and external stakeholders on emergency preparedness ITAAC are based on the understanding that ITAAC on the emergency preparedness exercise would serve to demonstrate various aspects of emergency preparedness (e.g., programs and facilities) that did not warrant their own specific/detailed ITAAC. For example, there is no ITAAC for determining whether an adequate staffing roster exists for the technical support center or emergency offsite facility, but its existence and adequacy could be demonstrated during an exercise. Therefore, appendix E to part 50 requirements for emergency preparedness exercises must be included for the current concepts regarding emergency preparedness ITAAC to be viable. With regard to subsequent reactors, those aspects of an exercise which address currently untested (i.e., unexercised) aspects of emergency preparedness for the proposed new reactor must be addressed in new emergency preparedness ITAAC for the subsequent reactor. If various generic exercise-related aspects of emergency preparedness for the site have been previously addressed and satisfied, then there would be no ITAAC for those emergency preparedness aspects for subsequent reactors.

The NRC is also modifying Section V of appendix E to part 50, which states

that no less than 180 days before the scheduled issuance of an operating license for a nuclear power reactor or a license to possess nuclear material, the applicant's detailed implementing procedures for its emergency plan shall be submitted to the Commission. Paragraph V also requires that licensees submit any changes to the emergency plan or procedures to the NRC within 30 days of these changes. The NRC is clarifying that paragraph V is also applicable to COL holders by stating that they must submit their detailed implementing procedures for their emergency plans to the NRC no less than 180 days before the scheduled date for initial loading of fuel. The wording of this requirement has been changed slightly in the final rule. In the proposed rule, this provision required that COL holders submit their detailed implementing procedures for their emergency plans to the NRC no less than 180 days before the date that the Commission authorizes fuel load and operation under § 52.103. The NRC has modified the provision to make the target date 180 days before scheduled date for initial loading of fuel because this will be a known date whereas the licensee would not know the date that the Commission will make the § 52.103(g) finding. This change is also consistent with other requirements in appendix E that are tied to the scheduled date for initial fuel load.

f. Section 50.48, Fire Protection

Section 50.48(a)(1) is revised to clarify that holders of an operating license issued under part 50 and a combined license issued under part 52 must have a fire protection plan. Section 50.48(a)(4) is added to clarify that applications for design approvals, design certifications, and manufacturing licenses issued under part 52 must meet the fire protection design requirements set forth in general design criterion 3 of appendix A to part 50.

g. Section 50.49, Environmental Qualification of Electric Equipment Important to Safety for Nuclear Power Plants

Section 50.49(a) is revised to clarify that these programmatic requirements apply to applicants for and holders of operating licenses issued under part 50 and combined licenses and manufacturing licenses under part 52.

h. Section 50.54, Conditions of Licenses; and § 50.55, Conditions of Construction Permits, Early Site Permits, Combined Licenses, and Manufacturing Licenses

Section 50.54 sets forth various provisions that are deemed to be conditions "in every license issued," while § 50.55 sets forth the provisions deemed to be conditions of every construction permit. In making the conforming changes to these regulations to reflect part 52, 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 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 covered in § 50.55. Combined licenses represent a special case, inasmuch as they address both construction and operation. The NRC addresses combined licenses by placing the conditions applicable only to construction in § 50.55, which indicates that these conditions are applicable until the date that the Commission makes the finding under § 52.103(g). Conditions which are applicable during construction and operation or only during operation are set forth in § 50.54. The NRC is revising the introductory paragraph of § 50.54 to refer to combined licenses, and to exclude manufacturing licenses from its provisions. The NRC is making revisions to § 50.54 in the final rule based on public comments. In the proposed rule, the NRC did not distinguish which provisions in § 50.54 are applicable only during operation from those that are applicable during both construction and operation. In the final rule, the NRC has revised the introductory paragraph to indicate which provisions are applicable only after the Commission makes the finding under § 52.103(g). In making these revisions, the NRC determined that the provisions that need to be applied during both construction and operation are paragraphs (a) through (h), (o), (p), (q), (t), (v), and (aa) through (ee). All of these provisions have some requirements that will be implemented prior to the Commission finding under § 52.103(g).

In addition, the NRC is adding paragraphs (r) and (u) to the list of provisions in the introduction that are not applicable to combined licenses. This is because paragraph (r) only applies to research and test reactor facilities and paragraph (u) was only applicable for 60 days after the amendment to § 50.54 that added paragraph (u). Finally, the NRC is also revising the first sentence of the introduction to indicate that paragraphs (r) and (gg) do not apply to nuclear power reactor operating licenses. In the proposed rule, the introduction stated that they did not apply to operating licenses, which would have included research and test reactor operating licenses.

The NRC is revising § 50.54(a)(1) 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 is revising § 50.54(i-1) to indicate its applicability to combined licenses. Specifically, § 50.54(i-1) requires that within 3 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 has added changes to § 50.54(p) and (q) in the final rule. The changes to paragraph (p) are being made to include references to appropriate part 52 sections in addition to the existing references to part 50 sections. The change to paragraph (q) is being added to include a statement that, for combined licenses, the requirement to follow and maintain in effect emergency plans which meet the standards in § 50.47(b) and the requirements in appendix E of part 50 is only applicable after the Commission makes the finding under § 52.103(g). However, the remainder of the requirements in paragraph (p) apply from the time the combined license is issued (*e.g.*, requirements to retain records of emergency plan changes). This is consistent with the change made to the introductory paragraph of § 50.54 discussed earlier in this section.

The NRC is adding a new § 50.54(gg). These revisions are discussed with related requirements in Section IV.D.4.f of this document, "Section 50.47, Emergency plans, § 50.54(gg), and appendix E to part 50."

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 is revised to specify which paragraphs apply to a construction permit, early site permit, combined license, and manufacturing license.

Sections 50.55(a) and (b) of the March 2006 proposed rule would have required a combined license to state the earliest and latest dates for completion of construction or modification, and to provide for forfeiture of the combined license if the construction or modification is not completed by the stated date. The Commission has reconsidered this position and has decided to remove this requirement from the final rule. The statutory requirement for a construction permit to state the earliest and latest date for completion of construction is now contained in Section 185.a of the AEA. The combined license, by contrast, is address in Section 185.b. The Commission believes that in the absence of specific language regarding the restriction in paragraph a. applicable to combined licenses in paragraph b., the combined license is not subject to any of the statutory restrictions in paragraph a. 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. Accordingly, no earliest and latest date for completion of manufacture would be required to be stated in a manufacturing license.

Section 50.55(c) makes the license conditions in § 50.54 also apply to construction permits, unless otherwise modified. In the proposed rule, the NRC revised this paragraph to add a reference to combined licenses. However, upon further consideration, the NRC has determined that no change to § 50.55(c) is necessary because the introduction to § 50.54 outlines which provision in that section apply to combined 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 in 10 CFR part 21. As discussed with respect to the NRC's changes to part 21, the NRC is retaining 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. 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 subpart E to part 50 (former 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 is revising § 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 further in Section J on part 21 of this document, early site permits do not authorize "construction" or its functional equivalent. Therefore, early site permits are subject to the requirements of part 21 rather than § 50.55(e) under the final rule.

Section 50.55(f) sets forth the NRC's requirements with respect to compliance with the QA requirements in 10 CFR part 50, appendix B, and implementation of the construction permit holder's QA program as described in its SAR. Comparable provisions applicable to holders of operating licenses are contained in § 50.54(a); requirements governing the SAR's description of the QA program are contained in § 50.34. A detailed discussion of all changes related to QA requirements can be found in Section IV.D.13.b of this document.

i. Section 50.55a, Codes and Standards

Section 50.55a provides requirements relating to codes and standards for construction permits and operating licenses for boiling or pressurized water-cooled nuclear power facilities. The NRC is revising § 50.55a to clarify how the regulations in § 50.55a apply to approvals, certifications, and licenses issued under 10 CFR part 52. Section 50.55a formerly applied to combined licenses by virtue of the provision in current § 52.83, which stated that all provisions of 10 CFR part 50 and its appendices applicable to holders of construction permits and operating licenses also apply to holders of combined licenses. Also, § 50.55a formerly applied to design certifications by virtue of the provision in former § 52.48, which states that design certification applications will be reviewed for compliance with the standards set out in 10 CFR part 50 as it applies to applications for construction permits and operating licenses for nuclear power plants, and as those standards are technically relevant to the design proposed for the facility. Although former appendix O to part 52 does not explicitly require applicants for design approvals to comply with the requirements of § 50.55a, the NRC is requiring 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, 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 is modifying § 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 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) is 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 applicable design certification rule. Section 50.59(d)(2) is revised to conform the frequency that summary reports are submitted for holders of combined licenses with the frequency set forth in the design certification rules. Section 50.59(d)(3) is revised to clarify that the requirement for maintaining records applies to holders of operating licenses issued under part 50 and combined licenses issued under part 52.

k. Section 50.61, Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events

This section is revised to clarify that the fracture toughness requirements apply to an operating license for a pressurized water reactor issued under part 50 or a combined license for a pressurized water reactor issued under 10 CFR part 52.

l. Section 50.62, Requirements for Reduction of Risk From Anticipated Transients Without Scram (ATWS) Events for Light-Water-Cooled Nuclear Power Plants

Paragraph (d) of § 50.62 provides implementation requirements for the requirements of the section. This paragraph is revised to indicate that these implementation requirements only apply to light-water-cooled nuclear power plant operating licenses issued before the effective date of this final rule. Section 50.62 is revised to require each light-water-cooled nuclear power plant operating license application submitted after the effective date of this final rule to submit information in its final safety analysis report demonstrating how it will comply with paragraphs (c)(1) through (c)(5) of § 50.62. Similarly, the NRC is adding provisions to §§ 52.47, 52.79, 52.137, and 52.157 requiring that applicants for standard design certifications, combined licenses, standard design approvals, and manufacturing licenses include the information required by this section in their final safety analysis reports.

m. Section 50.63, Loss of All Alternating Current Power

Conforming changes are made to this section to clarify that the requirements for station blackout apply to applications for construction permits, combined licenses, design approvals, design certifications, manufacturing licenses, and operating licenses.

n. Section 50.65, Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants

This section presents the requirements for monitoring the effectiveness of maintenance at nuclear power plants. Paragraph 50.65(a) is revised to clarify that holders of operating licenses issued under part 50 and combined licenses issued under part 52 must comply with the requirements in this section. In the proposed rule, § 50.65(c) was revised to specify that, for new licenses issued after the effective date of this regulation, the requirements of this section must be implemented 30 days before the initial fuel loading of the reactor. Commenters recommended that NRC should not require implementation prior to fuel load when not all systems will have been placed in service. The NRC agrees with this comment and has deleted the proposed revision to § 50.65(c). Under the final rule, licensees are required to implement the requirements of this section by the time that initial fuel loading has been authorized.

6. Inspections, Records, Reports, Notifications

a. Section 50.70, Inspections

Section 50.70(a) requires that each licensee and each holder of a construction permit allow inspection, by duly authorized representatives of the Commission, of its records, premises, activities, and of licensed materials in possession or use, related to the license or construction permit as may be necessary to effectuate the purposes of the AEA. The language in § 50.70(a) encompasses combined license holders and manufacturing license holders because they are licensees. In addition, the provision in former § 52.83, states that all provisions of 10 CFR part 50 and its appendices applicable to holders of construction permits and operating licenses also apply to holders of combined licenses. Also, former Section M.1 of appendix M to part 52, 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. Section 50.70(a) is revised to clarify that these inspection requirements also apply to holders of early site permits under 10 CFR part 52. An early site permit is a partial construction permit and therefore should be subject to the same inspection requirements as a construction permit. In addition, the NRC is clarifying that the inspection requirements also apply to applicants for licenses, construction permits, and early site permits. It is common for applicants to perform activities related to NRC regulations before issuance of the license or permit for which they are applying and it has been the NRC's practice to inspect these activities whenever they are performed. Therefore, the modification to require that the inspection requirements in § 50.70(a) apply to applicants is simply a codification of the NRC's current practices.

Section 50.70(b)(1) requires that each licensee and each holder of a construction permit provide rent-free office space for the exclusive use of NRC inspection personnel. The existing language in this provision encompasses combined license holders and manufacturing license holders. Section 50.70(b)(2) provides requirements regarding the space to be provided for a site with a single power reactor facility licensed under 10 CFR part 50 and for sites containing multiple power reactor units. The NRC is revising § 50.70(b)(2) to clarify that these requirements also apply to sites for combined license holders under 10 CFR part 52 and to facilities issued manufacturing licenses under 10 CFR part 52.

b. Section 50.71, Maintenance of Records, Making of Reports

Section 50.71 establishes the NRC's requirements for maintenance and retention of records and reports, and updating of FSARs. Section 50.71(a) requires each licensee and each holder of a construction permit to maintain all records and make all reports as may be required by license, or by the NRC's regulations. The former language does not apply to non-licensees, such as holders of standard design approvals and applicants for standard design certifications, even though it would appear that these requirements should Accordingly, the NRC is revising § 50.71(a) to make its provisions applicable to holders of standard design approvals and all applicants for design certification during the period of NRC consideration of the application for design certification, and those applicants for design certification whose designs are certified via rulemaking in accordance with subpart B of 10 CFR part 52.

Section 50.71(c) specifies that the default record retention period (i.e., the period that applies if a record retention period is not specified by the regulation requiring the record) ends when the NRC "terminates the facility license." A manufacturing license is not a "facility" license, inasmuch as subpart F of part 52 is limited to the manufacture of reactors, not a "facility." Finally, some licenses (e.g., early site permits and manufacturing licenses) may either be terminated by the NRC, or "expire" as a matter of law at the end of their term. Accordingly, the NRC is revising § 50.71(c) to establish the records retention period and to properly refer to manufacturing licenses, early site permits, and construction permits.

Section 50.71(e) establishes the updating requirements for the FSAR, including the information that must be included in each update. The former regulation, however was deficient in two respects. First, it did not address the updating requirements for combined license applicants and holders. Second,

the regulation, if applied to manufacturing licenses under subpart F of part 52, imposed unnecessary regulatory burden with respect to periodic updating.

Accordingly, the NRC is revising § 50.71(e) to specify the FSAR updating requirements for combined license applicants and holders. In addition, current § 50.71(f) is redesignated as § 50.71(g), and a new § 50.71(f) is added.

Section 50.71(e)(3)(iii) is added to contain the provisions applicable to combined license holders during the period of time from docketing of the application to the Commission finding under § 52.103(g). The update frequency during this period is established as annually, which is consistent with requirements in Section X.B.3.b of the design certification rules in appendices A through D of part 52 for combined license holders that reference those rules. After the Commission finding under § 52.103(g), the frequency would be governed by § 50.71(e)(4), as for other operating reactors.

Section 50.71(f) is revised to require the holder of the manufacturing license to update the FSAR to reflect any modifications to the design of the reactor authorized to be manufactured which have been approved by the NRC under § 52.171, or any new analyses requested to be performed by the NRC. Periodic updating of an FSAR for a manufacturing license is not required by § 50.71(f), inasmuch as the NRC's concept for a manufacturing license is for the design of the reactor authorized to be manufactured to be stable with no changes except as specifically approved by the NRC as necessary for adequate protection to public health and safety or common defense and security, or to ensure compliance with the NRC's requirements in effect at the time of issuance of the manufacturing license. The provision in § 50.71(f) requiring the FSAR for a manufacturing license to be updated to reflect new safety analyses required by the NRC is analogous to the existing updating requirement in § 50.71(e). This assures that new analyses performed to demonstrate the continuing adequacy of the unchanged manufactured reactor design are appropriately reflected in the FSAR.

Paragraph (g), formerly (f), is being revised to add reference to § 52.110(a)(1) for permanent cessation of operation for plants licensed under part 52.

Finally, paragraph (h) is being added to 50.71. This paragraph contains requirements for licensees to maintain and upgrade the PRA periodically throughout the plant life. These provisions apply only to COLs under part 52, but are included in part 50 in this section covering maintenance of records and making of reports, consistent with the Commission's practice elsewhere in development of the requirements for the part 52 processes.

These new requirements are a culmination of the Commission's interest in use of risk-informed processes as articulated in its 1995 Policy Statement ("Use of Probabilistic Risk Assessment Methods in Nuclear Activities: Final Policy Statement," (60 FR 42622; August 16, 1995)).In the original part 52 rule, each design certification holder was required to include as part of the application a design-specific PRA. The Commission has been engaged in an effort to improve PRA quality through support and endorsement of consensus standards on PRA methods.

In the proposed rule published in March 2006, the Commission included a specific request for comment (Question 10, "New Requirements for Periodic Updates to the PRA"—see section IV of this document) about part 52 licensees periodically updating the PRA throughout the life of the facility, on a schedule similar to that for FSAR updates. Several commenters noted that the proposed rule did not include a frequency for updating the PRA. These commenters stated that they believed that PRA update frequency should be addressed in guidance rather than regulations. These commenters indicated a frequency of once every two operating cycles would be reasonable and consistent with existing requirements in 10 CFR 50.69(e). After considering the comments received, the Commission has decided to require combined license holders to maintain and upgrade a PRA to meets endorsed standards over the lifetime of the facility. To implement this decision, new requirements are being placed in § 50.71(h).

Paragraph (h)(1) requires each holder of a combined license, by the time of the scheduled fuel load date for the facility, to develop a plant-specific PRA. The PRA is to be both level 1 and level 2 and must cover those modes of operation and initiating events for which NRC-endorsed consensus standards are in effect one year prior to that date. Level 1 refers to the identification and quantification of sequences leading to the onset of core damage. Level 2 refers to identification and quantification of severe accident progression and containment response. Additional information about scope and quality of PRA to meet these provisions will be addressed in the NRC documents endorsing the standards, or in the standards themselves.

The one year time period was chosen to allow time for the licensee to develop and upgrade its PRA and conduct peer review prior to the date when the PRA must be completed (i.e., by the scheduled date for initial fuel load). The scheduled fuel load date was selected because the COL holder chooses this date, and thus is in a position to determine when the "one-year prior" requirement comes into effect. Note that this provision does not require that this PRA be submitted to the NRC for review and approval. The need for any such submittal or review would be determined by any risk-informed application for which the licensee might wish to use this PRA, such as in support of licensing actions.

Paragraph (h)(2) requires the COL holder to maintain the PRA until permanent cessation of operations under § 52.110(a). The Commission intends PRA maintenance to be consistent with how it is defined in the American Society of Mechanical Engineers (ASME) "Standard for Probabilistic Risk Assessment for Nuclear Power Plant Applications" (ASME–RA–Sb–2005), that is "the update of the PRA models to reflect plant changes, such as modifications, procedure changes or plant performance." No specific frequency is defined in the rule for such maintenance; the Commission expects licensees to follow the ASME (or other consensus body) guidance on this aspect.

The paragraph further provides that the PRA must be upgraded every four years, to cover initiating events and operational modes contained in NRC-endorsed consensus standards in effect one year prior to each required upgrade. The Commission intends PRA upgrade to be consistent with how it is defined in consensus standards, such as ASME–RA–Sb–2005, that is, "the incorporation into a PRA model of a new methodology or significant changes in scope or capability." If no new standards are issued during a four-year upgrade cycle, licensees would not be required to upgrade their PRAs; however, the requirement to maintain the PRA would still be in effect. It should also be noted that there may be situations where a PRA upgrade is needed more frequently than the four year cycle, as for instance to support a new risk-informed application.

Finally, paragraph (h)(3) specifies that each holder of a combined license shall, no later than the date on which the licensee submits an application for a renewed license, upgrade the PRA to

cover all modes and all initiating events. This requirement is not premised on the existence of NRC-approved consensus standards, and an all-mode, all-initiator PRA must be developed even if standards do not yet exist. The requirement to develop and maintain such a PRA by the time of license renewal application is intended only to establish a timing requirement for completing the upgrade of the PRA, and does not have any implications on the current requirements for license renewal. The upgraded PRA is not an element of any (i.e., past, present, or future) review or approval of a license renewal application.

In implementing these new requirements, it is the NRC's expectation that industry stakeholders will work with the NRC and appropriate codes and standard setting bodies to continually upgrade the relevant codes and standards, identify potential issues, resolve problems, and create relevant guidance to assist in periodically improving the quality and comprehensiveness of the PRA.

c. Section 50.72, Immediate Notification Requirements for Operating Nuclear Power Reactors

Section 50.72 currently requires holders of operating licenses under part 50 for nuclear power plants to notify the NRC Operations Center via the Emergency Notification System of the declaration of any of the emergency classes specified in the licensee's approved emergency plan and of certain non-emergency events. The NRC's regulatory interest in these events also extends to nuclear power plants operating under a combined license under subpart C of part 52, but the former language did not impose the notification requirements on combined license holders. Accordingly, in a conforming change in the final rule, the NRC is extending the notification requirements to holders of combined licenses under part 52 after the Commission has made the finding under § 52.103(g). The NRC did not include a conforming change to this section in the proposed rule. However, based on public comments, the NRC is including the change in the final rule to make it clear that the requirements of § 50.72 only apply to a combined license holder after the Commission makes the finding under § 52.103(g). The NRC is not extending the notification requirements to other part 52 processes because the events to be reported under the existing rule concern events which can only occur upon fuel load and operation, and the remaining part 52 licensing and regulatory approval processes do not authorize fuel load or operation.

d. Section 50.73, Licensee Event Report System

Section 50.73 requires holders of operating licenses under part 50 for nuclear power plants to submit licensee event reports (LERs) on the occurrence of certain operating events to the NRC. LERs facilitate the NRC's oversight of operating nuclear power plants, by alerting the NRC to the occurrence and underlying causes of events having potential safety implications. The NRC's regulatory interest in these events also extends to nuclear power plants operating under a combined license under subpart C of part 52, but the former language did not impose the LER requirement on combined license holders. Accordingly, in a conforming change, the NRC is extending the LER reporting requirements to holders of combined licenses under part 52 after the Commission has made the finding under § 52.103(g). The final rule does not extend the LER requirement to other part 52 processes, because the events to be reported under the existing rule concern events which can only occur upon fuel load and operation, and the remaining part 52 licensing and regulatory approval processes do not authorize fuel load or operation.

e. Section 50.75, Reporting and Recordkeeping for Decommissioning Planning

The requirements in § 50.75 are intended to ensure that entities who construct and ultimately operate a nuclear power plant will have sufficient funds at the end of the operational life of the plant to complete the decommissioning of the plant. Section 50.75 requires a nuclear power plant operating license application to address the predicted costs of decommissioning, provide financial assurance by one of the means specified in the regulation, and submit evidence that one or more of these means has been established. Section 50.75 also requires the operating license holder to update the cost estimates for decommissioning on an annual basis, and to submit reports to the NRC every 2 years describing, *inter alia*, any adjustments to the amount of funds collected annually to reflect any changes in projected decommissioning cost. When a plant is within 5 years of its projected end of its operation, the reports must be submitted annually, and a site-specific decommissioning cost estimate must be submitted. Some of these requirements are directed at the two-phase licensing process in 10 CFR part 50, in which the NRC issues a construction permit followed by an operating license. These requirements are not well-suited to the combined license process under part 52. For example, requiring the combined license applicant to comply with the current requirement in § 50.75(b)(4) that the operating license applicant submit a copy of the financial instrument obtained to satisfy the requirements of § 50.75(e), would place a more stringent requirement on the combined license applicant, inasmuch as that applicant would be required to fund decommissioning assurance at an earlier date as compared with the operating license applicant.

To address these discrepancies, the NRC is revising § 50.75 to address decommissioning funding assurance for combined licenses. Under the final rule, the combined license applicant must submit a decommissioning report as required by § 50.33(k), but it need not obtain a financial instrument to fund decommissioning or to submit a copy to the NRC. Instead, under § 50.75(b)(1) and (4), the combined license application must contain a certification that the financial assurance will be provided no later than 30 days after the NRC publishes notice in the **Federal Register** under § 52.103(a). See § 50.75(b)(1).

The proposed rule would have required the combined license holder to submit, by March 31 of each year until the date that the NRC authorizes fuel load under § 52.103(g), an updated certification of the information required by paragraph (b)(1). The proposed rule also would have required the combined license holder to submit, no later than 30 days after the Commission publishes notice in the **Federal Register** under § 52.103(a), a certification that financial assurance is being provided in the relevant amount together with a copy of the financial instrument obtained to satisfy the requirements of § 50.75(e). Once the Commission has made the finding under § 52.103, the proposed rule would have required the combined license holder to be subject to the reporting and updating requirements as an operating license holder under part 50, including the requirements applicable when the plant is within 5 years of the projected end of operation. A commenter objected to the annual reporting requirement, arguing that an annual update during the construction period would serve no purpose and is unnecessary and unduly burdensome. The commenter proposed that the holder be allowed to adjust or update the original certification at the time construction is complete and the plant is ready to begin operation. Upon

further consideration, the Commission has decided to modify the final rule by eliminating the requirement for annual reports, and instead requiring the updating reports 2 years and 1 year before the date scheduled for initial loading of fuel load (consistent with the schedule required by § 52.99(a)). The Commission's objective is to have sufficient time to evaluate the projected costs of decommissioning, and any licensee-proposed changes in the financial assurance mechanism for funding before fuel is loaded into the reactor and operation commences. This will allow the Commission to take any necessary regulatory action before fuel loading and commencement of operation.

The final rule requires that no later than 30 days after the Commission publishes notice in the **Federal Register** under § 52.103(a), the combined license holder must submit a report to the NRC. The report must contain a certification that financial assurance is being provided in an amount specified in the licensee's most recent updated certification (i.e., the certification provided 1 year before the scheduled date for initial loading of fuel, in accordance with the first sentence of § 50.75(e)(3)). The certification must include a copy of the financial instrument obtained to provide decommissioning funding assurance. The requirements in paragraph (f)(1) of § 52.103(a), which are applicable to the combined license holder after the Commission has made the finding under § 52.103, are adopted in the final rule without change from the proposed rule.

The § 50.75 decommissioning funding requirements do not apply to an applicant for, and holder of, a manufacturing license under part 52. The NRC did not intend, when it first adopted § 50.75, to subject holders of manufacturing licenses to the requirements of that section. It is clear from the words of former § 50.33(k)(1) that the rule applies only to applications for operating licenses for production and utilization facilities. A manufacturing license by itself does not authorize either fuel load or operation, which are the activities necessitating the expenditure of funds for decommissioning. Therefore, there is no need for a holder of a manufacturing license, who does not intend to operate the reactor being manufactured to provide funding.

7. US/IAEA Safeguards Agreement

a. Section 50.78, Installation Information and Verification

Since 1980, the U.S./International Atomic Energy Agency (IAEA) Safeguards Agreement has allowed IAEA inspection and verification activities at U.S. facilities that the IAEA selects from the U.S. Eligible Facilities List. The safeguards agreement is implemented under the Nuclear Non-Proliferation Treaty, which provides assurance that all nuclear materials declared to be in peaceful use are not diverted to potential use in nuclear explosives. Although 10 CFR part 75 contains most of the NRC requirements intended to implement the installation, inspection, and verification provisions of the Safeguards Agreement with IAEA, § 50.78 requires each holder of a construction permit to submit certain information on Form N–71, permit verification by representatives of the IAEA, and take any other action necessary to implement the Safeguards Agreement. Inasmuch as combined licenses authorize construction of a nuclear power plant at a fixed site, the provisions of § 50.78 should also apply to a holder of a combined license under part 52. Accordingly, § 50.78 is revised to specify that holders of combined licenses must, if requested by the NRC, submit installation information on Form N–71, permit verification of that information by the IAEA, and take other action as may be necessary to implement the Safeguards Agreement, in the manner set forth in § 75.6, and §§ 75.11 through 75.14.

8. Transfers of Licenses—Creditors' Rights—Surrender of Licenses

a. Section 50.80, Transfer of Licenses

Section 50.80 implements Sections 101 and 184 of the AEA, which require Commission approval for the transfer of a license for a production or utilization facility, including a nuclear power reactor. Section 50.80(a) explicitly refers to transfers of a "license for a production or utilization facility * * *," which would include construction permits under part 50, as well as all licenses and permits issued under part 52. However, to explicitly recognize the applicability of § 50.80(a) to both permits under parts 50 and 52 and all licenses under part 52, § 50.80(a) is revised to explicitly refer to permits under parts 50 and 52, and licenses under part 52. The proposed rule would have only made these clarifying revisions. A commenter on the proposed rule stated that some of the requirements in § 50.80 are not relevant to transfers of an ESP. The NRC agrees, and has revised the final rule to specify which criteria are applicable to transfer of an ESP. Specifically, paragraph (b)(1)(ii) requires an application for transfer of an ESP to include as much of the information described in §§ 52.16 and 52.17 with respect to the identity and technical qualifications of the proposed transferee as would be required by those sections if the application were for an initial license. This change removes the requirement for the applicant for transfer of an ESP to address financial qualifications since this is not required of an initial ESP applicant. In addition, this change removes the provision that the NRC may require additional information as part of an ESP transfer with respect to data on proposed safeguards against hazards from radioactive materials and the applicant's qualifications to protect against such hazards. Information on these subject matters is not relevant to an ESP transfer, inasmuch as an ESP does not authorize the holder to possess radioactive material.

The NRC declines to adopt the suggestion of a commenter who suggested that the statement of considerations clarify when a transfer of an ESP is necessary. The NRC's revision to § 50.80 is a conforming change to a procedural regulation, the process by which the NRC processes and determines a transfer of a license. Section 50.80 does not, by itself, specify the circumstances for which a license transfer is necessary; it simply addresses what procedures must be followed if a license transfer request is received. Therefore, the NRC does not believe that it is necessary or desirable to provide such guidance in the context of this rulemaking.

b. Section 50.81, Creditor Regulations

Section 50.81 implements Section 184 of the AEA, which requires the consent of the Commission for the creation of any mortgage, pledge or other lien upon any Commission-licensed facility or special nuclear material. To ensure that the reach of § 50.81 is as broad as the statutory requirement, the NRC is revising the definition of *license* and *facility*. The definition of *license* in this section is revised to explicitly refer to all licenses under 10 CFR, and early site permits under part 52. The definition of *facility* is revised to add a new paragraph which explicitly refers to an early site permit under part 52, and a reactor manufactured under a manufacturing license under part 52.

9. Amendment of License or Construction Permit at Request of Holder

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 is making 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 amended in § 50.2 includes combined licenses, manufacturing licenses, and early site permits under part 52, § 50.92 is 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 is revising § 50.92(c) to clarify that, consistent with Section 189 of the AEA, the NRC may make a no significant hazards consideration determination for amendments of combined 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 significant hazards consideration. In addition, a combined license merges into a single license the authority otherwise contained in a construction permit and an operating license, and the language of Section 189.a.(1)(A) of the AEA which refers to both amendments of construction permits and operating licenses, also applies to amendments of combined licenses.

Finally, § 50.92(a) is revised to provide that a separate application for a construction permit is not required even where a holder of a combined license or a manufacturing license must seek a license amendment because of a material alteration. There is no safety or regulatory benefit in requiring the licensee to concurrently submit an application for a new construction permit in addition to a license amendment, inasmuch as NRC review of the alteration is assured.

10. Revocation, Suspension, Modification, Amendment of Licenses and Construction Permits, Emergency Operations by the Commission

a. Section 50.100, Revocation, Suspension, Modification of Licenses, Permits, and Approvals for Cause

Section 50.100 is revised to explicitly address the Commission's authority to suspend, modify, or revoke any standard design approval under subpart E of parts 50 or 52 for any material false statement in the application, or because of any statement in any report, record, inspection, or condition revealed by the application, or by other means, which would warrant the NRC to refuse to grant the design approval on an original application. The former language of § 50.100, which is retained as paragraph (a) in the final rule, applied to any license or any license or construction permit issued under part 50 for any material false statement in the application for the license or permit, or because of any statement in any report, record, inspection, or condition revealed by the application, or by other means, which would warrant the NRC to refuse to grant a license on an original application, or for failure to construct or operate a facility in accordance with the applicable license or permit. While this language applies to early site permits, combined licenses and manufacturing licenses, by virtue of their status as licenses under the AEA, it does not clearly apply to standard design approvals as these are not licenses. Nonetheless, the Commission possesses authority to modify, suspend or revoke the regulatory approvals. Accordingly, the NRC is revising this section to add a reference to a standard design approval.

The final rule is different than the proposed rule in several ways. A reference to part 50 is added in the clause governing revocations, suspensions, and modifications of licenses. The word, "provided * * *," is revised to read "provided, however,* * *." Finally, a reference to a combined license is added to the clause stating that a failure to meet the timely completion of proposed construction or alteration is subject to § 50.55(b) (which is also revised in this final rulemaking to make its provisions applicable to combined licenses).

11. Backfitting

a. Section 50.109, Backfitting

The backfit rule, 10 CFR 50.109, provides certain protection to nuclear power plant licensees against changes in the NRC requirements and NRC staff positions on those requirements. Prior to the final rule, the backfitting provisions in § 50.109 applied to standard design approvals, construction permits, and operating licenses, but did not address combined licenses or manufacturing licenses. Part 52 contains special backfitting requirements on early site permits, design certification rules, but prior to this rulemaking, neither § 50.109 or part 52 addressed backfitting of a combined license, although the NRC recognizes that backfitting restraints for an early site permit and a design certification rule would apply to a combined license referencing either or both. To address these gaps in backfitting, and to clarify the application of special backfitting provisions, § 50.109(a)(1) is revised by establishing the date that backfitting protection begins for a manufacturing license, a construction permit for a duplicate design license, and a combined license. Moreover, with respect to a part 50 construction permit, a part 50 operating license, and a part 52 combined license, § 50.109 is revised by listing the specific backfitting restrictions that apply if an early site permit, standard design approval, or standard design certification rule is referenced, or if a nuclear power reactor manufactured under a part 52 manufacturing license is used.

In the statement of considerations for the 2006 proposed rule, the Commission asked whether, instead of conforming the language of § 50.109 to reflect the licensing and regulatory approval processes in part 52, the Commission should adopt a general backfitting provision, analogous to § 50.109, in part 52. Commenters either expressed no opinion on the matter, or otherwise indicated that they did not have a preference. Accordingly, the Commission has decided to revise § 50.109 to include the conforming changes, rather than adopting a backfitting provision in part 52.

12. Enforcement

a. Section 50.120, Training and Qualification of Nuclear Power Plant Personnel

This section sets forth the requirements for training and qualifying nuclear power plant personnel. In a conforming change, the NRC is revising § 50.120 to add applicants for and holders of combined licenses as being subject to this provision.

13. Appendices

a. Appendix A to Part 50—General Design Criteria for Nuclear Power Plants

The first paragraph of the Introduction to appendix A to part 50 is revised to clarify that the general design criteria in appendix A to part 50 apply to applications for combined licenses, design approvals, design certification, and manufacturing licenses, as well as for construction permits. Also, General Design Criterion (GDC) 19 of appendix A to part 50, which sets forth requirements for a main control room in a nuclear power plant, is revised to clarify that the radiation protection requirements in GDC 19 for applications filed after January 10, 1997, apply to design approvals and manufacturing licenses issued under part 52, in addition to design certifications and combined licenses.

b. Appendix B to Part 50—Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants

Appendix B to part 50 states that every applicant for a construction permit is required to include in its preliminary safety analysis report a description of the quality assurance program to be applied to the design, fabrication, construction, and testing of the SSCs of the facility and every applicant for an operating license is required to include, in its FSAR, information pertaining to the managerial and administrative controls to be used to assure safe operation. The NRC is revising appendix B to part 50 to clarify that these requirements also apply to early site permits, design approvals, design certifications, combined licenses, and manufacturing licenses under 10 CFR part 52. Specifically, the introduction to appendix B to part 50 is revised to state that every applicant for a combined license is required by the provisions of § 52.79 to include in its FSAR a description of the quality assurance program applied to the design, and to be applied to the fabrication, construction, and testing of the SSCs of the facility and to the managerial and administrative controls to be used to assure safe operation. The introduction also states that, for applications submitted after the effective date of the final rule, every applicant for an early site permit is required by the provisions of § 52.17 to include in its site safety analysis report a description of the quality assurance program applied to site activities related to the design, fabrication, construction, and testing of the SSCs of a facility or facilities that may be constructed on the site. The introduction states that every applicant for a design approval or design certification is required by the provisions of §§ 52.137 and 52.47, respectively, to include in its FSAR a description of the quality assurance program applied to the design of the SSCs of the facility. Finally, the introduction states that every applicant for a manufacturing license is required by the provisions of 10 CFR 52.157 to include in its FSAR a description of the quality assurance program applied to the design, and to be applied to the manufacture of, the SSCs of the reactor. The wording in appendix B of part 50 and in the related provisions in the contents of application sections in 10 CFR part 52 is modified slightly in the final rule to reflect that some activities have already occurred when the application is submitted (e.g., design of SSCs for design certification applicants). Therefore, instead of requiring that the application describe the QA program "to be applied" to these activities, the final rule requires that the application describe the QA program "applied" to these activities, since they have already occurred.

The NRC is maintaining the current regulatory structure for requirements that implement appendix B to part 50 whereby QA for construction activities is governed by § 50.55(f), and QA for operation is governed by § 50.54(a). Because a combined license under part 52 authorizes both construction and operation, a combined license holder should be subject to the QA requirements in § 50.55(f) from the date of issuance of the combined license until the Commission makes the finding under § 52.103(g) that allows the licensee to load fuel and operate. Thereafter, the combined license holder should be governed by the QA requirements in § 50.54(a). The manufacture of a nuclear power reactor under a manufacturing license is the functional equivalent of construction. Accordingly, the NRC is revising § 50.55(f) to refer to holders of manufacturing licenses under part 52. Early site permits under subpart A precede construction and are considered partial construction permits. Hence the NRC believes that they should be subject to QA under § 50.55(f), and § 50.55(f) is revised accordingly.

Appendix B to part 50 was formerly applicable to combined licenses under the provisions of § 52.83, which states that all provisions of 10 CFR part 50 and its appendices applicable to holders of operating licenses also apply to holders of combined licenses. Appendix B to part 50 formerly applied to design certifications by virtue of the provision in former § 52.48, which stated that design certification applications will be reviewed for compliance with the standards set out in 10 CFR part 50 as they apply to applications for construction permits and operating licenses for nuclear power plants, and as those standards are technically relevant to the design proposed for the facility. Former appendix O to part 52, Section O.3, required applicants for design approvals to include the information required by §§ 50.34(a) and (b), as appropriate, and stated that the information required by § 50.34(a)(7) (a description of the quality assurance program and a discussion of how the applicable requirements of appendix B to part 50 will be satisfied), shall be limited to the QA program to be applied to the design, procurement and fabrication of the SSCs for which design review has been requested. Appendix B to part 50 formerly applied to manufacturing licenses by virtue of the provision in former appendix M to part 52, Section M.1, which stated 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.

Early site permits are considered partial construction permits, therefore, the NRC believes that they should be subject to the QA requirements of appendix B to part 50. Section 52.39, with certain specific exceptions, requires the Commission to treat matters resolved in an early site permit proceeding as resolved in making findings for issuance of a construction permit, operating license, or combined license. Because of this finality, conclusions made during the early site permit phase will be relied upon for use in subsequent design, construction, fabrication, and operation of a reactor that might be constructed on the site for which an early site permit is issued. Therefore, the NRC believes that the level of quality used to control activities related to safety-related SSCs should be equivalent in the early site permit and combined license phases. For these reasons, applicants must apply quality

controls to each early site permit activity associated with the generation of design information for safety-related SSCs that meet the criteria in appendix B to part 50. Therefore, the NRC is revising appendix B to part 50 to make it applicable to early site permits.

c. Appendix C to Part 50—A Guide for the Financial Data and Related Information Required To Establish Financial Qualifications for Construction Permits and Combined Licenses

Section 182.a of the AEA requires an applicant for a license for a production or utilization facility to submit information in its application * * * "as the Commission, regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant * * * as the Commission may deem appropriate for the license." The NRC has long determined the need for non-utility applicants for nuclear power plant construction permits and operating licenses to establish their financial qualifications (see 10 CFR 50.33(f)), and has set forth the specific information on financial qualifications to be provided by applicants for construction permits in appendix C to part 50. Inasmuch as holders of combined licenses under part 52 are authorized to perform the same construction activities with respect to a nuclear power plant as a holder of a construction permit under part 50, the NRC believes that applicants for combined licenses should be subject to the requirements of appendix C to part 50. Accordingly, the title of appendix C is revised to make clear the applicability of this appendix to applicants for combined licenses. This change constitutes a conforming change to the revision of § 50.33.

With the exception of manufacturing licenses, none of the other regulatory processes under part 52, e.g., early site permits, standard design certifications, and standard design approvals, authorize any activities constituting "construction" under the AEA and the Commission's regulations.[7] Therefore, the final rule does not refer to early site permits, design certifications, or design approvals under part 52. With respect to a reactor manufacturing license, the NRC does not believe that a financial qualifications review is necessary for several reasons. A financial qualifications review at the manufacturing license stage would appear to be redundant to the financial qualifications review that is already necessary at the construction permit and operating license stages, or combined license stage. Sufficient safety and quality assurance reviews, including the use of ITAAC in the case of a combined license, should be sufficient to address any adverse impacts on safety as the result of inadequate financial resources to properly manufacture the reactor. Furthermore, the NRC notes that manufacture of a reactor is, in many respects, no different than fabrication of components and systems by third party vendors, who are not required to obtain an NRC license and demonstrate financial qualifications. There seems to be no regulatory value to mandate a financial qualifications review of manufacturing license applicants, when this type of review is not conducted by the NRC for fabricators of nuclear power plant systems and components.

d. Appendix E to Part 50—Emergency Planning and Preparedness for Production and Utilization Facilities

See discussion in Section V.D.4.f of this document.

e. Appendix I to Part 50—Numerical Guides for Design Objectives and Limiting Conditions for Operation To Meet the Criterion "as Low as is Reasonably Achievable" for Radioactive Material in Light-Water-Cooled Nuclear Power Reactor Effluents

The Commission is revising appendix I to part 50 to conform to the changes in §§ 50.34a and 50.36a which are being made as part of this final rule. Specifically, a statement is added in Section I of appendix I to part 50, stating that §§ 52.47, 52.79, 52.137, and 52.157 provide that applications for design certification, combined license, design approval, or manufacturing license, respectively, shall include a description of the equipment and procedures for the control of gaseous and liquid effluents and for the maintenance and use of equipment installed in radioactive waste systems. In addition, Section II of appendix I to part 50 is revised to state that the guides on design objectives set forth in appendix I to part 50 may be used by an applicant for a combined license as guidance in meeting the requirements of § 50.34a(d) or by an applicant for a design approval, a design certification, or a manufacturing license as guidance in meeting the requirements of § 50.34a(e). Section IV of appendix I to part 50 is revised to state that the guides on limiting conditions for operation for light-water-cooled nuclear power reactors in appendix I to part 50 may be used by an applicant for an operating license or a design certification or combined license, or a licensee who has submitted a certification of permanent cessation of operations under § 50.82(a)(1) or § 52.110 as guidance in developing technical specifications under § 50.36a(a) to keep levels of radioactive materials in effluents to unrestricted areas as low as is reasonably achievable. Finally, Section V of appendix I to part 50 is revised to state that the guides for limiting conditions for operation set forth in appendix I are applicable to any application filed on or after January 2, 1971, for a construction permit for a light-water-cooled nuclear power reactor, or a design certification, a combined license, or a manufacturing license for a light-water-cooled nuclear power reactor under part 52. Note that the NRC added the phrase "for a light-water-cooled nuclear power reactor" to Section V in the final rule. This phrase was inadvertently left out of the introduction to Section V in the proposed rule. The NRC did not intend to change the applicability of appendix I in this rulemaking and is, therefore, correcting this omission in the final rule. The NRC has also removed the conforming change it had proposed to paragraph A.3 of the Concluding Statement of Position of the Regulatory Staff (Docket–RM–50–2) Guides on Design Objectives for Light-Water-Cooled Nuclear Power Reactors in appendix I. The design objectives in this staff position are only applicable to those light-water-cooled nuclear power reactors that applied for a construction permit before January 2, 1971 (per Appendix I, Section V, B.2.). Because part 52 did not exist before 1971, the proposed change is unnecessary.

f. Appendix J to Part 50—Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors

Section 50.54(o) provides a condition for all operating licenses for water-cooled power reactors that primary reactor containments must meet the containment leakage test requirements set forth in appendix J to part 50. These test requirements provide for preoperational and periodic verification by test of the leak-tight integrity of the primary reactor containment, and systems and components which penetrate containment of water-cooled power reactors, and establish the acceptance criteria for these tests. The purpose of the tests are to assure that leakage through the primary reactor containment systems and components penetrating primary containment shall not exceed allowable leakage rate values

[7] Although early site permit applicants may seek the authority to conduct activities allowed under 10 CFR 50.10(e)(1) (but not activities allowed under § 50.10(e)(3), see § 52.17(c)), these activities are not considered "construction."

as specified in the technical specifications or associated bases, and periodic surveillance of reactor containment penetrations and isolation valves is performed so that proper maintenance and repairs are made during the service life of the containment, and systems and components penetrating primary containment. The Commission is revising appendix J to clarify that these requirements also apply to combined licenses under 10 CFR part 52. This is consistent with former § 52.83, which stated that all provisions of 10 CFR part 50 and its appendices applicable to holders of operating licenses also apply to holders of combined licenses.

g. Appendices M and O to Part 50 [Removed]

The NRC has removed appendices M and O from 10 CFR part 50. Appendix M provided for issuance of a license authorizing the manufacture of a nuclear power reactor to be incorporated into a nuclear power plant under a construction permit and operated under an operating license at a different location from the place of manufacture. Appendix O addressed the approval of standard designs for nuclear power reactors. These appendices were transferred to 10 CFR part 52 when it was first issued (54 FR 15372; April 18, 1989). However, the NRC failed to remove those appendices from 10 CFR part 50, though the NRC intended to do so (see 54 FR 15385; April 18, 1989).

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

Appendix S to part 50 provides earthquake engineering criteria for nuclear power plants and applies to applicants for a design certification or combined license under part 52 or a construction permit or operating license under part 50. The final rule revises appendix S to clarify that the requirements in appendix S also apply to applicants for design approvals and manufacturing licenses issued under 10 CFR part 52. Although former appendix O to part 52 did not explicitly require applicants for design approvals to comply with the requirements of appendix S, the NRC is requiring design approval holders to comply with appendix S to part 50 because the NRC believes that the requirements for a design approval should be the same as the requirements for a design certification, given that the reviews performed by the NRC staff for the two products are essentially identical. Finally, appendix S formerly applied to manufacturing licenses by virtue of former appendix M to part 52, Section M.1, which stated 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 Commission is revising the General Information section of appendix S to part 50 to state that the appendix applies to applicants for a design certification, design approval, combined license, or manufacturing license under 10 CFR part 52 or a construction permit or operating license under 10 CFR part 50. The NRC also made conforming changes to the Introduction, paragraph (a) to appendix S to part 50, and added definitions for *design approval* and *manufacturing license* to Section III of appendix S to part 50, to be consistent with the definitions in proposed part 52.

E. Change to 10 CFR Part 1

1. Section 1.43, Office of Nuclear Reactor Regulation

Section 1.43 describes the responsibilities of the Office of Nuclear Reactor Regulation (NRR), which includes the development and implementation of regulations, policies, programs and procedures for the receipt, possession or ownership of source, byproduct and special nuclear material that is used or produced at nuclear power plants. Inasmuch as power plants may be licensed under part 52 as well as part 50, § 1.43(a)(2) is revised to clarify that NRR has authority over the development and implementation of regulations, policies, programs and procedures for the receipt, possession or ownership of source, byproduct and special nuclear material that is used or produced at nuclear power plants licensed under part 52. In addition, a correction has been made to reference part 54, to clarify that NRR has the same authority with respect to renewed operating licenses for nuclear power plants.

F. Changes to 10 CFR Part 2

1. Section 2.1, Scope

The statement of scope for part 2 is revised by adding a reference to rulemaking and standard design approvals. Previously, the scope statement did not mention rulemakings, even though subpart H of part 2 applied to rulemakings, nor did it mention standard design approvals even though the NRC processed applications for design approvals in accordance with the procedures in part 2. Accordingly, the change in the statement of scope for part 2 correctly reflects the applicability of its procedures to both rulemaking and the processing of standard design approvals.

2. Section 2.4, Definitions

The definitions of *contested proceeding, license,* and *licensee,* are revised in part 2 by adding conforming references, as appropriate, to the licensing processes in part 52. The revised definition of *contested proceeding* clarifies that contested proceedings include those involving permits, such as early site permits and construction permits. The revised definition of *license,* ensures 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 revised definition of *licensee* ensures 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 Subpart

This section is 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, which governs the procedures for, and the timing and content of applications, has been revised in several respects. Paragraphs (a)(1), (a)(2), the introductory paragraph of (a)(3), paragraph (a)(3)(iii), and paragraph (a)(4) are 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 licenses. Nonetheless, consistent with the revisions to the definitions of *license* and *licensee,* § 2.101 has been revised to explicitly refer to early site permits, as applicable.

In response to public comment on the proposed rule, paragraph (a)(5) of § 2.101 and paragraph (a–1) are revised to allow applicants for combined licenses—as well as applicants for construction permits as provided under this section—to submit applications in parts. Paragraph (a)(5) of the final rule allow applicants for combined licenses and construction permits to submit an application in two parts, with one part containing the environmental report required under § 50.30(f) if the application is for a construction permit or § 52.80(b) if the application is for a combined license. The other part must

contain the information required by §§ 50.34(a) and 50.34a if the application is for a construction permit, or § 52.79 and § 52.80(a) if the application is for a combined license. In addition, the part that is filed first must contain the information required by § 50.33, § 50.34(a)(1) if the application is for a construction permit, § 52.79(a)(1) if the application is for a combined license, and § 50.37. There are no considerations unique to combined licenses which would weigh against allowing a combined license applicant to submit a two part application under paragraph (a)(5) of § 2.101. Accordingly, the Commission is adopting this change in the final rulemaking. Inasmuch as the revisions are to the Commission's rules of procedure and practice, the Commission may adopt them in final form without further notice and comment, under the rulemaking provisions of the APA, 5 U.S.C. 553(b)(A).

Paragraph (a–1) of § 2.101 allows applicants for combined licenses, as well as applicants for construction permits, to submit an application in parts to allow for early consideration and a presiding officer's partial initial decision on those site suitability matters for which the applicant seeks NRC resolution. The provisions governing early consideration of site suitability issues in a combined license proceeding are set forth in paragraph (a–1)(2). Under this paragraph, a combined license application may be submitted in three parts, with the first part containing information on the site suitability issues which the applicant wishes to have resolved first. The second and third parts, which constitute the remainder of the application as described in paragraph (a–1)(2)(ii) and (iii), must be submitted during the period that the partial decision on part one is effective, viz., 5 years under new § 2.627 in subpart F of part 2. There are no considerations unique to combined licenses which would weigh against allowing a combined license applicant to obtain early consideration of site suitability issued under paragraph (a–1). As with the change to paragraph (a)(5), this revision to paragraph (a–1) constitutes revisions to the Commission's rules of procedure and practice. Accordingly, the Commission may adopt them in final form without further notice and comment, under the rulemaking provisions of the APA, 5 U.S.C. 553(b)(A).

5. Section 2.102, Administrative Review of Application

This section is revised by adding conforming references in § 2.102(a) to applications for early site permits, standard design approvals, combined licenses, and manufacturing licenses under part 52. Under the revised section, the NRC staff will establish a review schedule for an application for these processes, thereby treating the applications the same as applications for construction permits or operating licenses.

6. Section 2.104, Notice of Hearing

Section 2.104 sets forth the NRC's requirements regarding publication in the **Federal Register** of notice of hearings. The former rule, as well as the proposed part 52 rule, specified the nature of the issues that the presiding officer must address in both uncontested and contested proceedings. The NRC has decided, based upon its experience in noticing hearings in the last decade (in which the Commission's notices for more significant proceedings have varied from requirements in this section), as well as its consideration of the nature of mandatory hearings under Section 189 of the AEA, that much of this detailed prescription of the content of the notice of hearing should be removed from § 2.104.

Accordingly, the language of § 2.104 has been considerably truncated from the former rule. Paragraph (a) is largely the same as former paragraph (a). However, paragraph (b) has been modified to specify only the requirements of the notice of hearing which are common to all proceedings. All provisions in the former § 2.104 specifying the issues to be addressed by the presiding officer are removed in the final rule. Inasmuch as this revision is to the NRC's rules of procedure and practice, the NRC may adopt them in final form without further notice and comment, under the rulemaking provisions of the APA, 5 U.S.C. 553(b)(A).

Paragraph (c), (paragraph (m) in the proposed rule, former paragraph (e)) requires the NRC to transmit a notice of hearing on an initial application of a license for a production or utilization facility to an appropriate state official and the chief executive of the municipality or county in which the facility is to be located or an activity is to be conducted. In addition to the redesignation, paragraph (c) is revised to clarify that the notice must be provided for applications for early site permits, combined licenses, but not manufacturing licenses. Manufacturing licenses are excluded from the notification provisions because the NRC is not licensing any particular location or site where manufacturing may occur (see discussion of the manufacturing license concept).

7. Section 2.105, Notice of Proposed Action

Section 2.105 contains the NRC's procedures for notices of proposed actions where a hearing is not required by law and if the Commission has determined that a hearing is in the public interest. Inasmuch as amendments to combined licenses and manufacturing licenses do not require a mandatory hearing under the AEA, § 2.105(a)(4) is revised to clarify that the procedures in § 2.105 also apply to applications for amendments of combined licenses and manufacturing licenses. Furthermore, because the AEA does not require a mandatory hearing for the initial issuance of manufacturing licenses, paragraph (a)(13) is added in the final rule to provide for publication of a notice of proposed action in connection with an application for a manufacturing license under subpart F of part 52.

Under § 52.103(a), which implements Section 189.a(1)(B)(i) of the AEA, the NRC is required to publish in the **Federal Register** a notice of intended operation and an opportunity to request a hearing with respect to compliance of the facility with inspections, tests, and acceptance criteria in a part 52 combined license. Accordingly, the NRC is revising § 2.105 by adding § 2.105(a)(12) which addresses the information to be contained in the **Federal Register** notice required by § 52.103(a).

Because the Commission's authorization for a combined license holder to operate under § 52.103 does not constitute "issuance" of a license or amendment under § 2.106, § 2.105(b)(3) is added indicating that the Commission will publish a notice of intended operation in the **Federal Register** that identifies the proposed Agency action as making the finding under § 52.103(g). Paragraph (b)(3)(iii) of the proposed rule, which would have required that the Commission publish, as part of that **Federal Register** notice, a finding that ITAAC have been met, has not been included in the final rule. This is because Commission may not have made, at the time of the **Federal Register** notice, the finding that all ITAAC have been met. After careful review of the language of Section 189 of the AEA, the Commission concludes that the **Federal Register** notice required by Section 189.a(1)(B)(i) need not include a finding that ITAAC have been met. Accordingly, § 2.105(b)(3) of the final rule does not include a requirement for such a finding to be

included in the **Federal Register** notice of intended operation.

8. Section 2.106, Notice of Issuance

Section 2.106(a) formerly provided that the NRC will publish in the **Federal Register** a notice of issuance of a license or amendment of a license where a notice of proposed action has been previously published, and notice of amendment of a nuclear power plant license. However, that language did not require publication in the **Federal Register** that the Commission has made the finding under § 52.103(g). Although the AEA does not require publication of a notice of the Commission finding under § 52.103, the Commission believes that this publication is desirable as a matter of public transparency and consistency with past practice of the **Federal Register** publication of Commission action with similar effects (*i.e.*, the issuance of a nuclear power plant operating license). Accordingly, § 2.106(a) is revised to require **Federal Register** publication of the Commission finding under § 52.103.

Section 2.106(b)(2) is also revised to set forth the minimum requirements for the contents of a **Federal Register** notice of action, *e.g.*, the manner in which copies of the safety analyses, if any, may be obtained and examined, and a finding that the prescribed inspections, tests, and analyses have been performed and that the acceptance criteria prescribed in the combined license have been met, and that the license complies with the requirements of the AEA and the NRC's regulations. These provisions are the same as the existing requirements with respect to notices of issuance for licenses and license amendments, but adds the requirements with respect to ITAAC mandated by Section 185 of the AEA and part 52. The NRC disagrees with the contention raised by the nuclear industry that Section 185 of the AEA limits the NRC to a finding of compliance with respect to ITAAC under § 52.103(g). Nothing in the legislative history suggests that by adopting Section 185 of the AEA, Congress intended to override the NRC's long-standing practice of making findings of compliance with the Act and the Commission regulations when issuing nuclear power plant licenses.

9. Section 2.109, Effect of Timely Renewal Application

Section 2.109 is revised to add conforming references to a combined license under subpart C of part 52. The revised language clarifies that an application for a combined license filed no later than 5 years before its expiration will not be deemed to have expired until the renewal application has been finally determined.

10. Section 2.110, Filing and Administrative Action on Submittals for Standard Design Approval or Early Review of Site Suitability Issues

In a conforming change, paragraphs (a) and (b) of § 2.110 are revised to refer to subpart E of part 52 and appendix Q of part 50. Paragraph (c) is corrected by adding § 2.110(c)(2) to address the procedures applicable to administrative determinations of submittals for early review of site suitability issues; formerly, paragraph (c) only refers to standard designs.

11. Section 2.111, Prohibition of Sex Discrimination

This section prohibits sex discrimination against certain persons with respect to, inter alia, a license under the AEA. This section is revised to include standard design approvals under part 52, and petitions for rulemaking, including an application for a design certification under part 52.

12. Section 2.202, Orders

This section is revised by redesignating § 2.202(e) as § 2.202(e)(1), and adding §§ 2.202(e)(2) through (5), to indicate the backfitting provisions in part 52 applicable to the various licensing processes under part 52. No provisions were deemed necessary to address issuance of orders representing backfitting of NRC approvals such as standard design approvals.

13. Section 2.309, Hearing Requests, Petitions To Intervene, Requirements for Standing, and Contentions

Section 2.309, which establishes the NRC requirements governing requests for hearing and petitions to intervene—including submission of contentions—is revised to add three conforming and clarifying changes. First, paragraph (a) is revised, consistent with a change to § 52.103(c), to make clear that in a proceeding under § 52.103, the Commission itself will act as the presiding officer, will consider and act upon a request for a hearing under § 52.103, and will also determine whether a period of interim operation may be permitted, as provided for under Section 189.a(1)(B)(iii) of the AEA. Inasmuch as the Commission itself will make the contention admission determination, there should be no need for further Commission review of the contention admission decision at the end of the hearing.

Second, paragraph (f)(1)(i) has been revised to make clear that contentions in § 52.103(b) requests for hearing must raise issues in law or fact with respect to whether one or more of the acceptance criteria in a combined license have not been, or will not be met, and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection to public health and safety. This is consistent with the statutory limitation on the scope of a hearing in Section 189.a(1)(B)(ii) of the AEA.

Third, a new paragraph (f)(1)(vii) has been added to set forth the specific requirements for a contention under Section 189.a(1)(B)(ii) and 10 CFR 52.103(b). The new paragraph provides that, in a request for hearing under § 52.103(b), the information submitted must be sufficient and include supporting information showing, *prima facie*, that: (i) One or more of the acceptance criteria in a combined license have not been, or will not be met, and (ii) the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection to public health and safety. The revision also makes clear that the information in support of a contention that an acceptance criterion is not, or will not be met, must identify the specific portions of the § 52.99(c) report which is inaccurate, incorrect, or incomplete. The terms, "inaccurate," and "incorrect," while somewhat overlapping, are intended to cover a broad range of situations. "Inaccurate" is intended to address a situation where information contained in, referenced by, or relied upon (either explicitly or implicitly) as a supporting basis for a representation in a § 52.99(c) report, is erroneous (*e.g.*, an erroneous computation, or inaccurate data entry of a test result). By contrast, "incorrect" focuses on a situation where such information is the result of a cognitive inadequacy or failure (even if, under the circumstances, the inadequacy or failure is justifiable), poor judgement, negligence, or deliberate wrongdoing. By "incomplete," the NRC means that the report does not provide the information which must be provided in the report as required by § 52.99. Furthermore, if the requestor contends that the § 52.99(c) report is incomplete, and the requestor contends that the incomplete portion prevents the requestor from making the necessary prima facie showing, then the requestor must also, as provided by § 2.309(f)(1)(vii), explain why the deficiency (viz., the incomplete nature of the report) prevents the requestor from making the necessary prima facie

showing. The NRC believes that these changes to § 2.309 will help ensure that any 10 CFR 52.103 hearing on whether the acceptance criteria in ITAAC have been, or will be met, is focused only on the matters which Congress intended to be adjudicated at this juncture, as directed by Section 189.a.(1)(B) of the AEA.

Fourth, paragraph (g) is revised to conform with the change in: (i) 10 CFR 52.103(c), which now provides that the Commission will act as the presiding officer in determining whether to grant or deny a request for hearing with respect to whether acceptance criteria in ITAAC have been or will be met; and (ii) 10 CFR 2.310, which provides that the Commission, acting as the presiding officer, will determine the hearing procedures to be utilized in a § 52.103 hearing. Under the revised paragraph (g), a request for hearing under § 52.103 shall not address the hearing procedures to be utilized.

Fifth, paragraph (h) is revised to prohibit a reply by a requestor for a hearing under § 52.103. The NRC believes that Congress intended the Commission's initial decision to grant the hearing and the determination of interim operation to be based upon the same set of information. The Commission's view is based upon the language of Section 189.a.(1)(B)(iii), which refers to a Commission determination to allow a period of interim operation based upon the "petitioner's prima facie showing and any answers thereto. * * *" That the statute only refers to a request and the answers thereto suggests that Congress did not intend that a reply was necessary. This is understandable given Congress" explicit direction that any hearing granted be completed "to the maximum possible extent * * * within 180 days of the publication of the notice [of opportunity to request a hearing under Section 189.a(10)(B)(i)] or the anticipated date for initial loading of fuel into the reactor, whichever is later." While the relevant statutory language literally applies only to the Commission determination of interim operation, the NRC believes that as a matter of logic, Congress must have intended that it would also apply to the threshold question of granting or denying the hearing request. It is unclear why Congress would allow more information to be considered in the threshold question of the hearing request, but limit the information to be considered in the interim operation determination. The NRC concludes that it would be closer to Congress' intention to prohibit a requestor for a § 52.103 hearing from replying to any answers filed by the applicant and/or the NRC staff.

Finally, in a conforming change associated with the revision to § 52.103(c), paragraph (i) is revised to prohibit any "appeal" under § 2.311 of a Commission decision to grant or deny a request for hearing. Inasmuch as the Commission is acting as a presiding officer, there can be no further "appeal" to a higher agency decisionmaker. Moreover, an adversely affected party may seek reconsideration of the Commission's decision under § 2.345, and it would be duplicative to afford an adversely-affected party a § 2.311 "review" right in addition to the opportunity to seek reconsideration under § 2.345.

Inasmuch as these revisions are to the NRC's rules of procedure and practice, the NRC may adopt them in final form without further notice and comment, under the rulemaking provisions of the APA, 5 U.S.C. 553(b)(A).

14. Section 2.310, Selection of Hearing Procedures

Section 2.310 is revised, in part to conform with the change in 10 CFR 52.103(c), which now provides that the Commission will act as the presiding officer in determining whether to grant or deny a request for hearing with respect to whether acceptance criteria in ITAAC have been or will be met. The revised § 2.310 now provides that the Commission will determine the hearing procedures to be utilized in its determination on a hearing request under § 52.103, as well as the hearing procedures to be utilized in resolving admitted contentions under § 52.103(c) and (g).[8]

Inasmuch as this revision is to the NRC's rules of procedure and practice, the NRC may adopt it in final form without further notice and comment, under the rulemaking provisions of the APA, 5 U.S.C. 553(b)(A).

15. Section 2.340, Initial Decision in Certain Contested Proceedings; Immediate Effectiveness of Initial Decisions; Issuance of Authorizations, Permits, and Licenses

Section 2.340 addresses several different matters relating to the presiding officer's initial decision and its effect. The final rule reorganizes the paragraphs in this section in order to better distinguish among these matters, reserves paragraphs (g) and (h) for future use by the Commission, and makes substantial changes to these matters addressed in this section, as discussed below. These changes are to the NRC's rules of procedure and practice, and the NRC is adopting the changes in final form without further notice and comment, under the rulemaking provisions of the APA, 5 U.S.C. 5, 553(b)(A).

Scope of Presiding Officer's Initial Decision

Formerly, paragraph (a) limited the scope of the presiding officer's findings and conclusions of law in initial decisions in contested proceedings for production or utilization facility operating licenses to matters put into controversy by the parties. Matters not put into controversy by the parties could only be examined by the presiding officer by direction of the Commission, either on its own initiative or upon the presiding officer's referral of the matter to the Commission. In a conforming change, a new paragraph (b) is added to apply the limitation in contested hearings under § 52.103(g) with respect to whether the acceptance criteria in a combined license ITAAC have been, or will be met.

The § 2.340(a) limitation did not apply to a contested utilization facility construction permit proceeding. Although the statement of considerations for the original rulemaking adopting this limitation (in former § 2.760a) does not directly address the basis for this limitation (see January 17, 1975; 40 FR 2973), the underlying rationale may be gleaned from the Commission's order in *Consolidated Edison Co. of New York* (Indian Point Nuclear Generating Unit 3), 8 AEC 7 (1974) which engendered the rulemaking. In explaining that the Licensing Board has no obligation at the operating license stage to inquire into matters which parties have not raised and the Licensing Board itself has no reason to inquire, the Commission stated:

> To have a Licensing Board engage in an idle exercise examining issues just for the sake of examination—when the parties have not raised such matters, and the Board is satisfied that there is nothing to inquire about—would serve no useful purpose. This is particularly true since an operating license proceeding is not to be used to rehash issues already well ventilated and resolved at the construction permit stage. *Alabama Power Co.* (Joseph M. Farley Nuclear Plant, Units 1 and 2), CLI–74–12 (RAI–74–3–203).

Id. at 8. Thus, the limitation was based, in part, upon the broader scope of inquiry for the presiding officer at construction permit stage, which is a "mandatory hearing" required by

[8] The NRC notes that 10 CFR 2.309 does not apply, by its terms, to petitions to modify the terms and conditions of a combined license under 10 CFR 52.103(f). Such petitions must meet the requirements of 10 CFR 2.206.

Section 189.a(1)(A). This rationale continues to apply today, and consequently the NRC does not propose to alter the NRC's practice by extending the § 2.340(a)/§ 2.760a limitation to construction permit (including early site permit) proceedings. Nor should the § 2.340(a)/§ 2.760a limitation apply in a part 52 combined license proceeding with respect to matters that would otherwise be addressed and resolved in a construction permit issuance proceeding.

The final part 52 rule includes several changes to implement the NRC's conclusions in this regard. Section 2.340(a) is revised to provide that the presiding officer in a contested operating license proceeding shall make findings of fact and conclusions of law to, inter alia, those matters put into controversy or otherwise directed by the Commission. Paragraphs (b), (c), and (d) are revised to address the scope of the presiding officer's initial decision in a combined license proceeding (including a renewal or amendment proceeding), in a proceeding under § 52.103(g), and in a manufacturing license proceeding (including a renewal or amendment proceeding).

As discussed previously, the former § 2.340(a)/§ 2.760a limitation applied only to operating license proceedings, and did not apply to other contested proceedings which do not require a "mandatory hearing," which includes most materials licensing proceedings (with the notable exception of the licensing of a uranium enrichment facility). The statement of consideration in this document merely states that the rule codifies the Commission's Indian Point decision. (see January 17, 1975; 40 FR 2973 (first column)). Inasmuch as the Indian Point proceeding involved a utilization facility license, it is likely that the Commission simply did not consider as part of the rulemaking the possibility of applying the limitation to non-production or utilization facility proceedings, as opposed to making a deliberate decision not to apply the limitation to non-production or utilization facility proceedings. Currently, the NRC believes that with 30 additional years of hearing experience, there is no practical, compelling policy-based, or legal reason why the § 2.340(a) limitation should not be extended to non-production or utilization facility proceedings. Accordingly, the NRC is revising § 2.340 by adding a new paragraph (e), which extends the existing limitation on the presiding officer's initial decision in contested proceedings to all other proceedings not covered by paragraphs (a) or (b) of § 2.340. Although this change is not related to the part 52 rulemaking effort, the NRC is adopting this change as part of the part 52 final rule to ensure that stakeholders understand the provisions of § 2.340 as an integrated whole.

Immediate Effectiveness of Presiding Officer's Initial Decision in Production and Utilization Facility Proceedings

The remainder of former § 2.340 was an amalgam of the Commission's original rule (10 CFR 2.764 [9]) a presiding officer's initial decision in certain proceedings was immediately effective upon issuance, combined with newer provisions—first adopted in 1979 and modified in 1981—which suspended the immediate effectiveness rule. The "automatic stay" provisions were adopted following the accident at TMI–2, in order to provide for the Commission's direct involvement in the issuance of nuclear power plant licenses. The Commission first issued an *Interim Statement of Policy and Procedure* in October 1979, which first noted that the TMI–2 accident was being investigated by the NRC and may result in "significant changes in the Commission's regulatory policy and in the procedures it employs to license nuclear power facilities." The Policy Statement then indicated that "new construction permits, limited work authorizations, or operating licenses for any nuclear power plants shall be issued only after action of the Commission itself." (See October 10, 1979; 44 FR 58559.) Soon thereafter, on November 9, 1979 (44 FR 65049), the NRC issued a *Suspension of § 2.764 and Statement of Policy on the Conduct of Adjudicatory Proceedings*. As part of this final rulemaking, the NRC adopted a new appendix B to part 2 addressing the suspension of immediate effectiveness provisions in § 2.764, and providing for both Atomic Safety and Licensing Appeal Board review and Commission review of the presiding officer's initial decision.

On May 28, 1981 (46 FR 28627), the NRC issued a final rule which removed the need for the Appeal Board review of a presiding officer's initial decision, but retained a minimum 60-day period for Commission review. The final rule was almost immediately amended to exclude from Commission review presiding officer decisions authorizing fuel load and low-power testing (September 30, 1981; 46 FR 47764). In 2004, the provisions in § 2.764 were transferred without substantive change to a new § 2.340 as part of the general revision to 10 CFR part 2 (January 14, 2004; 69 FR 2182).

[9] 31 FR 12774 (September 30, 1966).

While the NRC's 1979 and 1981 rulemakings were justified in light of the circumstances at that time, other factors now lead the NRC to believe that the oversight provisions adopted in 1981 are no longer necessary or desirable. In the 25 years since the adoption of the 1981 provisions, the NRC's regulatory framework and requirements for nuclear power plants has evolved and strengthened. The NRC's technical requirements for nuclear power reactors were substantially augmented in the years immediately following the TMI accident, and thereafter have evolved to reflect lessons learned, new information, and the increasing acceptance of risk-informed methodologies. Similarly, the NRC's oversight of nuclear power plants has evolved to reflect lessons learned, new information, and the maturation of risk assessment methodologies. Thus, the NRC believes its regulations may be revised to remove the regulatory requirement for direct Commission involvement in all production and utilization licensing proceedings. The Commission's words in the May 1981 final rulemaking apply with more force today:

> This amendment does not compromise the Commission's commitment to the protection of public health and safety or to a fair hearing process. Thorough technical safety reviews of license applications by the NRC staff and the Advisory Committee on Reactor Safeguards, the availability of public hearings on license applications, and the Commission's inherent supervisory authority form the basis of the network of procedural safeguards intended to implement this commitment to a fair decision process and public health and safety. (May 28, 1981; 46 FR 28628 first column)

The NRC's commitment remains unchanged, and the NRC's safeguards have been strengthened since that time, for example, by refocusing the regulatory process to include considerations of risk. In addition, the NRC's rules of practice in part 2 provide several procedural safeguards within the NRC's administrative process, including: (1) A petition for presiding officer reconsideration under § 2.345; (2) a petition for Commission review under § 2.341; and (3) a motion for a stay with the presiding officer or the Commission under § 2.342.

By removing the "automatic stay" provisions in former § 2.340(f) and (g), the NRC's administrative process will be completed in less time, thereby benefitting all parties from the reduction in litigation resources without compromising the fairness of the overall hearing process. Faster completion of

the adjudication will also enable aggrieved parties to more quickly seek relief via an appeal to a U.S. Circuit Court of Appeals. The NRC believes that Congress intends the Commission to conduct fair, but efficient, hearings with respect to licensing, and to remove unnecessary hearing procedures which do not contribute to such a hearing process. This is evidenced by Section 189 of the AEA, as amended by the Energy Policy Act of 1992, which directs the Commission to issue, "to the maximum possible extent," a final decision on issues raised with respect to acceptance criteria by the anticipated date for initial loading of fuel. The Commission concludes that the changes to § 2.340 are consistent with applicable law, and will provide tangible benefits to all parties in NRC adjudications.

Immediate Effectiveness of Presiding Officer's Initial Decision in Other, Non-Production or Utilization Facility Proceedings

As noted previously, the 1981 final rulemaking provided for an "automatic stay" to provide for direct Commission involvement in the issuance of nuclear power plant licenses. Since that time, the NRC has extended the "automatic stay" provisions in § 2.340 to other licensing contexts, such as independent spent fuel storage facilities (ISFSIs) at sites away from nuclear power reactors, monitored retrievable storage (MRO) licenses, and provided for a parallel provision in 10 CFR part 61 for low-level waste (LLW) facilities, see 10 CFR 2.1211. The NRC did not explain the basis for requiring direct Commission involvement in the issuance of a part 61 LLW license (see 47 FR 57446; December 27, 1982), although one could surmise from the timing of the rulemaking that the factors underlying the 1981 rulemakings also were the basis for the 1982 rulemaking's provision providing for direct Commission involvement in part 61 license issuances. The NRC's original intent in requiring direct Commission involvement in the issuance of specific ISFSI licenses and a MRS license was the lack of regulatory experience (see, e.g., 60 FR 20879 and 20883; April 28, 1995), and, therefore, is somewhat different from the motivating factors for the 1981 rulemakings. In any event, the NRC now has had the benefit of experience in licensing a specific ISFSI, as well as several specific ISFSIs located at reactor sites. Thus, the NRC has come to a recognition that the safety, security and regulatory issues associated with these licenses are of less complexity than those associated with nuclear power plants, and that the NRC has greater time to respond to potentially adverse situations. Compare 46 FR 47764, 47765 (issuance of licenses for activities involving minimal risk to public health and safety, and greater time to take corrective action, do not require Commission involvement). Furthermore, the Commission possesses general supervisory authority over the NRC staff and may direct the staff to keep the Commission appraised of licensing status and issues for such licenses. Accordingly, the NRC concludes that there is little regulatory benefit to be provided by a rule requiring direct Commission involvement in the issuance of these licenses and that the provisions in § 2.340 providing for such involvement should also be removed as part of this streamlining of the regulatory process.

Issuances of Authorizations, Permits, Licenses, and § 52.103(g) Findings

Former paragraph (c) of § 2.340 provided that the appropriate staff Office Director was authorized to issue certain delineated licenses, including license amendments, construction permits, and construction authorizations, within 10 days from the date of issuance of an initial decision. The former language could be erroneously read as requiring the Director to issue a license following an initial decision on a contested matter, even if other issues not contested had yet to be resolved by the NRC staff. In addition, paragraph (c) did not address the issuance of a finding under § 52.103(g). To resolve these concerns, new paragraphs (i), (j), and (k) are added to § 2.340. In general, each paragraph authorizes the appropriate staff Office Director to issue the delineated license, permit, authorization or finding within 10 days from the issuance of an initial decision, if all other safety and environmental findings necessary for issuance of the license, permit, authorization or finding have been made, notwithstanding the pendency of various petitions or motions for reconsideration, review or stay before the presiding officer or the Commission.

Paragraph (i) authorizes the Director of Nuclear Reactor Regulation (NRR) or the Director of the Office of New Reactors (NRO), as appropriate, to issue nuclear power plant licenses, including amendments, permits and authorizations, within 10 days of the initial decision. Paragraph (j) authorizes the Commission or the appropriate staff Office Director to make the finding under 10 CFR 52.103(g) that the acceptance criteria in a combined license have been met. Finally, paragraph (k) addresses the issuance of other licenses that are issued by the Director of Nuclear Material Safety and Safeguards (NMSS). Typical licenses of this type would be materials licenses for, *inter alia,* medical uses, well logging, radiography, irradiators, and research.

16. Section 2.341, Review of Decisions and Actions of a Presiding Officer

This section addresses requests for review and appeals to the Commission from a presiding officer's decision or actions in a hearing. In a conforming change associated with the revision to § 52.103(c), paragraph (a)(1) of § 2.341 is revised to explicitly prohibit a party from seeking a "review" or an "appeal" of the Commission's determination to allow a period of interim operation under § 52.103(c), separate from and in addition to a request for reconsideration under § 2.345. Inasmuch as the Commission is acting as the presiding officer in the § 52.103(c) determination, there can be no further "appeal" to a higher agency decisionmaker. Moreover, it would be duplicative to afford a § 2.341 "review" or "appeal" right in addition to the opportunity to seek reconsideration under § 2.345.

Inasmuch as this revision is to the NRC's rules of procedure and practice, the NRC may adopt it in final form without further notice and comment, under the rulemaking provisions of the APA, 5 U.S.C. 553(b)(A).

17. Section 2.347, Ex Parte Communications

Section 2.347, which sets forth the NRC's requirements governing *ex parte* communications with the Commission and its adjudicatory employees, is revised in this final rule to address several problems with the current rule.

First, § 2.347 is revised to make clear that *ex parte* communication restrictions are not applicable in uncontested proceedings. The APA requirements in 5 U.S.C. 557(d)(1) governing *ex parte* communications apply only to communications "relevant to the merits of the proceeding * * *," which are made to and from "interested persons outside the agency." In an uncontested proceeding, there are no "interested persons outside the agency," in the sense that there are no persons for which a hearing has been requested or intervention in a hearing has been granted. Hence, *ex parte* communication restrictions do not apply. Moreover, as the NRC has stated in the 2004 rulemaking revising 10 CFR part 2, Section 189 of the AEA does not require NRC hearings under that section to be "on the record." See 69 FR 2183–2185, 2192–2193 (January 14, 2004).

Accordingly, § 2.347 is revised to explicitly provide that *ex parte* restrictions do not apply to uncontested proceedings.

Second, § 2.347 is revised to exclude undisputed (i.e., uncontested) issues in contested proceedings from the application of *ex parte* restrictions. It makes little sense to require the Commission to inform parties to the proceeding of the Commission's communications with the applicant or licensee on matters for which those parties have not been admitted (and may have no interest in litigating). In addition, the NRC believes that uncontested matters are not, for purposes of applying the *ex parte* limitations in Section 557(d)(1) of the APA, either "a fact in issue" or a matter which is "relevant to the merits of the [contested] proceeding." The NRC also believes, as stated above, that the *ex parte* limitations in Section 557(d) of the APA do not apply to NRC proceedings, and therefore the application of *ex parte* restrictions in NRC proceedings is a matter of discretion on the part of the NRC. The NRC believes that it is appropriate to exclude undisputed issues from the application of *ex parte* limitations in contested proceedings, inasmuch as there appears to be little, if any, public confidence benefit from extending *ex parte* limitations to "undisputed issues," i.e., matters which have not been raised by any party in the proceeding.

Finally, § 2.347 is also revised to make clear that *ex parte* restrictions apply to matters which are the subject of a presiding officer referral to the Commission under § 2.340(a), and the presiding officer's examination of that matter following Commission approval under § 2.340(a) (referred to as "*sua sponte*" issues at 53 FR 10361; March 31, 1988). The application of *ex parte* restrictions to § 2.340(a) "*sua sponte*" matters does not represent a change in NRC practice, cf., 53 FR 10360, 10361 (first and second column) (March 31, 1988). Nonetheless, upon further reflection the NRC believes it is inaccurate to treat § 2.340(a) "*sua sponte*" matters as a "disputed issue" for purposes of applying § 2.347. Accordingly, the NRC is revising § 2.347 to explicitly state that consideration of § 2.340(a) "*sua sponte*" matters are to be subject to *ex parte* restrictions.

Inasmuch as these § 2.347 revisions are to the NRC's rules of procedure and practice, the NRC may adopt them in final form without further notice and comment under the rulemaking provisions of the APA, 5 U.S.C. 553(b)(A).

18. Section 2.348, Separation of Functions

This section sets forth the NRC's requirements governing separation of functions of the Commission and its adjudicatory employees when acting in their adjudicatory capacity. The rule prohibits an NRC officer or employee engaged in the performance of investigative or litigation function in that proceeding from participating in or advising the Commission and its adjudicatory employees about "any disputed issue in that proceeding * * *," with certain delineated exceptions (10 CFR 2.348(a)).

The NRC believes that there are two problems with the current language. First, the rule does not explicitly state that in an uncontested proceeding, separation of functions does not apply. More importantly, the rule applies separation of functions in circumstances where it is not required by Section 554(d), viz., determinations involving initial licenses (5 U.S.C. 554(d)(2)(A) of the APA). The NRC recognizes that public confidence considerations may favor compliance with separation of functions restrictions in contested initial licensing proceedings. However, there is little apparent value in applying separation of functions to the NRC's resolution of uncontested (i.e., "undisputed") issues in contested proceedings. The NRC also notes that (as in the case of the APA restrictions on *ex parte* communications) the APA separation of functions requirements apply only to adjudications which are required to be "on the record." As discussed above, NRC licensing proceedings are not required by the AEA or any other statute to be on the record. Thus, there is no legal requirement to apply separation of functions in initial licensing proceedings. Although the NRC could voluntarily, as a matter of discretion, apply separation of functions in circumstances where it is not required by law, such a course of action seems unjustified in view of the lack of a clear public confidence benefit—which is the primary objective of separation of functions restrictions. For these reasons, the final part 52 rule revises § 2.348 to make explicit that separation of functions requirements do not apply to either uncontested proceedings, or to an undisputed issue in contested initial licensing proceedings.

Section 2.348 is also revised to make clear that separation of functions applies to matters which are the subject of a presiding officer referral to the Commission under § 2.340(a), and the presiding officer's examination of that matter following Commission approval under § 2.340(a). As with the change in § 2.347 with respect to *ex parte* restrictions, this change in § 2.348 does not depart from the NRC's current practice of applying separation of function restrictions to "*sua sponte*" matters under § 2.340(a). The NRC believes that it is more accurate to explicitly state that *sua sponte* matters under § 2.340(a) are subject to separation of functions restrictions, rather than characterizing such matters as "disputed issues."

Inasmuch as these § 2.348 revisions are to the NRC's rules of procedure and practice, the NRC may adopt them in final form without further notice and comment under the rulemaking provisions of the APA, 5 U.S.C. 553(b)(A).

19. Section 2.390, Public Inspections, Exemptions, Requests for Withholding

Section 2.390 governs the availability of NRC records and documents regarding a license, permit or order, and implements the Freedom of Information Act (FOIA). This section is revised to make clear that its provisions also applies to NRC records and documents regarding standard design approvals under part 52.

20. Subpart D—Additional Procedures Applicable to Proceedings for the Issuance of Licenses To Construct and/or Operate for Nuclear Power Plants of Identical Design at Multiple Sites

Formerly, subpart D of part 2 set forth the Commission's administrative and hearing procedures for proceedings for issuance of construction permits and operating licenses under part 52 for nuclear power plants of "duplicate" design at multiple sites. The requirements governing the content of such applications and the technical consideration of such applications are set forth in 10 CFR part 50, appendix N, which was "transferred" to part 52 as part of the 1989 part 52 rulemaking. However, the 1989 rulemaking did not remove appendix N from part 50, nor did the NRC make conforming changes to appendix N in part 52 to make its provisions applicable to combined licenses under subpart C of part 52. As discussed elsewhere, in the March 2006 proposed rule the NRC proposed deleting appendix N in part 52, and retaining these provisions in part 50. Although no comment was received on this proposal, the NRC has decided to withdraw its proposal to delete appendix N in part 52. Instead, the NRC is revising appendix N in part 52 to apply only to proceedings for combined licenses under subpart C of part 52

(appendix N in part 50 will continue to address proceedings for construction permits and operating licenses under that part).

To reflect the expanded scope of appendix N of part 52 and to ensure that all of the NRC's regulations use consistent terminology, the NRC is revising subpart D of part 2 as part of this final rulemaking. Inasmuch as the changes to the provisions in subpart D constitute revisions to the NRC's rules of procedure and practice, the NRC may adopt them in final form without further notice and comment, under the rulemaking provisions of the APA, 5 U.S.C. 553(b)(A).

21. Section 2.400, Scope of Subpart

This section is revised to refer to both appendix N of both part 50 and part 52, in order to reflect the Commission's determination that the appendix should be retained in both parts, and that the procedures in the appendices (both of which refer to this subpart) should apply to applications for construction permits, operating reactors, and combined licenses of identical design. In addition, § 2.400 is revised to use the term "identical design," instead of the former "essentially the same design," so that subpart D and appendix N of part 50 and part 52 use identical terminology.

22. Section 2.401, Notice of Hearing on Construction Permit or Combined License Applications Pursuant to Appendix N of 10 CFR Parts 50 or 52

Paragraph (a) of § 2.401 is revised to indicate that notices of hearing will be published for both construction permits under part 50 and combined licenses under part 52. Notices of the issuance of operating licenses is addressed, as was the case under the former provisions of subpart D, in § 2.403. No other substantive changes are intended by this revision. Paragraph (b) remains unchanged.

23. Section 2.402, Separate Hearings on Separate Issues; Consolidation of Proceedings

Both paragraphs of this section are revised to refer to applications under part 50 and part 52. No other substantive changes are intended by this revision.

24. Section 2.403, Notice of Proposed Action on Applications for Operating Licenses Pursuant to Appendix N of 10 CFR Part 50

This section is revised to refer to operating licenses issued under part 50, rather than part 52. This reflects the Commission's determination that appendix N of part 50 applies to construction permits and operating licenses, whereas appendix N of part 52 applies to combined licenses under subpart C of part 52.

25. Section 2.404, Hearings on Applications for Operating Licenses Pursuant to Appendix N of 10 CFR Part 50

This section is revised to make clarifying changes by adding references to a presiding officer, correctly referring to the Chief Administrative Judge, and removing a reference to the atomic safety and licensing board. No substantive changes are intended by this revision.

26. Section 2.405, Initial Decisions in Consolidated Hearings

This section is revised by requiring the presiding officer to issue a separate partial initial decision on the common design. Section 2.405 is also revised by clarifying that the presiding officer may, if otherwise determined under the consolidation provisions of § 2.317(b), issue a consolidated decision for those proceedings. No other substantive changes are intended by this revision.

27. Section 2.406, Finality of Decisions on Separate Issues

This section is revised to refer to both appendix N of both part 50 and part 52. No other substantive changes are intended by this revision.

28. Section 2.407, Applicability of Other Sections

This section is revised to correctly reference subparts C, L, and N of part 2. No other substantive changes are intended by this revision.

29. Section 2.500, Scope of Subpart

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

30. Section 2.501, Notice of Hearing on Application Under Subpart F of Part 52 for a License To Manufacture Nuclear Power Reactors

This section is revised by adding a conforming reference to subpart F of part 52 on manufacturing licenses. In addition, paragraph (b) of this section is 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 is consolidating in § 2.104 the requirements governing the content of a notice of hearing with respect to part 52 licensing and regulatory approval processes (with the exception of standard design certifications, which are addressed in subpart H of part 2).

31. Sections 2.502, 2.503, and 2.504

The text of these sections is removed, and their places are reserved in the final rule, because the matters addressed in these sections, regarding finality and the referencing of a manufactured reactor in a combined license, are addressed with greater specificity in the revisions to subpart F of part 52.

32. Subpart F, Additional Procedures Applicable to Early Partial Decisions on Site Suitability Issues in Connection with an Application for a Construction Permit or Combined License for Certain Utilization Facilities

Subpart F provides special procedures for the acceptance, docketing, administrative consideration, the conduct of hearings, and the presiding officer's issuance of a partial initial decision in licensing proceedings where there is early submittal of site suitability information in connection with an application for a construction permit or operating license, as described in § 2.101(a–1). As discussed earlier, the NRC has revised § 2.101(a–1) to allow applicants for combined licenses under part 52, as well as applicants for construction permits under part 50, to submit their applications in two parts, and to allow for early consideration and presiding officer's partial initial decision on those site suitability matters for which the applicant seeks early resolution in accordance with subpart F of part 2.

The NRC has reorganized subpart F in an attempt to improve its usability (the reorganization is reflected in the provisions of § 2.600, Scope of subpart). Requirements applicable to partial decisions in construction permit proceedings continue to be addressed in §§ 2.602 through 2.606; a new subheading is added before § 2.602 to reflect the subject matter of these sections. The new requirements applicable to partial decisions in combined license proceedings are in §§ 2.621 through 2.629; a new subheading is also added before § 2.621 to reflect the subject matter covered by these sections. Section 2.629, which has no analogous provisions in §§ 2.602 through 2.606, is added by the NRC to ensure that the finality of a presiding officer's partial initial decision in a combined license proceeding is clearly addressed using regulatory language similar to that used in the finality provisions in part 52, e.g., §§ 52.39, 52.63, 52.98.

Section 2.601 is revised to correctly list subparts A, C, G, L, and N of part 2 as subparts which are either applicable to or may be utilized in proceedings under subpart F.

33. Section 2.800, Scope and Applicability

Subpart B of part 52 sets out the requirements applicable to Commission issuance of regulations granting standard design certification for nuclear power facilities. Standard design certifications are approved through a rulemaking proceeding, and, in concept, the applicant for a design certification may be considered as a petitioner for rulemaking. However, subpart H of part 2, which sets forth the Commission's procedures governing rulemaking, including petitions for rulemaking, did not specifically address design certification. Furthermore, based upon the Commission's experience with three final design certification rules and a proposed design certification rule, it is clear that some of the procedural requirements applicable to petitions for rulemaking are not well-suited to the administrative process for determining a design certification application, e.g., the existing prohibition against pre-application consultation with the NRC. These consultations between potential license applicants and the NRC staff are not currently prohibited and indeed are encouraged by the Commission to enhance NRC resource planning and to facilitate early identification and resolution of technical and regulatory issues. An application for design certification is more like a license application than a traditional petition for rulemaking, and the current prohibition against pre-application consulting appears to be inconsistent with the Commission's strategic objectives of safety, effectiveness, and management excellence. 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 is revising subpart H of part 2 to address standard design certifications. Section 2.800 is 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 is revised to reflect the additional function of this section. New §§ 2.811 through 2.819 are 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 applicant for that design certification (or successor in interest), will be treated as an amending petition for rulemaking under the provisions of §§ 2.801 through 2.810.

34. Section 2.801, Initiation of Rulemaking

In a conforming change, § 2.801 is revised to refer to applications for standard design certification rulemaking.

35. Section 2.811, Filing of Standard Design Certification Application; Required Copies

New § 2.811 clarifies the requirements that are related to the filing of applications for standard design certifications. The requirements in this section are derived from procedural requirements for license applications located in several different regulations in part 50. Section 2.811(a), which is analogous to § 50.4(a), identifies the NRC addresses where an application for a standard design certification must be filed, and provides the requirements for electronic submission of a design certification application. Section 2.811(b), which is analogous to § 50.30(a)(1) and (3), provides that a standard design certification application must meet the written communications requirements in § 2.813. Section 2.811(c), which is analogous to § 50.30(a)(2), requires the applicant to have the capability to make and supply additional copies of the application upon NRC request. Section 2.811(d), which is analogous to the requirement in § 50.30(a)(4), requires the applicant to make a copy of the updated application for use by any party in a hearing conducted under subpart O of part 2 (a legislative-style hearing). Section 2.811(e), which addresses pre-application consultation with the NRC staff, provides that the potential applicant for a design certification may consult with the NRC on the subject matters listed in § 2.802(a)(1)(i) through (iii), including the procedure and process for filing and processing an application for a design certification. However, § 2.811(e) also allows the prospective standard design certification applicant to consult with the NRC staff on substantive technical and regulatory matters relevant to the design certification; the prohibitions in § 2.802(a)(2) do not apply to these consultations.

36. Section 2.813, Written Communications

New § 2.813 contains procedural and "housekeeping" requirements governing written communications with the NRC, and are derived from analogous requirements located in several different regulations in part 50. Section 2.813(a) is analogous to § 50.4(a). Section 2.813(b) is analogous to § 50.4(c), and sets forth the requirement that written copies be submitted in permanent form on unglazed paper. Section 2.813(c) is analogous to § 50.4(d), and expresses the Commission's preference that the upper right corner of the first page of the applicant's submission set forth the specific regulation or other basis which instigated the written communication.

37. Section 2.815, Docketing and Acceptance Review

New § 2.815 is analogous to § 2.101(a)(2), and permits the NRC to conduct a review to determine whether the application is complete (*i.e.*, addresses all matters specifically required by NRC regulation to be addressed in an application) and acceptable for docketing. Section 2.815(a) provides that the NRC may determine, in its discretion, the acceptability for docketing of an application based on the technical adequacy of the application, not just on the completeness of the application.

38. Section 2.817, Withdrawal of Application

New § 2.817 is analogous to § 2.107, and addresses the procedures that the NRC will follow if a design certification applicant withdraws its application. Section 2.817 also provides for a notice of action on the withdrawal on the NRC Web site if the notice of application was published on the NRC Web site.

39. Section 2.819, Denial of Application for Failure To Supply Information

New § 2.819 is analogous to § 2.108, and states in paragraph (a) that the NRC may deny an application for a standard design certification if the applicant fails to respond to an NRC request for additional information concerning its application within 30 days of the request. Section 2.819(b) provides that the NRC will publish in the **Federal Register** a document denying the application. Section 2.819(b) also states that the NRC will publish a notice on

the NRC's Web site denying the application if the NRC previously published a notice of receipt of the application on the NRC Web site.

40. Section 2.1202, Authority and Role of NRC Staff

Paragraph (a) of § 2.1202 acknowledges and confirms the authority of the NRC staff to take regulatory (including licensing) action during the pendency of a hearing, with several delineated exceptions in numbered paragraphs (a)(1) through (5). Most of these exceptions are mandated by Section 189.a.(1)(A) of the AEA, which requires that the NRC hold a "mandatory hearing," after 30 days notice and publication once in the **Federal Register**, on any application for a construction permit for a facility to be licensed under Section 103 or 104b. Paragraph (a)(1) is revised by adding specific references to applications for limited work authorizations and combined licenses under 10 CFR part 52. A limited work authorization is considered to be a partial construction permit, and a combined license under part 52 includes a construction permit. Therefore, they are both subject to the strictures of Section 189.a.(1)(A). Paragraphs (2), (3), and (4) are redesignated as paragraphs (4), (5), and (6), and a new paragraph (2) is added for early site permits applications. An early site permit is considered to be a partial construction permit, and therefore is also subject to Section 189.a(1)(A). A new paragraph (3) is added for manufacturing licenses, as a matter of NRC discretion. The Section 189.a.(1)(A) requirement for a mandatory hearing applies only to construction permits; a manufacturing license is not a construction permit. Hence, the remaining provisions of Section 189.a.(1)(A), including the NRC's authority to issue an operating license or amendment to a construction permit without a hearing but only upon 30 days notice and publication once in the **Federal Register** of the NRC's intent to do so, are inapposite and do not constrain the NRC's authority to issue manufacturing licenses despite a pending hearing. Nonetheless, as a matter of discretion, the NRC has decided to treat manufacturing licenses similar to construction permits in this regard, although the NRC reserves the right to change its practice in the future.

G. Changes to 10 CFR Part 10

1. Section 10.1, Purpose; and § 10.2, Scope

Part 10, which contains the NRC's requirements and procedures for determining eligibility for granting access to Restricted Data and National Security Information, did not reflect the licensing and approval processes in part 52. Accordingly, the Commission made two changes to ensure that there are defined criteria and procedures governing requests for access to Restricted Data and National Security Information by individuals with respect to a license or approval under part 52.

Section 10.1 is revised by adding a new paragraph (a)(3), which refers to the eligibility of individuals for employment with NRC licensees and applicants, and holders of standard design approvals under part 52. Section 10.2(b) is revised so that it refers to standard design approvals under part 52 and applicants for consultants. This change will address the provision of services associated with design approvals, who may not, per se, be "employees."

H. Changes to 10 CFR Part 19

Part 19, entitled *Notices, Instructions and Reports to Workers: Inspection and Investigations*, establishes the NRC's requirements for notices, instructions and reports to persons participating in NRC licensed and other regulated activities. For example, it requires licensees and applicants for licenses to post a copy of, *inter alia*, the regulations in 10 CFR parts 19 and 20, and NRC Form 3. NRC Form 3 provides a statement of rights and responsibilities to employees with respect to NRC requirements. Part 19 also establishes the rights and responsibilities of the NRC and individuals during interviews compelled by subpoena as part of a NRC inspection or investigation under Section 161.c of the AEA. Finally, part 19 prohibits, on the grounds of sex, the exclusion from participation in, or being subjected to discrimination under any program or activity licensed by the NRC. The regulatory authority for part 19 stems from Sections 211 and 401 of the Energy Reorganization Act of 1974, as amended (1974 ERA).

The NRC has identified a number of weaknesses with the former regulatory language in part 19. Formerly, part 19's regulatory requirements and proscriptions applied only to licensees who receive, possess, use or transfer material licensed under the NRC's regulations, including persons licensed to operate a production or utilization facility under 10 CFR part 50, but did not cover holders of 10 CFR part 52 licenses such as combined licenses, early site permits, and manufacturing licenses. Moreover, part 19 applied only to licensees who receive, possess, use or transfer materials licensed under 10 CFR parts 30 through 36, 39, 40, 60, 61, 63, 70 or 72 (including persons licensed to operate a production or utilization facility under part 50). Thus, the former regulations did not appear to address discrimination against an employee during "non-operational" activities such as manufacturing or construction of a nuclear 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 applied only to a "licensee" and activities authorized by a "license" (see, *e.g.*, §§ 19.1, 19.2, 19.11, 19.20, 19.32), and did 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 is amending 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 extends 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 is much broader than the former 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. 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 protection provisions to include * * * *any other employer* engaged

in *any activity* under the Energy Reorganization Act of the Atomic Energy Act of 1954. (H. Rep. No. 102–474, part 8, 102d Congress, 2d Sess., at 78–79 (1992) (emphasis added))

There was no discussion of the statutory language in the conference report. (H.R. Conf. Rep. No. 102–1018, 102d Cong., 2d Sess. (1992)). The provisions in Section 401 of the ERA, prohibiting sex discrimination apply to "any program or activity carried on * * * under any title of this Act." Accordingly, the NRC concludes that it has the authority to extend the former scope of part 19 to address the non-licensing regulatory approvals in part 52.

To implement the NRC's broadening of the scope of part 19, §§ 19.1 and 19.2 are revised to explicitly refer to: (1) applicants for and holders of licenses and permits under part 52; (2) applicants for and holders of final design approvals; and (3) applicants for standard design certifications. The NRC notes that the existing provision in § 19.2 excluding part 19 from applying to NRC employees and NRC contractors remains unchanged in the final rule. To provide a convenient term for referring to persons and entities applying for, or granting non-licensed regulatory approvals in part 52, as well as any future regulatory processes, the NRC is amending § 19.3 to the terms, *regulated activities*, and *regulated entities*. Regulated entities are defined to include (but not be limited to) applicants for and holders of standard design approvals under subpart E of part 52, and applicants for standard design certifications under subpart B of part 52.

Section 19.11 establishes requirements for posting of notices to workers. Because §§ 19.11(a)(2) and (a)(4) contain posting requirements which are not relevant to early site permits, manufacturing licenses, standard design approvals, and standard design certifications, the NRC delineated in § 19.11(b) the applicable posting requirements for those regulatory processes. Section 19.11(c) is reserved for future Commission use.

Sections 19.14 and 19.20 are revised to apply to regulated entities, as well as licensees.

Section 19.31, governing exemptions from part 19, is revised to use language consistent with § 50.12 and § 52.7. Unlike the former regulation, which limits a request for exemption to a "licensee," the final rule allows "interested persons," as well as licensees to request an exemption from one or more provisions of part 19. This will allow applicants for and holders of non-license regulatory vehicles in part 52 (standard design approvals and design certifications) to request exemptions from part 19. The broadened scope of persons that will be allowed to request an exemption is consistent with most of the exemption provisions throughout the NRC's regulations in Title 10 of the CFR, including the specific exemption provision in part 50 (*i.e.*, § 50.12).

Section 19.32 is revised to more closely track the broad scope of statutory language in Section 401 of the 1974 ERA, which is not limited to licensing, but extends the sex discrimination prohibition to "any * * * activity carried on * * * under any title" of the ERA. By using the statutory language in the proposed rule, the NRC believes that the regulations cover not only the existing non-license regulatory vehicles in part 52, but any other regulatory approaches that the NRC may adopt in the future (Section 401 of the 1974 ERA applies to NRC regulatory activities under the AEA, inasmuch as the 1974 ERA transferred the AEA regulatory authority from the old AEC to the NRC, see 1974 ERA, Sec. 104(c)).

I. Changes to 10 CFR Part 20

1. Section 20.1002, Scope

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 is 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 is revised to add a conforming reference to facilities licensed under 10 CFR part 52.

3. Section 20.1406, Minimization of Contamination

Section 20.1406 requires applicants for licenses, other than renewals, after August 20, 1997, to describe in the application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of radioactive waste. The NRC is adding conforming changes to § 20.1406 in the final rule. These conforming changes to address part 52 were inadvertently overlooked in the proposed rule. Section 20.1406 contains requirements that relate both to design and operation of a facility and therefore applies in whole or in part to design approvals, design certifications, manufacturing licenses, and combined licenses. The final rule divides § 20.1406 into two paragraphs. Paragraph (a) addresses applicants for licenses, other than early site permits and manufacturing licenses, and contains all of the requirements in former § 20.1406. Paragraph (b) addresses applicants for standard design certifications, standard design approvals, and manufacturing licenses and only contains the requirements related to design. If a combined license applicant references a design approval, design certification, or a reactor manufactured under a manufacturing license that has addressed the design portion of this requirement under paragraph (b), then it would only need to address the remaining "operational" requirements under paragraph (a).

4. Section 20.2203, Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Constraints or Limits

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

J. 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 2003 proposed rule did not address Section 206 reporting requirements with respect to standard design approvals or manufacturing licenses. Moreover, the proposals were developed without the benefit of the NRC's in-depth consideration of the issues as applied in the context of the early site permit applications that are currently before the NRC. Accordingly, NRC withdrew its earlier proposal and developed a more complete and integrated rule on Section 206 reporting under part 21 and § 50.55(e). As discussed previously, § 50.55(e) sets forth the Section 206 reporting requirements applicable to holders of construction permits, combined licenses, and manufacturing licenses.

Key Principles of Reporting Under Section 206 of the ERA

The NRC believes that the extension of NRC's reporting requirements

implementing Section 206 of the ERA to part 52 licensing and approval processes should be consistent with three key principles. First, NRC regulatory requirements implementing Section 206 of the ERA should be a legal obligation throughout the entire "regulatory life" of an NRC license, a standard design approval, or standard design certification. Second, reporting of defects or failures to comply associated with substantial safety hazards should occur whenever the information on potential defects would be most effective in ensuring the integrity and adequacy of the NRC's regulatory activities under part 52 and the activities of entities [10] subject to the part 52 regulatory regime. Third, each entity conducting activities within the scope of part 52 should develop and implement procedures and practices to ensure that it fulfills its Section 206 of the ERA reporting obligation in an accurate and timely manner.

First Principle—Section 206 of the ERA Applies Throughout "Regulatory Life"

The first principle, that NRC regulatory requirements implementing Section 206 must extend throughout the entire "regulatory life" of a part 52 process, reflects the regulatory pattern inherent in part 52, whereby certain designated licenses or approvals—e.g., an early site permit, nuclear power reactor manufactured under a manufacturing license, or a design certification—are capable of being referenced in a subsequent nuclear power plant licensing application. Under the part 52 regulatory scheme, a referenced NRC approval constitutes the NRC's basis for the licensing action within the scope of the prior Commission approval, and becomes part of the "licensing basis" for that plant. However, if Section 206 of the ERA reflects that effective NRC decision-making and regulatory oversight require accurate and timely information about defects and failures to comply associated with substantial safety hazards, then Section 206 of the ERA should apply whenever necessary to support effective NRC decision-making and regulatory oversight of the referencing licenses and regulatory approvals. To put it in different terms, if the NRC decision that it may safely issue a license depends in part upon an earlier NRC safety determination for a referenced license, standard design approval, or standard design certification, it follows that a safety issue with respect to the referenced license, design approval, or design certification has safety implications for the referencing license or design certification, and the continuing validity of the NRC's licensing decision. Thus, the NRC concludes that the need for Section 206 reporting should not be limited to those licenses and approvals under part 52 which are referenced or "relied upon" in a subsequent nuclear power plant licensing application (viz., early site permits, standard design approvals, standard design certifications, and manufacturing licenses), but rather should extend to licenses and approvals that are capable of being referenced in a future licensing application. In other words, they must extend until there can be no further potential safety implications for a referencing license or approval.

The NRC believes that the beginning of the "regulatory life" of a referenced license, standard design approval, or standard design certification under part 52 occurs when an application for a license, design approval, or design certification is docketed. Docketing of an application marks the start of the NRC's formal safety and environmental review of the application, and therefore the initiation of the NRC's need for accurate and timely information to support its regulatory review and approval. However, the NRC cautions that this does not mean that an applicant is without Section 206 responsibilities for pre-application activities. As the NRC staff discussed in a June 22, 2004, letter to the Nuclear Energy Institute (NEI) (ML040430041) in the context of an early site permit, there are two aspects, namely, a "backward looking" or retrospective aspect with respect to existing information, and a "forward looking" or prospective aspect with respect to future information. The retrospective obligation is that the early site permit holder and its contractors, must report all known defects or failures to comply in "basic components," as defined in part 21. The prospective obligation is that the early site permit holder and its contractors must report all defects or failures to comply in basic components discovered subsequent to early site permit issuance. The early site permit holder and its contractors are required to meet these requirements, and must continue to meet them throughout the term of the early site permit. Accordingly, safety-related design and analysis or consulting services should be procured and controlled, or dedicated, in a manner sufficient to allow the early site permit holder and its contractors, as applicable, to comply with the above described reporting requirements of Section 206, as implemented by 10 CFR 50.55(e) and part 21.

The NRC believes that the end of regulatory life occurs at the later of: (1) The termination or expiration of the referenced license, standard design approval, or standard design certification; or (2) the termination or expiration of the last of the license or design certification *directly* or *indirectly referencing* the (referenced) license, design approval, or design certification. For example, if the NRC approves a standard design approval, which is subsequently referenced in a final standard design certification rule, and that standard design certification is, in turn referenced in a combined license issued by the NRC, the "end" of the regulatory life occurs when the authorization to operate under the combined license is terminated (ordinarily, under the provisions of § 52.110). As long as a referenced combined license continues to be effective, the "regulatory life" of a referenced license, standard design approval, standard design certification, or manufactured reactor (as applicable) must also continue and cannot be deemed to have ended.

Some commenters argued that the NRC's regulatory interests would be met if reporting under Section 206 of the ERA were limited to the referencing applicant/licensee, and that there should be no ongoing part 21 reporting obligation imposed on the early site permit holder, original applicant for a standard design certification, or holder of a part 52 regulatory approval. Under this proposal the referencing applicant and licensee would satisfy its obligation by an appropriate contractual provision between the referencing applicant/licensee and the entity "supplying" the referenced license or regulatory approval. Although this could be a viable alternative for some combined licenses, early site permits, and standard design approvals, the approach would not be effective in the following contexts. This approach would not result in reporting of defects to the NRC by the applicant of the early site permit or standard design certification, which violates the NRC's second principle (discussed more fully in the next section). In addition, this approach would not result in reporting where there is no contractual relationship between the combined license applicant/licensee and the original applicant of the standard design certification. Because the approach suggested by these commenters does not

[10] Throughout this discussion, reference to entities, licensees and/or applicants includes the contractors and subcontractors of those entities, licensees and/or applicants.

satisfy the NRC's regulatory objectives, it is not adopted.

One of the original applicants for the current standard design certifications stated that any arguable Section 206 requirements must logically end upon expiration of the standard design certification, inasmuch as expiration marks the end time that the standard design certification may be referenced. The NRC disagrees with this position. Under § 52.55(b) of the current regulations, a standard design certification continues to be effective in a hearing for a combined license or operating license docketed before the expiration date, and in a hearing under § 52.103 for authority to load fuel and operate. At minimum, the original standard design certification applicant should be subject to Section 206 requirements until the proceeding is completed. Beyond the minimum requirements, the NRC also believes that the original design certification applicant's Section 206 obligations should continue until operation is no longer authorized in accordance with § 50.82(a)(2) for the last operating license or combined license referencing that standard design certification. The NRC believes that the regulatory need for information concerning defects in a standard design certification continues throughout the operating life of a license referencing that design certification; the relevance of and the NRC's need for this information, if subsequently discovered by the original design certification applicant, does not diminish simply because the standard design certification may no longer be referenced.

Second Principle—Notification Occurs When Information Is Needed

The second principle is focused on ensuring that the NRC, its licensees, and license applicants receive information on defects at the time when the information would be most useful to the NRC in carrying out its regulatory responsibilities under the AEA, and to the licensee or applicant when engaging in activities regulated by the NRC. A result of this principle is that reporting may be delayed if there is no immediate consequence or regulatory interest in prompt reporting, and that delayed reporting will actually occur when necessary to support effective, efficient, and timely action by the NRC, its licensees and applicants. Applying the second principle and its result to part 52 processes, the NRC believes that immediate reporting is required throughout the period of pendency of an application, be it a license, a standard design approval, or a standard design certification. Allowing an applicant to delay the reporting of a defect would appear to be inconsistent with the NRC's statutory mandate to provide adequate protection to public health and safety and common defense and security. Even if delayed reporting would allow the NRC an opportunity to modify its prior safety finding with respect to the license, design approval, or design certification, the delayed consideration is inconsistent with one of the fundamental purposes of part 52, viz., to provide for early consideration and resolution of issues in a manner that avoids the potential for delay during licensing of a facility. Accordingly, the Commission has determined that the NRC's requirements implementing Section 206 of the ERA must extend to applicants (and their contractors and subcontractors) for all part 52 processes (licenses, early site permits, design approvals, and design certifications). Some commenters stated that part 21 should not apply to applicants and claimed that the NRC's proposal was contrary to the ERA. For the reasons stated previously, the Commission does not agree with that position. However, once an application has been granted, the Commission has decided that immediate reporting of subsequently-discovered defects is not necessary in certain circumstances. For those part 52 processes which do not authorize continuing activities required to be licensed under the AEA, but are intended solely to provide early identification and resolution of issues in subsequent licensing or regulatory approvals, the reporting of defects or failures to comply associated with substantial safety hazards may be delayed until the time that the part 52 process is first referenced. The Commission's view is based upon its determination that a defect with respect to part 52 processes should not be regarded as a "substantial safety hazard," because the possibility of a substantial safety hazard becomes a tangible possibility necessitating NRC regulatory interest only when those part 52 processes are referenced in an application for a license, such as a combined license or manufacturing license.

Some commenters believe that these reporting requirements should not apply to a holder of an early site permit or a vendor of a standard design until the ESP or standard design is referenced in a COL application. As stated previously, the Commission agrees that reporting may be delayed until the approval, certification, or permit is referenced. After referencing, the holder (or in the case of a design certification, the applicant who submitted the application leading to the final design certification regulation) must make the necessary notifications to the NRC as well as provide final engineering. The notification must address the period from the Commission adoption of the final design certification regulation up to the filing of the application referencing the final design certification regulations. Thereafter, notice must be made in the ordinary manner. The notification obligation ends when the last license referencing the design certification is terminated.

Third Principle—Procedures and Practices Must Be Implemented To Ensure Accurate and Timely Reporting

The third principle (viz., each entity conducting activities under the purview of part 52, should develop and implement procedures and practices to ensure that the entity accurately and timely fulfils its reporting obligation as delineated in the NRC's regulations), is intended to ensure the effectiveness of each entity's reporting processes. This is especially true where there is a potential for substantial passage of time between the discovery of a defect and the reporting of the defect, as may be allowed by the NRC consistent with the second principle. For example, following issuance of a final standard design certification regulation, if the original applicant determines that there is a substantial safety hazard, that applicant need not report the discovery until the time that the design certification rule is referenced—which may be as long as 15 years from the date of the final rule. Given the substantial time that may pass between the time of discovery and the date of reporting, it is imperative that the original standard design certification applicant develop and implement procedures from the time of effectiveness of the final design certification regulations.

The result of the third principle, consistent with part 21's current requirements, is that licensees, license applicants, and other entities seeking a design approval or design certification, must have contractual provisions with their contractors, subcontractors, consultants, and other suppliers which notify them that they are subject to the NRC's regulatory requirements on reporting and the development and implementation of reporting procedures. This result is set forth in §§ 21.31 and 50.55(e)(7).

Division of Implementing Requirements Between Part 21 and § 50.55(e)

Under the Commission's current regulatory structure, persons and entities engaged in construction (or the functional equivalent of construction) are subject to reporting requirements under § 50.55(e). Persons and entities engaged in all other activities within the purview of Section 206 of the ERA are subject to the requirements in part 21 and/or § 50.55(e). The revised part 21 and § 50.55(e) reflect the Commission's determination to retain this divided regulatory structure. The NRC believes that the only part 52 processes that authorize "construction" or its functional equivalent are manufacturing licenses and combined licenses before the Commission makes the finding under § 52.103(g). Therefore, the reporting requirements with respect to Section 206 of the ERA for manufacturing licenses and combined licenses before the Commission makes the finding under § 52.103(g) are contained in § 50.55(e). The requirements in part 21 apply after the Commission makes the finding under § 52.103(g) for a combined license. Part 21 was 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 applicability of part 21 and § 50.55(e) to each of the various approvals under part 52.

TABLE A–1.—APPLICABILITY OF NRC REQUIREMENTS IMPLEMENTING SECTION 206 OF THE ENERGY REORGANIZATION ACT TO PART 52 LICENSING AND APPROVAL PROCESSES

Part 52 licensing or approval processes	Applicable NRC requirement implementing section 206 of the ERA	Sanctions	
		Civil	Criminal
Early Site Permit (ESP)			
Application	part 21	21.61	21.62
Issuance of ESP	part 21	21.61	21.62
Standard Design Approval (SDA)			
Application	part 21	21.61	21.62
Issuance of SDA	part 21	21.61	21.62
Standard Design Certification Rule (DCR)			
Application	part 21	21.61	21.62
Final DCR Rulemaking	part 21	21.61	21.62
Combined License (COL)			
Application	50.55(e)	50.110	50.111
COL before § 52.103 Authorization	50.55(e)	50.110	50.111
COL after § 52.103 Authorization	part 21	21.61	21.62
Manufacturing License (ML)			
Application	50.55(e)	50.110	50.111
Issuance of ML	50.55(e)	50.110	50.111

Reporting Requirements for Early Site Permits

If the ESP holder becomes aware of a significant safety concern with respect to its site (e.g., that the specified site characteristics 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 ESP. As stated previously, the reporting may be delayed until the ESP is referenced. This reporting attains special importance given the NRC's proposal not to impose an updating requirement for ESP information other than that related to emergency preparedness. In order for the applicant for an ESP 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 ESP applicant would have to have a program in place for implementing the requirements of 10 CFR part 21. The applicant's program may be inspected by the NRC as part of the application review. Approval of the ESP application would be subject to approval of the part 21 program.

Some commenters claimed that there is no practicable method for ESP applicants or holders to determine whether an error in siting information creates a substantial safety hazard and, therefore, part 21 should not be applicable to ESP applicants or holders. The Commission does not agree with this position. As stated previously, the ESP holder and its contractors can determine defects or failures to comply with "basic components," as defined in part 21. This information is necessary in order to support effective NRC decisionmaking and regulatory oversight of the referencing licenses and approvals.

Applicability of Part 21 to Contractors or Subcontractors of an ESP Applicant or Holder

In accordance with 10 CFR 21.31, the purchaser of a basic component must state in the procurement documents for the basic component that part 21 is applicable to that procurement. As explained previously, services that are required to support an early site permit application (e.g., geologic or seismic analyses, etc.) that are safety-related and could be relied upon in the siting, design, and construction of a nuclear power plant, are to be treated as basic components as defined in part 21. Therefore, these services must be either purchased as basic components, requiring the service provider to have an appendix B to part 50 QA program, as well as its own part 21 program, or the early site permit applicant could dedicate the service in accordance with part 21, which requires the dedication process itself to be controlled under an appendix B to part 50 QA program.

Reporting Requirements for Standard Design Approvals

A standard design approval represents the NRC staff's determination regarding the acceptability of the design for a nuclear power reactor (or major portions thereof). Although a standard design approval does not represent the NRC's final determination as to the acceptability of the design, it nonetheless represents a substantial expenditure of agency resources in reviewing the design. A standard design

approval may be referenced in a subsequent application for a design certification, construction permit, operating license, combined license, or manufacturing license. Accordingly, consistent with the first principle, the final rule imposes requirements implementing Section 206 of the ERA on applicants for and holders of standard design approvals.

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 requirements implementing Section 206 of the ERA, which are applicable to standard design approvals, were 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 imposed 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 revised §§ 21.2, 21.3, 21.21, 21.51, and 21.61 to explicitly refer to an applicant for a standard design certification, rather than § 50.55(e).

Some commenters 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 plant) for use in a future "facility * * * licensed" by the NRC. One of the consequences of the design certification provisions in part 52 is the ability of the applicant to subsequently offer its design with additional, value-added services. Thus, applying for and facilitating NRC adoption of a final standard design certification regulation is simply a partial step in the overall activity of "supplying" the certified design to potential nuclear power plant license applicants. Alternatively, one could treat the standard design certification applicant as supplying a component of an "activity" which is "otherwise regulated" by the NRC. Under this interpretation, the "activity * * * otherwise regulated by the NRC" can be viewed as the design certification rulemaking, and/or the entire part 52 regulatory regime whereby a design certification rule is referenced in a subsequent licensing application. The NRC concludes that under either interpretation, Section 206 of the ERA provides ample statutory authority for the NRC to impose regulations implementing Section 206 on design certification applicants, during the pendency of the application before the NRC, as well as after NRC adoption of a final design certification regulation (for those applicants whose application is granted).

As with standard design approvals, a standard design certification does not authorize construction of a nuclear power plant; it constitutes the NRC's approval of the design of a nuclear power plant. Therefore, the requirements implementing Section 206 of the ERA which are applicable to design certifications were placed in part 21, as opposed to § 50.55(e).

Reporting Requirements for Combined Licenses

A combined license authorizes both construction of a nuclear power plant, and loading of fuel and operation if the NRC makes the findings specified in § 52.103. As such, the application of the first and second principles to combined licenses is the most straightforward of all the part 52 processes. Under the final 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 revised § 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 finding under § 52.103(g), 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(g).

Reporting Requirements for Manufacturing Licenses

Under 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 incorporated into 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 manufactured reactor, the NRC believes that the combined license holder 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 manufacturing license. There will be no interim period similar to a design certification where there is no activity occurring under the manufacturing license. Accordingly, in compliance with the first and second principles, the NRC proposes that Section 206 of the ERA requirements should apply continuously from the filing of the application, until the manufacturing license expires or is otherwise terminated by the NRC.

A manufacturing license holder would essentially be conducting the same activities as a construction permit holder, albeit with several differences.[11] Nonetheless, the NRC believes that manufacturing is similar to construction such that the NRC's requirements implementing Section 206 of the ERA which are applicable to manufacturing licenses, are contained in § 50.55(e).

[11] These key differences are, first, the design of the manufactured plant would be approved before manufacturing commences, unlike the historical practice with construction permits. Second, a single manufacturing license may authorize the manufacture of multiple reactors, with the manufacturing process to be accomplished in a controlled setting rather than as a "field" operation. This is unlike the historical approach where non-standardized nuclear power facilities were constructed onsite using a "roving" workforce. Third, the manufacturing license will specify the inspections, tests, and acceptance criteria for determining successful manufacturing.

Accordingly, the NRC revised § 50.55(e) to specifically apply its provisions to holders of manufacturing licenses.

K. Change to 10 CFR Part 25

1. Section 25.35, Classified Visits

Part 25 sets forth the NRC's requirements governing the granting of access authorization to classified information to certain individuals. Section 52.35, which requires that licensees and certificate holders minimize the number of classified visits, did not, by its terms, apply to applicants for standard design certifications, and applicants for or holders of standard design approvals. Accordingly, § 25.35 is revised to refer to an applicant for a standard design certification under part 52 (including the applicant after the NRC adopts a final standard design certification rule), and the applicant for or holder of a standard design approval under part 52.

L. Changes to 10 CFR Part 26

1. Section 26.2, Scope, § 26.10, General Performance Objectives; and Appendix A to Part 26

Part 26, which sets forth the NRC's requirements governing fitness-for-duty, currently uses a two-part regulatory regime for the application of fitness-for-duty requirements. A holder of an operating license for a nuclear power plant is required to implement all of the provisions in part 26. By contrast, a holder of a construction permit is required to comply with §§ 26.10, 26.20, 26.23, 26.70, and 26.73, and also implement a chemical testing program, including random tests, and make provisions for employee assistance programs, imposition of sanctions, appeals procedures, the protection of information, and record keeping.

The NRC has extended the applicability of parts 26 to 52, in keeping with the existing two-part regulatory regime, so that the full array of requirements in part 26 apply to a combined license holder after the date that the NRC authorizes makes the finding under § 52.103(g), analogous to holder of an operating license under part 50. By contrast, holders of combined licenses, before the date that the NRC makes the § 52.103(g) findings, are required to comply with the part 26 provisions currently applicable to construction permit holders. Similarly, holders of manufacturing licenses under subpart F of part 52 are treated the same as holders of construction permits. Finally, persons authorized to conduct the limited construction activities allowed under § 50.10(e)(3) are also treated the same as a construction permit holder. The final rule accomplishes this by: (1) Revising § 26.2(a) to refer to combined license holders after the date that the NRC makes the finding under § 52.103(g); (2) revising § 26.2(c) to refer to a holder of a combined license before the date that the NRC makes the finding under § 52.103(g), a holder of a manufacturing license under subpart F of part 52, and a person authorized to conduct the activities under § 50.10(e)(3); (3) revising § 26.10(a) to refer to the personnel of a holder of a manufacturing license and those authorized to conduct the activities under § 50.10(e)(3); and (4) revising appendix A to part 26, paragraph 1.1(1) to include a reference to a holder of combined license after the date that the NRC makes the finding under § 52.103(g).

The NRC believes that part 26 need not be extended to cover applicants for and holders of early site permits, standard design approvals, and applicants for standard design certifications. These activities present less of a concern with respect to public health and safety, and common defense and security, as compared with construction permits, manufacturing licenses, operating licenses, and combined licenses. None of these regulatory approvals or design certification regulations authorize the construction, manufacture, or operation of a facility, nor do they authorize possession of special nuclear material (SNM). The adverse impacts on public health and safety or common defense and security attributable to any fitness-for-duty issues are likely to be of a much lower level of significance, as compared to issues that may occur during construction, manufacture, operation, or possession of SNM. The NRC believes that the potential benefits of imposing the fitness-for-duty requirements are not justified in view of the regulatory burden to be imposed upon such applicants and holders. Accordingly, these requirements will not be imposed on applicants for and holders of standard design approvals and applicants for standard design certifications under part 52.

M. Changes to 10 CFR Part 51

The NRC is making several conforming changes to part 51 to clarify the environmental protection regulations applicable to the various part 52 licensing processes.

NEPA Compliance for Design Certifications

For each of the four design certification rules in appendices A, B, C, and D of part 52, the NRC prepared an environmental assessment which: (1) Provides the bases for a Commission finding of no significant environmental impact (FONSI) for issuance of the design certification regulation; and (2) identifies and addresses the need for incorporating SAMDAs into the design certification rule. Based upon this experience, the NRC is making changes to part 51 to accomplish two objectives.

First, the NRC is eliminating the need for the NRC to prepare essentially repetitive discussions in environmental assessments supporting a FONSI on issuance of a final standard design certification regulation. Each of the environmental assessments and FONSIs prepared to date conclude that there is no significant environmental impact associated with NRC issuance of a final design certification regulation because a design certification does not authorize either the construction or operation of a nuclear power facility. Design certification represents the NRC's pre-approval of the design for the nuclear power facility, but does not authorize manufacture or construction. For the design certification to have practical effect, it must be referenced in an application for a combined license. The NRC is revising 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 is requiring 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 severe accident mitigation alternatives 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 have been completed 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 former 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 NRC is requiring that SAMDAs be addressed in environmental reports and environmental assessments for design certifications.

The NRC is making a number of changes to accomplish these two objectives. The NRC is redesignating existing § 51.55 as § 51.58, and is adding new § 51.55 to indicate that an environmental report submitted by the design certification applicant must be directed towards addressing the costs and benefits of possible SAMDAs, and presenting the bases for not incorporating identified SAMDAs into the design to be certified. The environmental report for an applicant seeking to amend an existing design certification would be somewhat narrower by focusing on if the design change which is the subject of the amendment, renders a SAMDA previously rejected to become cost-beneficial, and if the design change results in the identification of new SAMDAs that may be reasonably incorporated into the design certification.

The NRC is revising § 51.30 to provide for a new § 51.30(d) establishing the scope of an environmental assessment for a design certification. The NRC is adding §§ 51.32(b)(1) and (2) to set forth the NRC's generic determination of no significant environmental impact associated with issuance of a final or amended design certification rule. This is, essentially, the legal equivalent of a categorical exclusion. The NRC is including an explicit statement of no significant environmental impact in § 51.32. The NRC believes that external stakeholders will better understand the nature of the Commission's action by doing so. The NRC is modifying § 51.31 by adding § 51.31(b) specifying the information on the environmental assessment to be included in the proposed rulemaking on the design certification published in the **Federal Register**.

The NRC is revising § 51.50(c)(2) to indicate that if a combined license application references a design certification then the combined license applicant's environmental report may reference the SAMDA discussion in the design certification environmental assessment as part of its SAMDA analysis, but must contain information demonstrating that the site characteristics for the combined license site falls within the site parameters in the design certification environmental assessment.[12]

Finally, the NRC is adding § 51.75(c)(2) to provide that if a combined license application references a design certification, then the combined license EIS will incorporate by reference the design certification environmental assessment, and summarize the SAMDA analysis and conclusions of the environmental assessment.

NEPA Compliance for Manufacturing Licenses

The NRC believes that its current approach for meeting the Commission's NEPA responsibilities for standard design certifications should be extended to manufacturing licenses for nuclear power reactors. Under subpart F to part 52, a manufacturing license is similar to a standard design certification in that a final nuclear power reactor design would be approved. Therefore, the NRC is requiring that the environmental effects of construction and operation of a nuclear power facility using a manufactured reactor would be addressed in the EIS for the combined license application for a nuclear power facility using a manufactured reactor, rather than in an environmental assessment or EIS at the manufacturing license stage.

Further, the NRC does not believe that NEPA requires the NRC to address the environmental impacts of actually manufacturing a nuclear power reactor licensed under subpart F of part 52, either at the manufacturing license stage or at the combined license stage where an application proposes to use a manufactured reactor. The manufacturing license approves the final design of the manufactured reactor, the organization and technical procedures for designing and manufacturing the reactor, and the ITAAC that are to be used by the licensee in determining whether the reactor has been properly manufactured in accordance with NRC requirements and the manufacturing license, and the possession (but not the use or transport offsite) of the manufactured reactor. The manufacturing license does not approve any specific location, building, or facility where the actual manufacture of the reactors may occur,[13] and the NRC does not require the applicant for the manufacturing license to submit any information on these matters as part of its application. These matters are commercial matters generally unrelated to the NRC's regulatory jurisdiction. The Federal Aviation Administration (FAA) does not prepare an EIS when issuing a production certificate under 14 CFR part 21, subpart G, authorizing the production of an aircraft or component in conformance with a type certificate. See Federal Aviation Agency Order 1050.1E, Sec. 308c (June 8, 2004). Because the NRC does not approve any specific location or facility in which to manufacture any component of or the reactor licensed under the manufacturing license, it would be speculative for the NRC to describe and assess the environmental impacts of manufacturing. NEPA does not require that an EIS address speculative impacts. The NRC also notes that EISs prepared in the past for construction permits and operating licenses under part 50, as well as current environmental assessments for nuclear power plant license amendments, have never considered the offsite environmental impacts of fabricating systems and components by vendors and subcontractors, even for circumstances where the fabrication activities are subject to NRC regulatory jurisdiction (e.g., under applicable provisions of parts 19 and 21). For these reasons, the NRC concludes that NEPA does not require the NRC to address, either at the manufacturing license stage or at the combined license stage where the application proposes to use a manufactured reactor, the speculative impacts of manufacturing a reactor offsite at a location or in a facility not specified or approved in the manufacturing license.

The NRC is making a number of changes to part 51, in some cases parallel to those described previously with respect to design certifications, consistent with its views on manufacturing licenses. The NRC is revising existing § 51.54 to clarify that an environmental report for a manufacturing license must address the costs and benefits of SAMDAs and the bases for not incorporating SAMDAs

[12] The design certification applicant may have chosen to specify site parameters for the design certification safety review under § 52.79 which differ from the site parameters specified in the environmental report for its design. If such a design certification is referenced in a combined license application, the combined license applicant must demonstrate that the two differing sets of site parameters are met, in order for the full panoply of issue finality provisions in § 52.63 to apply in the combined license proceeding.

[13] A reactor manufactured outside of the United States would not be within the scope of a manufacturing license under subpart F of part 52, by virtue of proposed § 52.9, which states that no license shall be deemed to have been issued for activities which are not under or within the jurisdiction of the United States.

into the design of the reactor to be manufactured, and to state that the environmental report need not address the impacts of manufacturing a reactor under the manufacturing license. The NRC is removing both § 51.20(b)(6), which formerly required preparation of an EIS for issuance of a manufacturing license, and § 51.76, which formerly addressed the subject matter of an EIS for a manufacturing license, from part 51.

The NRC is revising § 51.30(e) to establish the scope of an environmental assessment prepared for a manufacturing license. The NRC is adding §§ 51.32(b)(3) and (4) to state the NRC's generic determination of no significant environmental impact associated with issuance of a final or amended manufacturing license. As with the parallel provisions governing design certifications in § 50.32(b)(1) and (2), the NRC is including an explicit statement of no significant environmental impact for manufacturing licenses in § 51.32(b)(3) and (4) to facilitate external stakeholders' understanding of the nature of the Commission's action. The NRC is adding § 51.31(c) to describe the NRC's process for determining the manufacturing license with respect to environmental issues covered by NEPA.

The NRC is adding § 51.50(c)(3) to provide that if a combined license application proposes using a manufactured reactor, then the combined license environmental report may incorporate by reference the environmental assessment for the manufacturing license under which the reactor is to be manufactured and, if so, must include information demonstrating that the site characteristics for the combined license site fall within the site parameters specified in the manufacturing license environmental assessment. This section also states that the environmental report need not address the environmental impacts associated with manufacturing the reactor under the manufacturing license.

Finally, the NRC is adding § 51.75(c)(3) to indicate that if the proposed combined license application 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,[14] 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, § 51.75(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) explicitly provides 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

Formerly, neither part 51 nor subpart C of part 52 explicitly addressed 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 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 former 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 is 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 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 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.

NEPA Compliance for Combined Licenses Referencing an Early Site Permit

The NRC has made several changes in the final rule based on public comments regarding the requirements for a combined license application referencing an early site permit and further consideration of the NRC's obligations under NEPA for such actions. Several commenters believed that an ESP and COL met the definition of "connected actions," under NEPA case law and Council on Environmental Quality (CEQ) regulations, and should therefore not require the preparation of a new EIS for the second of the two connected actions, or a revalidation of previous findings if neither the applicant nor others identify new and significant information. Commenters stated that under applicable NEPA case law, there was no requirement to prepare a new EIS for the latter of the two connected actions that were previously evaluated together in a single EIS. The commenters stated that the EIS prepared at the ESP stage serves as the EIS for issuance of both the ESP and COL. Commenters stated that the ESP EIS included an evaluation of the environmental impacts related to

[14] 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.

issuance of a COL inasmuch as it considered the environmental impact of plant construction and operation.

The NRC continues to believe that it is not necessary to require that all topics be covered in a single EIS at the ESP stage, and that topics such as alternative energy sources and need for power may be treated in an EIS supplement at the COL application stage when the detailed planning for the project is completed. As the commenters note, new and significant information may also prompt the preparation of a supplement to the ESP EIS in connection with the COL application. Since the NRC believes that some issues may not be ripe for consideration at the ESP stage, and an ESP EIS need not address such issues, the Commission is declining to take a position on whether the granting of an ESP and the granting of a COL referencing that ESP are connected actions. Nevertheless, the Commission believes that, inasmuch as an early site permit and a combined license are major Federal actions significantly affecting the quality of the human environment, both actions require the preparation of an EIS. However, 10 CFR part 52 does provide finality for previously resolved issues. Under NEPA, the combined license environmental review is informed by the EIS prepared at the ESP stage and the NRC staff intends to incorporate by reference the ESP EIS in the combined license supplemental EIS. A description of what the combined license applicant must address in this situation can be found under the discussion of changes to § 51.50(c)(1).

More specific changes to individual sections in part 51 are discussed as follows:

1. Section 51.20, Criteria for and Identification of Licensing and Regulatory Actions Requiring Environmental Impact Statements

The NRC is revising § 51.20(b) to identify the part 52 licensing processes that require an EIS or a supplement to an EIS. Specifically, the NRC is revising § 51.20(b)(1) to indicate that issuance of an early site permit requires an EIS. The NRC is revising § 51.20(b)(2) to indicate that issuance of a combined license requires an EIS. Also, paragraph (b)(6) is being 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.

2. Section 51.22, Criterion for Categorical Exclusion; Identification of Licensing and Regulatory Actions Eligible for Categorical Exclusion or Otherwise Not Requiring Environmental Review

The NRC is revising § 51.22(c) to identify part 52 licensing processes that are eligible for categorical exclusion or otherwise do not require environmental review.

3. Section 51.23, Temporary Storage of Spent Fuel After Cessation of Reactor Operation—Generic Determination of No Significant Environmental Impact

The NRC is revising §§ 51.23(b) and(c) to indicate that the provisions of these paragraphs also apply to combined licenses.

4. Section 51.26, Requirement To Publish Notice and Conduct Scoping Process

The NRC is adding a new paragraph (d) to this section to provide requirements for publication of a notice of intent when the NRC determines that a supplement to an EIS will be prepared. This new provision also states that, in such cases, the NRC staff need not conduct a scoping process, provided, however, that if scoping is conducted, then the scoping must be directed at matters to be addressed in the supplement. If scoping is conducted in a proceeding for a combined license referencing an ESP under part 52 , then the scoping must be directed at matters to be addressed in the supplement as described in § 51.92(e).

5. Section 51.27, Notice of Intent

The NRC is adding a new paragraph (b) to this section to provide requirements for the contents of a notice of intent when the NRC determines that a supplement to an EIS will be prepared. Paragraph (b) states that the notice of intent will, among other things, describe the matters to be addressed in the supplement to the final EIS and describe any proposed scoping process that the NRC staff may conduct.

6. Section 51.29, Scoping-Environmental Impact Statement and Supplement to Environmental Impact Statement

The NRC is revising paragraph (a)(1) of this section in the final rule to include requirements for supplements to an ESP EIS prepared for a combined license application.

7. Section 51.45, Environmental Report

The NRC is revising § 51.45(c) to indicate that the analysis in an environmental report prepared for an ESP need not include consideration of the economic, technical, and other benefits and costs of the proposed action and of energy alternatives. This change is being made for consistency with the provisions of § 51.50(b), which state that an environmental report included in an ESP application need not include an assessment of the benefits (e.g., need for power) of the proposed action and with the Commission's denial of a Petition for Rulemaking (See PRM–52–02 (October 28, 2003; 68 FR 55905)).

8. Section 51.50, Environmental Report—Construction Permit, Early Site Permit, or Combined License Stage

The NRC is revising the title of § 51.50 to "Environmental Report Construction Permit, Early Site Permit, or Combined License Stage," and including separate paragraphs with specific requirements for environmental reports for early site permit and combined license applications which are based on existing requirements in part 51 for construction permits and operating licenses and requirements for early site permits and combined licenses in part 52.

The NRC is revising the requirements from former § 52.17(a)(2) to clarify that an early site permit applicant has the flexibility of either addressing the matter of alternative energy sources in the environmental report supporting its early site permit application, or deferring consideration of alternative energy sources to the time that the early site permit is referenced in a licensing application. The NRC believes the former regulations already afforded the early site permit applicant such flexibility, inasmuch as former § 52.17(a)(2) stated that the environmental report submitted in support of an early site permit application must "focus on the environmental effects of construction and operation of a reactor, or reactors * * *." The environmental report's discussion of alternative energy sources does not, per se, address the "environmental effects of construction and operation of a reactor," which is one of the matters which must be addressed in an environmental impact statement (EIS). [See 10 CFR 51.71(d); National Environmental Policy Act of 1969 (NEPA), Sec. 102(2)(C)(i), (ii), and (v).] Rather, alternative energy sources constitute part of the discussion of reasonable alternatives to the proposed action, which is required by Section 102(2)(C)(iii) of NEPA. [See 10 CFR 51.71(e) n.4; 46 FR 39440 (August 3, 1981) (proposed rule that would eliminate consideration of need for

power and alternative energy sources at operating license stage), at 39441 (first column) (final rule published March 26, 1982; 47 FR 12940).] *See Exelon Generation Company, LLC et al.*, CLI–05–17, 62 NRC 5, where the Commission ruled that:

> [T]he "reasonable alternatives" issue does not apply with full force to ESP (or "partial" construction permit) cases. At the ESP stage of the construction permit process, the boards' "reasonable alternatives" responsibilities are limited because the proceeding is focused on an appropriate site, not the actual construction of a reactor. Thus, boards must merely weigh and compare alternative sites, not other types of alternatives (such as alterative energy sources). (Id. at 48 (citations omitted).)

Accordingly, the NRC believes that former § 52.17(a)(2) already provided the early site permit applicant the flexibility of choosing to defer consideration of alternative energy sources to the time that the early site permit is referenced in a combined license or a construction permit application. The revisions in § 51.50(b) clarify that the early site permit applicant may either include a discussion of alternative energy sources in its environmental report, or defer consideration of the matter. The NRC made conforming amendments elsewhere in part 51 to clarify that the NRC's EIS need not address the need for power or alternative energy sources (and therefore these matters may not be litigated) if the early site permit applicant chooses not to address these matters in its environmental report. The environmental report and EIS for an early site permit must address the benefits associated with issuance of the early site permit (e.g., early resolution of siting issues, early resolution of issues on the environmental impacts of construction and operation of a reactor(s) that fall within the site characteristics, and ability of potential nuclear power plant licensees to "bank" sites on which nuclear power plants could be located without obtaining a full construction permit or combined license). The benefits (and impacts) of issuing an early site permit must always be addressed in the environmental report and EIS for an early site permit, regardless of whether the early site permit applicant chooses to defer consideration of the benefits associated with the construction and operation of a nuclear power plant that may be located at the early site permit site. This is because the "benefits * * * of the proposed action" for which the discussion may be deferred are the benefits associated with the construction and operation of a nuclear power plant that may be located at the early site permit site; the benefits which may be deferred are entirely separate from the benefits of issuing an early site permit. The proposed action of issuing an early site permit is not the same as the "proposed action" of constructing and operating a nuclear power plant for which the discussion of benefits (including need for power) may be deferred under § 51.50(b).

The NRC is further modifying § 51.50(b) in the final rule based on public comments. This section addresses requirements for environmental reports at the early site permit stage. In the proposed rule, § 51.50(b) stated that environmental reports "must focus on the environmental effects of construction and operation of a reactor, or reactors, which have characteristics that fall within the postulated site parameters." Commenters pointed out that the use of "postulated site parameters" was not consistent with the terminology the NRC had used elsewhere in the proposed rule. Consequently, the NRC is revising this provision in the final rule to require that the environmental report "must focus on the environmental effects of construction and operation of a reactor, or reactors, which have design characteristics that fall within the site characteristics and design parameters for the early site permit application." A similar change is being made to the same language in final rule § 51.75(b) [proposed § 51.71(d)].

The NRC is making additional changes to § 51.50(b) to further clarify the scope of the environmental review at the early site permit stage. Final § 51.50(b)(2) states that an early site permit environmental report may address one or more of the environmental effects of construction and operation of a reactor, or reactors, which have design characteristics that fall within the site characteristics and design parameters for the early site permit application, but that the environmental report must address all environmental effects of construction and operation necessary to determine whether there is any obviously superior alternative to the site proposed. The purpose of this change is to clearly delineate that the scope of the environmental review at the early site permit stage is, at a minimum, to address all issues needed for the NRC to perform its evaluation of the alternative sites. In addition, the applicant may choose to address one or more issues related to construction and operation of the facility with the goal of achieving finality on those issues at the early site permit stage.

In addition, the NRC is modifying §§ 51.50(b) and 51.50(c) in the final rule to reflect comments made at the NRC's public workshops during the public comment period on the proposed rule. These discussions related to the requirement to include a proposed list of activities and a redress plan in license applications that request authority to perform activities under § 50.10(e). The NRC concluded that it is preferable to include both the list of proposed activities and the redress plan as separate documents in the application, outside of both the final safety analysis report (or site safety analysis report in the case of an early site permit) and the environmental report. The NRC's conclusion is based on the fact that the requirements in § 50.10(e) address both safety and environmental issues. Additional changes were made to §§ 52.17(c), 52.79(a), and 52.80 to implement this concept.

The NRC is also revising § 51.50(c) based on public comments in the final rule. These revisions address the situation where a combined license applicant is referencing an early site permit and provide for a clearer link to the finality provisions in § 52.39, eliminate language that attempted to define "new and significant," and provide greater consistency with related requirements elsewhere in part 51. The revisions also provide requirements for addressing environmental terms and conditions. The discussion that follows reflects the language in the final rule.

The NRC is adding a requirement in § 51.50(c)(1) that the applicant's environmental report need not contain information or analyses submitted to the Commission in the early site permit environmental report or resolved in the Commission's early site permit environmental impact statement, but must contain, in addition to the environmental information and analyses otherwise required: (1) Information to demonstrate that the design of the facility falls within the site characteristics and design parameters specified in the early site permit; (2) information to resolve any significant environmental issue that was not resolved in the early site permit proceeding: (3) any new and significant information for issues related to the impacts of construction and operation of the facility that were resolved in the early site permit proceeding; (4) a description of the process used to identify new and significant information regarding the NRC's conclusions in the early site permit environmental impact statement, including a requirement that the process use a reasonable

methodology for identifying such new and significant information; and (5) a demonstration that all environmental terms and conditions that have been included in the early site permit will be satisfied by the date of issuance of the combined license. Any terms or conditions of the early site permit that cannot be met by the time the combined license is issued must be set forth as terms or conditions of the combined license.

For an early site permit, the NRC prepares an EIS that resolves numerous issues within certain bounding conditions. These issues have issue preclusion at the combined license or CP stage provided certain conditions are met. A combined license or CP application must demonstrate that the design of the facility falls within the site characteristics and design parameters specified in the early site permit. In addition, the application must include any new and significant information for issues related to the impacts of construction and operation of the facility (i.e., the issue being addressed at the combined license stage) that were resolved in the early site permit proceeding. Documentation related to the applicant's search for new information and its determination about the significance of the new information should be maintained in an auditable form by the applicant. The NRC staff may also use the environmental scoping process to assist it in determining if there is new and significant information regarding issues that were resolved in the early site permit proceeding. Although the NRC is ultimately responsible for completing any required NEPA review under 10 CFR 51.70(b), for example, an evaluation of the impact of new and significant information on the conclusions for a resolved early site permit environmental issue, the combined license applicant must identify whether there is new and significant information on such an issue. A combined license applicant should have a reasonable process to ensure it becomes aware of new and significant information that may have a bearing on the earlier NRC conclusion, and should document the results of this process in an auditable form. The NRC staff will verify that the applicant's process for identifying new and significant information is effective.

The NRC, in the context of a combined license application that references an early site permit, has defined the term "new" in the phrase "new and significant information" as any information that was both (1) not considered in preparing the ESP environmental report or EIS (as may be evidenced by references in these documents, applicant responses to NRC requests for additional information, comment letters, etc.) and (2) not generally known or publicly available during the preparation of the EIS (such as information in reports, studies, and treatises). For new information to be "significant," it must be material to the issue being considered, that is, it must have the potential to affect the finding or conclusions of the NRC staff's evaluation of the issue. The COL applicant need only provide information about a previously resolved environmental issue if it is both new and significant.

The combined license applicant referencing an early site permit is also required to provide information sufficient to resolve any other significant environmental issue not considered in the early site permit proceeding (e.g., need for power) and the information contained in the application should be sufficient to aid the staff in its development of an independent analysis (see 10 CFR 51.45).

Finally, the combined license applicant referencing an early site permit must demonstrate that all environmental terms and conditions included in the early site permit will be satisfied by the date of issuance of the combined license. In some cases, this may require adding a condition to the combined license to adequately address the environmental issue raised in the early site permit condition. Note that this provision was added to § 51.50(c)(1) in the final rule. Requirements to include environmental conditions in an early site permit environmental report were addressed in the proposed rule in § 51.50(b), but the associated provision to ensure any conditions included in the permit would be met was inadvertently left out of § 51.50(c)(1).

In the past, the NRC staff has attempted to explain the relationship between the environmental review of an early site permit application to that of a combined license application referencing the early site permit by analogy to the license renewal environmental review process. The NRC believes the analogy especially useful because the license renewal process is well-established and clearly understood. Because there appears to be some confusion regarding this analogy, NRC believes a brief explanation of the similarities of the two processes is warranted.

For license renewal, the NRC prepared a generic EIS (GEIS) that resolved more than 60 issues for all plants based on certain bounding assumptions. These were termed Category 1 issues. If a license renewal applicant identifies new and significant information with respect to a Category 1 issue, it documents its assessment of that information in its application. If the applicant determines that this new information is not significant, or that there is no new information, the applicant documents the bases for these determinations in an auditable form and makes the documentation available for staff inspection. If there is new and significant information on a Category 1 issue, the NRC staff limits its inquiry to determine if this information changes the Commission's earlier conclusion set forth in the GEIS. The NRC staff may inquire if the applicant has a reasonable process for identifying new and significant information on Category 1 issues.

Similarly, in the NRC environmental review process for a combined license application, the combined license EIS brings forward the Commission's earlier conclusions from the early site permit EIS and articulates the activities undertaken by the NRC staff to ensure that an issue that was resolved can remain resolved. If there is new and significant information on a previously resolved issue, then the staff will limit its inquiry to determine if the information changes the Commission's earlier conclusion. Environmental matters subject to litigation in a combined license proceeding mainly include (1) those issues that were not considered in the previous proceeding on the site or the design; (2) those issues for which there is new and significant information; and (3) those issues subject to the change or exemption processes in 10 CFR part 52.

Notwithstanding that, in the context of renewal, the GEIS resolves Category 1 issues through rulemaking and an early site permit resolves environmental issues through an individual licensing proceeding, the staff believes that the license renewal practice is similar to the part 52 process in which a combined license application references an early site permit.

The NRC has determined that a combined license is a major Federal action significantly affecting the quality of the human environment and, in accordance with 10 CFR 51.20, the NRC must prepare an EIS on that action. If there is no new and significant information for matters resolved at the ESP stage, then the staff will rely upon ("tier off") the ESP EIS at the combined license stage and disclose the NRC conclusion for matters covered in the early site permit review. Such matters

will not be subject to litigation at the combined license stage.

9. Section 51.51, Uranium Fuel Cycle Environmental Data—Table S–3

The NRC is revising § 51.51 to require that every environmental report prepared for the early site permit stage or combined license stage of a light-water-cooled nuclear power reactor use Table S–3, Table of Uranium Fuel Cycle Environmental Data, as the basis for evaluating the contribution of the environmental effects of the uranium fuel cycle to the environmental costs of licensing light-water-cooled nuclear power reactors. If the application for a combined license references an early site permit in which the environmental impacts and costs related to the uranium fuel cycle were already evaluated and resolved, then the repetition of this information in the environment report for the combined license is not required unless the applicant has identified new and significant information regarding these environmental impacts and costs.

10. Section 51.52, Environmental Effects of Transportation of Fuel and Waste—Table S–4

The NRC is revising § 51.52 to require that every environmental report prepared for the early site permit stage or combined license stage of a light-water-cooled nuclear power reactor contain a statement concerning transportation of fuel and radioactive wastes to and from the reactor. If the application for a combined license references an early site permit in which the transportation of fuel and radioactive wastes to and from the reactor has already been evaluated and resolved, then the repetition of this information in the environment report for the combined license is not necessary unless the applicant has identified new and significant information regarding the associated environmental impacts.

11. Section 51.53, Postconstruction Environmental Reports

The NRC is revising § 51.53(a) to clarify that any postconstruction environmental report may incorporate by reference any information contained in a prior environmental report or supplement thereto that relates to the site or any information contained in a final environmental document previously prepared by the NRC staff that relates to the site. This change reflects the recognition that environmental documents will be prepared at the early site permit stage and may be referenced in environmental documents for future licensing actions. The NRC is also revising § 51.53(a) to clarify that documents that may be referenced in post-construction environmental reports include those prepared in connection with an early site permit or a combined license. In addition, the NRC is revising § 51.53(c)(3) to clarify that the requirements for the content of environmental reports submitted in applications for renewal of a combined license are the same as those for renewal of an operating license.

12. Section 51.54, Environmental Report—Manufacturing License

The NRC is revising this section by adding two paragraphs to delineate the difference in the matters with respect to SAMDAs that must be addressed in an environmental report for issuance of a manufacturing license under subpart F of part 52, versus that for an amendment to the manufacturing license. Section 51.54(a) provides that the environmental report for the manufacturing license must address the costs and benefits of SAMDAs, and the bases for not incorporating into the design of the manufactured reactor any SAMDAs identified during the applicant's review. Section 51.54(b) reflects the narrower scope of an environmental report submitted in connection with a proposed amendment to a manufacturing license, by providing that the report need only address whether the design change which is subject of a proposed amendment either renders a SAMDA previously identified and rejected to become cost beneficial, or results in the identification of new SAMDAs that may be reasonably incorporated into the design of the manufactured reactors.

As discussed earlier, the environmental impacts of manufacturing a reactor under a manufacturing license are not considered by the NRC, and § 51.54 indicates that the environmental report need not include a discussion of the environmental impacts of manufacturing a reactor.

13. Section 51.55, Environmental Report—Standard Design Certification

The NRC is transferring the provisions in current § 51.55 to a new § 51.58 (discussed in § 51.58), and the NRC is revising this section to address the contents of environmental reports for design certifications under subpart B of part 52. The structure of new § 51.55 is similar to that of § 51.54, reflecting the fact that the environmental review for either manufacturing licenses or design certifications is limited to SAMDAs. Section 51.55(a) provides that the environmental report for the design certification must address the costs and benefits of SAMDA, and the bases for not incorporating into the design certification any SAMDAs identified during the applicant's review. Section 51.55(b) provides that the environmental report submitted in support of a request to amend a design certification need only address whether the design change which is the subject of a proposed amendment either renders a SAMDA previously identified and rejected to become cost beneficial, or results in the identification of new SAMDAs that may be reasonably incorporated into the design certification.

14. Section 51.58, Environmental Report—Number of Copies; Distribution

The matters previously addressed in § 51.55 are addressed in a new § 51.58. The NRC is adding conforming references to § 51.58(a) for early site permits and combined licenses. Section 51.58(b) contains a conforming reference to subpart F of part 52.

15. Section 51.71, Draft Environmental Impact Statement—Contents

The NRC is revising § 51.71(d) to include a reference to § 51.75 in the first sentence because § 51.75 also includes exceptions to the provisions in § 51.71(d). This represents a change the NRC is making in the final rule to move the specific discussions on early site permits and combined licenses from § 51.71(d) to their associated paragraphs in § 51.75. The NRC is also revising associated footnote 3 to include references to early site permits and combined licenses.

16. Section 51.75, Draft Environmental Impact Statement—Construction Permit, Early Site Permit, or Combined License

The NRC is adding §§ 51.75(b) and (c) to include separate requirements for the preparation of draft EISs at the early site permit and combined license stages. In the final rule, the NRC is also moving information related to early site permits that was contained in proposed § 51.71(d) to § 51.75(b). In addition, the NRC is providing further clarification in the final rule on the scope of the environmental review at the early site permit stage. Section 51.75 requires that the draft environmental impact statement must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed. The draft environmental impact statement must also include an evaluation of the environmental effects of construction

and operation of a reactor, or reactors, which have design characteristics that fall within the site characteristics and design parameters for the early site permit application, but only to the extent addressed in the early site permit environmental report or otherwise necessary to determine whether there is any obviously superior alternative to the site proposed. The purpose of this change is to clearly delineate that the scope of the environmental review at the early site permit stage is, at a minimum, to address all issues needed for the NRC to perform its evaluation of the alternative sites. In addition, the applicant may choose to address one or more issues related to construction and operation of the facility with the goal of achieving finality on those issues at the early site permit stage. The NRC also notes that, where the early site permit application identifies a specific nuclear power reactor design (i.e., a standard design certification or manufacturing license) under § 52.17(a)(1)(i), the environmental report for an early site permit may address the applicability of the severe accident mitigation design alternatives (SAMDA) evaluation for that reactor design to the proposed site. In this situation, the early site permit EIS must determine whether the site characteristics bound the site parameters relevant to the SAMDA analysis, as specified in the environmental assessment for the identified nuclear power reactor design.

The requirements for combined licenses are organized into separate paragraphs (c)(1), (c)(2), and (c)(3) which address the contents of the combined license environmental impact statement if the combined license application references an early site permit or standard design certification, or proposes to use a manufactured reactor. For example, § 51.75(c)(3) provides that the combined license EIS will not address the environmental impacts associated with manufacturing the reactor under the manufacturing license.

In the final rule, § 51.75(c)(1) states that if a combined license application references an early site permit, then the NRC staff shall prepare a supplement to the early site permit EIS. Paragraph (c)(1) also requires that the supplement be prepared in accordance with § 51.92. Section 51.92 contains the requirements for the content of a supplemental EIS prepared for a combined license application that references an early site permit.

17. Section 51.92, Supplement to the Final Environmental Impact Statement

The NRC is revising § 51.92 in the final rule to provide requirements for NRC staff preparation of a supplement to the final environmental impact statement for an early site permit as required by § 51.75(c)(1). Paragraph (b) of § 51.92 states that, in a proceeding for a combined license application referencing an early site permit, the NRC staff shall prepare a supplement to the final environmental impact statement for the referenced early site permit in accordance with § 51.92(e). In the final rule, the NRC is moving information related to combined licenses that was contained in proposed § 51.71(d) to § 51.92(e) and is revising the wording of this provision. In the proposed rule, § 51.71(d) stated that the draft supplemental environmental impact statement prepared at the combined license stage when an early site permit is referenced need not include detailed information or analyses that were resolved in the final environmental impact statement prepared by the Commission in connection with the early site permit, provided that the design of the facility falls within the design parameters specified in the early site permit, the site falls within the site characteristics specified within the early site permit, and there is no new and significant environmental issue or information not considered on the site or the design only to the extent that they differ from that discussed in the final environmental impact statement prepared by the Commission in connection with the early site permit. In the final rule, the NRC has modified these provisions and moved them to § 51.92(e). The revised language in paragraph (e) provides a clearer link to the finality provisions in § 52.39, eliminates language in the proposed rule that attempted to define "new and significant," and provides greater consistency with related requirements elsewhere in part 51. Specifically, paragraph (e) requires that a supplement to an early site permit final environmental impact statement must: (1) Identify the proposed action as the issuance of a combined license for the construction and operation of a nuclear power plant as described in the combined license application at the site described in the early site permit referenced in the combined license application; (2) incorporate by reference the final environmental impact statement prepared for the early site permit; (3) contain no separate discussion of alternative sites; (4) include an analysis of the economic, technical, and other benefits and costs of the proposed action, to the extent that the final environmental impact statement prepared for the early site permit did not include an assessment of these benefits and costs; (5) include an analysis of other energy alternatives, to the extent that the final environmental impact statement prepared for the early site permit did not include an assessment of energy alternatives; (6) include an analysis of any environmental issue related to the impacts of construction or operation of the facility that was not resolved in the proceeding on the early site permit; and (7) include an analysis of the issues related to the impacts of construction and operation of the facility that were resolved in the early site permit proceeding for which new and significant information has been identified, including, but not limited to, new and significant information demonstrating that the design of the facility falls outside the site characteristics and design parameters specified in the early site permit.

18. Section 51.95, Postconstruction Environmental Impact Statements

The NRC is revising § 51.95(a) to indicate that documents that may be referenced in a supplement to a final environmental impact statement include documents prepared in connection with an early site permit or combined license. In addition, the NRC is revising § 51.95(c) to add provisions for renewal of combined licenses and to correct the address for the NRC Public Document Room. The NRC is revising § 51.95 to indicate that the NRC will prepare a supplemental environmental impact statement in 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, the NRC is revising § 51.95(d) to indicate that, unless otherwise required by the Commission, in accordance with 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.

19. Section 51.105, Public Hearings in Proceedings for Issuance of Construction Permits or Early Site Permits

The NRC is revising the section heading and § 51.105(a) 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, the NRC is adding § 51.105(b) 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. This change is being made for consistency with the provisions of § 51.50(b), which state that an environmental report included in an early site permit application need not include an assessment of the benefits (e.g., need for power) of the proposed action, and with the Commission's denial of a Petition for Rulemaking (See PRM–52–02 (October 28, 2003; 68 FR 55905)). The NRC notes that the environmental report and EIS for an early site permit must address the benefits associated with issuance of the early site permit (e.g., early resolution of siting issues, early resolution of issues on the environmental impacts of construction and operation of a reactor(s) that fall within the site characteristics, and ability of potential nuclear power plant licensees to "bank" sites on which nuclear power plants could be located without obtaining a full construction permit or combined license). The benefits (and impacts) of issuing an early site permit must always be addressed in the environmental report and EIS for an early site permit, regardless of whether the early site permit applicant chooses to defer consideration of the benefits associated with the construction and operation of a nuclear power plant that may be located at the early site permit site. This is because the "benefits * * * of the proposed action" for which the discussion may be deferred are the benefits associated with the construction and operation of a nuclear power plant that may be located at the early site permit site; the benefits which may be deferred are entirely separate from the benefits of issuing an early site permit. The presiding officer needs to be mindful of whether the applicant has addressed only the benefits of issuing the early site permit or whether the applicant has also addressed all of the benefits of construction and operation of the facility. This is because the presiding officer, in accordance with § 51.105(a)(3), must determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the early site permit should be issued, denied, or appropriately conditioned to protect environmental values. If the applicant has addressed all of the costs and benefits associated with construction and operation of the facility in its environmental report, the final balancing between costs and benefits needs to occur at the early site permit stage.

The NRC also notes that, where the early site permit application identifies a specific nuclear power reactor design (i.e., a standard design certification or manufacturing license) under § 52.17(a)(1)(i), the environmental report for an early site permit may address the applicability of the severe accident mitigation design alternatives evaluation for that reactor design to the proposed site. In this situation, the early site permit EIS must determine whether the site characteristics bound the site parameters relevant to the SAMDA analysis, as specified in the environmental assessment for the identified nuclear power reactor design. In addition, in accordance with Section 52.107(c), the presiding officer shall not admit contentions proffered by any party concerning severe accident mitigation design alternatives unless the contention demonstrates that the site characteristics fall outside of the site parameters in the standard design certification or underlying manufacturing license for the manufactured reactor.

20. Section 51.105a, Public Hearings in Proceedings for Issuance of Manufacturing Licenses

The NRC is adding § 51.105a to provide requirements for public hearings in proceedings for issuance of manufacturing licenses. Specifically, § 51.105a establishes that the presiding officer in a proceeding for a manufacturing license will determine whether the manufacturing license should be issued as proposed by the appropriate NRC staff director.

21. Section 51.107, Public Hearings in Proceedings for Issuance of Combined Licenses

The NRC is adding § 51.107 to set out the requirements for public hearings in proceedings for issuance of combined licenses. The requirements parallel the associated requirements for public hearings on construction permits and operating licenses, as appropriate, and provide requirements unique to the combined license process that are derived from various provisions in part 52, namely §§ 52.39 and 52.103. The NRC is making changes to the language in § 51.107 in the final rule to more clearly define the role of the presiding officer in a proceeding for the issuance of a combined license where an early site permit is being referenced. Specifically, paragraph (b) addresses the situation where a combined license application references an early site permit and a supplement to the early site permit environmental impact statement is prepared in accordance with § 51.75(c)(1) and § 51.92(e). In such cases, the presiding officer in the combined license hearing shall not admit any contention proffered by any party on environmental issues which have been accorded finality under § 52.39 unless the contention: (1) Demonstrates that the nuclear power reactor proposed to be built does not fit within one or more of the site characteristics or design parameters included in the early site permit; (2) raises any significant environmental issue that was not resolved in the early site permit proceeding; or (3) raises any issue involving the impacts of construction and operation of the facility that was resolved in the early site permit proceeding for which new and significant information has been identified.

N. Changes to 10 CFR Part 54

1. Section 54.1, Purpose

This part applies to renewed operating licenses for nuclear power plants. A conforming change is made to this section to include renewed combined licenses.

2. Section 54.3, Definitions

The definition for *renewed combined license* is added to explain the meaning of the new phrase as it is used in this part.

3. Section 54.17, Filing of Application

Section 54.17(c) is revised to add a conforming reference to combined licenses issued under 10 CFR part 52.

4. Section 54.27, Hearings

This section is revised to include a conforming reference to renewed combined license issued under 10 CFR part 52.

5. Section 54.31, Issuance of a Renewed License

Sections 54.31(a), (b), and (c) are revised to include conforming references to combined licenses in this procedure on issuance of renewed licenses.

6. Section 54.35, Requirements During Term of Renewed License

This section is revised to include conforming references to holders of combined licenses and the regulations in part 52 into the requirements for a renewed license.

7. Section 54.37, Additional Records and Recordkeeping Requirements

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

O. 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. Formerly, the provisions in part 55 referred 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 are revised by adding a reference to part 52. This clarifies that each operator of a nuclear power reactor 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 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. Changes to 10 CFR Part 72

1. Section 72.210, General License Issued

Part 72 sets forth the requirements for independent spent fuel storage facilities. This section is revised to include a conforming reference to persons authorized to operate nuclear power reactors under 10 CFR part 52 (i.e., a combined license holder).

2. Section 72.218, Termination of Licenses

Section 72.218(b) is revised to include a conforming reference to combined licenses issued under part 52.

Q. Changes to 10 CFR Part 73

Part 73 establishes the NRC's requirements for the physical protection of production and utilization facilities licensed by the NRC. It provides requirements for the physical protection of licensed activities, for personnel access authorization, and for criminal history checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information. Formerly, the language of § 73.1, *Purpose and scope*, § 73.2, *Definitions*, § 73.50, *Requirements for physical protection of licensed activities*, § 73.56, *Personnel access authorization requirements for nuclear power plants*, and § 73.57, *Requirements for criminal history checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information by power reactor licensees*, and Appendix C, *Licensee Safeguards Contingency Plans*, did not refer to combined licenses issued under part 52. However, part 73 was formerly applicable to combined licenses under the provisions of § 52.83, *Applicability of part 50 provisions*, which states that all provisions of 10 CFR part 50 and its appendices applicable to holders of operating licenses also apply to holders of combined licenses. Accordingly, § 73.1 is revised to clarify that the regulations in part 73 apply to persons who receive combined licenses under part 52, and § 73.2 is revised to state that terms defined in part 52 have the same meaning when used in part 73. The NRC has addressed combined licenses in § 73.57 by making the provisions that are required before receiving an operating license under part 50 applicable before the date that the Commission makes the finding under § 52.103 for a combined license. Additional conforming changes to include part 52 licenses are made for §§ 73.50 and 73.56, and appendix C to part 73.

R. Change to 10 CFR Part 75

1. Section 75.6, Maintenance of Records and Delivery of Information, Reports, and Other Communications

Part 75 sets forth NRC requirements intended to implement the agreement between the United States and the International Atomic Energy Agency (IAEA) with respect to safeguards of nuclear material. Various provisions throughout part 75 require certain licensees and other individuals and entities regulated by the NRC to submit to the NRC various reports and communications. Section 75.6 specifies the NRC officials to whom these reports and communications are to be sent. However, § 75.6(b)—the provision applying to, inter alia, nuclear power plants—refers only to holders of a construction permit or an operating license, and does not include holders of combined licenses. Accordingly, § 75.6(b) is revised to reference combined licenses. The NRC notes that early site permits and manufacturing licenses need not be referenced, inasmuch as the U.S.–IAEA Safeguards Agreement does not extend to early site permits or manufacturing licenses.

S. Changes to 10 CFR Part 95

The following discussion explains the requirements in part 95 generically and covers §§ 95.5, 95.13, 95.19, 95.20, 95.23, 95.31, 95.33 through 95.37, 95.39, 95.43, 95.45, 95.49, 95.51, 95.53, 95.57, and 95.59.

Part 95 sets forth the NRC requirements governing what individuals and entities may be provided access to National Security Information (NSI) and/or Restricted Data (RD) received or developed in connection with activities licensed, certified, or regulated by the NRC, and how this information and data is to be protected by these individuals and entities against unauthorized disclosure.

Although requirements for protection of NSI and RD must, by statute, apply to all individuals and entities provided access to such information, various sections in part 95 use slightly different wording to delineate the relevant set of individuals and entities. To ensure consistency, the Commission is revising its regulations to refer to "licensee, certificate holder, or other person," to describe the individuals and entities subject to the applicable requirements. In adopting this phrase, the NRC intends to ensure that its regulatory requirements for protection of NSI and RD in part 95 extend as broadly as the NRC's authority provided under applicable law. The term, "licensee," includes both holders of all NRC licenses, including (but not limited to) combined licenses, as well as holders of permits such as construction permits and early site permits. The term, "certificate holder," includes (but is not limited to) all certificates of approval that the Commission may issue, such as a certificate of compliance for spent fuel casks under 10 CFR part 72. Finally, the term, "or other person," is 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 is revising § 95.39 to use the phrase, "NRC

license, certificate, or standard design approval or standard design certification under part 52."

T. 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 did not address the indemnification and financial protection requirements of combined license holders. Accordingly, the final rule revises various sections in part 140 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 authorize the possession or use of nuclear fuel or other nuclear materials.

U. Changes to 10 CFR Part 170

Part 170 sets out the fees charged for licensing services performed by the NRC. The NRC is revising § 170.2(g) and (k) to add conforming references to manufacturing licenses and standard design approvals issued under part 52, revise the existing reference to appendix Q to part 52 to be a reference to appendix Q to part 50, and delete the reference to a manufacturing license issued under part 50 (which is being removed from part 50 because of its transfer to part 52 in the 1989 rulemaking adopting part 52).

V. Changes to 10 CFR Part 171

Part 171 sets out the annual fees charged to persons who hold licenses issued by the NRC. The NRC is revising § 171.15 to add conforming references to combined licenses issued under part 52. Note that for combined licenses, the requirements of part 171 are not applicable until after the Commission has made the finding under § 52.103(g). This section also provides fee requirements for each person holding a part 50 power reactor license that is in decommissioning or possession only status and each person holding a part 72 license who does not hold a part 50 license. The NRC also added conforming changes to include references in part 52 in these provisions.

VI. Section-by-Section Analysis

Part 52, General Provisions

Section 52.0 Scope; Applicability of 10 CFR Chapter I Provisions

This section, formerly designated as § 52.1, has been expanded to: (1) address all licensing and regulatory processes covered in part 52; and (2) more clearly define the relationship between part 52 and remaining provisions of 10 CFR Chapter I. Paragraph (a), which establishes the scope of part 52, is revised by referring to all licensing and regulatory processes covered in part 52. In addition, paragraph (a) is revised to give notice to contractors, subcontractors or consultants of applicants for or holders of licenses or regulatory approvals under part 52 that they are subject to NRC enforcement action for violations of the deliberate misconduct proscriptions in § 52.4. The Commission notes, as discussed below in the section-by-section analysis of § 52.4, that deliberate misconduct under § 52.4 may occur as the result of a violation of any Commission rule and regulation throughout 10 CFR Chapter I, not just a violation of a requirement in part 52.

Paragraph (b) is a new provision that supersedes former § 52.83. The first sentence of paragraph (b) is intended to make clear that the Commission's regulations in 10 CFR Chapter I apply to applicants and holders of licenses, permits and other regulatory approvals in part 52 (e.g., design approvals and standard design certifications). Accordingly, applicants, licensees and holders of regulatory approvals under part 52 should review the regulations in 10 CFR Chapter I to ensure that they are in compliance with applicable Commission requirements throughout 10 CFR Chapter I. The second sentence of paragraph (b) reinforces the applicability of the Commission's requirements throughout 10 CFR Chapter I to part 52 licenses, permits, and other regulatory approvals. As part of this final rule, the Commission is making conforming changes as necessary throughout Chapter I to ensure that relevant regulations clearly set forth their applicability to part 52 licenses and approvals, and to part 52 entities such as applicants, licensees, and holders. Nonetheless, the Commission is adopting paragraph (b) in order to clearly and unambiguously impose applicable regulatory requirements that exist throughout 10 CFR Chapter I.

Section 52.1 Definitions

This section, formerly designated as § 52.2, has been supplemented by: (1) adding definitions of terms that are used in part 52 but were undefined in the previous rule; and (2) providing definitions of new terms that were added in this rulemaking to provide greater clarity and precision. New definitions which are noteworthy are discussed individually as follows.

A definition of *modular design* is added to explain the type of modular reactor design to which the Commission intended to refer to in the second sentence of the current § 52.103(g). This special provision for modular designs was added to part 52 to facilitate the licensing of nuclear plants, such as the Modular High Temperature Gas-Cooled Reactor (MHTGR) and Power Reactor Innovative Small Module (PRISM) designs, that consisted of three or four nuclear reactors in a single power block with a shared power conversion system. During the period that the power block is under construction, the Commission could separately authorize operation for each nuclear reactor when each reactor and all of its necessary support systems were completed. The Commission believes that the term "modular design" needs to be defined to aid future use of the current § 52.103(g) by distinguishing the intended definition from other currently used definitions for "modular design." Also, future combined license applicants for a multi-unit site that would be similar to current multi-unit sites (where each unit is similar in design but independent of all other units) could use this provision.

Definitions of the terms *design characteristics, design parameters, site characteristics,* and *site parameters* were added to § 52.1 to clarify their meaning and use in the licensing and approval processes of part 52. *Design characteristics* are defined as the actual features of a nuclear reactor or reactors. Design characteristics are specified in the final safety analysis report for a standard design approval, a standard design certification, a combined license application, or a manufacturing license. *Design parameters* are defined as the postulated features of a nuclear reactor or reactors that could be built at the proposed site. Design parameters are specified in an early site permit application. *Site characteristics* are defined as the actual physical, environmental, and demographic

features of a site. Site characteristics are specified in an early site permit or combined license application. *Site parameters* are defined as the postulated physical, environmental, and demographic features of an assumed site. Site parameters are specified in a standard design approval, standard design certification, or manufacturing license.

The values for the characteristics and parameters will be used in the NRC's review of combined license applications that reference design approvals, design certifications, manufacturing licenses, or early site permits. For example, § 52.79(b) requires that a combined license application referencing an early site permit contain information sufficient to demonstrate that the actual design characteristics of the nuclear facility fall within the design parameters and site characteristics specified in the early site permit. Also, § 52.79(d) requires that a combined license application referencing a design certification rule must contain information sufficient to demonstrate that the actual site characteristics fall within the site parameters specified in the design certification.

The above terms are also used in §§ 52.39 and 52.93. Because the NRC is relying on certain design parameters specified in the early site permit applications to reach its conclusions on site suitability, these design parameters will be included in any early site permit issued. The NRC believes that its review of a combined license application that references an early site permit will involve a comparison to ensure that the actual characteristics of the design chosen by the combined license applicant fall within the design parameters specified in the early site permit. A combined license application that references a design certification will involve a comparison to ensure that the actual characteristics of the site chosen by the combined license applicant fall within the site parameters in the design certification. Similarly, if a combined license applicant references both an early site permit and a design certification, the NRC will review the application to ensure that the site characteristics in the early site permit fall within the site parameters in the referenced design certification and that the actual design characteristics fall within the design parameters in the early site permit.

A new definition of *major features of the emergency plans* is added to explain what aspects of emergency preparedness—short of full and integrated emergency plans—an early site permit applicant may seek approval of under § 52.17(b)(2)(i). A major feature may consist of a specific aspect of a plan necessary to address in whole or part 1 or more of the 16 planning standards in 10 CFR 50.47(b). Additional requirements for each of the planning standards are set forth in part 50, appendix E, and the applicant may choose to demonstrate compliance with one or more provisions in appendix E, either in addition to or without a full demonstration of compliance with a planning standard in § 50.47(b), when seeking approval of part of a major feature. A major feature may also be a description of one or both of the emergency planning zones (EPZs) required by 10 CFR 50.33(g). Regulatory considerations governing EPZs are set forth in § 50.33(g); a major feature need not address all of these considerations.

A definition of *prototype plant* is added to explain the type of nuclear power plant that the Commission intended in the former § 52.47(b) (new § 50.43), and § 52.157(e)). A prototype plant is a licensed nuclear reactor test facility that is similar to and representative of either the first-of-a-kind or standard nuclear plant design in all features and size, but may have additional safety features. The purpose of the prototype plant is to perform testing of new or innovative safety features for the first-of-a-kind nuclear plant design, as well as being used as a commercial nuclear power facility.

Section 52.2 Interpretations

This section, formerly designated as § 52.5, remains unchanged. It provides that the only interpretations of part 52 that are legally binding on the Commission are interpretations provided by the General Counsel. These written interpretations, which are rarely provided by the General Counsel, are set forth in 10 CFR part 8.

Section 52.3 Written Communications

This new section, which is analogous to § 50.4, sets forth administrative requirements regarding written communications with the NRC, including the addressing of such communications, and listings of the various NRC offices and officials who must receive copies of different types of communications (e.g., applications for licenses and license amendments, security plan and related submissions, quality assurance related submissions). The administrative requirements themselves are identical to those in § 50.4; they are reproduced in § 52.3 to make clear that they apply to applicants for and holders of permits, licenses, and regulatory processes that are contained in part 52.

Section 52.4 Deliberate Misconduct

This section, formerly designated as § 52.9, has been substantially rewritten in order to more clearly delineate the applicability of the proscriptions against deliberate misconduct to all delineated part 52 entities, including applicants for and holders of standard design approvals, and applicants for standard design certifications (including those applicants whose designs are certified by the Commission in a standard design certification rulemaking). Although the regulatory language in § 52.4 differs from former § 52.9, no substantive change in any aspect of the Commission law or the underlying policy considerations is being made by the Commission's adoption of § 52.4. The relevant law and policy considerations for former § 52.9 are merely clarified and extended in § 52.4 to cover applicants for and holders of permits, licenses, and regulatory processes that are contained in part 52.

Section 52.5 Employee Protection

This new section, which is analogous to § 50.7, prohibits discrimination against employees for engaging in protected activities established in Section 211 of the Energy Reorganization Act of 1974, as amended (1974 ERA). These protected activities, which are listed in § 52.5(a)(1), include (but are not limited to) providing the Commission or the employer information about alleged violations of the AEA or 1974 ERA, of any of the Commission's regulations. No substantive change in any aspect of the Commission law or the underlying policy considerations with respect to employee protection is being made by the Commission adoption of § 52.5; the relevant law and policy considerations for former § 50.7 are merely clarified and extended in § 52.5 to cover applicants for and holders of permits, licenses, and regulatory processes that are contained in part 52 (currently, standard design approvals and standard design certifications).

Section 52.6 Completeness and Accuracy of Information

This new section, which is analogous to § 50.9, requires that all information submitted to the NRC by the delineated part 52 entities be complete and accurate, and imposes a reporting requirement on such entities with respect to information with respect to the regulated activity having a significant implication for public health and safety or common defense and security. No substantive change in any aspect of the Commission law or the

underlying policy considerations is being made by the Commission adoption of § 52.6; the relevant law and policy considerations underlying § 50.9 are merely clarified and extended to cover applicants for and holders of permits, licenses and regulatory processes that are contained in part 52. For example, § 50.9 does not impose a positive obligation on licensees to seek out new information meeting the reporting thresholds in the rule. In applying § 52.6, the Commission would extend this interpretation to part 52 entities such as combined license holders and standard design certification applicants (including applicants whose applications were approved, for the regulatory life of the certification rule).

Section 52.7 Specific Exemptions

This new section, which is analogous to § 50.12, provides for specific procedures and criteria for Commission grants of exemptions from the provisions of part 52. No substantive change in any aspect of the Commission law or the underlying policy considerations is being made by the Commission adoption of § 52.7; the relevant law and policy considerations underlying § 50.12 are merely extended to part 52.

The NRC notes that the exemption provisions in § 52.7 do not supercede or otherwise diminish more specific exemption provisions that are in part 52, such as the provision 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 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 those criteria, then it may request an exemption under the more encompassing authority of § 52.7. However, the exemption request must then demonstrate compliance with the additional criteria in § 52.7.

The Commission also notes that § 52.7 does not supercede the applicability of more specific dispensation provisions in other parts of Chapter I. For example, a holder of a combined license would not require a separate part 52 exemption in order to obtain approval of an alternative to a provision of an applicable ASME Code provision that is otherwise required under 10 CFR 50.55a; the licensee need only satisfy the criteria in § 50.55a(a)(3). However, in the absence of a more specific dispensation provision, the Commission intends to utilize § 52.7 as a means for granting dispensation from compliance with Commission requirements in other parts of 10 CFR Chapter I. The person requesting an exemption need only address the § 52.7 criteria as applied to the underlying requirement for which dispensation from compliance is sought, and need not also address dispensation from compliance with the relevant part 52 requirement. For example, the holder of the combined license who wishes dispensation from compliance with a fire protection requirement in 10 CFR 50.48 need only address the relevant criteria in § 52.7 with respect to the reasons for dispensation from compliance with § 50.48. The holder need not address dispensation from compliance with § 52.0, which otherwise makes applicable the provisions of § 50.48 on the licensee. Any exemption granted by the Commission would address the reasons for dispensation with the underlying requirement—in this case, § 50.48, and would also provide dispensation from compliance with § 52.0.

Section 52.8 Combining Licenses; Elimination of Repetition

This new section includes provisions analogous to §§ 50.31, 50.32, and 50.52 and is added to clarify that these regulatory provisions also apply to part 52 licenses. Paragraph (a), which is analogous to § 50.31, is added to make clear that an applicant for a license under part 52 may combine in one application, several applications for different kinds of licenses under various regulations in 10 CFR Chapter I. Section 50.31 currently provides that an applicant may combine in one application, several applications for different kinds of licenses under various regulations in 10 CFR Chapter I. The plain reading of this language, given that this provision is located in part 50, is that a part 50 application may contain in one application other applications for different licenses in other parts of 10 CFR Chapter I. Thus, § 50.31 would not appear to allow a part 52 application (as for a combined license) to combine in one application other applications for different license in other parts of 10 CFR Chapter I. Accordingly, paragraph (a) makes clear that a part 52 application may be combined with application for different licenses in other parts of 10 CFR Chapter I.

Paragraph (b), which is analogous to § 50.32, is added to make clear that an applicant for a license, standard design certification, or design approval under part 52 may incorporate by reference in its application information contained in other documents provided to the Commission, but that such incorporation must clearly specify the information to be incorporated.

Paragraph (c), which is analogous to § 50.52, is added 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. Analogous to the situation with respect to § 50.31, the language in § 50.52 would not appear to allow the Commission to combine into a single part 52 license, other non-part 52 licenses. No substantive change in any aspect of the Commission law or the policy considerations underlying §§ 50.31, 50.32, and 50.52 is being made by the Commission adoption of § 52.8; the relevant law and policy considerations underlying §§ 50.31, 50.32, and 50.52 are merely extended to part 52.

Section 52.9 Jurisdictional Limits

This new section, which is analogous to § 50.53, makes clear that no approval provided by the Commission under part 52 addresses or approves in any manner activities which are not under or within the territorial jurisdiction of the United States. As a practical matter, this means that an approval or license issued by the NRC under part 52 has no legal effect outside the territorial jurisdiction of the United States. No substantive change in any aspect of the Commission law or the policy considerations underlying § 50.53 is being made by the Commission adoption of § 52.9; the relevant law and policy considerations are merely extended to part 52.

Section 52.10 Attacks and Destructive Acts

This new section, which is analogous to § 50.13, applies the existing Commission law and policy that a licensee need not provide for design features or other measures to protect against certain attacks and destructive acts, or the use or deployment of weapons incident to U.S. defense activities, to the applicants for and holders of permits, licenses and other approvals under part 52. No substantive change in any aspect of the Commission law or the underlying policy considerations is being made by the Commission adoption of § 52.10; the relevant law and policy considerations for the § 50.13 exclusion are merely extended to cover applicants for and holders of permits, licenses, and regulatory processes that are contained in part 52.

Section 52.11 Information Collection Requirements: OMB Approval

This section, formerly designated as § 52.8, remains unchanged. It gives notice that all information collection and reporting requirements in part 52 have been approved by the Office of Management and Budget. No requirement, action or responsibility is imposed on part 52 entities by this section.

Subpart A—Early Site Permits

Section 52.12 Scope of Subpart

This section describes the scope of this licensing process. Under this subpart an applicant can request pre-approval of a site (so-called site banking), separate from other licensing actions, and subsequently reference that early site permit in a future application to build a nuclear power plant. This process was created for proposed sites that the applicant may not plan to use in the near term.

Section 52.13 Relationship to Other Subparts

This section explains the relationship of the early site permit process to the construction permit process under 10 CFR part 50 and to the combined license process under part 52.

Section 52.15 Filing of Applications

This section explains who can file, how to file, and the fees for NRC review of an application for an early site permit.

Section 52.16 Contents of Applications; General Information

This section sets forth the type of general information that is required to be included in an early site permit application, namely, the information required by 10 CFR 50.33(a) through (d) and (j). Section 50.33 requires that the application include information such as the name and address of the applicant, a description of the business or occupation of the applicant, and citizenship information of the applicant. Section 50.33 also provides requirements for the handling of Restricted Data or other defense information in an application.

Section 52.17 Contents of Applications; Technical Information

The purpose of this section is to set forth the type of technical information to be included in an application for an early site permit. Paragraph (a)(1) identifies the information needed for the site safety review, excluding emergency planning information. The site safety information is a subset of the information required of applicants for construction permits. Although an ESP applicant does not need to specify a particular nuclear plant design, as in construction permit applications, it does need to provide sufficient surrogate design information (developed to bound the nuclear plant design(s) that are being considered by the applicant) so that the NRC can make a determination on the acceptability of the site and the environmental impacts, and determine whether designs bounded by the surrogate design information provided by the applicant can be qualified for the proposed site. The application must contain, among other things, the specific number, type (e.g., pressurized-water reactor), and thermal power level of the facilities, or range of possible facilities, for which the site may be used; the anticipated maximum levels of radiological and thermal effluents each facility will produce; the type of cooling systems, intakes, and outflows that may be associated with each facility; the boundaries of the site; and the proposed general location of each facility on the site. As part of the description of the proposed general location of each facility on the site (§ 52.17(a)(1)(v)), the applicant should describe the foot print for all structures and external safety-related design features proposed for the site.

The application must also include the seismic, meteorological, hydrologic, and geologic characteristics of the proposed site with 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 period of time in which the historical data have been accumulated. This information is to ensure that future plants built at the site would be in compliance with General Design Criterion 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 application must also include the location and description of any nearby industrial, military, or transportation facilities and routes, and the existing and projected future population profile of the area surrounding the site. The application must contain an analysis and evaluation of the major structures, systems, and components of the facility that bear significantly on the acceptability of the site from a radiological safety standpoint. In addition, the application must demonstrate that adequate security plans and measures can be developed for the site and must provide a description of the quality assurance program applied to site-related activities.

Paragraph (a)(2) identifies that the application must include an environmental report that meets the requirements of § 51.50(b). Environmental reports must focus on the environmental effects of construction and operation of a nuclear reactor, or reactors, which have characteristics that fall within the design parameters postulated in the early site permit. Environmental reports must also include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed. Environmental reports submitted in an early site permit application are not required to but may include an assessment of the economic, technical, and other benefits and costs of the proposed action or an analysis of other energy alternatives.

Paragraph (b) identifies the emergency planning information to be included in the application. All ESP applicants are required to identify in the site safety analysis report (SSAR) physical characteristics unique to the proposed site that could pose a significant impediment to the development of emergency plans, e.g., a physical characteristic or combination of physical characteristics that could pose major difficulties for evacuation or the taking of other protective actions. In addition, if the applicant identifies such physical characteristics, the application must identify measures that would, when implemented, mitigate or eliminate the significant impediment. After meeting this mandatory requirement, paragraph (b) allows applicants the option of either submitting major features of emergency plans or complete and integrated emergency plans for approval by the NRC, in consultation with the Department of Homeland Security (DHS). For complete and integrated emergency plans, the applicant must include the proposed inspections, tests, and analyses that the holder of a combined license referencing the early site permit shall perform, and the acceptance criteria that are necessary and sufficient to provide reasonable assurance that, if the inspections, tests, and analyses are 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. The inclusion of such inspections, tests, analyses, and acceptance criteria (ITAAC) is necessary to allow the NRC to make the finding that the plans submitted by the applicant provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. Paragraph (b) also allows applicants proposing major features of emergency plans to include proposed ITAAC. Where the applicant is submitting a complete and integrated emergency plan, a utility plan must be submitted if any offsite agencies elect not to participate in the development of emergency planning information.

If the applicant plans to perform the preparations for construction activities identified in 10 CFR 50.10(e)(1), then paragraph 52.17(c) requires the applicant to describe the activities it is requesting to perform and propose a redress plan that, if carried out, would achieve a "self-maintaining, environmentally stable, and aesthetically acceptable site" that conforms to local zoning laws. Redress plans are expected to be modeled on the redress requirements imposed on the Clinch River Breeder Reactor project (see In the Matter of the U.S. Department of Energy, et al., LBP–85–7, 21 NRC 507 (1985)). By containing a redress plan, the ESP will constitute assurance that, if site preparation activities are conducted but the site is never used for a nuclear power plant, the site will be returned to an acceptable and stable condition.

Section 52.18 Standards for Review of Applications

This section identifies the regulations that the NRC staff will use in performing its review of an application for an early site permit, including the standards that the NRC staff will use in performing its assessment of emergency preparedness information provided in the ESP application.

Section 52.21 Administrative Review of Applications; Hearings

This section identifies the procedural requirements that apply to the mandatory hearing for the early site permit licensing process. This section also clarifies that the applicant's environmental report is not required to but may include an assessment of the benefits of construction and operation of the reactor or reactors, or an analysis of alternative energy sources. In addition, the presiding officer in an ESP hearing is prohibited from admitting contentions on these matters if those issues were not addressed in the early site permit application.

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

This section states that the ACRS will report on those portions of the application which concern safety which is the same role the ACRS had with respect to construction permits in the past.

Section 52.24 Issuance of Early Site Permit

The purpose of this section is to set forth the timing of issuance of an ESP and the findings that the Commission must make to issue the ESP, including that issuance of the permit will not be inimical to the common defense and security or to the health and safety of the public, that the applicant is technically qualified to engage in activities necessary to prepare the ESP application and any site preparation activities that the applicant is seeking approval to perform, and that the findings required by subpart A of 10 CFR part 51 regarding the NRC staff's assessment of the environmental impact have been made.

This section also requires that the early site permit specify the site characteristics, design parameters, and terms and conditions of the early site. Before issuance of either a construction permit or a combined license referencing an early site permit, the Commission must find that any relevant terms and conditions of the early site permit have been met. Any terms or conditions that could not be met by the time of issuance of the construction permit or combined license must be set forth as terms or conditions of the construction permit or combined license. Finally, this section requires that the early site permit specify the site preparation activities under § 52.17(c) that the permit holder is authorized to perform.

Section 52.25 Extent of Activities Permitted

This section specifies that, if the construction preparation activities authorized by § 52.24(c) are performed and the site is not referenced in a application for a construction permit or a combined license while the permit remains valid, then the early site permit remains in effect for the purpose of site redress with the goal of achieving an environmentally stable and aesthetically acceptable site.

Section 52.27 Duration of Permit

The purpose of paragraph (a) of this section is to specify the duration of an early site permit. The applicant can request a duration of up to 20 years. Paragraph (b) describes the conditions under which an ESP can continue to be valid beyond its expiration date. Paragraph (c) allows an applicant for a construction permit or combined license, at its own risk, to reference an ESP that is under review by the NRC but not yet granted. Paragraph (d) explains that, upon issuance of a construction permit or combined license, a referenced early site permit is subsumed, to the extent referenced, into the construction permit or combined license. By "subsumed" the NRC means that the information that was contained in the early site permit SSAR becomes part of the referencing combined license FSAR upon issuance of the combined licenses in the same manner as if the combined license applicant had not referenced an early site permit. The NRC is including the phrase "to the extent referenced," to indicate that it is not all of the information submitted in the early site permit application that is subsumed into the combined license, but, rather, only that information that is contained in the SSAR and identified by the applicant as being referenced in the combined license application. This subsumption of the early site permit into the referencing license affects the way changes to the early site permit information will be handled because it breaks the tie to the finality provisions in § 52.39. After issuance of the construction permit or combined license, § 52.39 no longer applies to the early site permit information and such information will be covered by the same finality provisions as the rest of the information in the FSAR (with the exception of any referenced design certification information), as outlined in § 52.98 (e.g., in accordance with §§ 50.54, 50.59, etc.).

Section 52.28 Transfer of Early Site Permit

This section specifies the requirements to be followed if a holder of an early site permit wants to transfer the ESP to another person or company.

Section 52.29 Application for Renewal

Paragraph (a) of this section explains the contents and timing of an application for renewal of an early site permit. Paragraph (b) sets forth the procedure for requesting a hearing on the application for renewal. Paragraph (c) explains that an ESP may remain in effect beyond its expiration under

certain circumstances. Specifically, an ESP for which a timely application for renewal has been filed remains in effect until the Commission has determined whether to renew the permit. If an ESP is not renewed, it continues to be valid in any proceeding on an application for a construction permit or a combined license which references the ESP and was docketed prior to the expiration of the ESP. Finally, paragraph (d) identifies the responsibilities of the ACRS on an ESP renewal application.

Section 52.31 Criteria for Renewal

Paragraph (a) of this section sets forth the criteria for granting a renewal of an early site permit and provides that, if the NRC wants to impose new requirements, it must demonstrate that the new requirements meet the backfit standard from § 50.109. Paragraph (b) explains that even if an application for renewal of an ESP is denied by the NRC, the applicant can submit a new application for an ESP that corrects the problems with the application for renewal.

Section 52.33 Duration of Renewal

This section specifies the duration of a renewed early site permit. An ESP may, upon application, be extended for periods of up to 20 years beyond the previously approved duration, provided the criteria in § 52.31 are met.

Section 52.35 Use of Site for Other Purposes

The purpose of this section is to explain how the holder of an early site permit could use the site for other activities. An approved site may be used for purposes not related to the construction of a nuclear power facility, e.g., a fossil-fueled station or a park, provided that the Commission is informed of all significant non-nuclear uses prior to actual construction or site modification activities. A permit may be revoked if a non-nuclear use would interfere with a nuclear use, or would so alter the site that important assumptions underlying the issuance of the permit were called into question.

Section 52.39 Finality of Early Site Permit Determinations

This section specifies the special backfit requirements that apply to an early site permit. Paragraph (a) provides requirements regarding finality of ESP issues as they relate to the Commission. Paragraph (a)(1) states that, notwithstanding any provision in 10 CFR 50.109 (Backfitting), while an early site permit or renewed early site permit is in effect, the Commission may not change or impose new site characteristics, design parameters, or terms and conditions, including emergency planning requirements, on the early site permit unless the Commission meets one of four conditions. Those conditions are that the Commission either determines that a modification is necessary to bring the permit or the site into compliance with the Commission's regulations and orders applicable and in effect at the time the permit was issued; determines that a modification is necessary to assure adequate protection of the public health and safety or the common defense and security; determines that a modification is necessary based on an update under § 52.39(b); or issues a variance requested under § 52.39(d).

Paragraph (a)(2) addresses the finality of an early site permit for a license that references the early site permit and requires that the Commission treat as resolved those matters resolved in the proceeding on the application for issuance or renewal of the early site permit, except as provided for in §§ 52.39(b), (c), and (d). This paragraph also addresses finality of changes to an early site permit approved emergency plan (or major features thereof).

Paragraph (b) requires a license applicant that references an ESP to update and correct the emergency preparedness information that was provided in the ESP and to discuss whether the new information materially changes the bases for compliance with the applicable NRC requirements. New information which materially changes the bases for compliance includes: (1) Information which substantially alters the bases for a previous NRC conclusion with respect to the acceptability of a material aspect of emergency preparedness or an emergency preparedness plan, and (2) information which would constitute a sufficient basis for the Commission to modify or impose new terms and conditions related to emergency preparedness, in accordance with § 52.39(a)(1). New information which materially changes the Commission's determination of the matters in § 52.17(b), or results in modifications of existing terms and conditions by the NRC under § 52.39(a)(1) would be subject to litigation during the licensing proceedings in accordance with § 52.39(c).

Section 52.39(c) provides requirements for the submittal of contentions in a proceeding for the issuance of a license referencing an early site permit and for the filing of petitions requesting that an early site permit be modified, suspended, or revoked. Paragraph (c)(1) states that contentions on several matters may be litigated in the proceeding on a combined license that references an early site permit. Matters that may be litigated include contentions related to the following: (1) The nuclear power reactor proposed to be built does not fit within one or more of the site characteristics or design parameters included in the early site permit; (2) one or more of the terms and conditions of the early site permit have not been met; (3) a variance requested under § 52.39(d) is unwarranted or should be modified; (4) new or additional information is provided in the application that substantially alters the bases for a previous NRC conclusion or constitutes a sufficient basis for Commission to modify or impose new terms and conditions related to emergency preparedness; or (5) any significant environmental issue that was not resolved in the early site permit proceeding, or any issue involving the impacts of construction and operation of the facility that was resolved in the early site permit proceeding for which significant new information has been identified. An issue related to the impacts of construction and operation of the facility resolved in the early site permit proceeding is afforded finality at the combined license stage provided that there is no "new and significant" information on the issue. If an environmental issue was not resolved at the early site permit stage, either because information was not sufficient to resolve it or because the early site permit applicant was permitted to defer it (e.g., need for power analysis), then the combined license applicant would need to address the issue in its combined license application. The NRC, in the context of a combined license application that references an early site permit, has defined the term "new" in the phrase "new and significant information" as any information that was both (1) not considered in preparing the ESP environmental report or EIS (as may be evidenced by references in these documents, applicant responses to NRC requests for additional information, comment letters, etc.) and (2) not generally known or publicly available during the preparation of the EIS (such as information in reports, studies, and treatises). This new information may or may not be significant. For an issue to be significant, it must be material to the issue being considered, i.e., it must have the potential to affect the NRC staff's evaluation of the issue. The COL applicant need only provide information about a previously resolved

environmental issue if it is both new and significant.

Paragraph (c)(2) allows any person to file a petition requesting that the site characteristics, design parameters, or terms and conditions of the early site permit be modified, or that the permit be suspended or revoked. The petition will be considered in accordance with § 2.206. Section 2.206 provides that any person may file a request to institute a proceeding to modify, suspend, or revoke a license, or for any other action as may be proper. Section 52.39(c)(2) addresses the Commission's required action on such a petition and states that construction under the construction permit or combined license will not be affected by the granting of the petition unless the Commission makes the order immediately effective.

Paragraph (d) provides that an applicant for a license or an amendment to such a license who has filed an application referencing an early site permit may request a variance from one or more site characteristics, design parameters, or terms and conditions of the early site permit, or from the SSAR. This paragraph also states that, once a construction permit or combined license referencing an early site permit is issued, a variance from the early site permit will not be granted for that construction permit or combined license. At that point, the early site permit is subsumed into the combined license and any request for a change to the terms or conditions of the combined license is a request for a license amendment that must be filed under the provisions of § 50.90.

The NRC is adding new paragraph (e) in the final rule in response to public comments expressing support for adding provisions to provide an early site permit holder with the option of requesting an amendment to the early site permit in order to resolve issues that were not addressed in the original early site permit review or to achieve finality on updated early site permit information. Paragraph (e) states that the holder of an early site permit may not make changes to the early site permit, including the SSAR, without prior Commission approval. The request for a change to the early site permit must be in the form of an application for a license amendment, and must meet the requirements of 10 CFR 50.90 and 50.92. The NRC considers an early site permit SSAR to be equivalent to a combined license FSAR; therefore, when an early site permit is amended, the SSAR must be revised consistent with the ESP amendments. In addition, the SSAR retains continuing viability for early site permits that are for multiple units after it is referenced in the first combined license. However, unlike an FSAR, there is no change process for the SSAR that does not require NRC review and approval.

Finally, the Commission is adding a new paragraph (f) (proposed paragraph (e)) to the "finality" section in each subpart of part 52, including § 52.39, entitled "Information requests," which delineates the restrictions on the NRC for information requests to the holder of the early site permit. This provision is analogous to the former 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 provision is contained in § 52.39(f), and requires 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.

Subpart B—Standard Design Certifications

Section 52.41 Scope of Subpart

This section describes the scope of this licensing process for certification of standard nuclear power plant designs. Under this subpart, an applicant may request pre-approval of either an evolutionary light-water or advanced nuclear power plant design, separate from a site review or other licensing action, and subsequently reference that certified design in an application to build a nuclear power plant. The requirements for the type of plant to be certified were moved from § 52.45 to this section. The scope of the standard plant design must be essentially complete as described in § 52.47(c).

Section 52.43 Relationship to Other Subparts

The purpose of this section is to explain the relationship of the design certification process to the processes set forth in subparts C, E, and F of 10 CFR part 52, which provide for combined licenses, standard design approvals, and manufacturing licenses. The requirement to hold a final design approval under former appendix O to part 52 as a prerequisite to design certification was deleted from § 52.45. However, applicants for design certification have the option of also applying for a standard design approval under subpart E. Also, applicants for a manufacturing license may reference a certified design.

Section 52.45 Filing of Applications

This revised section is similar to the "filing of applications" sections in subparts A and C of this part. This section explains how to file an application for design certification and how the fees for NRC's review of the application will be assessed. Because design certification is a rule and not a license, the applicant for design certification does not need to be a U.S. citizen or company (AEA, Section 103).

Section 52.46 Contents of Applications; General Information

This is a new section and it is similar to the "general information" sections in subparts A and C of this part. It identifies the general information that must be included in all applications.

Section 52.47 Contents of Applications; Technical Information

The purpose of this section is to identify the technical information that must be included in an application for design certification. This section was revised to provide a comprehensive list of requirements for a design certification application. Paragraphs (a) and (c) describe the information that must be included in the FSAR, which is included in the application, and paragraph (b) describes the information that must also be included in the application but does not need to be included in the FSAR. Paragraph (c) describes additional requirements for particular types of applications. This section also specifies the level of detail for the design information that must be provided in an application.

Many of the requirements in this section were taken from 10 CFR 50.34 or are pointers to technical requirements in parts 20, 50, 51, and 73 that must be addressed in the application. The requirements taken from § 50.34 are a subset of the information required of applicants for construction permits and operating licenses. Other requirements came from the original version of 10 CFR 52.47 or were developed by the Commission during the initial design certification reviews (e.g., SECY–93–087, ML003708021).

Although an applicant for design certification does not need to specify a particular site for the nuclear power plant, as in a combined license application, it does need to identify the site parameters, under paragraph (a)(1),

that the standard nuclear power plant is designed to meet, e.g., postulated values for the safe-shutdown earthquake response spectra and maximum tornado wind speed. These parameters are usually selected to envelop a large portion of existing nuclear plant sites in the United States. Once the design is certified by the NRC, conformance of the actual site with the established site parameters must be demonstrated by the applicant for a combined license and verified by the NRC when the application is submitted.

Paragraph (a)(7) requires the applicant for design certification to describe its qualifications to design and analyze a standard nuclear power plant, which may become part of the bases for a future license.

Paragraph (a)(13) requires the applicant to provide the electric equipment list required by § 50.49(d). The NRC understands that the applicant may not be able to establish qualification files for all applicable components.

In its staff requirements memorandum (SRM) on SECY–90–377, "Requirements for Design Certification under 10 CFR part 52," dated February 15, 1991, the Commission directed the staff to ensure that the design certification process preserves operating experience insights in the certified design. Therefore, for plant designs that are based on or are evolutions of nuclear plants that have operated in the United States, paragraph (a)(22) requires the applicant to demonstrate how relevant operating experience insights, from NRC's generic letters and bulletins issued after the most recent revision of the applicable SRP and 6 months before the docket date of the application, have been incorporated into the plant design. Operating experience includes consideration of operating events and the reliability and performance of structures, systems, and components. If the application is for a design that is not based on or is not an evolution of a nuclear plant that operated in the United States, the applicant must demonstrate how insights from any relevant international operating experience have been incorporated into that plant design.

In its SRMs, dated June 26, 1990, and July 21, 1993, on SECY–90–16, "Evolutionary Light-Water Reactor Certification Issues and their Relationship to Current Regulatory Requirements," and SECY–93–087, "Policy, Technical, and Licensing Issues Pertaining to Evolutionary and Advanced Light-Water Reactor Designs," respectively, the Commission approved NRC staff recommendations for selected preventative and mitigative design features for future light-water reactor designs. Paragraph (a)(23) requires the applicant to provide a description and analysis of those design features discussed in SECY–90–16 and SECY–93–087. Postulated severe accidents are not design-basis accidents (DBAs) and the severe accident design features do not have to meet the requirements for DBAs. However, the severe accident design features are part of a plant's design bases information.

Paragraph (a)(24) requires the applicant to provide a conceptual design for those design features that are outside the scope of the certified design, e.g., service water intake structure or ultimate heat sink.

Paragraph (a)(25) requires the applicant to describe the interface requirements for those design features that are outside the scope of the certified design, e.g., service water intake structure or ultimate heat sink. Paragraph (a)(26) requires justification that the interface requirements can be verified with the ITAAC for the plant.

Paragraph (a)(27) requires the applicant to provide a description of the design-specific PRA and its results. Guidance on how to meet the PRA information requirement will be provided in separate regulatory guidance documents.

Paragraph (b)(1) requires the applicant to provide the ITAAC that are necessary and sufficient to demonstrate that a facility that references the design certification has been constructed and will be operated in conformity with the design certification, the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations. These ITAAC will be a part of the Commission's verification program and must cover all of the design information that is within the scope of the certified design. ITAAC for the remaining design features that are outside of the scope of the certified design will be provided in a combined license application that references the design certification rule.

In its SRM on SECY–91–229, "Severe Accident Mitigation Design Alternatives for Certified Standard Designs," dated October 25, 1991, the Commission approved the staff's recommendation that design certification applicants assess SAMDAs for their standard plant designs. The Commission required SAMDA evaluations in order to achieve greater finality for the design features that are resolved in design certification rulemakings. For further explanation, see discussion in SECY–93–087, dated April 2, 1993. In order to implement this requirement, paragraph (b)(2) requires the applicant to provide a SAMDA evaluation for the standard plant design. This assessment is distinct from, and in addition to, the requirement in paragraph (a)(23) to provide a description and analysis of severe accident design features.

Paragraph (c)(1) requires an essentially complete scope of design in applications for evolutionary nuclear power plants. These plants are improved versions of light-water reactor designs that were in operation when part 52 was originally codified. Examples of evolutionary designs include General Electric's U.S. Advanced Boiling Water Reactor and Westinghouse's SP/90 and System 80+ designs. Evolutionary designs do not have to meet the design qualification testing requirements set forth in 10 CFR 50.43(e).

Paragraph (c)(2) requires applications for "advanced" nuclear power plants to provide an essentially complete scope of design and meet the design qualification testing requirements in 10 CFR 50.43(e). Advanced designs differ significantly from evolutionary light-water reactor designs or incorporate, to a greater extent than evolutionary designs do, simplified, inherent, passive, or other innovative means to accomplish their safety functions. Examples of advanced nuclear power plant designs include General Atomic's Modular High Temperature Gas-Cooled Reactor, General Electric's Simplified Boiling Water Reactor, and Westinghouse's AP600.

Paragraph (c)(3) requires applications for modular nuclear power plant designs to describe and analyze the possible operating configurations of reactor modules. Modular designs are defined in § 52.1. Modular plant designs are not portions of a single nuclear plant, rather they are separate nuclear power reactors with some shared or common systems.

Section 52.48 Standards for Review of Applications

This section sets forth the parts of 10 CFR that contain applicable requirements for the technical review of design certification applications. The applicability of these requirements to the design certification process is specified in the identified parts. The Commission recognizes that new designs may incorporate design features that are not addressed by the current standards set out in 10 CFR parts 20, 50 and its appendices, 51, 73, or 100, and that new standards may be required to address these new design features. The Commission will determine whether additional rulemakings are needed or appropriate to resolve generic safety

issues that are applicable to multiple designs. On the other hand, new design features that are unique to a particular design could be addressed in the design certification rulemaking for that particular design.

Section 52.51 Administrative Review of Applications

This section sets forth the procedures for performing a notice and comment rulemaking for design certification. Paragraph (b) states that the Commission will determine, at its sole discretion, whether to hold a legislative hearing on the proposed design certification rule under the procedures in subpart O of 10 CFR part 2. Paragraph (c) states that proprietary information contained in an application for design certification will be given the same treatment that such information would be given in a proceeding on an application for a construction permit or an operating license under 10 CFR part 50. This gives the design certification applicant (vendor) an opportunity to treat elements of its design as trade secrets.

Section 52.53 Referral to the Advisory Committee on Reactor Safeguards (ACRS)

This section states that the application for design certification shall be sent to the ACRS for its review of safety issues.

Section 52.54 Issuance of Standard Design Certification

Paragraph (a) of this section sets forth the findings that the Commission must make in order to issue a design certification rule. Paragraph (b) requires that site parameters, design characteristics, and any additional requirements and restrictions be specified in the design certification rule. Previous DCRs set forth the additional requirements and restrictions in Section IV of the rule. Site parameters and design characteristics are defined in § 52.1 and can be specified in the design control document. These values will be used during the review of a combined license application that references the design certification rule to verify that the standard plant design conforms with the characteristics of the actual site and the design parameters used in the early site permit.

Section 52.54 was amended to include a new paragraph (c) which requires that every DCR contain a provision stating that, after the Commission has adopted the final DCR, the applicant for that design certification will not permit any individual to have access to, or 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 NRC believes that this amendment, along with the changes to parts 25, 95, and § 50.37, are necessary to ensure that access to classified information is adequately controlled by all entities applying for NRC certifications.

Section 52.55 Duration of Certification

The purpose of this section is to specify the duration that a standard design certification is valid for referencing in a combined license application.

Section 52.57 Application for Renewal

The purpose of this section is to set forth the process for applying for renewal of an existing design certification rule. Paragraph (a) specifies the time period for submitting an application for renewal and states that any person can apply for renewal. However, if the applicant for renewal is not the same person or entity that applied for the existing design certification, as identified in Section I of the DCR, then the new applicant is required to demonstrate that they have the capability to provide the detailed design for that certified nuclear power plant under § 52.63(c) or § 52.73(b).

Section 52.59 Criteria for Renewal

The purpose of this section is to identify the regulations that will be used to determine if an existing design certification should be renewed. Paragraph (a) states that the Commission will grant a request for renewal if the design complies with the regulations in effect at the time the certification was originally issued (see Section V of an existing design certification rule) and imposition of any new safety requirements on the design during a renewal proceeding will be governed by the backfit standards in paragraph (b).

Under paragraph (c), the applicant for renewal may request an amendment to the existing certified design to make some design changes provided that the new design meets the regulations in effect at the time that the amended, renewed design certification rule is issued and the changes do not require a major review or reanalysis of the new design. If the changes to the original design certification are so extensive that the NRC concludes an essentially new standard design is being proposed, then the applicant must submit an application for a new design certification under § 52.45.

Under paragraph (d), denial by the NRC of a request for renewal of a design certification does not prevent an applicant from submitting a new application for certification under § 52.45.

Section 52.61 Duration of Renewal

This section specifies the duration that a renewed design certification is valid for referencing in a combined license application.

Section 52.63 Finality of Standard Design Certifications

The purpose of this section is to set forth the process for amending or backfitting existing design certification rules (DCRs) or issuing orders to nuclear plants that referenced a DCR. This section also describes the finality of issue resolution under a design certification and the process for plant-specific departures from a certified design. This amendment process places a nuclear plant designer on the same footing as the Commission or any other member of the public (see 54 FR 15377, first column, April 18, 1989). Therefore, it cannot be said that this section makes it easier for a designer to amend design certification information than for the NRC to backfit the certified design. The amendment and backfitting process uses the phrase "certification information" in order to distinguish the rule language in the DCRs from the design certification information (*e.g.*, Tier 1 and Tier 2) that is incorporated by reference in the DCRs.

No matter who proposes it, a generic change under § 52.63(a)(1) will not be made to a DCR while it is in effect unless the change: (1) is necessary for compliance with Commission regulations applicable and in effect at the time the certification was issued; (2) is necessary to provide adequate protection of the public health and safety or common defense and security; (3) reduces unnecessary regulatory burden and maintains protection to public health and safety and common defense and security; (4) provides the detailed design information necessary to resolve selected design acceptance criteria; (5) corrects material errors in the certification information; (6) substantially increases overall safety, reliability, or security of a facility and the costs of the change are justified; or (7) contributes to increased standardization of the certification information.

Paragraphs (a)(1)(i) and (a)(1)(ii) did not change in the final rule. Paragraph (a)(1)(i) provides the compliance exception to the NRC's backfit process. Paragraph (a)(1)(ii) sets forth the special

backfit criteria, which uses the adequate protection standard rather than the backfit standard in 10 CFR 50.109. The remaining paragraphs permit amendments of design certification information without meeting the special backfit requirement in § 52.63(a)(1)(ii).

Paragraph (a)(1)(iii) allows the Commission to change the design certification rule language to reduce unnecessary regulatory burdens, *i.e.*, 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, *i.e.*, 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 RG 1.174).

Paragraph (a)(1)(iv) allows for generic resolutions of design acceptance criteria (DAC) by amending DCRs. The DAC are a special type of ITAAC that are used to verify the resolution of design issues where sufficient design information was not provided in the design certification application. By generically resolving DAC with the amendment process, the Commission achieves resolution of additional design issues, achieves finality for those issue resolutions, and avoids repetitive consideration of those design issues in individual combined license proceedings. Also, the amendments will enhance standardization by further completing the certification information. The NRC staff will review the amendment application to ensure that the DAC are met and that the new design information conforms with the applicable regulations.

Paragraph (a)(1)(v) allows for generic resolutions of material errors in the certification information. This provision is only to be used to correct a material error, which is an error that significantly and adversely affects a design function or analysis conclusion described in the design control document (certification information). The Commission wants to correct material errors so that these errors will not have to be addressed in individual licensing proceedings.

Paragraph (a)(1)(vi) allows for generic amendments of certification information that will substantially increase the overall safety, reliability, or security of facility design, construction, or operation provided that the direct and indirect costs of implementation of the amendment are justified in view of this increased safety, reliability, or security. This amendment process will function similar to the backfitting process in 10 CFR 50.109.

Finally, paragraph (a)(1)(vii) allows for generic amendments that would increase the standardization of certification information in referencing applications. The Commission is still committed to achieving and maintaining the benefits of standardization. Therefore, the final rule allows for generic amendments of certification information through this additional process, provided that the amendment is applied to all plants that reference the DCR. This paragraph will allow applicants and licensees to request corrections or changes to certification information through a generic process rather than through individual licensing actions. In determining whether to codify a proposed amendment under this paragraph, the Commission will give special consideration to comments from applicants or licensees who referenced the DCR regarding whether they want to backfit their plants with these additional changes.

The process for amending DCRs will be a rulemaking with opportunity for public comment under paragraph (a)(2). As part of the rulemaking under § 52.63(a)(1), except for § 52.63(a)(1)(ii), the Commission will give consideration to whether the benefits justify the costs for plants that are already licensed or for which an application for a permit or license is under consideration. The duration of the amended DCR will be for the same period of time as the original DCR and have the same expiration date.

Once a DCR is amended by rulemaking, under paragraph (a)(3) the changes will apply to all future applications referencing the DCR as well as all current plants referencing the design certification, unless the change has been rendered "technically irrelevant" through other action taken under paragraphs (a)(4) or (b)(1) of this section. Thus, standardization is maintained by ensuring that any amendment to a DCR is imposed upon all nuclear power plants referencing the design certification rule.

Paragraph (a)(4) sets forth the criteria that must be met before the Commission can impose new requirements by plant-specific order on a nuclear plant that references a DCR. Under this paragraph, the Commission must meet either the compliance or adequate protection backfit criteria and cite one or more special circumstances as defined in § 52.7. In addition, the Commission shall consider whether the special circumstances that justify the plant-specific order outweigh any decrease in safety that may result from the reduction in standardization caused by the plant-specific order. This additional requirement was added to ensure that the benefits of standardization will be preserved.

Paragraph (a)(5) sets forth the finality of matters that are resolved as part of a design certification rulemaking. Each of the DCRs have detailed provisions on the issues that were resolved for that plant design and detailed processes for changes to and departures from certification information (refer to Sections VI and VIII of appendices A, B, C, or D to part 52).

Paragraphs (b)(1) and (b)(2) provide processes for requesting exemptions and departures from certification information. As part of its adoption of a two-tiered rule structure (refer to SRM on SECY–90–377, dated February 15, 1991), the Commission codified detailed processes for changes to and departures from certification information in each of the design certification rules (refer to Section VIII of appendices A, B, C, or D to part 52). The processes for a specific certified design must be used when requesting exemptions and departures from certification information.

Paragraph (c) identifies the detailed design information that an applicant for a combined license must have completed and available for audit by the NRC. The NRC expects that design certification applicants (vendors) will have this information available during the review of a combined license application that references the certified design. Because a rule certifying a standard plant design does not belong to the designer (vendor), an applicant for a combined license that references the DCR could use a vendor other than the applicant that achieved the design certification. In that situation, the combined license applicant must acquire the detailed design information identified in paragraph (c) in order to demonstrate that the new vendor has the ability to provide the certified design and that the combined license applicant's design information is consistent with the design information for the DCR.

Subpart C—Combined Licenses

Section 52.71 Scope of Subpart

This section describes the scope of the requirements in this subpart. Under this subpart an applicant can request a combined construction permit and operating license with conditions (combined license) for a nuclear power

facility. The combined license is essentially a combination of a construction permit, which requires consideration and resolution of many of the issues currently considered at the operating license stage, and a conditional operating license. Operation is allowed only after the Commission has made the finding that all acceptance criteria in ITAAC have been met.

The combined license application could describe a site and a custom design, or it could reference an early site permit (subpart A of part 52), a standard design certification (subpart B of part 52), a standard design approval (subpart E of part 52), or a reactor manufactured under a manufacturing licenses (subpart F of part 52) or a combination thereof. Although a pre-approved site and certified standard design need not be referenced for the combined license, maximum efficiency will result if site-related issues, as well as design-related issues, have been resolved before commencement of the combined license proceeding.

Section 52.73 Relationship to Other Subparts

The purpose of this section is to explain the relationship of the combined license process to the licensing processes in subparts A, B, E, and F of 10 CFR part 52.

Section 52.75 Filing of Applications

This section explains who can file, how to file, and the fees for NRC review of an application for a combined license.

Section 52.77 Contents of Applications; General Information

This section sets forth the type of general information that is required to be included in an combined license application, namely, the information required by 10 CFR 50.33. Section 50.33 requires that the application include information such as the name and address of the applicant, a description of the business or occupation of the applicant, citizenship information of the applicant, the class of license applied for, the use to which the facility will be put, the time for which the license is sought, financial qualification information, State and local emergency response plans, the earliest and latest dates for the completion of construction, and information about decommissioning funding. Section 50.33 also provides requirements for the handling of Restricted Data or other defense information in an application.

Section 52.79 Contents of Applications; Technical Information in Final Safety Analysis Report

The purpose of this section is to identify specific technical information to be included in the final safety analysis report as part of an application for a combined license. This generally includes the same information required of applicants for construction permits and operating licenses under 10 CFR part 50.

This section specifies the complete set of FSAR information needed for a combined license that is a stand-alone application, but also takes into account that certain information may already have been submitted and reviewed in those instances where the application references an early site permit (subpart A), a certified design (subpart B), a standard design approval (subpart E), a manufacturing license (subpart F), or some combination. The required FSAR information also includes requirements for descriptions of operational programs that need to be included in the FSAR to allow a reasonable assurance finding of acceptability. These additional requirements are in support of the Commission's direction to the staff in SRM–SECY–02–0067 dated September 11, 2002, "Inspections, Tests, Analyses, and Acceptance Criteria for Operational Programs (Programmatic ITAAC)," that a combined license applicant was not required to have ITAAC for operational programs if the applicant fully described the operational program and its implementation in the combined license application. In this SRM, the Commission stated:

> [a]n ITAAC for a program should not be necessary if the program and its implementation are fully described in the application and found to be acceptable by the NRC at the COL stage. The burden is on the applicant to provide the necessary and sufficient programmatic information for approval of the COL without ITAAC.

The Commission clarified its definition of fully described in SRM–SECY–04–0032, "Programmatic Information Needed for Approval of a Combined License Application Without Inspections, Tests, Analyses, and Acceptance Criteria," dated May 14, 2004, as follows:

> In this context, fully described should be understood to mean that the program is clearly and sufficiently described in terms of the scope and level of detail to allow a reasonable assurance finding of acceptability. Required programs should always be described at a functional level and at an increased level of detail where implementation choices could materially and negatively affect the program effectiveness and acceptability.

Accordingly, this section contains requirements for descriptions of operational programs and their implementation.

Paragraph (b) describes the information that is needed if the application references an early site permit. Although a combined license applicant referencing a certified design need not resubmit information or analyses submitted in connection with the early site permit, the combined license application FSARs must either include or incorporate by reference the SSAR for the early site permit. The SSAR must be included or incorporated into the combined license FSAR to ensure that matters addressed in the SSAR legally become part of the FSAR upon issuance of the combined license. This will also ensure that the information in the SSAR is subject to control under § 50.59 after issuance of the combined license. This provision is meant to convey that the combined license applicant referencing the early site permit does not need to resubmit, for NRC review, information or analyses that were already reviewed and resolved in the early site permit proceeding (such as information provided in responses to NRC requests for additional information). At the same time, this provision provides combined license applicants guidance as to what the combined license application must contain to be considered complete, including a requirement that it contain or incorporate the early site permit SSAR.

Because an early site permit applicant need not specify a particular nuclear plant design, the combined license application must demonstrate that the design of the facility falls within the site characteristics and postulated design parameters specified in the early site permit. If the application does not demonstrate that design of the facility falls within the site characteristics and design parameters of the early site permit, then, the applicant must request for a variance from the early site permit. Paragraph (b) requires that the application demonstrate that all terms and conditions in the early site permit, excluding terms and conditions imposed under § 50.36b, be satisfied by the date of issuance of the combined license. Any terms or conditions of the early site permit that could not be met by the time of issuance of the combined license must be set forth as terms or conditions of the combined license. Early site permit conditions imposed under § 50.36b are to be addressed in the environmental report and not in the FSAR.

Paragraph (b) also addresses emergency planning information submitted in a referenced early site permit and requires that the combined license application include any new or additional information to update or correct information provided with the early site permit and to discuss whether the new information may materially change the bases for compliance with the applicable NRC requirements. New information which materially changes the bases for compliance includes: (1) information which substantially alters the bases for a previous NRC conclusion with respect to the acceptability of a material aspect of emergency preparedness or an emergency preparedness plan, as well as (2) information which would constitute a sufficient basis for the Commission to modify or impose new terms and conditions related to emergency preparedness in accordance with § 52.39(a)(1). New information that substantially alters the bases for a previous NRC conclusion or constitutes a sufficient basis for Commission to modify or impose new terms and conditions related to emergency preparedness would be subject to litigation during the combined license proceeding in accordance with § 52.39(c). This paragraph also addresses referenced early site permit emergency plans that incorporate existing emergency plans and requires the combined license application to identify changes to the emergency plans that constitute a decrease in effectiveness under 10 CFR 50.54(q). This requirement ensures that the NRC can review such changes to assess their impact on the emergency plans for the proposed combined license facility.

Paragraph (c) and (d) provide application requirements for a combined license that is referencing a standard design approval or a standard design certification, respectively. Similar to a combined license application referencing an early site permit, a combined license application referencing a design approval or design certification must either include or incorporate by reference the design approval or design certification FSAR. Because a design approval or design certification applicant need not specify a particular site, the combined license application must demonstrate that characteristics of the site fall within the site parameters specified in the design approval or design certification. In addition, the plant-specific PRA information must use the PRA information for the design certification and must be updated to account for site-specific design information and any design changes or departures. An applicant referencing a design certification must demonstrate that the interface requirements established for the design have been met. Applicants referencing either a design approval or a design certification must demonstrate that any terms and conditions in the design approval or requirements and restrictions in the referenced design certification rule will be satisfied by the date that the combined license is issued. Any terms or conditions of the design approval that cannot be met or satisfied by the time of issuance of the combined license must be set forth as terms or conditions of the combined license. Likewise, any requirements or restrictions of the design certification that cannot be met or satisfied by the time of issuance of the combined license must be set forth as terms or conditions of the combined license.

Paragraph (e) describes the information that is needed if the combined license application references one or more manufactured reactors. Similar to a combined license application referencing an early site permit, design approval, or design certification, a combined license application referencing one or more manufactured nuclear power reactors under subpart F or part 52 must either include or incorporate by reference the manufacturing license FSAR. Because a manufacturing license applicant need not specify a particular site for the installation of a manufactured reactor, the combined license application must demonstrate that the site parameters for the manufactured reactor are bounded by the site where the manufactured reactor is to be installed and used. In addition, the plant-specific PRA information must use the PRA information for the manufactured reactor and must be updated to account for site-specific design information and any design changes or departures. The combined license application must also demonstrate that the interface requirements established for the design have been met and that any terms and conditions in the manufacturing license will be satisfied by the date that the combined license is issued. Any terms or conditions of the manufacturing license that could not be met by the time of issuance of the combined license must be set forth as terms or conditions of the combined license.

Section 52.80 Contents of Applications; Additional Technical Information

This section covers the required technical contents of a combined license application that are not contained in the FSAR. These application contents include the proposed ITAAC, the environmental report, and information to address an applicant's request to perform activities at the site allowed by 10 CFR 50.10(e) before issuance of the combined license.

Paragraph (a) requires the application to include the proposed ITAAC and, if the application references an early site permit with ITAAC or a design certification, requires the applicant to use the ITAAC contained in the early site permit or design certification for the applicable portion of the combined license application. ITAAC that must be included are those that are necessary and sufficient to demonstrate that the facility has been constructed and will be operated in conformity with the combined license, the provisions of the Atomic Energy Act of 1954 and the Commission's rules and regulations. In addition, under Section 52.103(g), the Commission must find that all acceptance criteria specified in the license are met before facility operation. Because ITAAC are the sole source of acceptance criteria for subsequent resolution of items which cannot be fully evaluated prior to issuance of a combined license, it is essential that the combined license ITAAC include all significant issues that require satisfactory resolution before fuel loading.

This paragraph also provides an applicant for a combined license with a process for resolving certain acceptance criteria in one or more of the ITAAC before issuance of the combined license. This provision is included mainly to allow for completion of DAC at the combined license application stage because applicants might want to complete certain DAC before construction. DAC are special design certification rule ITAAC. DAC set forth processes and criteria for completing certain design information, such as information about the digital instrumentation and control system. Many DAC were originally written to be verified as part of the normal, post-combined license, ITAAC verification process. Completion of the design matters covered by DAC before the issuance of a combined license is consistent with the Commission's original concept for design certification and issuance of a combined license. When it adopted 10 CFR part 52, the Commission intended that a design certification contain final and complete design information. Allowing a finding of acceptable completion of DAC before issuance of a combined license is, therefore, consistent with the

Commission's original intent. Second, completion of DAC before issuance of the combined license is consistent with the Commission's goal of resolving issues before construction. Determining whether DAC have been successfully completed before issuance of the combined license avoids the possibility that improperly completed DAC will result in the construction of improperly designed structures, systems, and components. Accordingly, a finding of successful completion of DAC may be made when a combined license is issued, if the combined license applicant demonstrates that the DAC have been successfully completed. This process would also allow findings on successful completion of inspections or tests of components procured before the issuance of the combined license.

Paragraph (b) requires a complete environmental report in accordance with 10 CFR 51.50(c).

Paragraph (c) requires that, if the applicant is requesting to perform any activities at the site allowed by 10 CFR 50.10(e), then the applicant must identify and describe the activities and propose a plan for redress of the site in the event that the activities are performed and either construction is abandoned or the combined license is revoked. This paragraph also requires the applicant to demonstrate that there is reasonable assurance that redress carried out under the plan will achieve an environmentally stable and aesthetically acceptable site suitable for whatever non-nuclear use may conform with local zoning laws. These requirements attempt to limit, to the extent practicable, the environmental impact of any site work done in the case where construction of the nuclear power facility is not completed.

Section 52.81 Standards for Review of Applications

This section identifies the regulations that the NRC staff will use in performing its review of an application for a combined license.

Section 52.83 Finality of Referenced NRC Approvals; Partial Initial Decision of Site Suitability

This section describes the finality of regulatory products that may be referenced in a combined license application. Specifically, paragraph (a) states that the finality of matters resolved in a referenced early site permit, design certification, design approval, or manufacturing license are governed by the finality provisions in the respective subparts that address each of these regulatory processes. Paragraph (b) states that, while a partial decision on site suitability is in effect under 10 CFR 2.617(b)(2), the finality provisions in 10 CFR 2.629 govern the scope and nature of matters resolved in the proceeding.

Section 52.85 Administrative Review of Applications; Hearings

This section identifies the procedural requirements that apply to the mandatory combined license hearing. This section also identifies that, if an applicant requests a Commission finding on certain ITAAC with the issuance of the combined license, then those ITAAC will be identified in the notice of hearing.

Section 52.87 Referral to the Advisory Committee on Reactor Safeguards (ACRS)

This section states that the ACRS will report on those portions of the application which concern safety.

Section 52.91 Authorization To Conduct Site Activities

The purpose of this section is to outline the activities that can be performed at the site by a combined license applicant. Paragraph (a) of this section discusses the authorization a combined license applicant needs to obtain in order to perform limited work activities at the site while the NRC is considering the combined license application in the case where a combined license applicant does not reference an early site permit that contains a redress plan. The requirements contained in paragraph (a) discuss work commonly referred to as a limited work authorization 1 (LWA–1) that is allowed in accordance with the requirements contained in 10 CFR 50.10(e)(1). These requirements do not allow the applicant to perform LWA–1 activities without first submitting a redress plan and obtaining the separate authorization required by 10 CFR 50.10(e)(1). Plans are expected to be modeled on the Midland Site Stabilization Report that was submitted on October 2, 1986 (ML061710504).

Paragraph (a) recognizes this possibility and notes that authorization may be granted only after the presiding officer in the proceeding on the application has made the findings and determination required by 10 CFR 50.10(e)(2) and has determined that redress carried out under the site redress plan will return the site to an aesthetically acceptable and environmentally stable condition.

Paragraph (b) contains requirements for work commonly referred to as an LWA–2. An LWA–2 allows structural work for structures, systems, and components which prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public. Because the design must be known to obtain authorization for LWA–2 activities, an LWA–2 is an option for a combined license applicant but not an option for an early site permit holder. A combined license applicant may request LWA–2 authority prior to the combined license being granted. Paragraph (b) recognizes this possibility and notes that authorization may be granted only after the presiding officer in the combined license makes the additional finding required by 10 CFR 50.10(e)(3)(ii), namely, that there are no unresolved safety issues relating to the LWA–2 activities.

Paragraph (c) of this section clarifies that, if work is performed either under an LWA–1, or LWA–2 or both, and the combined license application is subsequently withdrawn by the applicant or denied by the NRC, then the combined license applicant must redress the site in accordance with the terms of the site redress plan. Paragraph (c) of this section also provides the combined license applicant with the ability to redress the site for an alternate use that was not considered at the time that the original redress plan was prepared.

Section 52.93 Exemptions and Variances

The purpose of this section is to describe the process for combined license applicants to obtain exemptions and variances. If the request is for an exemption from any part of a referenced design certification rule, the Commission can grant the request only if it determines that the exemption complies with any exemption provisions in the referenced design certification rule, or with § 52.63 if there are no applicable exemption provisions in the referenced design certification rule. A request for an exemption that is outside the scope of a design certification rule must be processed in accordance with the requirements contained in § 52.7.

For the General Electric ABWR, Westinghouse System 80+, Westinghouse AP600, and Westinghouse AP1000 designs, these requirements are contained in Section VIII, "Processes for Changes and Departures," of appendices A, B, C, and D respectively, of 10 CFR part 52. Section VIII of these appendices discusses the process for exemptions from different portions of the design certification rule. The section-by-section analysis for these respective rules

discuss requirements regarding processing of exemptions that are expected to be carried forward to future design certification rulemakings. Therefore, if applicable, the applicant should refer to the respective section-by-section analysis in the portion of the design certification rule that discusses exemptions for additional information. Exemptions requested in accordance with this section are subject to litigation in the same manner as other issues in the licensee hearing.

Paragraph (b) of this section sets forth the process for requesting variances from an early site permit if one is referenced in the combined license. Paragraph (c) sets forth the process for requesting variances from one or more design characteristics, site parameters, terms and conditions, or approved design of a manufactured reactor. Issuance of a variance is subject to litigation during the combined license proceeding in the same manner as other issues material to that proceeding.

Section 52.97 Issuance of Combined Licenses

The purpose of this section is to set forth the process for issuing a combined license. Paragraph (a)(1) of this section sets forth the requirements relative to the Commission findings that must be made for granting of a combined license.

Paragraph (a)(2) of this section allows for completion of certain acceptance criteria in one or more of the ITAAC in a combined license being met prior to granting of the combined license. This paragraph could apply to DAC found in the applicable design certification rules. DAC set forth processes and criteria for completing certain design information, such as information about the digital instrumentation and control system. Paragraph (a)(2) would allow the Commission to make a finding of successful completion of DAC when a combined license is issued, if the combined license applicant demonstrates that the DAC have been successfully completed. This process would also allow findings on successful completion of inspections or tests of components procured before the issuance of a combined license. Paragraph (a)(2) notes that such a finding will preclude any required finding under § 52.103(g) with respect to that ITAAC.

Paragraph (b) requires the Commission to identify the ITAAC within the combined license that the licensee shall perform, and the acceptance criteria that, if met, are necessary and sufficient 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 rules and regulations. This definition of what ITAAC are intended to accomplish is consistent with that contained in § 52.17 regarding early site permits, § 52.47 regarding design certifications and § 52.80, which are discussed above. If the combined license application references an early site permit with ITAAC related to emergency planning information, then the applicant must use these ITAAC in the emergency planning information submitted with the combined license application. If a combined license applicant references a design certification rule, the ITAAC contained in the license would be those contained in the design certification rule plus any additional ITAAC that were identified during the combined license review that were outside the scope of the certified design. If the Commission wishes to identify additional ITAAC that fall within the scope of the review of the referenced certified design it needs to meet the requirements contained in the design certification rule itself (see Section VIII.A.3 of appendix A, B, C, and D for the ABWR, System 80+, AP600, and AP1000) and the requirements contained in § 52.63. If a combined license applicant does not reference an early site permit or a certified design, then the ITAAC that are identified by the Commission for paragraph (b) of this section are those that were identified during the combined license review.

Section 52.98 Finality of Combined Licenses; Information Requests

This section covers the finality of combined license provisions and sets forth the requirements to modify the combined license after it has been issued. After issuance of a combined license, the Commission may not modify, add, or delete any term or condition of the combined license, the design of the facility, the inspections, tests, analyses, and acceptance criteria contained in the license which are not derived from a referenced standard design certification or manufacturing license, except in accordance with the backfit provisions of §§ 52.103 or 50.109, as applicable.

Paragraphs (b), (c), and (d) outline the applicability of the change processes in 10 CFR part 50, Section VIII of the design certification rules, and subpart F of 10 CFR part 52 to a combined license. The change processes in 10 CFR part 50 apply to a combined license that does not reference a design certification rule or a reactor manufactured under a manufacturing license. Section 52.98(c) states that the change processes in Section VIII of the design certification rules apply to changes within the scope of the referenced certified design. However, if the proposed change affects the design information that is outside of the scope of the design certification rule, the part 50 change processes apply unless the change also affects the design certification information. For that situation, both change processes may apply. If the combined license references a reactor manufactured under a subpart F manufacturing license, then changes to or variances from information within the scope of the manufactured reactor's design are subject to the change processes in § 52.171.

Paragraph (e) was added in 1992, and discussed in the section-by-section analysis (57 FR 60976; December 23, 1992), as following:

> This section has been amended with regard to making amendments to a combined license immediately effective under the so-called "Sholly Amendment." Under the Energy Policy Act, an amendment to a combined license can be made immediately effective if the Commission determines there are no significant hazards considerations. This section of the rule has been revised to incorporate the statutory provisions and previously issued Commission regulations implementing the "Sholly" amendment. The Commission, however, stresses that it will not look with favor upon license amendments to a combined license filed shortly before planned operation that could have the effect of undermining standardization or changing the scope of imminent or pending hearings on conformance issues.

Paragraph (f) states that any modification to a combined license is an amendment to the license and that there must be an opportunity for hearing on these amendments. Such amendments would be processed in accordance with the requirements contained in 10 CFR 50.90 and 50.91. In addition, if the applicant has referenced a certified design, or a reactor manufactured under a manufacturing license, additional requirements may apply. For example, a combined license that references an ABWR certified design may request an exemption from Tier 1 material in accordance with the provisions contained in Section VIII.A.4 of appendix A of 10 CFR part 52. In such a case, the licensee would have to process an exemption in accordance with the requirements contained in appendix A to part 52 and 10 CFR 52.63(b)(1) and a license amendment in accordance with paragraph (f) of this section.

Paragraph (g) which is analogous to §§ 52.39(f), 52.145(c), and 52.171(c),

provides that NRC information requests must be evaluated before issuance to ensure that the burden to be imposed by the information request is justified in view of the potential safety significance of the issue to be addressed, except when the information requests seeks to verify compliance with the current licensing basis of the combined license. Information requests may be in the form of a new rule requiring submission of information (i.e., a new information collection and reporting requirement), or in the form of a NRC staff request for information. Information requests by the staff must be in accordance with 10 CFR 50.54(f) and must be approved by the EDO or his or her designee before the request may be issued.

Section 52.99 Inspection During Construction

The purpose of this section is to set forth the requirements to support the NRC's inspections during construction. A new § 52.99(a) has been added to require that the licensee submit to the NRC, no later than 1 year after issuance of the combined license or at the start of construction as defined in 10 CFR 50.10, whichever is later, its schedule for completing the inspections, tests, or analyses in the ITAAC. This provision also requires the licensee to submit updates to the ITAAC schedule every 6 months thereafter and, within 1 year of its scheduled date for initial loading of fuel, licensees must submit updates to the ITAAC schedule every 30 days until the final notification is provided to the NRC under § 52.99(c). The information provided by the licensee will be used by NRC in developing the NRC's inspection activities and activities necessary to support the Commission's finding whether all of the ITAAC have been met prior to the licensee's scheduled date for fuel load. Even in the case where there were no changes to a licensee's ITAAC schedule during an update cycle, the NRC expect the licensee to notify the NRC that there have been no changes to the schedule.

Section 52.99 has also been amended to incorporate rule language from the design certification rules in 10 CFR part 52 regarding the completion of ITAAC (see paragraphs IX.A and IX.B.3 of appendix A to part 52). During the preparation of the design certification rules for the ABWR and System 80+ designs, the NRC staff and nuclear industry representatives agreed on certain requirements for the performance and completion of the inspections, tests, or analyses in ITAAC. In the design certification rulemakings, the Commission codified these ITAAC requirements into Section IX of the regulations. The purpose of the requirement in § 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.

Section 52.99(c)(1) requires the licensee to notify the NRC that the prescribed inspections, tests, and analyses have been performed and that the prescribed acceptance criteria have been met. Section 52.99(c)(1) further requires that the notification contain sufficient information to demonstrate that the prescribed inspections, tests, and analyses have been performed and that the prescribed acceptance criteria have been met.

Section 52.99(c)(2) requires that, if the licensee has not provided, by the date 225 days before the scheduled date for initial loading of fuel, the notification required by paragraph (c)(1) of this section for all ITAAC, then the licensee shall notify the NRC that the prescribed inspections, tests, or analyses for all uncompleted ITAAC will be performed and that the prescribed acceptance criteria will be met prior to operation (consistent with the Section 185.b requirement that the Commission, "prior to operation," find that the acceptance criteria in the combined license are met). The notification must be provided no later than the date 225 days before the scheduled date for initial loading of fuel, and must provide sufficient information to demonstrate that the prescribed inspections, tests, or analyses will be performed and the prescribed acceptance criteria for the uncompleted ITAAC will be met.

Section 52.99(c) ensures that: (1) The NRC has sufficient information to complete all of the activities necessary for the Commission to make a determination as to whether all of the ITAAC have been or will be met prior to initial operation; and (2) interested persons will have access to information on both completed and uncompleted ITAAC at a level of detail sufficient to address the AEA Section 189.a(1)(B) threshold for requesting a hearing on acceptance criteria. It is the licensee's burden to demonstrate compliance with the ITAAC and the NRC expects the information submitted under paragraph (c)(1) to contain more than just a simple statement that the licensee believes the ITAAC has been completed and the acceptance criteria met. The NRC expects the notification to be sufficiently complete and detailed for a reasonable person to understand the bases for the licensee's representation that the inspections, tests, and analyses have been successfully completed and the acceptance criteria have been met. The term "sufficient information" requires, at a minimum, a summary description of the bases for the licensee's conclusion that the inspections, tests, or analyses have been performed and that the prescribed acceptance criteria have been met. Furthermore, with respect to uncompleted ITAAC, it is the licensee's burden to demonstrate that it will comply with the ITAAC and the NRC expects the information that the licensee submits under paragraph (c)(2) to be sufficiently detailed such that the NRC can determine what activities it will need to undertake to determine if the acceptance criteria for each of the uncompleted ITAAC have been met, once the licensee notifies the NRC that those ITAAC have been successfully completed and their acceptance criteria met. The term "sufficient information" requires, at a minimum, a summary description of the bases for the licensee's conclusion that the inspections, tests, or analyses will be performed and that the prescribed acceptance criteria will be met. In addition, "sufficient information" includes, but is not limited to, a description of the specific procedures and analytical methods to be used for performing the inspections, tests, and analyses and determining that the acceptance criteria have been met.

The NRC notes that, even though it did not include a provision requiring the completion of all ITAAC by a certain time prior to the licensee's scheduled fuel load date, the NRC staff will require some period of time to perform its review of the last ITAAC once the licensee submits its notification that the ITAAC has been successfully completed and the acceptance criteria met. In addition, the Commission itself will require some period of time to perform its review of the staff's conclusions regarding all of the ITAAC and the staff's recommendations regarding the Commission finding under § 52.103(g). Therefore, licensees should structure their construction schedules to take into account these time periods.

A new paragraph (d) states 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. If an activity is subject to an ITAAC derived from a referenced standard design certification and the licensee has not demonstrated that the ITAAC has been met, the licensee may take corrective actions to

successfully complete that ITAAC or request an exemption from the standard design certification ITAAC, as applicable. A request for an exemption must also be accompanied by a request for a license amendment under § 52.98(f). Also, if an activity that is subject to an ITAAC is not derived from a referenced standard design certification and the licensee has not demonstrated that the ITAAC has been met, the licensee may take corrective actions to successfully complete that ITAAC or request a license amendment under § 52.98(f).

Paragraph (e)(1) of this section indicates that the NRC is responsible for ensuring (through its inspection and audit activities) that the combined license holder performs and documents the completion of inspections, tests, and analyses in the ITAAC. When part 52 was first adopted by the Commission in 1989 (April 18, 1989; 54 FR 15372), the rule provided that the NRC staff shall ensure that the inspections, tests, and analyses in the ITAAC are performed, and did not refer to the Commission finding on acceptance criteria being met. The Commission revised the language in this portion of the rule in 1992 (December 23, 1992; 57 FR 60975) to reflect changes to Section 185 of the AEA made by Congress in the Energy Policy Act of 1992 (1992 EPA), which states:

> Following issuance of the combined license, the Commission shall ensure that the prescribed inspections, tests, and analyses are performed and, prior to operation of the facility, shall find that the prescribed acceptance criteria are met.

Thus, the revisions to this portion of the rule in 1992 simply reflected the language of the 1992 EPA. However, the Commission does not believe that Congress, by adopting language in Section 185 stating that the Commission shall ensure that the ITAAC are performed, intended to prohibit the Commission's long-standing practice of delegating to the NRC staff the responsibility for performing the necessary activities, including audits and inspections, to ensure that "the required inspections, tests, and analyses in the ITAAC are performed." Accordingly, the language from the 1992 rule change is retained in this final rule.

Paragraph (e)(1) requires the NRC to publish, at appropriate intervals until the last date for submission of requests for hearing under § 52.103(a), notices in the **Federal Register** of the NRC staff's determination of the successful completion of inspections, tests, and analyses. Paragraph (e)(2) provides that the NRC shall make publicly available the licensee notifications under paragraphs (c)(1) and (c)(2). In general, the NRC expects to make the paragraph (c)(1) notifications availability shortly after the NRC has received the notifications and concluded that they are complete and detailed. Furthermore, by the date of the **Federal Register** notice of intended operation and opportunity to request a hearing on whether acceptance criteria have been or will be met (under § 52.103(a)), the NRC will make available the notifications under paragraph (c)(2), and the notifications under paragraph (c)(2) for all ITAAC for which paragraph (c)(1) notifications have not been provided by the licensee.

Section 52.103 Operation Under a Combined License

The purpose of this section is to set forth the requirements for operation under a combined license. This section has been previously discussed in a section-by-section analysis for the 1992 revisions to part 52 (57 FR 60976; December 23, 1992) which the NRC adopted in response to the Energy Policy Act of 1992. The 1992 section-by-section analysis states:

> In an effort to adhere as closely as possible to the new statutory requirements of the Energy Policy Act, the NRC has replaced most of its old § 52.103 with the text of section 2802 of that Act. Under the revised language, any request for a post-construction hearing must show, prima facie, both that one or more of the acceptance criteria are not or will not be met, and those specific operational consequences of nonconformance that would be contrary to providing reasonable assurance that the public health and safety will be adequately protected. The Commission may permit interim operation of a facility pending a hearing if it determines that this assurance exists. The Commission has the discretion to decide if any post-construction hearing will use formal or informal hearing procedures, and it must state publicly the reasons for choosing either set of procedures. The Commission must find, prior to operation of the facility, that the acceptance criteria have been met.

Paragraph (a) of this section is revised to require licensees to notify the NRC of its schedule date for initial loading of fuel no later than 270 days before the scheduled date and to notify the NRC of updates to its schedule every 30 days thereafter. This information will be used by the NRC to develop the notice of intended operation in the **Federal Register**, which must be published not less than 180 days before the licensee's initial fuel load date, as required by Section 189.a.(1)(B) of the AEA. In addition, paragraph (a) addresses the possibility that an applicant for a combined license may choose to resolve certain acceptance criteria in one or more of the ITAAC required by § 52.80 before issuance of the combined license. In such a case, if the Commission makes a finding in accordance with § 52.97 associated with these ITAAC at the time that a combined license is granted, these ITAAC would not be subjected to a hearing opportunity again under paragraph (a) of this section. The section-by-section analysis for § 52.97 discusses this issue in more detail.

Paragraph (b) provides the criteria that must be met for any request for a hearing on whether the facility complies or will comply with the acceptance criteria. The petitioner must set forth with reasonable specificity the facts and arguments which form the basis for the request. These provisions are designed to accord finality to the Commission's earlier decisions regarding the facility and to ensure that any proceeding is focused on significant safety issues.

Paragraph (c) requires the Commission to expeditiously either deny or grant any request for a hearing under this section. If a request is granted, the Commission must determine whether to allow interim operation of the facility based on reasonable assurance of adequate protection of the public health and safety.

Paragraph (d) provides that the Commission will determine the appropriate hearing procedures in accordance with 10 CFR part 2 for any hearing under paragraph (a) of this section. Under § 2.309, as adopted by the Commission in 2004 (69 FR 2182; January 14, 2004), such a hearing would ordinarily be conducted under subpart L of part 2. However, the Commission may direct, in the notice of required by paragraph (a) or in a subsequent order, that any hearing that may be conducted in a particular combined license proceeding under paragraph (a) use other, less formal hearing procedures, consistent with the requirements of the AEA. Any such Commission direction is consistent with the Commission's statement in the SOC for the 1989 final part 52 rulemaking (54 FR 15372, 15383; April 18, 1989) that any hearing held under former § 52.103(b)(2)(i) (§ 52.103(b) in this final rule) will use informal procedures to the maximum extent practical and permissible under law.

Paragraph (e) states that the Commission will, to the maximum extent possible, render a decision on issues raised in any hearing request within 180 days of the publication of the notice or by the anticipated date for initial fuel load, whichever is later.

Paragraph (f) provides requirements related to the submittal of petitions to modify the terms and conditions of a combined license and states that fuel loading and operation under a combined license will not be affected by the granting of a petition unless the Commission makes an order immediately effective.

Paragraph (g) prohibits the licensee from operating the facility until the Commission makes a finding that the acceptance criteria in the combined license are met (except for acceptance criteria that the Commission found were met when the combined license was issued). The NRC believes that the rule should reflect, as closely as possible, the statutory requirement in Section 185.b of the AEA. Although the NRC has historically viewed "operation" as including loading of fuel into the reactor, the NRC believes it is not necessary to change the language of § 52.103(g) to continue the historical practice.

Paragraph (h) of this section incorporates rule language from the design certification rules in 10 CFR part 52 regarding the completion of ITAAC (see paragraphs IX.A and IX.B.3 of appendix A to part 52). This paragraph states that ITAAC do not, by virtue of their inclusion in the design certification rule or combined license, constitute regulatory requirements after the licensee has received authorization to load fuel or for any renewal of the license. However, subsequent modifications to the facility or procedures described in the FSAR must comply with the requirements in § 52.98.

Section 52.104 Duration of Combined License

This section addresses the duration of a combined license which is a period not to exceed 40 years from the date that the Commission makes the finding that the acceptance criteria in the license are met, in accordance with § 52.103(g). Where the Commission has allowed operation during an interim period under § 52.103(c), the period of operation is not to exceed 40 years from the date allowing operation during the interim period. This provision implements Section 621 of the Energy Policy Act of 2005 which amended Section 103c. of the AEA. The AEA provided that the 40 year duration started on the date that the Commission authorized construction of the facility (i.e., the date of issuance of the combined license).

Section 52.105 Transfer of Combined License

This section states that a combined license may by transferred in accordance with 10 CFR 50.80, "Transfer of licenses." Section 50.80 provides the requirements regarding application for a license transfer. All license transfers must be approved by the Commission.

Section 52.107 Application for Renewal

This section states that an application to renew a combined license must be in accordance with 10 CFR part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants."

Section 52.109 Continuation of Combined License

This section, which is analogous to § 50.51, provides requirements for a combined license facility that has permanently ceased operations and states that the license continues in effect beyond the expiration date until the Commission notifies the licensee in writing that the license is terminated. During this period, the licensee is required to decommission and decontaminate the facility; maintain the facility, including the spent fuel, in a safe condition; and continue to follow the NRC's regulations and the provisions of the combined license.

Section 52.110 Termination of License

This section, which is analogous to § 50.82, provides requirements the termination of a combined license. These provisions include a requirement to notify the NRC within 30 days when a licensee has decided to permanently cease operations and to submit a certification to the NRC once fuel has been permanently removed from the reactor vessel. This section also requires decommissioning of the facility within 60 years of permanent cessation of operations and outlines requirements regarding decommissioning activities.

Subpart E—Standard Design Approvals

Section 52.131 Scope of Subpart

This section describes the scope of this process for design approvals of standard nuclear power plants or major portions thereof, i.e., a nuclear steam supply system or balance of plant. Under this subpart an applicant may request pre-approval of a standard nuclear power plant design, separate from a site review or other licensing action, and subsequently have that design approval referenced in an application to build a nuclear power plant. This licensing process was first adopted by the Commission in 1975 and has been used many times.

Section 52.133 Relationship to Other Subparts

The purpose of this section is to explain the relationship of the standard design approval process to the processes set forth in subparts B, C, and F of 10 CFR part 52, which provide for design certifications, combined licenses, and manufacturing licenses. The Commission continues to believe that the best approach for obtaining early resolution of design issues is through the design certification process in subpart B of this part. Applicants for a design approval have the option of also applying for design certification. Applicants for a combined license or a manufacturing license may reference a design approval.

Section 52.135 Filing of Applications

This section explains how to file an application for a standard design approval and how the fees for NRC's review of the application will be assessed. Applications are limited to final design information, in order to remove the unpredictability of issuing a construction permit that references only preliminary design information and initiating construction while the final design information is being completed. Approval of a final standard design ensures early consideration and resolution of technical matters by the NRC staff before there is any substantial commitment of resources, which will greatly enhance regulatory stability and predictability.

Section 52.136 Contents of Applications; General Information

This section identifies the general information that must be included in all applications.

Section 52.137 Contents of Applications; Technical Information

The purpose of this section is to identify the technical information that must be included in an application for a design approval. Paragraphs (a) and (c) describe information that must be included in the FSAR, which is included in the application, and paragraph (b) describes the information that must also be included in the application but does not need to be included in the FSAR. Applications for a major portion of the plant design, such as the nuclear steam supply system, only need to contain the technical information that is applicable to the major portion of the plant for which NRC staff approval is requested.

Many of the requirements in this section were taken from 10 CFR 50.34 or are pointers to technical requirements in parts 20, 50, and 73 that must be addressed in the application. The requirements taken from § 50.34 are a subset of the information required of applicants for construction permits and operating licenses. Other requirements came from appendix O to part 50 or were created by the Commission during its simultaneous reviews of applications for design approvals and design certifications.

Although an applicant for design approval does not need to specify a particular site for the nuclear power plant, which is required in a combined license application, it does need to identify the site parameters that the standard nuclear power plant or major portion thereof is designed to meet, e.g., postulated values for the safe shutdown earthquake response spectra and maximum tornado wind speed. These parameters are usually selected to envelop a large portion of nuclear plant sites in the United States. Once the design is approved by the NRC, conformance of the actual site characteristics with the established site parameters must be demonstrated by an applicant referencing the design approval and verified by the NRC staff at the time that the referencing application is submitted, i.e., combined license application.

Paragraph (a)(7) requires the applicant for design approval to describe its qualifications to design and analyze a standard nuclear power plant.

In its staff requirements memorandum (SRM) on SECY–90–377, "Requirements for Design Certification under 10 CFR part 52," dated February 15, 1991, the Commission stated that information submitted in an application should incorporate the experience from operating events in current designs which we want to prevent in the future. Therefore, for plant designs that are based on or are evolutions of nuclear plants that have operated in the United States, paragraph (a)(22) requires the applicant to demonstrate how relevant operating experience insights, from NRC's generic letters and bulletins issued after the most recent revision of the applicable SRP and 6 months before the docket date of the application, have been incorporated into the plant design. Operating experience includes consideration of operating events and the reliability and performance of structures, systems, and components. If the application is for a design that is not based on or is not an evolution of a nuclear plant that operated in the United States, the applicant must demonstrate how insights from any relevant international operating experience have been incorporated into that plant design.

In its SRMs, dated June 26, 1990, and July 21, 1993, on SECY–90–16, "Evolutionary Light-Water Reactor Certification Issues and their Relationship to Current Regulatory Requirements," and SECY–93–087, "Policy, Technical, and Licensing Issues Pertaining to Evolutionary and Advanced Light-Water Reactor Designs," respectively, the Commission approved NRC staff recommendations for selected preventative and mitigative design features for future light-water reactor designs. Paragraph (a)(23) requires the applicant to provide a description and analysis of those design features discussed in SECY–90–16 and SECY–93–87.

Paragraph (a)(U0) requires the application to describe the interfaces for those design features that are outside the scope of the approved design, e.g., service water intake structure or ultimate heat sink or, if the application is for approval of a major portion of the plant design, the interfaces between the nuclear steam supply system and the balance of plant.

Paragraph (a)(25) requires the applicant to provide a description of the design-specific PRA and its results. Guidance on meeting the PRA information requirements will be provided in separate regulatory guidance documents.

Paragraph (b) requires applications for "advanced" nuclear power plants to meet the design qualification testing requirements in 10 CFR 50.43(e). Advanced designs differ significantly from evolutionary light-water reactor designs or incorporate, to a greater extent than evolutionary designs do, simplified, inherent, passive, or other innovative means to accomplish their safety functions. Examples of advanced nuclear power plant designs include General Atomic's Modular High Temperature Gas-Cooled Reactor, General Electric's Simplified Boiling Water Reactor, and Westinghouse's AP600.

Section 52.139 Standards for Review of Applications

This section sets forth the parts of 10 CFR that contain applicable requirements for the technical review of applications for a design approval. The applicability of these requirements is specified in the identified parts. The Commission recognizes that new designs may incorporate design features that are not addressed by the current standards in 10 CFR parts 20, 50 and its appendices, 73, or 100 and that new standards may be required to address these new design features. The Commission will determine whether rulemakings are needed or appropriate to resolve generic safety issues that are applicable to multiple designs.

Section 52.141 Referral to the Advisory Committee on Reactor Safeguards (ACRS)

This section states that the application for design approval shall be sent to the ACRS for its review of safety issues.

Section 52.143 Staff Approval of Design

This section states that upon completion of the NRC staff's review of the standard design and receipt of a letter report from the ACRS, the staff shall issue a final safety evaluation report (FSER) and make that report available on the NRC's Web site. Also, if the FSER demonstrates that the standard design is acceptable, the Director of the Office of New Reactors or the Office of Nuclear Reactor Regulation may issue a final design approval with appropriate terms and conditions. The NRC's approval of a standard design is commonly referred to as an FDA because it is an approval of final design information.

Section 52.145 Finality of Standard Design Approvals; Information Requests

This section states that a valid FDA must be relied upon by the ACRS and NRR in any review of a license application that references the FDA unless significant new information substantially affects the staff's FSER. The Commission, Atomic Safety Licensing Board Panel, or presiding officers are not bound by NRC staff determinations in the FDA or FSER for the standard plant design. Therefore, there is no issue preclusion in the mandatory hearing for a combined license that references an FDA. Generic changes to the standard design can be made as a compliance backfit or under the backfit process in 10 CFR 50.109. Under paragraph (c), the justification for requests for information to FDA holders must be approved by the EDO or his or her designee, in accordance with the process set forth in 10 CFR 50.54(f).

Section 52.147 Section Duration of Design Approval

The purpose of this section is to specify the time period that an FDA can be referenced in a construction permit, operating license, combined license, or manufacturing license application.

Subpart F—Manufacturing Licenses

Section 52.151 Scope of Subpart

This new section is analogous to the "scope of subpart" sections in subparts A through C of part 52 (e.g., §§ 52.13, 52.41, 52.71). Section 52.151 describes the general subject matter of subpart F as the requirements and procedures applicable to NRC issuance of licenses authorizing the manufacture of nuclear power reactors to be installed at sites not identified in the manufacturing license application. This subpart does not cover the manufacture of subcomponents (e.g., a pump or a reactor pressure vessel) or major subassemblies (e.g., an integrated module consisting of a pump, piping and instrumentation and control) for installation in a nuclear power plant, either on a specific site, or being delivered for integration into a nuclear power plant under a manufacturing license issued under this subpart. For purposes of this subpart, a manufactured "nuclear power reactor" would not include site-specific SSCs such as the site foundation or SSCs related to the ultimate heat sink.

Section 52.153 Relationship to Other Subparts

This new section is analogous to the "relationship to other subpart" sections in subparts A through C of part 52 (e.g., §§ 52.13, 52.43, 52.73). Section 52.153 explains how this subpart relates to other licensing processes in parts 50 and 52, as well as to the regulatory approvals in part 52.

A manufactured reactor may only be transported to and installed at a site for which either a construction permit under part 50 or a combined license under part 52 has been issued to a licensee, as stated in paragraph (a). However, the licensing requirements associated with transport of a manufactured reactor from its place of manufacture to the site where it is to be installed and operated are not addressed in this rulemaking.

The NRC will issue a manufacturing license only if it approves the final design of the reactor to be manufactured. Paragraph (b) provides that the manufacturing license applicant may reference either a standard design certification rule or a standard design approval, in order to speed the NRC's review of the manufacturing license application. The language of paragraph (b) has been corrected in the final rule by deleting the reference to "preliminary or final" design approvals, inasmuch as the final part 52 rule does not provide for preliminary design approvals.

Section 52.155 Filing of Applications

This new section is analogous to the "filing of applications" sections in subparts A through C of part 52 (e.g., §§ 52.15, 52.45, 52.75). Section 52.155 addresses who may file an application for a manufacturing license, the administrative requirements with respect to filing (referring to §§ 52.3 and 50.30), and the fees for filing and review of the application (referring to 10 CFR part 170). With respect to these matters, a manufacturing license application is no different than any other license application under parts 50 or 52, and the applicant shall comply with all of these administrative requirements (which have been revised as part of the final rule to refer, as necessary, to manufacturing licenses).

Section 52.156 Contents of Applications; General Information

This new section is analogous to the "contents of application; general information" sections in subparts A through C of part 52 (e.g., §§ 52.16, 52.46, 52.77). Section 52.156 requires that the applicant include the information set forth in § 50.33(a) through (d) and (j), which are the same information required to be supplied by applicants of construction permits, early site permits, operating licenses, and combined licenses. Paragraphs (a) through (d) of § 50.33 require an application to include information identifying the applicant, including its name, address, business or occupation, and certain corporate information, including whether it is owned, controlled, or dominated by an alien, foreign corporation, or foreign government. Paragraph (j) of § 50.33 requires the applicant to segregate and protect any Restricted Data or other defense information from unclassified information. Manufacturing license applicants should note that there are other NRC requirements governing Restricted Data or National Security Information in other parts of 10 CFR Chapter I, including 10 CFR parts 10, 50, and 95.

Section 52.157 Contents of Applications; Technical Information in Final Safety Analysis Report

This new section is analogous to the "contents of application; technical information" sections in subparts A through C of part 52 (e.g., §§ 52.17, 52.47, 52.79). Section 52.157 identifies the technical information that must be included in an application for a manufacturing license. These requirements were modeled on those subparts, in particular subpart B's provisions dealing with standard design certifications, because of the commonality with respect to the nature and scope of NRC approval of the design in both regulatory processes. As with the existing part 50 licensing process, and part 52's combined license and standard design certification processes, the manufacturing license application must include an FSAR. The FSAR contains the information necessary for the NRC to determine the safety of the reactor design to be manufactured and the adequacy of the applicant's proposed means of assuring that the manufacturing conforms to the design. The FSAR must contain a level of detail sufficient to permit preparation of construction and installation specifications by an applicant who seeks to use the manufactured reactor, and for the NRC to prepare acceptance and inspection requirements.

The information required to be included in the manufacturing license FSAR is largely the same as what is required for a design certification or combined license, but the requirements have been modified as necessary to reflect the fact that the design and manufacture of a reactor is being approved by license, but that the reactor must be transported to a site and integrated into site specific plant elements in order to operate. In addition, unlike the case with a design certification, the NRC is not distinguishing between evolutionary plants versus more advanced plants with respect to the level of detail required to be developed to support the license application. The NRC expects that the designs of all manufactured plants will be completed at a level of detail sufficient for: (1) The holder of the manufacturing license to develop procurement, construction and installation specifications; and (2) the NRC to develop acceptance and inspection requirements.

Paragraph (a) requires that the FSAR contain the principal design criteria for the reactor to be manufactured, and references appendix A to 10 CFR part 50 as establishing minimum requirements for the principal design criteria for water-cooled nuclear power plants. The NRC expects to develop technology-neutral design criteria for non-light water cooled reactor designs in the future. This requirement was drawn from § 50.34(a)(3)(i).

Paragraph (b) requires that the FSAR describe the design bases and the relation of the design bases to the principal design criteria that are identified in accordance with paragraph (a). This requirement was drawn from § 50.34(a)(3)(ii).

Paragraph (c) requires that the FSAR describe and analyze the structures, systems, and components of the reactor to be manufactured, with the objective of demonstrating that the necessary safety functions will be accomplished. This requirement was drawn from § 50.34(a)(1) and (b)(2), but modified to reflect the fact that a manufacturing license represents approval of a final reactor design.

Paragraph (d) requires that the FSAR describe the safety features that are engineered into the reactor. This requirement was drawn from § 50.34(a)(1)(ii)(D), but modified to reflect the fact that a manufacturing license represents approval of a final reactor design.

Paragraph (e) requires the FSAR to describe the kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in part 20.

Paragraph (f) requires that the FSAR include that information necessary to establish that the design of the reactor to be manufactured complies with 18 delineated technical requirements in 10 CFR part 50. Applicants and licensees should note that the part 50 requirements listed in paragraph (f) do not constitute the sum total of requirements in part 50 for which either an applicant for or holder of a manufacturing license must comply with in its application and throughout the life of its license. Rather, the listed requirements in paragraph (f) simply represents *the minimum necessary content of the FSAR* for a manufacturing license. The part 50 requirements listed in paragraph (e) are mainly applicable to LWRs. Potential applicants and licensees should also note that the NRC may, in the future, adopt additional technical requirements in part 50 applicable to LWRs. If the NRC believes that future manufacturing license holder's compliance with that new requirement must be documented and controlled through the FSAR, the NRC will make a conforming change in § 52.157 to refer to the new part 50 requirement. A similar course would also be followed if the NRC backfits, in accordance with the finality provisions in § 52.171, the new requirement on existing manufacturing licenses.

Paragraph (f)(19) requires that the FSAR include the site parameters postulated for the design of the manufactured reactor. Although an applicant for a manufacturing license does not need to specify a particular site where the manufactured reactor will be integrated into a nuclear power plant, as in a combined license application, it does need to identify the site parameters, under paragraph (f)(20), that the manufactured reactor is designed to meet, e.g., postulated values for the safe-shutdown earthquake response spectra and maximum tornado wind speed. These parameters are usually selected to envelop a large portion of nuclear plant sites in the United States. Once the manufacturing license is issued by the NRC, conformance of the actual site with the established site parameters must be demonstrated by the applicant referencing the use of the manufactured reactor.

Paragraph (f)(20) requires the FSAR to describe the interface requirements for those design features that are outside the scope of the design of the manufactured reactor, e.g., service water intake structure or ultimate heat sink, and paragraph (f)(21) requires justification that compliance with the interface requirements in paragraph (g) can be verified through inspections or tests (which may be conducted at the plant where the manufactured reactor is utilized, or elsewhere, e.g., the place of manufacture) or analysis. This paragraph does not require, however, that the FSAR contain "acceptance criteria" for determining whether the interface requirements have been met.

Paragraph (f)(22) requires the FSAR to include a representative conceptual design for the nuclear power facility using the manufactured reactor. This will be used by the NRC in its review of the FSAR, to assess the adequacy of the interface requirements in paragraph (g) of this section, and to help the Commission in determining the adequacy of the site parameters and design characteristics to be included in the manufacturing license. The conceptual design will not, however, be approved as part of the manufacturing license and the Commission does not anticipate directly requiring a nuclear power plant utilizing the manufactured reactor to use the conceptual design. Instead, the Commission intends to use site parameters, design characteristics, ITAAC, and interface requirements to ensure that the manufactured reactor will be utilized safely at a specific nuclear power plant.

Paragraph (f)(23) requires the applicant to provide a description and analysis of design features to address prevention and mitigation of severe accidents, consistent with the Commission's SRM on SECY–91–229, "Severe Accident Mitigation Design Alternatives for Certified Standard Designs," dated October 25, 1991.

Paragraph (f)(U0) is reserved to accommodate any new requirement for the contents of an FSAR submitted as part of an application for a manufacturing license which the Commission may adopt in the future.

Paragraph (f)(25) requires FSARs for modular nuclear power plant designs to describe and analyze the various options for the configuration of the multi-reactor nuclear power plant. Modular nuclear power plant designs are defined in § 52.1. Modular designs are not portions of a single nuclear plant, rather they are separate nuclear reactors with some shared or common systems.

Paragraphs (f)(26)(i), (ii), (iii), and (v) focus on FSAR information necessary to demonstrate applicants technical, managerial, and organizational capability and resources to design and manufacture a nuclear power reactor consistent with the approved design, and in accordance with all applicable requirements.

Paragraph (f)(26)(iv) requires the FSAR to include proposed procedures for the preparation of the manufactured reactor for shipping, the conduct of shipping, and for verifying the condition of the manufactured reactor upon receipt at the site. However, the holder of the manufacturing license need not be responsible for implementing the procedures for verifying the condition of the reactor upon receipt at the site. The NRC will require the licensee whose application referenced the use of the manufactured reactor to implement the approved verification procedures (this could be done as a license condition). With respect to shipping, the holder of the manufacturing license may use an agent (e.g., a shipping company) to transport the reactor. To ensure that the shipping requirements in the manufacturing license are complied with by the third party transporter, the NRC has included a provision in § 52.167(c)(2) requiring the manufacturing license holder to include, in any contract governing the transport of a manufactured reactor from the place of manufacture to any other location, a provision requiring that the person or entity transporting the manufactured reactor to comply with all NRC-approved shipping requirements in the manufacturing license.

For plant designs that are based on or are evolutions of nuclear plants that have operated in the United States, paragraph (f)(29) requires the applicant to demonstrate how relevant operating experience insights, from NRC's generic letters and bulletins issued after the most recent revision of the applicable SRP and 6 months before the docket

date of the application, have been incorporated into the design of the reactor to be manufactured. Operating experience includes consideration of operating events and the reliability and performance of structures, systems, and components. If the application is for a design that is not based on or is not an evolution of a nuclear plant that operated in the United States, the applicant must demonstrate how insights from any relevant international operating experience have been incorporated into that manufactured reactor design.

Paragraph (f)(31) requires that the FSAR include a description of the design—specific probabilistic risk assessment and its results.

Section 52.158 Contents of Application; Additional Technical Information

This new section is analogous, in organizational structure, to § 52.80, "Contents of application; additional technical information" in subpart C of part 52.

Paragraph (a) requires that the application include inspections, tests, and analyses that the licensee who will be placing the manufactured reactor on a site and operating the reactor shall perform and their associated acceptance criteria. The purpose of these ITAAC are to ensure that: (1) The reactor has been manufactured in conformance with applicable requirements; and (2) the manufactured reactor, as emplaced at the site and integrated into any site-specific portions of the nuclear power plant, will operate in conformance with the design characteristics in the manufacturing license, the license authorizing operation of the manufactured reactor, and applicable requirements. Paragraph (a)(3), which is analogous to § 52.80(a)(3), provides that if the manufacturing license references a standard design certification, the manufacturing license application may include a notification that one or more ITAAC in the referenced design certification rule has been met. In such a situation, the **Federal Register** notice of docketing a hearing required by § 52.163 must specifically indicate that the application includes such a notification.

Paragraph (b)(1) requires that the application include an environmental report meeting the requirements in 10 CFR 51.54, which specifies the environmental information that must be submitted by a manufacturing license applicant to support the NRC's NEPA review. The Commission notes that environmental report need not include a discussion of assessment of the benefits and impacts of constructing and operating the manufactured reactor or an evaluation of alternative energy sources, under § 52.163 and § 51.54.

Under § 51.54, the environmental report for a manufacturing license must address the costs and benefits of SAMDAs that could be incorporated into the design, and the bases for not including SAMDAs into the design. The SAMDA information that must be included is essentially the same information that must be provided to support an application for a standard design certification. However, if the application references a standard design certification, § 51.54 provides that the manufacturing license's environmental report need not include the SAMDA evaluation. In such a case, the SAMDA determination in the EA for the referenced design certification would have finality in the manufacturing license proceeding, in accordance with § 52.63.

Section 52.159 Standards for Review of Applications

This new section is analogous to the "standards for review of applications" sections in subparts A through C of part 52 (e.g., §§ 52.18, 52.48, 52.81). Section 52.159 identifies the regulations that the NRC will use in reviewing an application for a manufacturing license. The NRC recognizes that reactors to be manufactured under a manufacturing license may incorporate design features which are inconsistent with current requirements in 10 CFR Chapter I, and may require exemptions from current requirements. Such exemptions would be granted as part of the NRC's issuance of the manufacturing license, together with alternative requirements (analogous to the "applicable regulations" provisions in the current design certifications rules, 10 CFR part 52, appendices A–D, Section V).

Section 52.161 Reserved

This section is reserved to accommodate any new requirements on the application process for manufacturing license which the NRC may adopt in the future.

Section 52.163 Administrative Review of Applications; Hearings

This new section is analogous to the "administrative review of applications" sections in subparts A through C of part 52 (e.g., §§ 52.21, 52.51, 52.85). Section 52.163 specifies that the procedural requirements in 10 CFR part 2 apply to the NRC's processing of an application for a manufacturing license, including docketing of the initial application.

Section 52.163 reiterates the § 2.105 requirement that the NRC publish in the **Federal Register** a notice of proposed action on the application. Apart from the required **Federal Register** notice, the Commission also expects to publish on the NRC's Web site notice of docketing of the application and the opportunity to intervene in the proceeding, consistent with the Commission's discussion in the 2004 final part 2 rulemaking (January 14, 2004; 69 FR 2182, 2198–99). The section makes clear, consistent with § 51.54, that the environmental report submitted by the manufacturing license applicant need not contain an assessment of the benefits of constructing and/or operating the manufactured reactor or an evaluation of alternative energy sources.

Finally, this section indicates that the hearing on the manufacturing license application will be governed by the procedures in part 2, subparts C, G, L, and N. The Commission notes that although subpart G is listed in this paragraph, it is unlikely that there would be contentions meeting the criteria in § 2.310 (and reiterated in § 2.700) for conduct of the hearing under subpart G. This is because the primary focus of the manufacturing license proceeding is on the adequacy of the design to be manufactured, and the nature of issues which are most likely to be raised on the design would not ordinarily involve issues of material fact relating to either: (1) The occurrence of a past activity, where the credibility of an eyewitness may reasonably be expected to be at issue; or (2) issues of motive or intent of the party or eyewitness which are material to the resolution of the contested matter.

Section 52.165 Referral to the Advisory Committee on Reactor Safeguards (ACRS)

This new section is analogous to the "Referral to the Advisory Committee on Reactor Safeguards" sections in subparts A through C of part 52 (e.g., §§ 52.21, 52.53, 52.87). It provides that the ACRS will have the same role with respect to manufacturing licenses that it has for other nuclear power plant licenses, in that it will report on those portions of the application which concern safety.

Section 52.167 Issuance of Manufacturing License

This new section is analogous to the "issuance" sections in subparts A through C of part 52 (e.g., §§ 52.24, 52.54, 52.97). Paragraph (a) sets forth the timing of issuance of a manufacturing license and the findings that the Commission must make in

order to issue the manufacturing license. The findings that must be made are similar to those necessary to issue a construction permit, inasmuch as construction is analogous to manufacturing. The Commission notes that it reserves the right to withhold issuance of the manufacturing license, even if all the rules and regulations of the Commission have been satisfied, based on public health and safety or common defense and security information or considerations not adequately addressed in the Commission's rules and regulations.

Paragraph (b) identifies the specific limitations that the Commission will include in each manufacturing license. They include technical specifications for the operation of each manufactured reactor, site parameters, design characteristics, and interface requirements, which are to be used by the applicant for and holder of the license referencing the use of the manufactured reactor(s). Ordinarily, the limitations to be included in the manufacturing license would be derived from the manufacturing license application, but the NRC may modify the proposed limitations based upon the NRC's review.

Paragraph (c) restricts the holder of the manufacturing license from transporting or allowing to be removed from the place of manufacture the manufactured reactor except to the site of a licensee who holds either a construction permit or combined license referencing the use of that manufactured reactor.

Section 52.169 Reserved

This section is reserved to accommodate any new requirements on either the issuance of, or activities authorized under a manufacturing license which the Commission may adopt in the future. Any new requirements adopted after issuance of a manufacturing license, which are made applicable to that manufacturing license, would have to satisfy the finality restrictions in § 52.171.

Section 52.171 Finality of Manufacturing Licenses; Information Requests

This new section is analogous to the variously entitled sections addressing finality and special backfitting protections which are in subparts A through C of part 52 (e.g., §§ 52.39, 52.63, 52.98),[15] but is more generally modeled on the finality provision for standard design certifications. In general, paragraph (a) addresses backfitting and finality restrictions on the NRC, paragraph (b) addresses finality and standardization restrictions applicable to the licensee (i.e., the holder the manufacturing license), and paragraph (c) establishes restrictions on certain NRC information collections with respect to the manufacturing license.

Paragraph (a)(1) states that the Commission may not modify, rescind, or impose new requirements on the design of a nuclear power reactor being manufactured, or new requirements for the manufacture of the nuclear power reactor, unless the Commission determines that a modification is necessary to either bring the design or the manufacture of the reactor into compliance with the Commission's requirements applicable and in effect at the time the manufacturing license was issued, or to provide reasonable assurance of adequate protection to public health and safety or common defense and security. This restriction on the Commission applies, *inter alia*, in construction permit, operating license, and combined license proceedings which reference the use of the manufactured reactor. It also applies in any enforcement proceeding initiated by the NRC, or in a rulemaking which proposes to apply new or changed requirements to reactors which have already been manufactured, as well as any reactors yet to be manufactured under the manufacturing license. However, the restrictions in paragraph (a)(1) do not apply to NRC information requests directed at either the manufacturing license holder, or to any holder of a license referencing the use of a manufactured reactor; such information requests are governed by paragraph (c) of this section.

Paragraph (a)(2) provides that any modification to the design of a manufactured nuclear power reactor which is imposed by the Commission under paragraph (a)(1) of this section will be applied to all reactors manufactured under the license, including those that have already been manufactured, transported, sited, and are in operation. The only exception would be for those reactors to which the Commission-ordered modification had been rendered technically irrelevant by action taken under paragraph (b) of this section, *i.e.*, either the holder of the manufacturing license has requested a change to the design approved in the manufacturing license (which ordinarily would apply only to reactors manufactured after Commission approval of the change), or the holder of a license referencing the use of the manufactured reactor has obtained Commission approval for a change to the design of the specific manufactured reactor(s) utilized by that licensee.

Paragraph (a)(3) delineates the nature of finality associated with the referencing of a manufactured reactor in subsequent NRC licensing proceedings. This paragraph provides that finality is accorded to those matters resolved in the proceeding on the issuance or renewal of the manufactured reactor. These matters resolved include the adequacy of the design of the manufactured reactor and the acceptability and completeness of the ITAAC required by § 52.158(a)(1) to be performed by the licensee operating the reactor. The matters resolved also include the SAMDA evaluation prepared by the Commission in compliance with its obligations under NEPA. This finality extends to both the Commission's determinations with respect to specific SAMDA features included in the design of the manufactured reactor, as well as the Commission's determinations regarding the lack of need for any other SAMDA features. Finality is accorded in the following situations: (1) Issuance of a construction permit, operating license, combined license; (2) any hearing under § 52.103; and (3) enforcement hearings other than those proceedings initiated by the Commission under paragraph (a)(1).

Paragraph (b)(1) requires the holder of a manufacturing license to seek a prior NRC review and approval for any change to the design of the nuclear power plant authorized to be manufactured. The holder of the manufacturing license may not make a change to the approved design for manufacture through the provisions of § 50.59. A request for a change to the approved design must be in the form of a license amendment application, and the application will be processed in accordance with §§ 50.90 through 50.92. The Commission notes, however, that the procedures for no significant hazards consideration (NSHC) are not applicable to manufacturing licenses, inasmuch as Section 189.a.(2) of the AEA, which is the statutory authority for these procedures, does not apply to manufacturing licenses.

Paragraph (b)(2) requires a holder of a license referencing the use of a manufactured reactor, who wishes to depart from the design characteristics, site parameters, terms and conditions,

[15] The finality provision in § 52.83 performs a different function than the finality sections cited above, in that it points back to, and thereby re-emphasizes, the primary finality provisions for each license or regulatory approval mechanism in part 52, e.g., the finality provision in § 52.39 for early site permits.

or approved design of the manufactured reactor, to seek a departure from the NRC. The manner in which a departure is granted depends upon the timing of the request. If a departure is requested as part of the initial combined license application, the departure would be treated as part of the application and issued as part of the combined license. By contrast, if the same departure were sought after the combined license had been issued, then the licensee must apply for the departure in the form of a license amendment. The criteria for granting the departure is the exemption criterion in § 52.7; however, the departure itself is not considered an exemption (unless, of course, the departure also involves a non-compliance with an underlying Commission regulatory requirement in 10 CFR Chapter I). Thus, the Commission will not approve a departure unless the Commission finds, in addition to the routine exemption criteria in § 52.7, that special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the departure. As explained earlier, these limitations are intended to maintain the standardization of manufactured reactors in operation to the extent practicable. The licensee may not depart from the design characteristics, site parameters, terms and conditions, or approved design of the manufactured reactor through the provisions of § 50.59.

Paragraph (c), which is analogous to §§ 52.39(d), 52.98(g), and 52.145(c), provides that NRC information requests must be evaluated before issuance to ensure that the burden to be imposed by the information request is justified in view of the potential safety significance of the issue to be addressed, except when the information requests seeks to verify compliance with the current licensing basis of either the manufacturing license or the manufactured reactor. This paragraph applies to information requests directed at either the holder of the manufacturing license or the holder of a license referencing the use of a manufactured reactor. Information requests may be in the form of a new rule requiring submission of information (i.e., a new information collection and reporting requirement), or in the form of a NRC staff request for information. Information requests by the staff must be in accordance with 10 CFR 50.54(f) and must be approved by the EDO or his or her designee before the request may be issued.

Section 52.173 Duration of Manufacturing License

This new section is analogous to the variously-entitled sections addressing duration (term) of each regulatory process in subparts A through C of part 52 (e.g., §§ 52.33, 52.61, 52.104). Under § 52.173, a manufacturing license may be issued for not less than 5 nor more than 15 years. Manufacturing of a new reactor may not commence less than 3 years before the expiration of the manufacturing license, even though a timely application for renewal has been filed in accordance with § 52.177. However, if a timely application for renewal of the manufacturing license has been docketed, manufacturing of uncompleted reactors whose manufacture commenced 3 years or more before the expiration date, may continue past the date of expiration of the license until the NRC acts upon the renewal application, consistent with the "Timely Renewal" doctrine of the Administrative Procedures Act. The NRC believes that timely renewal protection should only be provided to those applications which are of sufficient quality to be docketed. This is consistent with the requirement in § 2.109(b) requiring filing of a "sufficient" application for renewal of operating licenses as a prerequisite for the applicability of the timely renewal protection.

Section 52.175 Transfer of Manufacturing License

This new section is analogous to the variously entitled transfer sections in subparts A and C of part 52 (e.g., §§ 52.28, 52.105).[16] Section 52.175 provides that a manufacturing license may be transferred in accordance with § 50.80, which constitutes the Commission's common procedures and criteria governing transfers of nuclear power plant licenses. The matters to be addressed in a transfer are limited to the matters identified in § 50.80(b), and the transfer would not be an opportunity for the Commission to reconsider safety and environmental matters previously resolved, or to address new safety matters other than the narrow scope of matters identified in § 50.80(b).

Section 52.177 Application for Renewal

This new section is analogous to the "application for renewal" sections in subparts A through C of part 52 (e.g., §§ 52.29, 52.57, 52.107). Section 52.177 sets forth the content of an application for renewal, specifies the administrative requirements governing the application, addresses the effectiveness of a manufacturing license during the period of NRC's consideration of the renewal application, summarizes how an interested person may request a hearing on the renewal, and addresses the referral of the renewal application to the ACRS and the Commission's expectations with respect to the ACRS report on the application.

Section 52.179 Criteria for Renewal

This new section is analogous to the "criteria for renewal" sections in subparts A and B of part 52 (e.g., §§ 52.31, 52.59).[17] Section 52.179 provides that the Commission may grant renewal of a manufacturing license if the Commission determines that the license complies with the relevant provisions of the AEA, the Commission's regulations applicable and in effect at the time the manufacturing license was originally issued, and any new requirements which the Commission imposes which: (1) Are necessary for reasonable assurance of adequate protection to public health and safety or common defense and security; (2) are necessary for compliance with Commission's regulations and orders applicable and in effect at the time the manufacturing license was originally issued; or (3) represent a substantial increase in overall protection of the public health and safety or common defense and security and the direct and indirect costs of implementation are justified in light of the increased protection. These "backfitting" restrictions are similar to—if somewhat narrower than—the backfitting restrictions applicable to renewal of standard design certification rules under subpart B of this part.

Reasonable assurance of adequate protection to public health and safety and common defense and security is provided under this regulatory approach, inasmuch as paragraph (b) allows the Commission to impose new requirements which are necessary for common defense and security, or are necessary for compliance with the Commission's regulations and orders applicable and in effect at the time the manufacturing license was originally issued.

[16] A standard design certification is a rule, rather than a license. Accordingly, there is no "holder" of a standard design certification rule and no need for a provision addressing "transfer" of a standard design certification rule.

[17] Subpart C does not contain a "criteria for renewal" provision, inasmuch as the renewal would be governed by 10 CFR part 54, see § 52.107. Part 54 contains a provision, § 54.29, setting forth the standards for issuance of renewed licenses.

Section 52.181 Duration of Renewal

This new section is analogous to the "duration of renewal " sections in subparts A and B of part 52 (e.g., §§ 52.33, 52.61).[18] Section 52.181 specifies the term of a renewed manufacturing license as not less than 5 nor more than 15 years from the date of expiration of the prior manufacturing license. Thus, a holder of a manufacturing license with an original term of 15 years, who is granted a 15-year renewal of the manufacturing license 4 years before expiration of the license, will obtain a renewed manufacturing license of 19 years, representing a 15-year term of the renewed license plus the 4 years remaining on its original license.

Subpart G—Reserved

This subpart is reserved for future use by the Commission.

Subpart H—Enforcement

This subpart contains two provisions, § 52.301 and § 52.303, which are comparable to former § 52.111 and § 52.113, and are analogous to provisions contained in other parts of 10 CFR Chapter I imposing requirements on regulated entities.

Section 52.301 reiterates, and provides notice to licensees and applicants under part 52 of the Commission's authority to obtain injunctions or other court orders for the violations enumerated in this paragraph.

Section 52.303 provides notice to all persons and entities subject to part 52 that they are subject to criminal sanctions for willful violations, attempted violations, or conspiracy to violate certain regulations under part 52. The regulations for which criminal penalties apply are limited to those which establish either a regulatory obligation or prohibition. Most of the regulations in part 52 are procedural or administrative in nature, and therefore were listed in § 52.113 as not being subject to criminal sanctions. The regulations in part 52 which are subject to criminal sanctions are §§ 52.4 (Deliberate misconduct), 52.5 (Employee protection), 52.6 (Completeness of information), 52.25 (Extent of activities permitted), 52.35 (Use of site for other purpose), 52.91 (Authorization to conduct site activities), and 52.110 (Termination of license).

[18] Subpart C does not contain a "duration of renewal" provision, inasmuch as the renewal would be governed in all respects by 10 CFR part 54, see § 52.107. Part 54 contains a provision, § 54.31, governing the duration of renewed licenses.

Appendix A—U.S. Advanced Boiling Water Reactor

Refer to the section-by-section discussion in the final rule dated May 12, 1997 (62 FR 25800).

Appendix B—The System 80+ Design

Refer to the section-by-section discussion in the final rule dated May 21, 1997 (62 FR 27840).

Appendix C—The AP600 Design

Refer to the section-by-section discussion in the final rule dated December 23, 1999 (64 FR 72002).

Appendix D—The AP1000 Design

Refer to the section-by-section discussion in the final rule dated January 27, 2006 (71 FR 4464).

Appendix N—Combined Licenses for Nuclear Power Reactors of Identical Design

Appendix N of part 52 contains the Commission's procedures which may be used by one or more applicants for combined licenses under part 52, where the applications seek to construct and operate nuclear power reactors of identical design to be located at multiple sites. The comparable procedures governing applications for construction permits and operating licenses using identical nuclear power reactor designs remain in appendix N of 10 CFR part 50. Hearings for applications filed under appendix N in part 52, as well as part 50, are governed by subpart D of part 2. Thus, appendix N and subpart D of part 2 are integral to each other.

The regulations in appendix N of part 52 apply in two situations: (1) Where the same applicant seeks combined licenses at different sites utilizing the identical reactor design; and (2) where two or more different applicants each seek combined licenses at different sites utilizing the identical reactor design. In either situation, there is an identical reactor design. The Commission has deliberately used the term, "nuclear power reactor," in appendix N and subpart D of part 2—as distinguished from the term, "nuclear power plant"—to make clear that the site-specific elements, such as the service water intake structure or the ultimate heat sink, need not be identical in order for appendix N and subpart D to apply.

The Commission has conformed appendix N and subpart D of part 2 to use the term, "identical" nuclear power reactor design, and removed references to "duplicate" and "essentially identical." For purposes of appendix N and subpart D of part 2, designs for reactors are "identical," even if individual licensees request plant-specific departures or exemptions from a referenced standard design certification (or application). However, those plant-specific departures or exemptions are not part of the "common design." Therefore, the NRC's review of those departures and exemptions, as well as NRC hearings on those departures and exemptions, would be conducted separately as part of the safety review of each individual application, and would not be part of the hearing on the common design which would be conducted under subpart D of part 2.

Section 1

This is a new section specifying that its provisions apply to applicants for combined licenses under subpart C of part 52. Appendix N of part 50 would apply to applicants for construction permits and operating licenses who use identical reactor designs.

Section 2

This section, which is analogous to and derived from former § 2 of appendix N, specifies that each application submitted under this appendix must be submitted in accordance with the delineated Commission filing requirements. In addition, to ensure that the NRC is clearly informed that the applicants wish to have their application processed under appendix N and subpart D of part 2, this section requires: (1) That each application state the applicant's intent that the application be processed by the NRC under appendix N; and (2) that all of the applications to be treated together under this appendix be listed in each application. All of the applications must be filed simultaneously, which will facilitate NRC's administrative handling and technical review of the applications, as well as efficient conduct of the hearing process.

Section 3

This section, which is analogous to and derived from former § 3 of appendix N, specifies that combined license applications submitted under this appendix must include all of the information required to be submitted in a combined license application in §§ 52.77, 52.79, and 50.80(a) and (b), but makes clear that each of the applications must identify the common design. The common design may be (but is not limited to) a standard design certification under subpart B of part 52, a standard design approval, a "common custom design," or a manufactured reactor.

The FSAR for each application must either incorporate by reference or include the FSAR for the common design, including, as applicable, the FSAR for the referenced design certification or manufactured reactor. "Include," means that the FSAR may not simply reference the common FSAR; the information from the referenced FSAR must be included within each application's FSAR.

Section 4

This is a new section specifying that each application must submit an environmental report which complies with the applicable provisions of part 51 with respect to the content of environmental reports. As an alternative, this section provides that one or more of the applicants' environmental reports may incorporate by reference a single environmental report describing the environmental impacts of the common design at each of the sites.

Section 5

This is a new section specifying that, upon a determination that each application is acceptable for docketing, each application will be docketed and a notice of docketing will be published in the **Federal Register** in accordance with 10 CFR 2.104. The notice of docketing must state that the application will be processed under the provisions of appendix N. Separate notices of docketing are contemplated, so that a problem with acceptance review of one application will not prevent the docketing and initiation of the NRC's technical review of the other applications determined to be sufficient and acceptable for docketing. This could occur, for example, if information, submitted by an applicant which is unrelated to the common design, is determined by the NRC to be insufficient. However, if the applications are determined to be acceptable for docketing, § 5 provides the Commission with the discretion to publish a single notice of docketing for those applications.

Section 6

This is a new section which provides that the NRC will prepare a separate draft and final EIS for each of the applications. Scoping may be conducted simultaneously but need not be conducted jointly (e.g., scoping for an application at site 1 need not be conducted as part of the same process as the scoping for an application for site 2), at least with respect to site-specific environmental issues. However, for environmental issues related to the common design, the NRC has the discretion to conduct joint scoping. The NRC staff is not, however, required to prepare a joint environmental impact statement for the common design.

This section also addresses the content of an EIS when the applications reference either a standard design certification or the use of a manufactured reactor of common design. In either case, the NRC has already prepared and finalized an EA which addresses SAMDAs. This SAMDA analysis is accorded finality under the provisions of §§ 52.63 and 52.171, respectively. Therefore, the EIS for each of the applications must reference the relevant environmental assessment containing the SAMDA analysis.

Section 7

This section, which is analogous to and derived from former § 1 of appendix N, provides direction to the ACRS with respect to their report on each of the combined license applications. The ACRS must issue a separate report on the safety of the common design, except in those instances where the applications are referencing either a standard design certification or manufactured reactor (of common design). In addition, the ACRS must issue a separate report for each application. This report must be limited to those matters which are not relevant to the common design. This will facilitate the NRC's licensing process by eliminating overlap and ensuring that the ACRS reports are carefully focused on the relevant safety issues.

Section 8

This is a new section, which provides that the Commission shall designate a presiding officer to conduct the proceeding with respect to the health and safety, common defense and security, and environmental matters (i.e., SAMDAs) relating to the common design. The presiding officer will conduct the hearing in accordance with subpart D of part 2. The presiding officer is required to issue a separate partial initial decision on matters relevant to the common design, consistent with 10 CFR 2.405 in subpart D of part 2. Appeals of the partial initial decision are governed by 10 CFR 2.341, as provided by 10 CFR 2.405. The NRC also notes that issues on the contested design may not be relitigated in a different phase of the hearing except on the basis of significant new information that substantially affects the conclusion(s) reached at the other phase or other good cause. See 10 CFR 2.406.

VII. Availability of Documents

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

Public Document Room (PDR). The NRC Public Document Room is located at 11555 Rockville Pike, Rockville, Maryland.

Rulemaking Web site (Web). The NRC's interactive rulemaking Web site is located at *http://ruleforum.llnl.gov.* These documents may be viewed and downloaded electronically via this Web site.

NRC's Public Electronic Reading Room (EPDR). The NRC's electronic public reading room is located at *http://www.nrc.gov/reading-rm.html.*

The NRC staff contact. Nanette V. Gilles, Mail Stop O–4D9A, Washington, DC 20555–0001, 301–415–1180.

Document	PDR	Web	EPDR	NRC staff
Part 52 Rule, Cross-Reference Tables		X	ML062550246	X
Comments received	X	X	X	
Comment Summary Report			ML063450216	
Regulatory Analysis	X	X	ML071490350	X
Regulatory History Index for the proposed July 2003 rule			ML032810026	
Regulatory History Index for the March 13, 2006, proposed rule			ML062080575	

VIII. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" which became effective on September 3, 1997 (62 FR 46517), NRC program elements (including regulations) are placed into compatibility categories A, B, C, D, NRC, or adequacy category, Health and Safety (H&S). Category A includes program elements that are basic radiation protection standards or related

definitions, signs, labels, or terms necessary for a common understanding of radiation protection principles and should be essentially identical to those of NRC. Category B includes program elements that have significant direct transboundary implications and should be essentially identical to those of the NRC. Compatibility Category C includes program elements that do not meet the criteria of Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. Compatibility Category D includes those program elements that do not meet any of the criteria of Category A, B, or C, and do not need to be adopted by Agreement States. Compatibility Category NRC includes program elements that address areas reserved to the Commission and cannot be relinquished to Agreement States pursuant to the Atomic Energy Act or provisions of Title 10 of the *Code of Federal Regulations*. An Agreement State may inform its licensees of certain of these NRC provisions through a mechanism that is appropriate under the State's administrative procedure laws as long as the State adopts these provisions solely for the purposes of notification, and does not exercise any regulatory authority pursuant to them. Category H&S include program elements that are not required for compatibility, but have a particular health and safety role in the regulation of agreement material and the State should adopt the essential objectives of the NRC program elements. In addition, a State should not adopt provisions that would preclude, or effectively preclude, a practice authorized by the Atomic Energy Act, and in the national interest. The proposed revisions are categorized as follows:

LIST OF CHANGES 10 CFR PART 52 FINAL RULEMAKING

Sections	Description new, changes	Compatibility designation	Comments regarding compatibility designation
10 CFR Part 1	Statement of Organization and General Information.	D	This provision is designated Category D because it does not meet any of the criteria of Category A, B, or C. A State may adopt similar provisions to reflect their organizational structure and may wish to inform its licensees of the provisions of this part through a mechanism that is appropriate under the State's administrative procedure laws.
10 CFR Part 2—Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders			
2.1	Scope	D, except portions of these provisions are NRC.	These provisions are designated Compatibility Category D because they do not meet any of the critena of Category A, B, or C. A State may adopt similar provisions that are compatible with the orderly pattern of regulation established by the Atomic Energy Act, as amended (Act) and are consistent with their regulatory authority. Those portions of the provision that address areas reserved to the NRC, e.g., 10 CFR Part 52 standard design approvals, are designated as a Compatibility Category NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
2.4—Definitions	Contested proceeding	D, except portions of the definition are NRC.	This definition is designated Category D because it does not meet any of the criteria of Category A, B, or C. A State may adopt a similar definition that is compatible with the orderly pattern of regulation established by the Atomic Energy Act, as amended (Act) and is consistent with their regulatory authority. Those portions of the definition that address areas reserved to the NRC, e.g., 10 CFR Part 52 activities, are designated as a Compatibility Category NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Atomic Energy Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
	License	NRC	This definition is designated Compatibility Category NRC because it addresses areas reserved to the NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Atomic Energy Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions. For purposes of compatibility, States should use the language of the 10 CFR 20.1003 definition, except those portions of the definition that reference areas reserved to the NRC, e.g., 10 CFR Parts 50, 60, 63, and 72, are designated as a Compatibility Category NRC.
	Licensee	[D]	This definition also appears in 10 CFR 20.1003. For purposes of compatibility, the language of the Part 20 definition should be used where it is assigned to Compatibility Category D.

LIST OF CHANGES 10 CFR PART 52 FINAL RULEMAKING—Continued

Sections	Description new, changes	Compatibility designation	Comments regarding compatibility designation
2.100 thru 2.390	All of the sections covered by Subparts A, B, and C.	D, except portions of these provisions are NRC.	These provisions are designated Compatibility Category D because they do not meet any of the criteria of Category A, B, or C. A State may adopt similar provisions that are compatible with the orderly pattern of regulation established by the Atomic Energy Act, as amended (Act) and are consistent with their regulatory authority. Those portions of the provision that address areas reserved to the NRC, e.g., 10 CFR Parts 50, 51, 52, 53, 54, 55, 60, 63, 72, 73, and 76, are designated as a Compatibility Category NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
2.400 thru 2.629	All of the sections covered by Subparts D, E, and F.	NRC, for all of the sections.	These provisions are designated Compatibility Category NRC because they address areas reserved to the NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Atomic Energy Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
2.800	Scope and applicability	D, except portions of these provisions are NRC.	These provisions are designated Compatibility Category D because they do not meet any of the criteria of Category A, B, or C. A State may adopt similar provisions that are compatible with the orderly pattern of regulation established by the Atomic Energy Act, as amended (Act) and are consistent with their regulatory authority. Those portions of the provision that address areas reserved to the NRC, e.g., 10 CFR Part 52, are designated as a Compatibility Category NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
2.801	Initiation of rulemaking ..	D, except portions of these provisions are NRC.	These provisions are designated Compatibility Category D because they do not meet any of the criteria of Category A, B, or C. A State may adopt similar provisions that are compatible with the orderly pattern of regulation established by the Atomic Energy Act, as amended (Act) and are consistent with their regulatory authority. Those portions of the provision that address areas reserved to the NRC, e.g., 10 CFR Part 52, are designated as a Compatibility Category NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
2.811	Filing of standard design certification application, required copies.	NRC	This provision is designated Compatibility Category NRC because it addresses an area reserved to the NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Atomic Energy Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
2.813	Written communications	NRC	This provision is designated Compatibility Category NRC because it addresses an area reserved to the NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Atomic Energy Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
2.815	Docketing and acceptance review.	NRC	This provision is designated Compatibility Category NRC because it addresses an area reserved to the NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Atomic Energy Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.

LIST OF CHANGES 10 CFR PART 52 FINAL RULEMAKING—Continued

Sections	Description new, changes	Compatibility designation	Comments regarding compatibility designation
2.817	Withdrawal of application.	NRC	This provision is designated a Compatibility Category NRC because it addresses an area reserved to the NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Atomic Energy Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
2.819	Denial of application for failure to supply information.	NRC	This provision is designated Compatibility Category NRC because it addresses an area reserved to the NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Atomic Energy Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
2.1202	Authority and role of NRC staff.	NRC	This provision is designated Compatibility Category NRC because it addresses an area reserved to the NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Atomic Energy Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
2.1211—[Removed]..			
10 CFR Part 10	Criteria and procedures for determining eligibility for access to restricted data or national security information or an employment clearance.	NRC for all sections	These provisions are designated Compatibility Category NRC because they address areas reserved to the NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Atomic Energy Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
10 CFR Part 19—Notices, Instructions and Reports to Workers: Inspection and Investigations			
19.1	Purpose	D	This provision is designated Category D because it does not meet any of the criteria of Category A, B, or C. A State may adopt a similar provision that is compatible with the orderly pattern of regulation established by the Atomic Energy Act, as amended (Act) and are consistent with their regulatory authority.
19.2	Scope	D, except portions of the provisions in (a)(1), (a)(2), (a)(3), and (a)(4) are designated as NRC.	This provision is designated Compatibility Category D because it does not meet any of the criteria of Category A, B, or C. A State may adopt similar provisions that are compatible with the orderly pattern of regulation established by the Atomic Energy Act, as amended (Act) and are consistent with their regulatory authority. Those portions of the provision that address areas reserved to the NRC, e.g., 10 CFR Parts 50, 51, 52, 53, 54, 60, 63, 72, and 76, are designated as a Compatibility Category NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
19.3—Definitions	License	D, except portions of the definition are NRC.	This definition is designated Category D because it does not meet any of the criteria of Category A, B, or C. A State may adopt a similar definition that is compatible with the orderly pattern of regulation established by the Atomic Energy Act, as amended (Act) and is consistent with their regulatory authority. Those portions of the definition that address areas reserved to the NRC, e.g., 10 CFR Parts 50, 51, 52, 53, 54, 55, 60, 63, 72, 73, and 76, are designated as a Compatibility Category NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Atomic Energy Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions. This definition appears in 10 CFR 20.1003. For purposes of compatibility, States should use the language of the Part 20 definition, which is assigned a Compatibility Category D.

LIST OF CHANGES 10 CFR PART 52 FINAL RULEMAKING—Continued

Sections	Description new, changes	Compatibility designation	Comments regarding compatibility designation
	Regulated activities	D	This definition is designated Category D because it does not meet any of the criteria of Category A, B, or C. A State may adopt a similar definition that is compatible with the orderly pattern of regulation established by the Atomic Energy Act, as amended (Act) and is consistent with their regulatory authority.
	Regulated entities	D, except portions of the definition are NRC.	This definition is designated Category D because it does not meet any of the criteria of Category A, B, or C. A State may adopt a similar definition that is compatible with the orderly pattern of regulation established by the Atomic Energy Act, as amended (Act) and is consistent with their regulatory authority. Those portions of the definition that address areas reserved to the NRC are designated Compatibility Category NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Atomic Energy Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
	Worker	C	This definition is designated Compatibility Category C because of its role in effective communication, dose monitoring, and commerce (transboundary). A State should adopt definitions that are compatible with the orderly pattern of regulation established by the Atomic Energy Act, as amended (Act) and are consistent with their regulatory authority. The essential objectives of this definition should be adopted.
19.11	Posting of Notices to workers.	C, except portions of paragraph (a), and all of paragraphs (b) and (e) are designated as NRC.	This provision is designated Compatibility Category C because it is needed to provide a minimum level of information to workers and to assure that this information is consistent from one jurisdiction to another since workers may work in multiple jurisdictions. A State should adopt provisions that are compatible with the orderly pattern of regulation established by the Atomic Energy Act, as amended (Act) and are consistent with their regulatory authority. The essential objectives of this definition should be adopted. Those portions of paragraph (a) that reference 10 CFR Part 52 activities, and paragraphs (b) and (e) address areas reserved to the NRC, and are designated Compatibility Category NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
19.14	Presence of representatives of licensees and workers during inspections.	C, except paragraph (a) is designated as NRC.	This provision is designated Compatibility Category C because it is needed to provide a minimum level of consistency from one jurisdiction to another since workers may work in multiple jurisdictions. A State should adopt provisions that are compatible with the orderly pattern of regulation established by the Atomic Energy Act, as amended (Act) and are consistent with their regulatory authority. Paragraph (a) addresses areas reserved to the NRC, and is designated Compatibility Category NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
19.20	Employee protection	D, except portions of the provision are NRC.	This provision is designated Compatibility Category D because it does not meet any of the criteria of Category A, B, or C. A State may adopt provisions that are compatible with the orderly pattern of regulation established by the Atomic Energy Act, as amended (Act) and are consistent with their regulatory authority. Those portions of the provision that address areas reserved to the NRC, e.g., 10 CFR Parts 50, 52, 54, 60, 63, 72, and 76, are designated as a Compatibility Category NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.

LIST OF CHANGES 10 CFR PART 52 FINAL RULEMAKING—Continued

Sections	Description new, changes	Compatibility designation	Comments regarding compatibility designation
19.31	Application for exemptions.	D	This provision is designated Category D because it does not meet any of the criteria of Category A, B, or C. A State may adopt provisions that are compatible with the orderly pattern of regulation established by the Atomic Energy Act, as amended (Act) and are consistent with their regulatory authority.
19.32	Discrimination prohibited	D	This provision is designated Category D because it does not meet any of the criteria of Category A, B, or C. A State may adopt provisions that are compatible with the orderly pattern of regulation established by the Atomic Energy Act, as amended (Act) and are consistent with their regulatory authority.
10 CFR Part 20—Standards of Protection			
20.1002	Scope	D, except portions of the provision are designated as NRC.	This provision is designated Compatibility Category D because it does not meet any of the criteria of Category A, B, or C. A State may adopt provisions that are compatible with the orderly pattern of regulation established by the Atomic Energy Act, as amended (Act) and are consistent with their regulatory authority. Those portions of the provision that address areas reserved to the NRC, e.g., 10 CFR Parts 50, 52, 54, 60, 63, 72, and 76, are designated as a Compatibility Category NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
20.1401	General provisions and scope.	C, except portions of the provision are designated as NRC.	This provision is designated Compatibility Category C because it is needed to provide a minimum level of consistency regarding decommissioning activities. A State should adopt provisions that are compatible with the orderly pattern of regulation established by the Atomic Energy Act, as amended (Act) and are consistent with their regulatory authority. The essential objectives of these provisions should be adopted by States. Those portions of the provision that address areas reserved to the NRC, e.g., 10 CFR Parts 50, 52, 54, 60, 63, and 72, are designated as a Compatibility Category NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
20.1406	Minimization of contamination.	C, except portions of paragraph (a) and all of paragraph (b) are designated as NRC.	This provision is designated Compatibility Category C because it is needed to provide a minimum level of safety regarding decommissioning activities. A State should adopt provisions that are compatible with the orderly pattern of regulation established by the Atomic Energy Act, as amended (Act) and are consistent with their regulatory authority. The essential objectives of these provisions should be adopted by States. Those portions of paragraph (a) that reference 10 CFR Part 52 activities, and paragraphs (b) address areas reserved to the NRC, and are designated Compatibility Category NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.

LIST OF CHANGES 10 CFR PART 52 FINAL RULEMAKING—Continued

Sections	Description new, changes	Compatibility designation	Comments regarding compatibility designation
20.2203	Reports of exposures, etc., exceeding the limits.	C paragraphs (a) and (b). NRC paragraphs (c) and (d).	Paragraphs (a) and (b) are designated Compatibility Category C, because they are needed to provide a common understanding in collecting and reporting information on the regulation of agreement material on a nationwide basis. A State should adopt provisions that are compatible with the orderly pattern of regulation established by the Atomic Energy Act, as amended (Act) and are consistent with their regulatory authority. The essential objectives of these provisions should be adopted by States. Paragraphs (c) and (d) address NRC exclusive areas of authority are designated Compatibility Category NRC, and should not be adopted by States. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
10 CFR Part 21	Reporting of Defects and Noncompliance.	Not applicable for all sections.	The provisions in Part 21 are derived from statutory authority in the Energy Reorganization Act, not the Atomic Energy Act, which does not apply to Agreement States. Therefore, this part cannot be addressed under either compatibility or adequacy. While it may be argued that there are health and safety reasons to require States to adopt the provisions of Part 21, States may not have the statutory authority to do so. States that have the statutory authority to implement provisions similar to those in Part 21 may adopt similar provisions consistent with their regulatory authority but should not address areas of exclusive NRC jurisdiction.
10 CFR Part 25	Access Authorization	NRC for all sections	These provisions are designated a Compatibility Category NRC because they address areas reserved to the NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Atomic Energy Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
10 CFR Part 26	Fitness for Duty Programs.	NRC for all sections	These provisions are designated a Compatibility Category NRC because they address areas reserved to the NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Atomic Energy Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
10 CFR Part 50	Domestic Licensing of Production and Utilization Facilities.	NRC for all sections	These provisions are designated a Compatibility Category NRC because they address areas reserved to the NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Atomic Energy Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
10 CFR Part 51	Environmental Protection Regulation for Domestic Licensing and Related Regulatory Functions.	NRC for all sections	These provisions are designated a Compatibility Category NRC because they address areas reserved to the NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Atomic Energy Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
10 CFR Part 52	Licenses, Certifications, and Approvals For Nuclear Power Plants.	NRC for all sections	These provisions are designated a Compatibility Category NRC because they address areas reserved to the NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Atomic Energy Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
10 CFR Part 54	Requirements for Renewal of Operating License for Nuclear Power Plants.	NRC for all sections	These provisions are designated a Compatibility Category NRC because they address areas reserved to the NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Atomic Energy Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.

LIST OF CHANGES 10 CFR PART 52 FINAL RULEMAKING—Continued

Sections	Description new, changes	Compatibility designation	Comments regarding compatibility designation
10 CFR Part 55	Operators License	NRC for all sections	These provisions are designated a Compatibility Category NRC because they address areas reserved to the NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Atomic Energy Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
10 CFR Part 72	Licensing Requirements for Independent Storage of Spent Nuclear Fuel and High-level Radioactive Waste and Greater than Class C.	NRC for all sections	These provisions are designated a Compatibility Category NRC because they address areas reserved to the NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Atomic Energy Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
10 CFR Part 73	Physical Protection of Plants and Materials.	NRC for all sections	These provisions are designated a Compatibility Category NRC because they address areas reserved to the NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Atomic Energy Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
10 CFR Part 75	Safeguards on Nuclear Material—Implementation of US/IAEA Agreement.	NRC for all sections	These provisions are designated a Compatibility Category NRC because they address areas reserved to the NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Atomic Energy Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
10 CFR Part 95	Facility Security Clearance and Safeguarding of National Security Information and Restricted Data.	NRC for all sections	These provisions are designated a Compatibility Category NRC because they address areas reserved to the NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Atomic Energy Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
10 CFR Part 140	Financial Protection Requirements and Indemnity Agreements.	NRC for all sections	These provisions are designated a Compatibility Category NRC because they address areas reserved to the NRC. A State should not adopt provisions that would confer regulatory authority to the State in an area of exclusive NRC jurisdiction pursuant to the Atomic Energy Act, 10 CFR 8.4, 10 CFR Part 150, and other Federal laws, regulations, or provisions.
10 CFR Part 170	Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services under the Atomic Energy Act of 1954, as Amended.	D	These provisions are designated a Category D because they do not meet any of the criteria of Category A, B, or C. A State may adopt similar provisions that are compatible with the orderly pattern of regulation established by the Atomic Energy Act, as amended (Act) and are consistent with their regulatory authority.
10 CFR Part 171	Annual Fees: For Reactor Licenses and Fuel Cycle Licenses and Material Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by NRC.	D	These provisions are designated a Category D because they do not meet any of the criteria of Category A, B, or C. A State may adopt similar provisions that are compatible with the orderly pattern of regulation established by the Atomic Energy Act, as amended (Act) and are consistent with their regulatory authority.

IX. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this rule, the NRC is revising the procedural requirements for early site permits, standard design approvals, standard design certifications, combined licenses, and manufacturing licenses to make certain corrections and changes based on the experience of the previous design certification reviews and on discussions

with stakeholders on these licensing processes. These procedural requirements for rulemaking do not establish standards or substantive requirements with which all applicants and licensees must comply. In addition, portions of this rulemaking make conforming changes to regulatory requirements throughout 10 CFR Chapter I, such as access to national security information and the procedures governing the conduct of hearings in proceedings. These changes also do not establish standards or substantive requirements with which all applicants and licensees must comply. Finally, portions of this rulemaking make conforming changes to technical requirements throughout 10 CFR Chapter I, in order to make clear their applicability to applicants and licensees under part 52. Inasmuch as the purpose of this rulemaking was not to establish or fundamentally alter these technical requirements, the Commission considers it impractical to perform a reassessment of the fundamental nature of these technical requirements in this rulemaking. In addition, this rule amends certain portions of the three design certification regulations in 10 CFR part 52, appendices A, B, and C (for U.S. ABWR, System 80+, and AP600 designs, respectively). Design certifications are not generic rulemakings in the sense that design certifications do not establish standards or requirements with which all applicants and licensees must comply. Rather, design certifications are Commission approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certification rulemakings are initiated by an applicant for a design certification, rather than the NRC. For these reasons, the Commission concludes that this action does not constitute the establishment of a standard that contains generally applicable requirements.

X. Environmental Impact—Categorical Exclusion

The NRC has determined that these amendments fall within the types of actions described as categorical exclusions 10 CFR 51.22(c)(1), (c)(2), and (c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.[19]

[19] When 10 CFR part 52 was issued in 1989, the NRC determined that the regulation met the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(3). As stated in the **Federal Register** notice for the final rule (54 FR 15384; April 18, 1989), "It makes no substantive difference for the purpose of the categorical exclusion that the amendments are in a new 10 CFR part 52 rather than in 10 CFR part 50. The amendments are, in fact, amendments to the 10 CFR part 50 procedures and could have been placed in that part." The categorical exclusion for the current proposed change to 10 CFR part 52 is consistent with the original categorical exclusion determination. To ensure that future changes in part 52 are categorically excluded, this rule contains an appropriate change to § 51.22(c)(3).

XI. Paperwork Reduction Act Statement

This final rule contains new or amended information collection requirements contained in 10 CFR parts 21, 25, 50, 51, 52, and 54 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval numbers 3150–0035, 3150–0046, 3150–0011, 3150–0021, 3150–0151, and 3150–0155. The changes to 10 CFR parts 19, 20, 26, 55, 72, 73, 75, 95, and 140 do not contain new or amended information collection requirements. Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0044, 3150–0014, 3150–0146, 3150–0018, 3150–0132, 3150–0002, 3150–0055, 3150–0047, and 3150–0039.

The burden to the public for the information collections in 10 CFR part 52 is estimated to average 11,277 hours per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden to the records and FOIA/Privacy Services Branch (T–5 F53, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001), or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0035, 3150–0046, 3150–0011, 3150–0151, and 3150–0155 with revised information collection requirements), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

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

XII. Regulatory Analysis

The Commission has prepared a regulatory analysis on this final rule. Consistent with the Regulatory Analysis Guidelines, the NRC performed an aggregate analysis of the rule. The analysis is based on the assumption that the NRC will receive 19 COL applications during the next 3 years and 1 COL application per year over the next 17 years. The net present value of the part 52 rule modifications are estimated to result in costs to the industry of $58,992 K and $30,952 K using a 3-percent and a 7-percent discount rate, respectively. The provisions of the rule relating to part 21 are estimated to result in net present value costs of $3,873 K and $2,363 K to the industry, using a 3-percent and a 7-percent discount rate, respectively. The net present value of the entire rule is estimated to result in net costs to the industry of $29,726 K and $204 K at a 3-percent and a 7-percent discount rate, respectively. In addition, the rule is estimated to be a one time net present value savings to the NRC of $10,443 K.

XIII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing of nuclear power plants. The companies that will apply for an approval, certification, permit, site report, or license in accordance with the regulations affected by this rule do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XIV. Backfit Analysis

The NRC has determined that the backfit rule does not apply to this rule and, therefore, a backfit analysis is not required, because the rule does not contain any provisions that would impose backfitting as defined in the backfit rule, 10 CFR 50.109.

There are no current holders of combined licenses or manufacturing licenses that are protected by the backfitting restrictions in §§ 50.109, 52.39, 52.98, or 52.171. To the extent that this rule revises the requirements for future early site permits, standard design certifications, combined licenses, standard design approvals and manufacturing licenses for nuclear power plants, these revisions do not constitute backfits because they are prospective in nature and the backfit rule is not intended to apply to every NRC action which substantially changes the expectations of future applicants.

The NRC issued the first early site permits prior to the effective date of this final part 52 rule. In addition, there are applications for early site permits currently being considered by the NRC. As discussed elsewhere, the NRC has included a "grandfathering provision" in the final part 52 rulemaking which provides that the early site permit provisions in subpart A of part 52 do not apply to early site permits whose applications were docketed before the effective date of the final part 52 rulemaking, unless requested by the early site permit applicant. This grandfathering provision prohibits any backfitting for these early site permits.

Other provisions in this rule would apply to currently-approved standard design approvals and certifications, but they are not protected by the backfitting restrictions in § 50.104 or § 52.63 because they are either corrections, administrative changes, or provide additional flexibility to applicants or licensees who might reference the design approvals or certifications, and thus constitute a voluntary alternative or relaxation.

Finally, some of the provisions in this rule represent conforming changes throughout 10 CFR Chapter I which are being made to reflect Commission adoption of design approvals and design certification processes which should have been made at the time the Commission first adopted these processes by rulemaking. While these conforming changes may, in some cases, affect the way in which a current design certification or design approval may be referenced, they do not directly affect the design approval nor are the conforming changes result in any inconsistency with the finality provisions in the design certifications or in part 52. Accordingly, the Commission believes that these conforming changes with respect to design approvals and design certifications do not raise new backfitting considerations.

XV. Congressional Review Act

Under the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects

10 CFR Part 1

Organization and functions (Government Agencies).

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 10

Administrative practice and procedure, Classified information, Government employees, Security measures.

10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 21

Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 25

Classified information, Criminal penalties, Investigations, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power reactors, Protection of information, Reporting and recordkeeping requirements.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Emergency Planning, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 52

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

10 CFR Part 54

Administrative practice and procedure, Age-related degradation, Backfitting, Classified information, Criminal penalties, Environmental protection, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 55

Criminal penalties, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 75

Criminal penalties, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 95

Classified information, Criminal penalties, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 140

Criminal penalties, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental

relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Nuclear power plants and reactors.

■ For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 1, 2, 10, 19, 20, 21, 25, 26, 50, 51, 52, 54, 55, 72, 73, 75, 95, 140, 170, and 171.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

■ 1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

■ 2. In § 1.43, paragraph (a)(2) is revised to read as follows:

§ 1.43 Office of Nuclear Reactor Regulation.

* * * * *

(a) * * *

(2) Receipt, possession, and ownership of source, byproduct, and special nuclear material used or produced at facilities licensed under 10 CFR parts 50, 52, and 54;

* * * * *

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

■ 3. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(o)), sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 104, 105, 163, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by Section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Subpart C also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Section 2.700a also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.754, 2.712 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 3.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133), and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart N also 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 Procedure 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 is an applicant for or holder of a license or permit, or is or was an applicant for a standard design certification under part 52 of this chapter; 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.

* * * * *

License means a license, including an early site permit, construction permit, operating license, combined license, manufacturing license, or renewed license issued by the Commission.

Licensee means a person who is authorized to conduct activities under a license.

* * * * *

■ 6. The heading of Subpart A is revised to read as follows:

Subpart A—Procedure for Issuance, Amendment, Transfer, or Renewal of a License, and Standard Design Approval

■ 7. Section 2.100 is revised to read as follows:

§ 2.100 Scope of subpart.

This subpart prescribes the procedure for issuance of a license; amendment of a license at the request of the licensee; transfer and renewal of a license; and issuance of a standard design approval under subpart E of part 52 of this chapter.

■ 8. In § 2.101, paragraphs (a)(1), (a)(2), the introductory paragraph of (a)(3), paragraph (a)(3)(ii), paragraph (a)(4), paragraph (a)(5), and paragraph (a–1) are revised to read as follows:

§ 2.101 Filing of application.

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

(2) Each application for a license for a facility or for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee will be assigned a docket number. However, to allow a determination as to whether an application for a construction permit, operating license, early site permit, standard design approval, combined license, or manufacturing license for a production or utilization facility is complete and acceptable for docketing, it will be initially treated as a tendered application. A copy of the tendered application will be available for public inspection at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC

Public Document Room. Generally, the determination on acceptability for docketing will be made within a period of 30 days. However, in selected applications, the Commission may decide to determine acceptability based on the technical adequacy of the application as well as its completeness. In these cases, the Commission, under § 2.104(a), will direct that the notice of hearing be issued as soon as practicable after the application has been tendered, and the determination of acceptability will be made generally within a period of 60 days. For docketing and other requirements for applications under part 61 of this chapter, see paragraph (g) of this section.

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

* * * * *

(ii) Serve a copy on the chief executive of the municipality in which the facility or site which is the subject of an early site permit is to be located or, if the facility or site which is the subject of an early site permit is not to be located within a municipality, on the chief executive of the county, and serve a notice of availability of the application or environmental report on the chief executives of the municipalities or counties which have been identified in the application or environmental report as the location of all or part of the alternative sites, containing the following information, as applicable: Docket number of the application, a brief description of the proposed site and facility; the location of the site and facility as primarily proposed and alternatively listed; the name, address, telephone number, and email address (if available) of the applicant's representative who may be contacted for further information; notification that a draft environmental impact statement will be issued by the Commission and will be made available upon request to the Commission; and notification that if a request is received from the appropriate chief executive, the applicant will transmit a copy of the application and environmental report, and any changes to these documents which affect the alternative site location, to the executive who makes the request. In complying with the requirements of this paragraph, the applicant should not make public distribution of those parts of the application subject to § 2.390(d). The applicant shall submit to the Director of New Reactors or the Director of Nuclear Reactor Regulation an affidavit that service of the notice of availability of the application or environmental report has been completed along with a list of names and addresses of those executives upon whom the notice was served; and

* * * * *

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

(5) An applicant for a construction permit under part 50 of this chapter or a combined license under part 52 of this chapter for a production or utilization facility which is subject to § 51.20(b) of this chapter, and is of the type specified in § 50.21(b)(2) or (3) or § 50.22 of this chapter or is a testing facility may submit the information required of applicants by part 50 or part 52 of the chapter in two parts. One part shall be accompanied by the information required by § 50.30(f) of this chapter, or § 52.80(b) of this chapter, as applicable. The other part shall include any information required by § 50.34(a) and, if applicable, § 50.34a of this chapter, or §§ 52.79 and 52.80(a), as applicable. One part may precede or follow other parts by no longer than 6 months. If it is determined that either of the parts as described above is incomplete and not acceptable for processing, the Director of New Reactors, Director of Nuclear Reactor Regulation, or Director of Nuclear Material Safety and Safeguards, as appropriate, will inform the applicant of this determination and the respects in which the document is deficient. Such a determination of completeness will generally be made within a period of 30 days. Whichever part is filed first shall also include the fee required by §§ 50.30(e) and 170.21 of this chapter and the information required by §§ 50.33, 50.34(a)(1) or 52.79(a)(1), as applicable, and § 50.37 of this chapter. The Director of New Reactors, Director of Nuclear Reactor Regulation, or Director of Nuclear Material Safety and Safeguards, as appropriate, will accept for docketing an application for a construction permit under part 50 or a combined license under part 52 for a production or utilization facility which is subject to § 51.20(b) of this chapter, and is of the type specified in § 50.21(b)(2) or (3) or § 50.22 of this chapter or is a testing facility where one part of the application as described above is complete and conforms to the requirements of part 50 of this chapter. The additional parts will be docketed upon a determination by the Director of New Reactors, Director of Nuclear Reactor Regulation, or Director of Nuclear Material Safety and Safeguards, as appropriate, that it is complete.

(a–1) *Early consideration of site suitability issues.* An applicant for a

construction permit under part 50 of this chapter or a combined license under part 52 of this chapter for a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in § 50.21(b)(2) or (3) or § 50.22 of this chapter or is a testing facility, may request that the Commission conduct an early review and hearing and render an early partial decision in accordance with subpart F of this part on issues of site suitability within the purview of the applicable provisions of parts 50, 51, 52, and 100 of this chapter.

(1) *Construction permit.* The applicant for the construction permit may submit the information required of applicants by the provisions of this chapter in three parts:

(i) Part one shall include or be accompanied by any information required by §§ 50.34(a)(1) and 50.30(f) of this chapter which relates to the issue(s) of site suitability for which an early review, hearing, and partial decision are sought, except that information with respect to operation of the facility at the projected initial power level need not be supplied, and shall include the information required by §§ 50.33(a) through (e) and 50.37 of this chapter. The information submitted shall also include:

(A) Proposed findings on the issues of site suitability on which the applicant has requested review and a statement of the bases or the reasons for those findings,

(B) A range of postulated facility design and operation parameters that is sufficient to enable the Commission to perform the requested review of site suitability issues under the applicable provisions of parts 50, 51, and 100, and

(C) Information concerning the applicant's site selection process and long-range plans for ultimate development of the site required by § 2.603(b)(1).

(ii) Part two shall include or be accompanied by the remaining information required by §§ 50.30(f), 50.33, and 50.34(a)(1) of this chapter.

(iii) Part three shall include the remaining information required by §§ 50.34a and (in the case of a nuclear power reactor) 50.34(a) of this chapter.

(iv) The information required for part two or part three shall be submitted during the period the partial decision on part one is effective. Submittal of the information required for part three may precede by no more than 6 months or follow by no more than 6 months the submittal of the information required for part two.

(2) *Combined license under part 52.* An applicant for a combined license under part 52 of this chapter may submit the information required of applicants by the provisions of this chapter in three parts:

(i) Part one shall include or be accompanied by any information required by §§ 52.79(a)(1) and 50.30(f) of this chapter which relates to the issue(s) of site suitability for which an early review, hearing, and partial decision are sought, except that information with respect to operation of the facility at the projected initial power level need not be supplied, and shall include the information required by §§ 50.33(a) through (e) and 50.37 of this chapter. The information submitted shall also include:

(A) Proposed findings on the issues of site suitability on which the applicant has requested review and a statement of the bases or the reasons for those findings;

(B) A range of postulated facility design and operation parameters that is sufficient to enable the Commission to perform the requested review of site suitability issues under the applicable provisions of parts 50, 51, 52, and 100; and

(C) Information concerning the applicant's site selection process and long-range plans for ultimate development of the site required by § 2.621(b)(1).

(ii) Part two shall include or be accompanied by the remaining information required by §§ 50.30(f), 50.33, and 52.79(a)(1) of this chapter.

(iii) Part three shall include the remaining information required by §§ 52.79 and 52.80 of this chapter.

(iv) The information required for part two or part three shall be submitted during the period the partial decision on part one is effective. Submittal of the information required for part three may precede by no more than 6 months or follow by no more than 6 months the submittal of the information required for part two.

* * * * *

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

§ 2.102 Administrative review of application.

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

* * * * *

■ 10. Section 2.104 is revised to read as follows:

§ 2.104 Notice of hearing.

(a) In the case of an application on which a hearing is required by the Act or this chapter, or in which the Commission finds that a hearing is required in the public interest, the Secretary will issue a notice of hearing to be published in the **Federal Register**. The notice must be published at least 15 days, and in the case of an application concerning a construction permit, early site permit, or combined license for a facility of the type described in § 50.21(b) or § 50.22 of this chapter or a testing facility, at least 30 days before the date set for hearing in the notice.[1] In addition, in the case of an application for a construction permit, early site permit, or combined license for a facility of the type described in § 50.22 of this chapter, or a testing facility, the notice must be issued as soon as practicable after the NRC has docketed the application; provided, that if the NRC decides, under § 2.101(a)(2), to determine the acceptability of the application based upon its technical adequacy as well as completeness, the notice shall be issued as soon as practicable after the application has been tendered.

(b) The notice of hearing must state:

(1) The nature of the hearing;

(2) The authority under which the hearing is to be held;

(3) The matters of fact and law to be considered;

(4) The date by which requests for hearing or petitions to intervene must be filed;

(5) The presiding officer designated for the hearing, or the procedure that the Commission will use to designate a presiding officer for the hearing.

(c)(1) The Secretary will transmit a notice of hearing on an application for a license for a production or utilization facility including an early site permit, combined license (but not for a manufacturing license), for a license for

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

receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee, for a license under part 61 of this chapter, for a construction authorization for an HLW repository at a geologic repository operations area under parts 60 or 63 of this chapter, for a license to receive and possess high-level radioactive waste at a geologic repository operations area under parts 60 or 63 of this chapter, and for a license under part 72 of this chapter to acquire, receive or possess spent fuel for the purpose of storage in an independent spent fuel storage installation (ISFSI) to the governor or other appropriate official of the State and to the chief executive of the municipality in which the facility is to be located or the activity is to be conducted or, if the facility is not to be located or the activity conducted within a municipality, to the chief executive of the county (or to the Tribal organization, if it is to be located or conducted within an Indian reservation).

(2) The Secretary will transmit a notice of hearing on an application for a license under part 72 of this chapter to acquire, receive or possess spent fuel, high-level radioactive waste or radioactive material associated with high-level radioactive waste for the purpose of storage in a monitored retrievable storage installation (MRS) to the same persons who received the notice of docketing under § 72.16(e) of this chapter.

■ 11. In § 2.105, the introductory text of paragraphs (a) and (a)(4) are revised, and paragraphs (a)(12), (a)(13), and (b)(3) are added to read as follows:

§ 2.105 Notice of proposed action.

(a) If a hearing is not required by the Act or this chapter, and if the Commission has not found that a hearing is in the public interest, it will, before acting thereon, publish in the **Federal Register**, as applicable, either a notice of intended operation under § 52.103(a) of this chapter and a proposed finding that inspections, tests, analysis, and acceptance criteria for a combined license under subpart C of part 52 have been or will be met, or a notice of proposed action with respect to an application for:

* * * * *

(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).

(13) A manufacturing license under subpart F of part 52 of this chapter.

(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 the licensee notifications under 10 CFR 52.99(c) which are required to be made available by 10 CFR 52.99(e)(2) may be obtained and examined;

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

(iv) Any conditions, limitations, or restrictions to be placed on the license in connection with the finding under § 52.103(g) of this chapter, and the expiration date or circumstances (if any) under which the conditions, limitations or restrictions will no longer apply.

* * * * *

■ 12. In § 2.106, paragraphs (a) and (b) are revised to read as follows:

§ 2.106 Notice of issuance.

(a) The Director of New Reactors, Director of Nuclear Reactor Regulation, or Director of Nuclear Material Safety and Safeguards, as appropriate, will inform the State and local officials specified in § 2.104(e) and publish a document in the **Federal Register** announcing the issuance of:

(1) A license or an amendment of a license for which a notice of proposed action has been previously published;

(2) An amendment of a license for a facility of the type described in § 50.21(b) or § 50.22 of this chapter, or a testing facility, whether or not a notice of proposed action has been previously published; and

(3) The finding under § 52.103(g) of this chapter.

(b) The notice of issuance will set forth:

(1) In the case of a license or amendment:

(i) The nature of the license or amendment;

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

(iii) A finding that the application for the license or amendment complies with the requirements of the Act and this chapter.

(2) In the case of a finding under § 52.103(g) of this chapter:

(i) The manner in which copies of the safety analysis, if any, may be obtained and examined; and

(ii) A finding that the prescribed inspections, tests, and analyses have been performed, the prescribed acceptance criteria have been met, and that the license complies with the requirements of the Act and this chapter.

* * * * *

■ 13. Section 2.109 is revised to read as follows:

§ 2.109 Effect of timely renewal application.

(a) Except for the renewal of an operating license for a nuclear power plant under 10 CFR 50.21(b) or 50.22, an early site permit under subpart A of part 52 of this chapter, a manufacturing license under subpart F of part 52 of this chapter, or a combined license under subpart C of part 52 of this chapter, if at least 30 days before the expiration of an existing license authorizing any activity of a continuing nature, the licensee files an application for a renewal or for a new license for the activity so authorized, the existing license will not be deemed to have expired until the application has been finally determined.

(b) If the licensee of a nuclear power plant licensed under 10 CFR 50.21(b) or 50.22 files a sufficient application for renewal of either an operating license or a combined license at least 5 years before the expiration of the existing license, the existing license will not be deemed to have expired until the application has been finally determined.

(c) If the holder of an early site permit licensed under subpart A of part 52 of this chapter files a sufficient application for renewal under § 52.29 of this chapter at least 12 months before the expiration of the existing early site permit, the

existing permit will not be deemed to have expired until the application has been finally determined.

(d) If the licensee of a manufacturing license under subpart F of part 52 of this chapter files a sufficient application for renewal under § 52.177 of this chapter at least 12 months before the expiration of the existing license, the existing license will not be deemed to have expired until the application has been finally determined.

■ 14. Section 2.110 is revised to read as follows:

§ 2.110 Filing and administrative action on submittals for standard design approval or early review of site suitability issues.

(a)(1) A submittal for a standard design approval under subpart E of part 52 of this chapter shall be subject to §§ 2.101(a) and 2.390 to the same extent as if it were an application for a permit or license.

(2) Except as specifically provided otherwise by the provisions of appendix Q to parts 50 of this chapter, a submittal for early review of site suitability issues under appendix Q to parts 50 of this chapter shall be subject to §§ 2.101(a)(2) through (4) to the same extent as if it were an application for a permit or license.

(b) Upon initiation of review by the NRC staff of a submittal for an early review of site suitability issues under appendix Q of parts 50 of this chapter, or for a standard design approval under subpart E of part 52 of this chapter, the Director of New Reactors or the Director of Nuclear Reactor Regulation shall publish in the **Federal Register** a notice of receipt of the submittal, inviting comments from interested persons within 60 days of publication or other time as may be specified, for consideration by the NRC staff and ACRS in their review.

(c)(1) Upon completion of review by the NRC staff and the ACRS of a submittal for a standard design approval, the Director of New Reactors or the Director of the Office of Nuclear Reactor Regulation shall publish in the **Federal Register** a determination as to whether or not the design is acceptable, subject to terms and conditions as may be appropriate, and shall make available at the NRC Web site, *http://www.nrc.gov*, a report that analyzes the design.

(2) Upon completion of review by the NRC staff and, if appropriate by the ACRS, of a submittal for early review of site suitability issues, the NRC staff shall prepare a staff site report which shall identify the location of the site, state the site suitability issues reviewed, explain the nature and scope of the review, state the conclusions of the staff regarding the issues reviewed and state the reasons for those conclusions. Upon issuance of an NRC staff site report, the NRC staff shall publish a notice of the availability of the report in the **Federal Register** and shall make the report available at the NRC Web site, *http://www.nrc.gov*. The NRC staff shall also send a copy of the report to the Governor or other appropriate official of the State in which the site is located, and to the chief executive of the municipality in which the site is located or, if the site is not located in a municipality, to the chief executive of the county.

■ 15. Section 2.111 is revised to read as follows:

§ 2.111 Prohibition of sex discrimination.

No person shall on the grounds of sex be excluded from participation in, be denied a license, standard design approval, or petition for rulemaking (including a design certification), be denied the benefits of, or be subjected to discrimination under any program or activity carried on or receiving Federal assistance under the Act or the Energy Reorganization Act of 1974.

■ 16. In § 2.202, paragraph (e) is revised to read as follows:

§ 2.202 Orders.

* * * * *

(e)(1) If the order involves the modification of a part 50 license and is a backfit, the requirements of § 50.109 of this chapter shall be followed, unless the licensee has consented to the action required.

(2) If the order involves the modification of combined license under subpart C of part 52 of this chapter, the requirements of § 52.98 of this chapter shall be followed unless the licensee has consented to the action required.

(3) If the order involves a change to an early site permit under subpart A of part 52 of this chapter, the requirements of § 52.39 of this chapter must be followed, unless the applicant or licensee has consented to the action required.

(4) If the order involves a change to a standard design certification rule referenced by that plant's application, the requirements, if any, in the referenced design certification rule with respect to changes must be followed, or, in the absence of these requirements, the requirements of § 52.63 of this chapter must be followed, unless the applicant or licensee has consented to follow the action required.

(5) If the order involves a change to a standard design approval referenced by that plant's application, the requirements of § 52.145 of this chapter must be followed unless the applicant or licensee has consented to follow the action required.

(6) If the order involves a modification of a manufacturing license under subpart F of part 52, the requirements of § 52.171 of this chapter must be followed, unless the applicant or licensee has consented to the action required.

■ 17. In § 2.309, paragraphs (a), (f)(1)(i), (f)(1)(v), and (f)(1)(vi) are revised, a new paragraph (f)(1)(vii) is added, and paragraphs (g), (h)(2), and (i) are revised to read as follows:

§ 2.309 Hearing requests, petitions to intervene, requirements for standing, and contentions.

(a) *General requirements.* Any person whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing and a specification of the contentions which the person seeks to have litigated in the hearing. In a proceeding under 10 CFR 52.103, the Commission, acting as the presiding officer, will grant the request if it determines that the requestor has standing under the provisions of paragraph (d) of this section and has proposed at least one admissible contention that meets the requirements of paragraph (f) of this section. For all other proceedings, except as provided in paragraph (e) of this section, the Commission, presiding officer, or the Atomic Safety and Licensing Board designated to rule on the request for hearing and/or petition for leave to intervene, will grant the request/petition if it determines that the requestor/petitioner has standing under the provisions of paragraph (d) of this section and has proposed at least one admissible contention that meets the requirements of paragraph (f) of this section. In ruling on the request for hearing/petition to intervene submitted by petitioners seeking to intervene in the proceeding on the HLW repository, the Commission, the presiding officer, or the Atomic Safety and Licensing Board shall also consider any failure of the petitioner to participate as a potential party in the pre-license application phase under subpart J of this part in addition to the factors in paragraph (d) of this section. If a request for hearing or petition to intervene is filed in response to any notice of hearing or opportunity for hearing, the applicant/licensee shall be deemed to be a party.

* * * * *

(f) * * *

(1) * * *

(i) Provide a specific statement of the issue of law or fact to be raised or controverted, *provided further*, that the issue of law or fact to be raised in a request for hearing under 10 CFR 52.103(b) must be directed at demonstrating that one or more of the acceptance criteria in the combined license have not been, or will not be met, and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety;

* * * * *

(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;

(vi) In a proceeding other than one under 10 CFR 52.103, provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief; and

(vii) In a proceeding under 10 CFR 52.103(b), the information must be sufficient, and include supporting information showing, *prima facie*, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety. This information must include the specific portion of the report required by 10 CFR 52.99(c) which the requestor believes is inaccurate, incorrect, and/or incomplete (i.e., fails to contain the necessary information required by § 52.99(c)). If the requestor identifies a specific portion of the § 52.99(c) report as incomplete and the requestor contends that the incomplete portion prevents the requestor from making the necessary *prima facie* showing, then the requestor must explain why this deficiency prevents the requestor from making the *prima facie* showing.

* * * * *

(g) *Selection of hearing procedures.* A request for hearing and/or petition for leave to intervene may, except in a proceeding under 10 CFR 52.103, also address the selection of hearing procedures, taking into account the provisions of § 2.310. If a request/petition relies upon § 2.310(d), the request/petition must demonstrate, by reference to the contention and the bases provided and the specific procedures in subpart G of this part, that resolution of the contention necessitates resolution of material issues of fact which may be best determined through the use of the identified procedures.

(h) * * *

(2) Except in a proceeding under 10 CFR 52.103, the requestor/petitioner may file a reply to any answer. The reply must be filed within 7 days after service of that answer.

* * * * *

(i) *Decision on request/petition.* In all proceedings other than a proceeding under 10 CFR 52.103, the presiding officer shall, within 45 days after the filing of answers and replies under paragraph (h) of this section, issue a decision on each request for hearing/petition to intervene, absent an extension from the Commission. The Commission, acting as the presiding officer, shall expeditiously grant or deny the request for hearing in a proceeding under 10 CFR 52.103. The Commission's decision may not be the subject of any appeal under 10 CFR 2.311.

■ 18. In § 2.310, paragraph (j) is redesignated as paragraph (k), and a new paragraph (j) is added to read as follows:

§ 2.310 Selection of hearing procedures.

* * * * *

(j) Proceedings on a Commission finding under 10 CFR 52.103(c) and (g) shall be conducted in accordance with the procedures designated by the Commission in each proceeding.

* * * * *

■ 19. In § 2.339, paragraph (d) is revised to read as follows:

§ 2.339 Expedited decisionmaking procedure.

* * * * *

(d) The provisions of this section do not apply to an initial decision directing the issuance of a limited work authorization under 10 CFR 50.10, an early site permit under subpart A of part 52 of this chapter, a construction permit or construction authorization, a combined license under subpart C of part 52 of this chapter, or a manufacturing license under subpart F of part 52.

■ 20. Section 2.340 is revised to read as follows:

§ 2.340 Initial decision in certain contested proceedings; immediate effectiveness of initial decisions; issuance of authorizations, permits, and licenses.

(a) *Initial decision—production or utilization facility operating license.* In any initial decision in a contested proceeding on an application for an operating license (including an amendment to or renewal of an operating license) for a production or utilization facility, the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties to the proceeding, any matter designated by the Commission to be decided by the presiding officer, and any matter not put into controversy by the parties, but only to the extent that the presiding officer determines that a serious safety, environmental, or common defense and security matter exists, and the Commission approves of an examination of and decision on the matter upon its referral by the presiding officer. Depending on the resolution of those matters, the Commission, the Director of Nuclear Reactor Regulation, or the Director of New Reactors, as appropriate, after making the requisite findings, will issue, deny or appropriately condition the license.

(b) *Initial decision—combined license under 10 CFR part 52.* In any initial decision in a contested proceeding on an application for a combined license (including an amendment to or renewal of a combined license) under subpart C of part 52 of this chapter, the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties to the proceeding, and any matter designated by the Commission to be decided by the presiding officer. Depending on the resolution of those matters, the Commission, the Director of New Reactors, or the Director of Nuclear Reactor Regulation, as appropriate, after making the requisite findings, will issue, deny or appropriately condition the license.

(c) *Initial decision on finding under 10 CFR 52.103 with respect to acceptance criteria in nuclear power reactor combined licenses.* In any initial decision under § 52.103(g) of this chapter with respect to whether acceptance criteria have been or will be met, the presiding officer shall make findings of fact and conclusions of law

on the matters put into controversy by the parties to the proceeding, and on any matters designated by the Commission to be decided by the presiding officer. Matters not put into controversy by the parties shall be referred to the Commission for its determination. The Commission may, in its discretion, treat the matter as a request for action under 10 CFR 2.206 and process the matter in accordance with § 52.103(f). Depending on the resolution of those matters, the Commission, the Director of New Reactors, or the Director of Nuclear Reactor Regulation, as appropriate, will make the finding under 10 CFR 52.103, or appropriately condition that finding.

(d) *Initial decision—manufacturing license under 10 CFR part 52.* In any initial decision in a contested proceeding on an application for a manufactured license (including an amendment to or renewal of a combined license) under subpart C of part 52 of this chapter, the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties to the proceeding, and any matter designated by the Commission to be decided by the presiding officer. Depending on the resolution of those matters, the Commission, the Director of New Reactors, or the Director of Nuclear Reactor Regulation, as appropriate, after making the requisite findings, will issue, deny, or appropriately condition the manufacturing license.

(e) *Initial decision—other proceedings not involving production or utilization facilities.* In proceedings not involving production or utilization facilities, the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties to the proceeding, and on any matters designated by the Commission to be decided by the presiding officer. Matters not put into controversy by the parties must be referred to the Director of Nuclear Material Safety and Safeguards, or the Director of the Office of Federal and State Materials and Environmental Management Programs, as appropriate. Depending on the resolution of those matters, the Director of Nuclear Material Safety and Safeguards or the Director of the Office of Federal and State Materials and Environmental Management Programs, as appropriate, after making the requisite findings, will issue, deny, revoke or appropriately condition the license, or take other action as necessary or appropriate.

(f) *Immediate effectiveness of certain decisions.* An initial decision directing the issuance or amendment of a limited work authorization under 10 CFR 50.10, an early site permit under subpart A of part 52 of this chapter, a construction permit or construction authorization under part 50 of this chapter, an operating license under part 50 of this chapter, a combined license under subpart C of part 52 of this chapter, a manufacturing license under subpart F of part 52 of this chapter, or a license under 10 CFR part 72 to store spent fuel in an independent spent fuel storage facility (ISFSI) or a monitored retrievable storage installation (MRS), an initial decision directing issuance of a license under part 61 of this chapter, or an initial decision under 10 CFR 52.103(g) that acceptance criteria in a combined license have been met, is immediately effective upon issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective.

(g)–(h) [Reserved]

(i) *Issuance of authorizations, permits, and licenses—production and utilization facilities.* The Commission, the Director of New Reactors, or the Director of Nuclear Reactor Regulation, as appropriate, shall issue a limited work authorization under 10 CFR 50.10, an early site permit under subpart A of part 52 of this chapter, a construction permit or construction authorization under part 50 of this chapter, an operating license under part 50 of this chapter, a combined license under subpart C of part 52 of this chapter, or a manufacturing license under subpart F of part 52 of this chapter within 10 days from the date of issuance of the initial decision:

(1) If the Commission or the appropriate Director has made all findings necessary for issuance of the authorization, permit or license, not within the scope of the initial decision of the presiding officer; and

(2) Notwithstanding the pendency of a petition for reconsideration under § 2.345, a petition for review under § 2.341, or a motion for stay under § 2.342, or the filing of a petition under § 2.206.

(j) *Issuance of finding on acceptance criteria under 10 CFR 52.103.* The Commission, the Director of New Reactors, or the Director of Nuclear Reactor Regulation, as appropriate, shall make the finding under 10 CFR 52.103(g) that acceptance criteria in a combined license have been, or will be met, within 10 days from the date of issuance of the initial decision:

(1) If the Commission or the appropriate Director has made the finding under § 52.103(g) that acceptance criteria have been, or will be met, for those acceptance criteria which are not within the scope of the initial decision of the presiding officer; and

(2) Notwithstanding the pendency of a petition for reconsideration under § 2.345, a petition for review under § 2.341, or a motion for stay under § 2.342, or the filing of a petition under § 2.206.

(k) *Issuance of other licenses.* The Commission or the Director of Nuclear Material Safety and Safeguards, or the Director of the Office of Federal and State Materials and Environmental Management Programs, as appropriate, shall issue a license, including a license under 10 CFR part 72 to store spent fuel in either an independent spent fuel storage facility (ISFSI) located away from a reactor site or at a monitored retrievable storage installation (MRS), within 10 days from the date of issuance of the initial decision:

(1) If the Commission or the appropriate Director has made all findings necessary for issuance of the license, not within the scope of the initial decision of the presiding officer; and

(2) Notwithstanding the pendency of a petition for reconsideration under § 2.345, a petition for review under § 2.341, or a motion for stay under § 2.342, or the filing of a petition under § 2.206.

■ 21. In § 2.341, paragraph (a)(1) is revised to read as follows:

§ 2.341 Review of decisions and actions of a presiding officer.

(a)(1) Except for requests for review or appeals under § 2.311 or in a proceeding on the high-level radioactive waste repository (which are governed by § 2.1015), review of decisions and actions of a presiding officer are treated under this section, provided, however, that no party may request a further Commission review of a Commission determination to allow a period of interim operation under 10 CFR 52.103(c).

* * * * *

■ 22. In § 2.347, paragraph (a) is revised, and new paragraph (f)(5) is added to read as follows:

§ 2.347 Ex parte communications.

* * * * *

(a)(1) Interested persons outside the agency may not make or knowingly cause to be made to any Commission adjudicatory employee, any ex parte communication relevant to the merits of the proceeding.

(2) For purposes of this section, *merits of the proceeding* includes:

(i) A disputed issue;

(ii) A matter which a presiding officer seeks to be referred to the Commission under 10 CFR 2.340(a); and

(iii) A matter for which the Commission has approved examination by the presiding officer under § 2.340(a).

* * * * *

(f) * * *

(5) Communications, in contested proceedings and uncontested mandatory proceeding, regarding an undisputed issue.

■ 23. In § 2.348, the introductory text of paragraph (a) is revised, and new paragraphs (d)(1)(iii), (d)(1)(iv), and (d)(3) are added to read as follows:

§ 2.348 Separation of functions.

(a) In any proceeding under this part, any NRC officer or employee engaged in the performance of any investigative or litigating function in the proceeding or in a factually related proceeding with respect to a disputed issue in that proceeding, may not participate in or advise a Commission adjudicatory employee about the initial or final decision with respect to that disputed issue, except—

* * * * *

(d) * * *

(1) * * *

(iii) A matter which a presiding officer seeks to be referred to the Commission under 10 CFR 2.340(a); and

(iv) A matter for which the Commission has approved examination by the presiding officer under § 2.340(a).

* * * * *

(3) Separation of functions does not apply to uncontested proceedings, or to an undisputed issue in contested initial licensing proceedings.

* * * * *

■ 24. In § 2.390, the introductory text of paragraph (a) is revised to read as follows:

§ 2.390 Public inspections, exemptions, requests for withholding.

(a) Subject to the provisions of paragraphs (b), (d), (e), and (f) of this section, final NRC records and documents, including but not limited to correspondence to and from the NRC regarding the issuance, denial, amendment, transfer, renewal, modification, suspension, revocation, or violation of a license, permit, order, or standard design approval, or regarding a rulemaking proceeding subject to this part shall not, in the absence of an NRC determination of a compelling reason for nondisclosure after a balancing of the interests of the person or agency urging nondisclosure and the public interest in disclosure, be exempt from disclosure and will be made available for inspection and copying at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room, except for matters that are:

* * * * *

■ 25. Subpart D is revised to read as follows:

Subpart D—Additional Procedures Applicable to Proceedings for the Issuance of Licenses To Construct and/or Operate Nuclear Power Plants of Identical Design at Multiple Sites

Sec.

§ 2.400 Scope of subpart.

This subpart describes procedures applicable to licensing proceedings which involve the consideration in hearings of a number of applications, filed by one or more applicants pursuant to appendix N of parts 50 or 52 of this chapter, for licenses to construct and/or operate nuclear power reactors of identical design to be located at multiple sites.

§ 2.401 Notice of hearing on construction permit or combined license applications pursuant to appendix N of 10 CFR parts 50 or 52.

(a) In the case of applications pursuant to appendix N of part 50 of this chapter for construction permits for nuclear power reactors of the type described in § 50.22 of this chapter, or applications pursuant to appendix N of part 52 of this chapter for combined licenses, the Secretary will issue notices of hearing pursuant to § 2.104.

(b) The notice of hearing will also state the time and place of the hearings on any separate phase of the proceeding.

§ 2.402 Separate hearings on separate issues; consolidation of proceedings.

(a) In the case of applications under appendix N of part 50 of this chapter for construction permits for nuclear power reactors of a type described in 10 CFR 50.22, or applications pursuant to appendix N of part 52 of this chapter for combined licenses, the Commission or the presiding officer may order separate hearings on particular phases of the proceeding, such as matters related to the acceptability of the design of the reactor, in the context of the site parameters postulated for the design or environmental matters.

(b) If a separate hearing is held on a particular phase of the proceeding, the Commission or presiding officers of each affected proceeding may, under 10 CFR 2.317, consolidate for hearing on that phase two or more proceedings to consider common issues relating to the applications involved in the proceedings, if it finds that this action will be conducive to the proper dispatch of its business and to the ends of justice. In specifying the place of this consolidated hearing, due regard will be given to the convenience and necessity of the parties, petitioners for leave to intervene, or the attorneys or representatives of such persons, and the public interest.

§ 2.403 Notice of proposed action on applications for operating licenses pursuant to appendix N of 10 CFR part 50.

In the case of applications pursuant to appendix N of part 50 of this chapter for operating licenses for nuclear power reactors, if the Commission has not found that a hearing is in the public interest, the Commission, the Director of New Reactors, or the Director of Nuclear Reactor Regulation will, prior to acting thereon, cause to be published in the **Federal Register**, pursuant to § 2.105, a notice of proposed action with respect to each application as soon as practicable after the applications have been docketed.

§ 2.404 Hearings on applications for operating licenses pursuant to appendix N of 10 CFR part 50.

If a request for a hearing and/or petition for leave to intervene is filed within the time prescribed in the notice of proposed action on an application for an operating license pursuant to appendix N of part 50 of this chapter with respect to a specific reactor(s) at a specific site, and the Commission, the Chief Administrative Judge, or a presiding officer has issued a notice of hearing or other appropriate order, then the Commission, the Chief Administrative Judge, or the presiding officer may order separate hearings on particular phases of the proceeding and/or consolidate for hearing two or more proceedings in the manner described in § 2.402.

§ 2.405 Initial decisions in consolidated hearings.

At the conclusion of a hearing held under this subpart, the presiding officer will render a partial initial decision on the common design. The partial initial decision on the common design may be appealed under § 2.341. If the proceedings have also been consolidated with respect to matters other than the common design under § 2.317(b), the presiding officer may issue a consolidated partial initial decision for those proceedings. No construction permit, full-power operating license, or combined license under part 52 of this chapter will be issued until an initial decision has been issued on all phases of the hearing and all issues under the Act and the National Environmental Policy Act of 1969 appropriate to the proceeding have been resolved.

§ 2.406 Finality of decisions on separate issues.

Notwithstanding any other provision of this chapter, in a proceeding conducted pursuant to this subpart and appendices N of parts 50 or 52 of this chapter, no matter which has been reserved for consideration in one phase of the hearing shall be considered at another phase of the hearing except on the basis of significant new information that substantially affects the conclusion(s) reached at the other phase or other good cause.

§ 2.407 Applicability of other sections.

The provisions of subparts A, C, G, L, and N of this part relating to construction permits, operating licenses, and combined licenses apply, respectively, to construction permits, operating licenses, and combined licenses subject to this subpart, except as may be qualified by the provisions of this subpart.

■ 26. Section 2.500 is revised to read as follows:

§ 2.500 Scope of subpart.

This subpart prescribes procedures applicable to licensing proceedings which involve the consideration in separate hearings of an application for a license to manufacture nuclear power reactors under subpart F of part 52 of this chapter.

■ 27. In § 2.501, the section heading, the introductory text of paragraph (a) and paragraph (b) are revised to read as follows:

§ 2.501 Notice of hearing on application under subpart F of 10 CFR part 52 for a license to manufacture nuclear power reactors.

(a) In the case of an application under subpart F of part 52 of this chapter for a license to manufacture nuclear power reactors of the type described in § 50.22 of this chapter to be operated at sites not identified in the license application, the Secretary will issue a notice of hearing to be published in the **Federal Register** at least 30 days before the date set for hearing in the notice.[1] The notice shall be issued as soon as practicable after the application has been docketed. The notice will state:

* * * * *

(b) The notice of hearing shall comply with the requirements of § 2.104(f) of this chapter.

* * * * *

§ 2.502 [Removed]

■ 28. Remove and reserve § 2.502.

§ 2.503 [Removed]

■ 29. Remove and reserve § 2.503.

§ 2.504 [Removed]

■ 30. Remove and reserve § 2.504.

■ 31. Subpart F is revised to read as follows:

Subpart F—Additional Procedures Applicable to Early Partial Decisions on Site Suitability Issues in Connection With an Application for a Construction Permit or Combined License for Certain Utilization Facilities

Sec.

§ 2.600 Scope of subpart.

This subpart prescribes procedures applicable to licensing proceedings which involve an early submittal of site suitability information in accordance with § 2.101(a–1) and (a–2), and a hearing and early partial decision on issues of site suitability, in connection with an application for a permit to construct a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in § 50.21(b)(2) or (3) or § 50.22 of this chapter or is a testing facility; or an application for a combined license under part 52 of this chapter for a nuclear power facility.

(a) The procedures in §§ 2.601 through 2.609 apply to all applications under this subpart.

(b) The procedures in §§ 2.611 through 2.619 apply to applications for a permit to construct a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in § 50.21(b)(2) or (3) or § 50.22 of this chapter or is a testing facility.

(c) The procedures in §§ 2.621 through 2.629 apply to applications for combined license under part 52 of this chapter for a nuclear power facility.

§ 2.601 Applicability of other sections.

The provisions of subparts A, C, G, L, and N relating to applications for construction permits and combined licenses, and proceedings thereon apply, respectively, to such applications and proceedings in accordance with this subpart, except as specifically provided otherwise by the provisions of this subpart.

Early Partial Decisions on Site Suitability—Construction Permit

§ 2.602 Filing fees.

Each application which contains a request for early review of site suitability issues under the procedures of this subpart shall be accompanied by any fee required by § 50.30(e) and part 170 of this chapter.

§ 2.603 Acceptance and docketing of application for early review of site suitability issues in a construction permit proceeding.

(a) Each part of an application for a construction permit submitted in accordance with § 2.101(a–1) of this part will be initially treated as a tendered

[1] The thirty-day (30) requirement of this paragraph is not applicable to a notice of the time and place of hearing published by the presiding officer after the notice of hearing described in this section has been published.

application. If it is determined that any one of the parts as described in § 2.101(a–1) is incomplete and not acceptable for processing, the Director of the Office of New Reactors or the Director of the Office of Nuclear Reactor Regulation, as appropriate, will inform the applicant of this determination and the respects in which the document is deficient. Such a determination of completeness will generally be made within a period of 30 days.

(b)(1) The Director of the Office of New Reactors or the Director of the Office of Nuclear Reactor Regulation, as appropriate, will accept for docketing part one of an application for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in § 50.21(b)(2) or (3) or § 50.22 of this chapter, or is a testing facility where part one of the application as described in § 2.101(a–1) is complete. Part one of any application will not be considered complete unless it contains proposed findings as required by § 2.101(a–1)(1)(i) and unless it describes the applicant's site selection process, specifies the extent to which that process involves the consideration of alternative sites, explains the relationship between that process and the application for early review of site suitability issues, and briefly describes the applicant's long-range plans for ultimate development of the site. Upon assignment of a docket number, the procedures in § 2.101(a)(3) and (4) relating to formal docketing and the submission and distribution of additional copies of the application shall be followed.

(2) Additional parts of the application will be docketed upon a determination by the Director of the Office of New Reactors or the Director of the Office of Nuclear Reactor Regulation, as appropriate, that they are complete.

(c) If part one of the application is docketed, the Director of the Office of New Reactors or the Director of the Office of Nuclear Reactor Regulation, as appropriate, will cause to be published in the **Federal Register** and send to the Governor or other appropriate official of the State in which the site is located, a notice of docketing of the application which states the purpose of the application, states the location of the proposed site, states that a notice of hearing will be published, requests comments within 120 days or such other time as may be specified on the initiation or outcome of an early site review from Federal, State, and local agencies and interested persons.

§ 2.604 Notice of hearing on application for early review of site suitability issues in construction permit proceeding.

(a) Where an applicant for a construction permit requests an early review and hearing and an early partial decision on issues of site suitability pursuant to § 2.101(a–1), the provisions in the notice of hearing setting forth the matters of fact and law to be considered, as required by § 2.104, shall be modified so as to relate only to the site suitability issue or issues under review.

(b) After docketing of part two of the application, as provided in §§ 2.101(a–1) and 2.603, a supplementary notice of hearing will be published under § 2.104 with respect to the remaining unresolved issues in the proceeding within the scope of § 2.104. This supplementary notice of hearing will provide that any person whose interest may be affected by the proceeding and who desires to participate as a party in the resolution of the remaining issues shall file a petition for leave to intervene pursuant to § 2.309 within the time prescribed in the notice. This supplementary notice will also provide appropriate opportunities for participation by a representative of an interested State under § 2.315(c) and for limited appearances under § 2.315(a).

(c) Any person who was permitted to intervene as a party under the initial notice of hearing on site suitability issues and who was not dismissed or did not withdraw as a party may continue to participate as a party to the proceeding with respect to the remaining unresolved issues, provided that within the time prescribed for filing of petitions for leave to intervene in the supplementary notice of hearing, he or she files a notice of his intent to continue as a party, along with a supporting affidavit identifying the specific aspect or aspects of the subject matter of the proceeding as to which he or she wishes to continue to participate as a party and setting forth with particularity the basis for his contentions with regard to each aspect or aspects. A party who files a non-timely notice of intent to continue as a party may be dismissed from the proceeding, absent a determination that the party has made a substantial showing of good cause for failure to file on time, and with particular reference to the factors specified in §§ 2.309(c)(1)(i) through (iv) and 2.309(d). The notice will be ruled upon by the Commission or presiding officer designated to rule on petitions for leave to intervene.

(d) To the maximum extent practicable, the membership of any atomic safety and licensing board designated to preside in the proceeding on the remaining unresolved issues pursuant to the supplemental notice of hearing will be the same as the membership designated to preside in the initial notice of hearing on site suitability issues.

§ 2.605 Additional considerations.

(a) The Commission will not conduct more than one review of site suitability issues with regard to a particular site prior to filing and review of part two of the application described in § 2.101(a–1) of this part.

(b) The Commission, upon its own initiative, or upon the motion of any party to the proceeding filed at least 60 days prior to the date of the commencement of the evidentiary hearing on site suitability issues, may decline to initiate an early hearing or render an early partial decision on any issue or issues of site suitability:

(1) In cases where no partial decision on the relative merits of the proposed site and alternative sites under subpart A of part 51 of this chapter is requested, upon determination that there is a reasonable likelihood that further review would identify one or more preferable alternative sites and the partial decision on one or more site suitability issues would lead to an irreversible and irretrievable commitment of resources prior to the submittal of the remainder of the information required by § 50.30(f) of this chapter that would prejudice the later review and decision on such alternative sites; or

(2) In cases where it appears that an early partial decision on any issue or issues of site suitability would not be in the public interest considering:

(i) The degree of likelihood that any early findings on those issues would retain their validity in later reviews;

(ii) The objections, if any, of cognizant State or local government agencies to the conduct of an early review on those issues; and

(iii) The possible effect on the public interest and the parties of having an early, if not necessarily conclusive, resolution of those issues.

§ 2.606 Partial decision on site suitability issues in construction permit proceeding.

(a) The provisions of §§ 2.331, 2.339, 2.340, 2.343, 2.712, and 2.713 shall apply to any partial initial decision rendered in accordance with this subpart. A limited work authorization may not be issued under 10 CFR 50.10(e) and no construction permit may be issued without completion of the full review required by Section 102(2) of the National Environmental Policy Act of 1969, as amended, and

subpart A of part 51 of this chapter. The authority of the Commission to review such a partial initial decision sua sponte, or to raise sua sponte an issue that has not been raised by the parties, will be exercised within the same time period as in the case of a full decision relating to the issuance of a construction permit.

(b)(1) A partial decision on one or more site suitability issues pursuant to the applicable provisions of part 50, subpart A of part 51, and part 100 of this chapter issued in accordance with this subpart shall:

(i) Clearly identify the site to which the partial decision applies; and

(ii) Indicate to what extent additional information may be needed and additional review may be required to enable the Commission to determine in accordance with the provisions of the Act and the applicable provisions of the regulations in this chapter whether a construction permit for a facility to be located on the site identified in the partial decision should be issued or denied.

(2) Following either the Commission (acting in the function of a presiding officer) issuance of a partial initial decision, or completion of Commission review of the partial initial decision of the Atomic Safety and Licensing Board, after hearing, on the site suitability issues, the partial decision shall remain in effect either for a period of 5 years or, where the applicant for the construction permit has made timely submittal of the information required to support the application as provided in § 2.101(a–1), until the proceeding for a permit to construct a facility on the site identified in the partial decision has been concluded,[3] unless the Commission or Atomic Safety and Licensing Board, upon its own initiative or upon motion by a party to the proceeding, finds that there exists significant new information that substantially affects the earlier conclusions and reopens the hearing record on site suitability issues. Upon good cause shown, the Commission may extend the 5-year period during which a partial decision shall remain in effect for a reasonable period of time not to exceed 1 year.

[3] The partial decision on site suitability issues shall be incorporated in the decision regarding issuance of the combined license to the extent that it serves as a basis for the decision on a specific site issue.

Early Partial Decisions on Site Suitability—Combined License Under 10 CFR Part 52

§ 2.621 Acceptance and docketing of application for early review of site suitability issues in a combined license proceeding.

(a) Each part of an application submitted in accordance with § 2.101(a–1) of this part will be initially treated as a tendered application. If it is determined that any one of the parts as described in § 2.101(a–1) is incomplete and not acceptable for processing, the Director of the Office of New Reactors or the Director of the Office of Nuclear Reactor Regulation, as appropriate, will inform the applicant of this determination and the respects in which the document is deficient. Such a determination of completeness will generally be made within a period of 30 days.

(b)(1) The Director of the Office of New Reactors or the Director of the Office of Nuclear Reactor Regulation, as appropriate, will accept for docketing an application for a combined license for a nuclear power facility where part one of the application as described in § 2.101(a–1) is complete. Part one of any application will not be considered complete unless it contains proposed findings as required by § 2.101(a–1)(1)(i) and unless it describes the applicant's site selection process, specifies the extent to which that process involves the consideration of alternative sites, explains the relationship between that process and the application for early review of site suitability issues, and briefly describes the applicant's long-range plans for ultimate development of the site. Upon assignment of a docket number, the procedures in § 2.101(a)(3) and (4) relating to formal docketing and the submission and distribution of additional copies of the application shall be followed.

(2) Additional parts of the application will be docketed upon a determination by the Director of the Office of New Reactors or the Director of the Office of Nuclear Reactor Regulation, as appropriate, that they are complete.

(c) If part one of the application is docketed, the Director of the Office of New Reactors or the Director of the Office of Nuclear Reactor Regulation, as appropriate, will cause to be published in the **Federal Register** and send to the Governor or other appropriate official of the State in which the site is located, a notice of docketing of the application which states the purpose of the application, states the location of the proposed site, states that a notice of hearing will be published, requests comments within 120 days or such other time as may be specified on the initiation or outcome of an early site review from Federal, State, and local agencies and interested persons.

§ 2.623 Notice of hearing on application for early review of site suitability issues in combined license proceeding.

(a) Where an applicant for a combined license under part 52 of this chapter requests an early review and hearing and an early partial decision on issues of site suitability pursuant to § 2.101(a–2), the provisions in the notice of hearing setting forth the matters of fact and law to be considered, as required by § 2.104, shall be modified so as to relate only to the site suitability issue or issues under review. The notice will provide appropriate opportunities for participation by a representative of an interested State under § 2.315(c) and for limited appearances under § 2.315(a), limited however, to the issues of site suitability for which early review has been requested by the applicant.

(b) After docketing of part two of the application, as provided in §§ 2.101(a–1) and 2.603, a supplementary notice of hearing will be published under § 2.104 with respect to the remaining unresolved issues in the proceeding within the scope of § 2.104. This supplementary notice of hearing will provide that any person whose interest may be affected by the proceeding and who desires to participate as a party in the resolution of the remaining issues shall file a petition for leave to intervene pursuant to § 2.309 within the time prescribed in the notice. This supplementary notice will also provide appropriate opportunities for participation by a representative of an interested State under § 2.315(c) and for limited appearances under § 2.315(a).

(c) Any person who was permitted to intervene as a party under the initial notice of hearing on site suitability issues and who was not dismissed or did not withdraw as a party may continue to participate as a party to the proceeding without having to demonstrate standing under § 2.309(d), *provided, however,* that within the time prescribed for filing of petitions for leave to intervene in the supplementary notice of hearing, the party files a notice of intent to continue as a party. The notice must include the information required by § 2.309(f). A party who files a non-timely notice of intent to continue as a party may be dismissed from the proceeding, absent a determination that the party has made a substantial showing of good cause for failure to file on time, and with particular reference to the factors specified in §§ 2.309(c)(1)(i)

through (iv) and 2.309(d). The notice will be ruled upon by the Commission or presiding officer designated to rule on petitions for leave to intervene.

(d) To the maximum extent practicable, the presiding officer (as applicable, the membership of the licensing board) designated to preside in the proceeding on the remaining unresolved issues pursuant to the supplemental notice of hearing will be the same as the presiding officer (as applicable, the membership of the licensing board) designated to preside in the initial notice of hearing on site suitability issues.

§ 2.625 Additional considerations.

(a) The Commission will not conduct more than one review of site suitability issues with regard to a particular site prior to filing and review of part two of the application described in § 2.101(a–1) of this part.

(b) The Commission, upon its own initiative, or upon the motion of any party to the proceeding filed at least 60 days prior to the date of the commencement of the evidentiary hearing on site suitability issues, may decline to initiate an early hearing or render an early partial decision on any issue or issues of site suitability:

(1) In cases where no partial decision on the relative merits of the proposed site and alternative sites under subpart A of part 51 is requested, upon determination that there is a reasonable likelihood that further review would identify one or more preferable alternative sites and the partial decision on one or more site suitability issues would lead to an irreversible and irretrievable commitment of resources prior to the submittal of the remainder of the information required by § 50.30(f) of this chapter that would prejudice the later review and decision on such alternative sites; or

(2) In cases where it appears that an early partial decision on any issue or issues of site suitability would not be in the public interest considering:

(i) The degree of likelihood that any early findings on those issues would retain their validity in later reviews;

(ii) The objections, if any, of cognizant State or local government agencies to the conduct of an early review on those issues; and

(iii) The possible effect on the public interest and the parties of having an early, if not necessarily conclusive, resolution of those issues.

§ 2.627 Partial decision on site suitability issues in combined license proceeding.

(a) The provisions of §§ 2.331, 2.339, 2.340(b), 2.343, 2.712, and 2.713 shall apply to any partial initial decision rendered in accordance with this subpart. Section 2.340(c) shall not apply to any partial initial decision rendered in accordance with this subpart. A limited work authorization may not be issued under 10 CFR 50.10(e) and no construction permit may be issued without completion of the full review required by Section 102(2) of the National Environmental Policy Act of 1969, as amended, and subpart A of part 51 of this chapter. The authority of the Commission to review such a partial initial decision sua sponte, or to raise sua sponte an issue that has not been raised by the parties, will be exercised within the same time period as in the case of a full decision relating to the issuance of a construction permit.

(b)(1) A partial decision on one or more site suitability issues pursuant to the applicable provisions of part 50, subpart A of part 51, and part 100 of this chapter issued in accordance with this subpart shall:

(i) Clearly identify the site to which the partial decision applies; and

(ii) Indicate to what extent additional information may be needed and additional review may be required to enable the Commission to determine in accordance with the provisions of the Act and the applicable provisions of the regulations in this chapter whether a construction permit for a facility to be located on the site identified in the partial decision should be issued or denied.

(2) Following either the Commission (acting in the function of a presiding officer) issuance of a partial initial decision, or completion of Commission review of the partial initial decision of the presiding officer, after hearing, on the site suitability issues, the partial decision shall remain in effect either for a period of 5 years or, where the applicant for the combined license has made timely submittal of the information required to support the application as provided in § 2.101(a–2), until the proceeding for a combined license on the site identified in the partial decision has been concluded, unless the Commission or presiding officer, upon its own initiative or upon motion by a party to the proceeding, finds that there exists significant new information that substantially affects the earlier conclusions and reopens the hearing record on site suitability issues. Upon good cause shown, the Commission may extend the 5-year period during which a partial decision shall remain in effect for a reasonable period of time not to exceed 1 year.

§ 2.629 Finality of partial decision on site suitability issues in a combined license proceeding.

(a) The partial decision on site suitability issues in a combined license proceeding shall be incorporated in the decision regarding issuance of a combined license. Except as provided in 10 CFR 2.758, in making the findings required for issuance of a combined license, the Commission shall treat as resolved those matters resolved in connection with the issuance of the partial decision on site suitability issues. If the Commission reaches an adverse decision, the application shall be denied without prejudice for resubmission, provided, however, that in determining whether the resubmitted application is complete and acceptable for docketing under § 2.101(a)(3), the Director of the Office of New Reactors or the Director of the Office of Nuclear Reactor Regulation, as appropriate, shall determine whether the resubmitted application addresses those matters identified as bases for denial of the original application.

(b) Notwithstanding any provision in 10 CFR 50.109, while a partial decision on site suitability is in effect under § 2.617(b)(2), the Commission may not modify, rescind, or impose new requirements with respect to matters within the scope of the site suitability decision, whether on its own motion, or in response to a request or petition from any person, unless the Commission determines that a modification to the original decision is necessary either for compliance with the Commission's regulations applicable and in effect at the time the partial decision was issued, or to assure adequate protection of the public health and safety or the common defense and security.

■ 32. Section 2.800 is revised to read as follows:

§ 2.800 Scope and applicability.

(a) This subpart governs the issuance, amendment, and repeal of regulations in which participation by interested persons is prescribed under Section 553 of title 5 of the U.S. Code.

(b) The procedures in §§ 2.804 through 2.810 apply to all rulemakings.

(c) The procedures in §§ 2.802 through 2.803 apply to all petitions for rulemaking except for initial applications for standard design certification rulemaking under subpart B of part 52 of this chapter, and subsequent petitions for amendment of an existing design certification rule filed by the original applicant for the design certification rule.

(d) The procedures in §§ 2.811 through 2.819, as supplemented by the

provisions of subpart B of part 52, apply to standard design certification rulemaking.

■ 33. Section 2.801 is revised to read as follows:

§ 2.801 Initiation of rulemaking.

Rulemaking may be initiated by the Commission at its own instance, on the recommendation of another agency of the United States, or on the petition of any other interested person, including an application for design certification under subpart B of part 52 of this chapter.

■ 34. In subpart H, §§ 2.811, 2.813, 2.815, 2.817 and 2.819 are added to read as follows:

§ 2.811 Filing of standard design certification application; required copies.

(a) *Serving of applications.* The signed original of an application for a standard design certification, including all amendments to the applications, must be sent either by mail addressed: ATTN: Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by facsimile; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland, between the hours of 7:30 a.m. and 4:15 p.m. eastern time; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, e-mail, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by calling (301) 415–0439, by e-mail at *EIE@nrc.gov*, or by writing the Office of 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 New Reactors, 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, Division of New Reactor Licensing, 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 Rulemaking, Directives, and Editing 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.

§ 2.813 Written communications.

(a) *General requirements.* All correspondence, reports, and other written communications from the applicant to the Nuclear Regulatory Commission concerning the regulations in this subpart, and parts 50, 52, and 100 of this chapter must be sent either by mail addressed: ATTN: Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland, between the hours of 7:30 a.m. and 4:15 p.m. eastern time; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, e-mail, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by calling (301) 415–0439, by e-mail at *EIE@nrc.gov*, or by writing the Office of 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. If a submission due date falls on a Saturday, Sunday, or Federal holiday, the next Federal working day becomes the official due date.

(b) *Form of communications.* All paper copies submitted to meet the requirements set forth in paragraph (a) of this section must be typewritten, printed or otherwise reproduced in permanent form on unglazed paper. Exceptions to these requirements imposed on paper submissions may be granted for the submission of micrographic, photographic, or similar forms.

(c) *Regulation governing submission.* An applicant submitting correspondence, reports, and other written communications under the regulations of this chapter is requested but not required to cite whenever practical, in the upper right corner of the first page of the submission, the specific regulation or other basis requiring submission.

§ 2.815 Docketing and acceptance review.

(a) Each application for a standard design certification will be assigned a docket number. However, to allow a determination as to whether an application is complete and acceptable for docketing, it will be initially treated as a tendered application. A copy of the tendered application will be available for public inspection at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room. Generally, the determination on acceptability for docketing will be made within a period of 30 days. The Commission may decide to determine acceptability on the basis of the technical adequacy of the application as well as its completeness.

(b) If the Commission determines that a tendered application is complete and acceptable for docketing, a docket number will be assigned to the application or part thereof, and the applicant will be notified of the determination.

§ 2.817 Withdrawal of application.

(a) The Commission may permit an applicant to withdraw an application for a standard design certification before the issuance of a notice of proposed rulemaking on such terms and conditions as the Commission may prescribe, or may, on receiving a request for withdrawal of an application, deny the application or dismiss it without prejudice. The NRC will publish in the

Federal Register a document withdrawing the application, if the notice of receipt of the application, an advance notice of proposed rulemaking, or a notice of proposed rulemaking for the standard design certification has been previously published in the **Federal Register**. If the notice of receipt, advance notice of proposed rulemaking or notice of proposed rulemaking was published on the NRC Web site, then the notice of action on the withdrawal will also be published on the NRC Web site.

(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 denial will also be published on the NRC Web site.

■ 35. In § 2.1202, paragraph (a) is revised to read as follows:

§ 2.1202 Authority and role of NRC staff.

(a) During the pendency of any hearing under this subpart, consistent with the NRC staff's findings in its review of the application or matter which is the subject of the hearing and as authorized by law, the NRC staff is expected to issue its approval or denial of the application promptly, or take other appropriate action on the underlying regulatory matter for which a hearing was provided. When the NRC staff takes its action, it shall notify the presiding officer and the parties to the proceeding of its action. That notice must include the NRC staff's position on the matters in controversy before the presiding officer with respect to the staff action. The NRC staff's action on the matter is effective upon issuance by the staff, except in matters involving:

(1) An application to construct and/or operate a production or utilization facility (including an application for a limited work authorization under 10 CFR 50.12, or an application for a combined license under subpart C of 10 CFR part 52);

(2) An application for an early site permit under subpart A of 10 CFR part 52;

(3) An application for a manufacturing license under subpart F of 10 CFR part 52;

(4) An application for an amendment to a construction authorization for a high-level radioactive waste repository at a geologic repository operations area falling under either 10 CFR 60.32(c)(1) or 10 CFR part 63;

(5) An application for the construction and operation of an independent spent fuel storage installation (ISFSI) located at a site other than a reactor site or a monitored retrievable storage installation (MRS) under 10 CFR part 72; and

(6) Production or utilization facility licensing actions that involve significant hazards considerations as defined in 10 CFR 50.92.

* * * * *

§ 2.1211 [Removed]

■ 36. Section 2.1211 is removed.

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

■ 37. 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.

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

§ 10.1 Purpose.

(a) * * *

(1) The eligibility of individuals who are employed by or applicants for employment with NRC contractors, agents, and other individuals who are NRC employees or applicants for NRC employment, and other persons designated by the Deputy Executive Director for Information Services and Administration and Chief Information Officer of the NRC, for access to Restricted Data under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, or for access to national security information;

(2) The eligibility of NRC employees, or the eligibility of applicants for employment with the NRC, for employment clearance; and

(3) The eligibility of individuals who are employed by or are applicants for employment with NRC licensees, certificate holders, holders of standard design approvals under part 52 of this chapter, applicants for licenses, certificates, and NRC approvals, and others who may require access related to a license, certificate, or NRC approval, or other activities as the Commission may determine, for access to Restricted Data under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, or for access to national security information.

* * * * *

■ 39. In § 10.2, paragraph (b) is revised to read as follows:

§ 10.2 Scope.

* * * * *

(b) NRC licensees, certificate holders and holders of standard design approvals under part 52 of this chapter, applicants for licenses, certificates, and standard design approvals under part 52 of this chapter, and their employees (including consultants) and applicants for employment (including consulting);

* * * * *

PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS; INSPECTION AND INVESTIGATIONS

■ 40. The authority citation for part 19 is revised to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282, 2297f); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 19.32 is also issued under sec. 401, 88 Stat. 1254 (42 U.S.C. 2000d, 42 U.S.C. 5891).

■ 41. Section 19.1 is revised to read as follows:

§ 19.1 Purpose.

The regulations in this part establish requirements for notices, instructions, and reports by licensees and regulated entities to individuals participating in NRC-licensed and regulated activities and options available to these individuals in connection with Commission inspections of licensees and regulated entities, and to ascertain

compliance with the provisions of the Atomic Energy Act of 1954, as amended, titles II and IV of the Energy Reorganization Act of 1974, and regulations, orders, and licenses thereunder. The regulations in this part also establish the rights and responsibilities of the Commission and individuals during interviews compelled by subpoena as part of agency inspections or investigations under Section 161c of the Atomic Energy Act of 1954, as amended, on any matter within the Commission's jurisdiction.

■ 42. Section 19.2 is revised to read as follows:

§ 19.2 Scope.

(a) The regulations in this part apply to:

(1) All persons who receive, possess, use, or transfer material licensed by the NRC under the regulations in parts 30 through 36, 39, 40, 60, 61, 63, 70, or 72 of this chapter, including persons licensed to operate a production or utilization facility under parts 50 or 52 of this chapter, persons licensed to possess power reactor spent fuel in an independent spent fuel storage installation (ISFSI) under part 72 of this chapter, and in accordance with 10 CFR 76.60 to persons required to obtain a certificate of compliance or an approved compliance plan under part 76 of this chapter;

(2) All applicants for and holders of licenses (including construction permits and early site permits) under parts 50, 52, and 54 of this chapter;

(3) All applicants for and holders of a standard design approval under subpart E of part 52 of this chapter; and

(4) All applicants for a standard design certification under subpart B of part 52 of this chapter, and those (former) applicants whose designs have been certified under that subpart.

(b) The regulations in this part regarding interviews of individuals under subpoena apply to all investigations and inspections within the jurisdiction of the NRC other than those involving NRC employees or NRC contractors. The regulations in this part do not apply to subpoenas issued under 10 CFR 2.702.

■ 43. In § 19.3 the definitions of *License* and *Worker* are revised, and the definitions of *Regulated entities* and *Regulated activities* are added to read as follows:

§ 19.3 Definitions.

* * * * *

License means a license issued under the regulations in parts 30 through 36, 39, 40, 60, 61, 63, 70, or 72 of this chapter, including licenses to manufacture, construct and/or operate a production or utilization facility under parts 50, 52, or 54 of this chapter.

* * * * *

Regulated activities means any activity carried on which is under the jurisdiction of the NRC under the Atomic Energy Act of 1954, as amended, or any title of the Energy Reorganization Act of 1972, as amended.

Regulated entities means any individual, person, organization, or corporation that is subject to the regulatory jurisdiction of the NRC, including (but not limited to) an applicant for or holder of a standard design approval under subpart E of part 52 of this chapter or a standard design certification under subpart B of part 52 of this chapter.

* * * * *

Worker means an individual engaged in activities licensed or regulated by the Commission and controlled by a licensee or regulated entity, but does not include the licensee or regulated entity.

■ 44. In § 19.11, paragraph (c) is removed and reserved, and the introductory text of paragraph (a), paragraphs (b), (d), and (e) are revised, and paragraphs (f) and (g) are added to read as follows:

§ 19.11 Posting of notices to workers.

(a) Each licensee (except for a holder of an early site permit under subpart A of part 52 of this chapter, or a holder of a manufacturing license under subpart F of part 52 of this chapter) shall post current copies of the following documents:

* * * * *

(b) Each applicant for and holder of a standard design approval under subpart E of part 52 of this chapter, each applicant for an early site permit under subpart A of part 52 of this chapter, each applicant for a standard design certification under subpart B of part 52 of this chapter, and each applicant for and holder of a manufacturing license under subpart F of part 52 of this chapter shall post:

(1) The regulations in this part;

(2) The operating procedures applicable to the activities regulated by the NRC which are being conducted by the applicant or holder; and

(3) Any notice of violation, proposed imposition of civil penalty, or order issued under subpart B of part 2 of this chapter, and any response from the applicant or holder.

(c) [Reserved]

(d) If posting of a document specified in paragraphs (a)(1), (2) or (3), or (b)(1) or (2) of this section is not practicable, the licensee or regulated entity may post a notice which describes the document and states where it may be examined.

(e)(1) Each licensee, each applicant for a specific license, each applicant for or holder of a standard design approval under subpart E of part 52 of this chapter, each applicant for an early site permit under subpart A of part 52 of this chapter, and each applicant for a standard design certification under subpart B of part 52 of this chapter shall prominently post NRC Form 3, "Notice to Employees," dated August 1997. Later versions of NRC Form 3 that supersede the August 1997 version shall replace the previously posted version within 30 days of receiving the revised NRC Form 3 from the Commission.

(2) Additional copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter, by calling (301) 415–7232, via e-mail to *forms@nrc.gov*, or by visiting the NRC's Web site at *http://www.nrc.gov* and selecting forms from the index found on the home page.

(f) Documents, notices, or forms posted under this section shall appear in a sufficient number of places to permit individuals engaged in NRC-licensed or regulated activities to observe them on the way to or from any particular licensed or regulated activity location to which the document applies, shall be conspicuous, and shall be replaced if defaced or altered.

(g) Commission documents posted under paragraphs (a)(4) or (b)(3) of this section shall be posted within 2 working days after receipt of the documents from the Commission; the licensee's or regulated entity's response, if any, shall be posted within 2 working days after dispatch by the licensee or regulated entity. These documents shall remain posted for a minimum of 5 working days or until action correcting the violation has been completed, whichever is later.

■ 45. Section 19.14 is revised to read as follows:

§ 19.14 Presence of representatives of licensees and regulated entities, and workers during inspections.

(a) Each licensee, applicant for a license, applicant for or holder of a standard design approval under subpart E of part 52 of this chapter, applicant for an early site permit under subpart A of part 52 of this chapter, and applicant for a standard design certification under subpart B of part 52 of this chapter shall afford to the Commission at all

reasonable times opportunity to inspect materials, activities, facilities, premises, and records under the regulations in this chapter.

(b) During an inspection, Commission inspectors may consult privately with workers as specified in § 19.15. The licensee, regulated entity, or the licensee's or regulated entity's representative may accompany Commission inspectors during other phrases of an inspection.

(c) If, at the time of inspection, an individual has been authorized by the workers to represent them during Commission inspections, the licensee or regulated entity shall notify the inspectors of such authorization and shall give the workers' representative an opportunity to accompany the inspectors during the inspection of physical working conditions.

(d) Each workers' representative shall be routinely engaged in NRC-licensed or regulated activities under control of the licensee or regulated entity, and shall have received instructions as specified in § 19.12.

(e) Different representatives of licensees or regulated entities, and workers may accompany the inspectors during different phases of an inspection if there is no resulting interference with the conduct of the inspection. However, only one workers' representative at a time may accompany the inspectors.

(f) With the approval of the licensee or regulated entity, and the workers' representative an individual who is not routinely engaged in licensed or regulated activities under control of the license or regulated entity (for example, a consultant to the licensee, the regulated entity, or the workers' representative), shall be afforded the opportunity to accompany Commission inspectors during the inspection of physical working conditions.

(g) Notwithstanding the other provisions of this section, Commission inspectors are authorized to refuse to permit accompaniment by any individual who deliberately interferes with a fair and orderly inspection. With regard to areas containing information classified by an agency of the U.S. Government in the interest of national security, an individual who accompanies an inspector may have access to such information only if authorized to do so. With regard to any area containing proprietary information, the workers' representative for that area shall be an individual previously authorized by the licensee or regulated entity to enter that area.

■ 46. Section 19.20 is revised to read as follows:

§ 19.20 Employee protection.

Employment discrimination by a licensee, a holder of a certificate of compliance issued under part 76 of this chapter or regulated entity subject to the requirements in this part as delineated in § 19.2(a), or a contractor or subcontractor of a licensee, a holder of a certificate of compliance issued under part 76 of this chapter, or regulated entity subject to the requirements in this part as delineated in § 19.2(a), against an employee for engaging in protected activities under this part or parts 30, 40, 50, 52, 54, 60, 61, 63, 70, 72, 76, or 150 of this chapter is prohibited.

■ 47. Section 19.31 is revised to read as follows:

§ 19.31 Application for exemptions.

The Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law, will not result in undue hazard to life and property.

■ 48. Section 19.32 is revised to read as follows:

§ 19.32 Discrimination prohibited.

No person shall on the grounds of sex be excluded from participation in, be denied a license, be denied the benefit of, or be subjected to discrimination under any program or activity carried on which is under the jurisdiction of the NRC under the Atomic Energy Act of 1954, as amended, or under any title of the Energy Reorganization Act of 1974, as amended. This provision will be enforced through agency provisions and regulations similar to those already established, with respect to racial and other discrimination, under Title VI of the Civil Rights Act of 1964. This remedy is not exclusive, however, and will not prejudice or cut off any other legal remedies available to a discriminatee.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

■ 49. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 50. Section 20.1002 is revised to read as follows:

§ 20.1002 Scope.

The regulations in this part apply to persons licensed by the Commission to receive, possess, use, transfer, or dispose of byproduct, source, or special nuclear material or to operate a production or utilization facility under parts 30 through 36, 39, 40, 50, 52, 60, 61, 63, 70, or 72 of this chapter, and in accordance with 10 CFR 76.60 to persons required to obtain a certificate of compliance or an approved compliance plan under part 76 of this chapter. The limits in this part do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, to exposure from individuals administered radioactive material and released under § 35.75, or to exposure from voluntary participation in medical research programs.

■ 51. In § 20.1401 paragraph (a) is revised to read as follows:

§ 20.1401 General provisions and scope.

(a) The criteria in this subpart apply to the decommissioning of facilities licensed under parts 30, 40, 50, 52, 60, 61, 63, 70, and 72 of this chapter, and release of part of a facility or site for unrestricted use in accordance with § 50.83 of this chapter, as well as other facilities subject to the Commission's jurisdiction under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended. For high-level and low-level waste disposal facilities (10 CFR parts 60, 61, and 63), the criteria apply only to ancillary surface facilities that support radioactive waste disposal activities. The criteria do not apply to uranium and thorium recovery facilities already subject to appendix A to 10 CFR part 40 or the uranium solution extraction facilities.

* * * * *

■ 52. Section 20.1406 is revised to read as follows:

§ 20.1406 Minimization of contamination.

(a) Applicants for licenses, other than early site permits and manufacturing licenses under part 52 of this chapter and renewals, whose applications are submitted after August 20, 1997, shall describe in the application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of radioactive waste.

(b) Applicants for standard design certifications, standard design

approvals, and manufacturing licenses under part 52 of this chapter, whose applications are submitted after August 20, 1997, shall describe in the application how facility design will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of radioactive waste.

■ 53. In § 20.2203, paragraphs (c) and (d) are revised to read as follows:

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

* * * * *

(c) For holders of an operating license or a combined license for a nuclear power plant, the occurrences included in paragraph (a) of this section must be reported in accordance with the procedures described in §§ 50.73(b), (c), (d), (e), and (g) of this chapter, and must include the information required by paragraph (b) of this section. Occurrences reported in accordance with § 50.73 of this chapter need not be reported by a duplicate report under paragraph (a) of this section.

(d) All licensees, other than those holding an operating license or a combined license for a nuclear power plant, who make reports under paragraph (a) of this section shall submit the report in writing either by mail addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by calling (301) 415–0439, by e-mail to *EIE@nrc.gov*, or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. A copy should be sent to the appropriate NRC Regional Office listed in appendix D to this part.

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

■ 54. The authority citation for part 21 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2953 (42 U.S.C. 2201, 2282, 2297f); secs. 201, as amended, 206, 88 Stat. 1242, as amended 1246 (42 U.S.C. 5841, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 21.2 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

■ 55. 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 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 chapter, or who has supplied or is supplying basic components with respect to that design certification;

(4) 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 or holding a standard design approval under part 52 of this chapter; or supplying basic components with respect to a standard design approval under part 52 of this chapter;

(b) For persons licensed to construct a facility under either a construction permit issued under § 50.23 of this chapter or a combined license under part 52 of this chapter (for the period of construction until the date that the Commission makes the finding under § 52.103(g) of this chapter), or to manufacture a facility under part 52 of this chapter, evaluation of potential defects and failures to comply and reporting of defects and failures to comply under § 50.55(e) of this chapter satisfies each person's evaluation, notification, and reporting obligation to report defects and failures to comply under this part and the responsibility of individual directors and responsible officers of these licensees to report defects under Section 206 of the Energy Reorganization Act of 1974.

(c) For persons licensed to operate a nuclear power plant under part 50 or part 52 of this chapter, evaluation of potential defects and appropriate reporting of defects under §§ 50.72, 50.73, or § 73.71 of this chapter, satisfies each person's evaluation, notification, and reporting obligation to report defects under this part, and the responsibility of individual directors and responsible officers of these licensees to report defects under Section 206 of the Energy Reorganization Act of 1974.

* * * * *

■ 56. In § 21.3 the definitions of *basic component*, *defect*, *deviation*, and *substantial safety hazard* are revised to read as follows:

§ 21.3 Definitions.

* * * * *

Basic component. (1)(i) When applied to nuclear power plants licensed under 10 CFR part 50 or part 52 of this chapter, basic component means a structure, system, or component, or part thereof that affects its safety function necessary to assure:

(A) The integrity of the reactor coolant pressure boundary;

(B) The capability to shut down the reactor and maintain it in a safe-shutdown condition; or

(C) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in §§ 50.34(a)(1), 50.67(b)(2), or 100.11 of this chapter, as applicable.

(ii) Basic components are items designed and manufactured under a quality assurance program complying with appendix B to part 50 of this chapter, or commercial grade items which have successfully completed the dedication process.

(2) When applied to standard design certifications under subpart C of part 52 of this chapter and standard design approvals under part 52 of this chapter, basic component means the design or procurement information approved or to be approved within the scope of the design certification or approval for a structure, system, or component, or part thereof, that affects its safety function necessary to assure:

(i) The integrity of the reactor coolant pressure boundary;

(ii) The capability to shut down the reactor and maintain it in a safe-shutdown condition; or

(iii) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in §§ 50.34(a)(1), 50.67(b)(2), or 100.11 of this chapter, as applicable.

(3) When applied to other facilities and other activities licensed under 10 CFR parts 30, 40, 50 (other than nuclear power plants), 60, 61, 63, 70, 71, or 72 of this chapter, basic component means a structure, system, or component, or part thereof, that affects their safety function, that is directly procured by the licensee of a facility or activity subject to the regulations in this part and in which a defect or failure to comply with any applicable regulation in this chapter, order, or license issued by the Commission could create a substantial safety hazard.

(4) In all cases, basic component includes safety-related design, analysis, inspection, testing, fabrication, replacement of parts, or consulting services that are associated with the component hardware, design certification, design approval, or information in support of an early site permit application under part 52 of this chapter, whether these services are performed by the component supplier or others.

* * * * *

Defect means:

(1) A deviation in a basic component delivered to a purchaser for use in a facility or an activity subject to the regulations in this part if, on the basis of an evaluation, the deviation could create a substantial safety hazard;

(2) The installation, use, or operation of a basic component containing a defect as defined in this section;

(3) A deviation in a portion of a facility subject to the early site permit, standard design certification, standard design approval, construction permit, combined license or manufacturing licensing requirements of part 50 or part 52 of this chapter, provided the deviation could, on the basis of an evaluation, create a substantial safety hazard and the portion of the facility containing the deviation has been offered to the purchaser for acceptance;

(4) A condition or circumstance involving a basic component that could contribute to the exceeding of a safety limit, as defined in the technical specifications of a license for operation issued under part 50 or part 52 of this chapter; or

(5) An error, omission or other circumstance in a design certification, or standard design approval that, on the basis of an evaluation, could create a substantial safety hazard.

Deviation means a departure from the technical requirements included in a procurement document, or specified in early site permit information, a standard design certification or standard design approval.

* * * * *

Substantial safety hazard means a loss of safety function to the extent that there is a major reduction in the degree of protection provided to public health and safety for any facility or activity licensed or otherwise approved or regulated by the NRC, other than for export, under parts 30, 40, 50, 52, 60, 61, 63, 70, 71, or 72 of this chapter.

* * * * *

■ 57. Section 21.5 is revised to read as follows:

§ 21.5 Communications.

Except where otherwise specified in this part, written communications and reports concerning the regulations in this part must be addressed to the NRC's Document Control Desk, and sent by mail to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of 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. In the case of a licensee or permit holder, a copy of the communication must also be sent to the appropriate Regional Administrator at the address specified in appendix D to part 20 of this chapter.

■ 58. In § 21.21 the introductory text of paragraph (a)(3), paragraph (a)(3)(i), and paragraphs (d)(1)(i), (d)(1)(ii), and (d)(4)(vi) are revised and paragraph (d)(4)(ix) is added to read as follows:

§ 21.21 Notification of failure to comply or existence of a defect and its evaluation.

(a) * * *

(3) Ensure that a director or responsible officer subject to the regulations of this part is informed as soon as practicable, and, in all cases, within the 5 working days after completion of the evaluation described in paragraphs (a)(1) or (a)(2) of this section if the manufacture, construction, or operation of a facility or activity, a basic component supplied for such facility or activity, or the design certification or design approval under part 52 of this chapter—

(i) Fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Commission or standard design approval under part 52 of this chapter, relating to a substantial safety hazard, or

* * * * *

(d)(1) * * *

(i) The manufacture, construction or operation of a facility or an activity within the United States that is subject to the licensing requirements under parts 30, 40, 50, 52, 60, 61, 63, 70, 71, or 72 of this chapter and that is within his or her organization's responsibility; or

(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 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 transferred.

* * * * *

■ 59. In § 21.51 paragraphs (a)(4) and (a)(5) are 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 B 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.

(5) Applicants for or holders of a standard design approval under subpart E of part 52 of this chapter and others providing a design which is the subject of a design approval 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 the design which is the subject of the design approval or service associated with the design.

(b) Each individual, corporation, partnership, dedicating entity, or other entity subject to the regulations in this part shall permit the Commission the opportunity to inspect records pertaining to basic components that relate to the identification and evaluation of deviations, and the reporting of defects and failures to comply, including (but not limited to) any advice given to purchasers or licensees on the placement, erection, installation, operation, maintenance, modification, or inspection of a basic component.

■ 60. In § 21.61, paragraph (b) is revised to read as follows:

§ 21.61 Failure to notify.

* * * * *

(b) Any NRC licensee or applicant for a license (including an applicant for, or holder of, a permit), applicant for a design certification under part 52 of this chapter during the pendency of its application, applicant for a design certification after Commission adoption of a final design certification rule for that design, or applicant for or holder of a standard design approval under part 52 of this chapter subject to the regulations in this part who fails to provide the notice required by § 21.21, or otherwise fails to comply with the applicable requirements of this part shall be subject to a civil penalty as provided by Section 234 of the Atomic Energy Act of 1954, as amended.

* * * * *

PART 25—ACCESS AUTHORIZATION

■ 61. The authority citation for part 25 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); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); E.O. 10865, as amended, 3 CFR 1959–1963 Comp., p. 398 (50 U.S.C. 401, note); E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333 as amended by E.O. 13292, 3 CFR 2004 Comp., p. 196; E.O. 12968, 3 CFR, 1995 Comp., p. 396.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

■ 62. The heading of part 25 is revised to read as set forth above.

■ 63. In § 25.35, paragraph (a) is revised to read as follows:

§ 25.35 Classified visits.

(a) The number of classified visits must be held to a minimum. The licensee, certificate holder, applicant for a standard design certification under part 52 of this chapter (including an applicant after the Commission has adopted a final standard design certification rule under part 52 of this chapter), or other facility, or an applicant for or holder of a standard design approval under part 52 of this chapter shall determine that the visit is necessary and that the purpose of the visit cannot be achieved without access to, or disclosure of, classified information. All classified visits require advance notification to, and approval of, the organization to be visited. In urgent cases, visit information may be furnished by telephone and confirmed in writing.

* * * * *

PART 26—FITNESS FOR DUTY PROGRAMS

■ 64. The authority citation for part 26 continues to read as follows:

Authority: Secs. 53, 81, 103, 104, 107, 161, 68 Stat. 930, 935, 936, 937, 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201, 2297f); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

■ 65. In § 26.2, the introductory text of paragraph (a), and paragraph (c) are revised to read as follows:

§ 26.2 Scope.

(a) The regulations in this part apply to licensees authorized to operate a nuclear power reactor, including a holder of a combined license after the Commission makes the finding under § 52.103(g) of this chapter, and licensees who are authorized to possess or use formula quantities of SSNM, or to transport formula quantities of SSNM. Each licensee shall implement a fitness-for-duty program which complies with this part. The provisions of the fitness-for-duty program must apply to all persons granted unescorted access to nuclear power plant protected areas, to licensee, vendor, or contractor personnel required to physically report to a licensee's Technical Support Center (TSC) or Emergency Operations Facility (EOF) in accordance with licensee emergency plans and procedures, and to SSNM licensee and transporter personnel who:

* * * * *

(c) Certain regulations in this part apply to licensees holding permits to construct a nuclear power plant, including a holder of a combined license before the date that the Commission makes the finding under § 52.103(g) of this chapter, holders of manufacturing licenses under part 52, and persons authorized to conduct the activities under § 50.10(e)(3) of this chapter. Each licensee with a construction permit, a combined license before the Commission makes the finding under § 52.103(g) of this chapter, a manufacturing license, or person authorized to conduct the activities under § 50.10(e)(3) of this chapter, with a plant or reactor under active construction or manufacture, shall—

(1) Comply with §§ 26.10, 26.20, 26.23, 26.70, and 26.73;

(2) Implement a chemical testing program, including random tests; and

(3) Make provisions for employee assistance programs, imposition of sanctions, appeals procedures, the protection of information, and recordkeeping.

* * * * *

■ 66. In § 26.10, paragraph (a) is revised to read as follows:

§ 26.10 General performance objectives.

* * * * *

(a) Provide reasonable assurance that nuclear power plant personnel, personnel of a holder of a manufacturing license, personnel of a person authorized to conduct activities under § 50.10(e)(3) of this chapter, transporter personnel, and personnel of licensees authorized to possess or use formula quantities of SSNM, will perform their tasks in a reliable and trustworthy manner and are not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way adversely affects their ability to safely and competently perform their duties;

* * * * *

■ 67. In Appendix A of Part 26, paragraph (1) of Section 1.1 of Subpart A is revised to read as follows:

Appendix A to Part 26—Guidelines for Drug and Alcohol Testing Programs

1.1 Applicability.

(1) These guidelines apply to licensees authorized to operate nuclear power reactors, including a holder of a combined license after the Commission makes the finding under § 52.103(g) of this chapter, and licensees who are authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM).

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 68. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 50.7 also issued under Pub. L. 95—601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91—190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and appendix Q also issued under sec. 102, Pub. L. 91—190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97—415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80—50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 69. In Section 50.2, definitions of *applicant, license, licensee,* and *prototype plant,* are added to read as follows:

§ 50.2 Definitions.

* * * * *

Applicant means a person or an entity applying for a license, permit, or other form of Commission permission or approval under this part or part 52 of this chapter.

* * * * *

License means a license, including a construction permit or operating license under this part, an early site permit, combined license or manufacturing license under part 52 of this chapter, or a renewed license issued by the Commission under this part, part 52, or part 54 of this chapter.

Licensee means a person who is authorized to conduct activities under a license issued by the Commission.

* * * * *

Prototype plant means a nuclear reactor that is used to test design features, such as the testing required under § 50.43(e). The prototype plant is similar to a first-of-a-kind or standard plant design in all features and size, but may include additional safety features to protect the public and the plant staff from the possible consequences of accidents during the testing period.

* * * * *

■ 70. In § 50.10 the introductory text of paragraphs (b) and (c), and paragraphs (e)(1), (e)(2), and (e)(3) are revised to read as follows:

§ 50.10 License required.

* * * * *

(b) No person shall begin the construction of a production or utilization facility on a site on which the facility is to be operated until either a construction permit under this part, or a combined license under subpart C of part 52 of this chapter has been issued. As used in this paragraph, the term "construction" includes pouring the foundation for, or the installation of, any portion of the permanent facility on the site, but does not include:

* * * * *

(c) Notwithstanding the provisions of paragraph (b) of this section, and subject to paragraphs (d) and (e) of this section, no person shall effect commencement of construction of a production or utilization facility subject to the provisions of § 51.20(b) of this chapter on a site on which the facility is to be operated until an early site permit, construction permit, or combined license has been issued. As used in this paragraph, the term "commencement of construction" means any clearing of land, excavation or other substantial action that would adversely affect the environment of a site, but does not include:

* * * * *

(e)(1) The Director of Nuclear Reactor Regulation may authorize an applicant for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter, and is of the type specified in §§ 50.21(b)(2) or (3), or § 50.22 or is a testing facility, or an applicant for a combined license to conduct the following activities:

(i) Preparation of the site for construction of the facility (including activities as clearing, grading, construction of temporary access roads and borrow areas);

(ii) Installation of temporary construction support facilities (including items such as warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and construction support buildings);

(iii) Excavation for facility structures;

(iv) Construction of service facilities (including facilities such as roadways, paving, railroad spurs, fencing, exterior utility and lighting systems, transmission lines, and sanitary sewerage treatment facilities); and

(v) The construction of structures, systems and components which do not prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public.

(2) No authorization shall be granted unless the staff has completed a final environmental impact statement on the issuance of the construction permit or combined license as required by subpart A of part 51 of this chapter. An authorization shall be granted only after the presiding officer in the proceeding on the construction permit or combined license application:

(i) Has made all the findings required by §§ 51.104(b), 51.105, and 51.107 of this chapter to be made before issuance of the construction permit, or combined license for the facility; and

(ii) Has determined that, based upon the available information and review to date, there is reasonable assurance that the proposed site is a suitable location for a reactor of the general size and type proposed from the standpoint of radiological health and safety considerations under the Act and regulations issued by the Commission.

(3)(i) The Director of New Reactors or the Director of Nuclear Reactor

Regulation, as appropriate, may authorize an applicant for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter, and is of the type specified in §§ 50.21(b)(2) or (3), or § 50.22 or is a testing facility, or an applicant for a combined license to conduct, in addition to the activities described in paragraph (e)(1) of this section, the installation of structural foundations, including any necessary subsurface preparation, for structures, systems, and components which prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public.

(ii) Such an authorization, which may be combined with the authorization described in paragraph (e)(1) of this section, or may be granted at a later time, shall be granted only after the presiding officer in the proceeding on the construction permit or combined license application has, in addition to making the findings and determinations required by paragraph (e)(2) of this section, determined that there are no unresolved safety issues relating to the additional activities that may be authorized under this paragraph that would constitute good cause for withholding authorization.

* * * * *

■ 71. Section 50.23 is revised to read as follows:

§ 50.23 Construction permits.

A construction permit for the construction of a production or utilization facility will be issued before the issuance of a license if the application is otherwise acceptable, and will be converted upon completion of the facility and Commission action, into a license as provided in § 50.56. However, if a combined license for a nuclear power reactor is issued under part 52 of this chapter, the construction permit and operating license are deemed to be combined in a single license. A construction permit for the alteration of a production or utilization facility will be issued before the issuance of an amendment of a license, if the application for amendment is otherwise acceptable, as provided in § 50.91.

■ 72. The undesignated center heading before § 50.30 is revised to read as follows:

Applications for Licenses, Certifications, and Regulatory Approvals; Form; Contents; Ineligibility of Certain Applicants

■ 73. In § 50.30, the section heading and paragraphs (a)(1), (a)(3), (a)(5), (a)(6), (b), (e), and (f) are revised to read as follows:

§ 50.30 Filing of application; oath or affirmation.

(a) * * *

(1) Each filing of an application for a standard design approval or license to construct and/or operate, or manufacture, a production or utilization facility (including an early site permit, combined license, and manufacturing license under part 52 of this chapter), and any amendments to the applications, must be submitted to the U.S. Nuclear Regulatory Commission in accordance with § 50.4 or § 52.3 of this chapter, as applicable.

* * * * *

(3) Each applicant for a construction permit under this part, or an early site permit, combined license, or manufacturing license under part 52 of this chapter, shall, upon notification by the Atomic Safety and Licensing Board appointed to conduct the public hearing required by the Atomic Energy Act, update the application and serve the updated copies of the application or parts of it, eliminating all superseded information, together with an index of the updated application, as directed by the Atomic Safety and Licensing Board. Any subsequent amendment to the application must be served on those served copies of the application and must be submitted to the U.S. Nuclear Regulatory Commission as specified in § 50.4 or § 52.3 of this chapter, as applicable.

* * * * *

(5) At the time of filing an application, the Commission will make available at the NRC Web site, *http://www.nrc.gov*, a copy of the application, subsequent amendments, and other records pertinent to the matter which is the subject of the application for public inspection and copying.

(6) The serving of copies required by this section must not occur until the application has been docketed under § 2.101(a) of this chapter. Copies must be submitted to the Commission, as specified in § 50.4 or § 52.3 of this chapter, as applicable, to enable the Director, Office of New Reactors, or the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as appropriate, to determine whether the application is sufficiently complete to permit docketing.

(b) *Oath or affirmation.* Each application for a standard design approval or license, including, whenever appropriate, a construction permit or early site permit, or amendment of it, and each amendment of each application must be executed in a signed original by the applicant or duly authorized officer thereof under oath or affirmation.

* * * * *

(e) *Filing Fees.* Each application for a standard design approval or production or utilization facility license, including, whenever appropriate, a construction permit or early site permit, other than a license exempted from part 170 of this chapter, shall be accompanied by the fee prescribed in part 170 of this chapter. No fee will be required to accompany an application for renewal, amendment, or termination of a construction permit, operating license, combined license, or manufacturing license, except as provided in § 170.21 of this chapter.

(f) *Environmental report.* An application for a construction permit, operating license, early site permit, combined license, or manufacturing license for a nuclear power reactor, testing facility, fuel reprocessing plant, or other production or utilization facility whose construction or operation may be determined by the Commission to have a significant impact in the environment, shall be accompanied by an Environmental Report required under subpart A of part 51 of this chapter.

■ 74. In § 50.33, paragraphs (f)(3) and (f)(4) are redesignated as (f)(4)and (f)(5), respectively, and are revised, a new paragraph (f)(3) is added, and paragraphs (g), (h), and (k)(1) are revised to read as follows:

§ 50.33 Contents of applications; general information.

* * * * *

(f) * * *

(3) If the application is for a combined license under subpart C of part 52 of this chapter, the applicant shall submit the information described in paragraphs (f)(1) and (f)(2) of this section.

(4) Each application for a construction permit, operating license, or combined license submitted by a newly-formed entity organized for the primary purpose of constructing and/or operating a facility must also include information showing:

(i) The legal and financial relationships it has or proposes to have with its stockholders or owners;

(ii) The stockholders' or owners' financial ability to meet any contractual obligation to the entity which they have incurred or proposed to incur; and

(iii) Any other information considered necessary by the Commission to enable it to determine the applicant's financial qualification.

(5) The Commission may request an established entity or newly-formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this information appropriate. This may include information regarding a licensee's ability to continue the conduct of the activities authorized by the license and to decommission the facility.

(g) If the application is for an operating license or combined license for a nuclear power reactor, or if the application is for an early site permit and contains plans for coping with emergencies under § 52.17(b)(2)(ii) of this chapter, the applicant shall submit radiological emergency response plans of State and local governmental entities in the United States that are wholly or partially within the plume exposure pathway emergency planning zone (EPZ),[4] as well as the plans of State governments wholly or partially within the ingestion pathway EPZ.[5] If the application is for an early site permit that, under 10 CFR 52.17(b)(2)(i), proposes major features of the emergency plans describing the EPZs, then the descriptions of the EPZs must meet the requirements of this paragraph. Generally, the plume exposure pathway EPZ for nuclear power reactors shall consist of an area about 10 miles (16 km) in radius and the ingestion pathway EPZ shall consist of an area about 50 miles (80 km) in radius. The exact size and configuration of the EPZs surrounding a particular nuclear power reactor shall be determined in relation to the local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries. The size of the EPZs also may be determined on a case-by-case basis for gas-cooled reactors and for reactors with an authorized power level less than 250 MW thermal. The plans for the ingestion pathway shall focus on such actions as are appropriate to protect the food ingestion pathway.

(h) If the applicant, other than an applicant for a combined license, proposes to construct or alter a production or utilization facility, the application shall state the earliest and latest dates for completion of the construction or alteration.

* * * * *

(k)(1) For an application for an operating license or combined license for a production or utilization facility, information in the form of a report, as described in § 50.75, indicating how reasonable assurance will be provided that funds will be available to decommission the facility.

* * * * *

■ 75. In § 50.34, the section heading, the introductory text of paragraph (a)(1), paragraphs (a)(1)(ii)(E) and (a)(12), the introductory text of paragraph (b), paragraphs (b)(10) and (b)(11), and paragraphs (c), (d), and (e), the introductory text of paragraphs (f) and(f)(1), and paragraphs (g), and (h)(1)(ii) are revised to read as follows:

§ 50.34 Contents of construction permit and operating license applications; technical information.

(a) * * *

(1) Stationary power reactor applicants for a construction permit who apply on or after January 10, 1997, shall comply with paragraph (a)(1)(ii) of this section. All other applicants for a construction permit shall comply with paragraph (a)(1)(i) of this section.

* * * * *

(ii) * * *

(E) With respect to operation at the projected initial power level, the applicant is required to submit information prescribed in paragraphs (a)(2) through (a)(8) of this section, as well as the information required by paragraph (a)(1)(i) of this section, in support of the application for a construction permit.

* * * * *

(12) On or after January 10, 1997, stationary power reactor applicants who apply for a construction permit, as partial conformance to General Design Criterion 2 of appendix A to this part, shall comply with the earthquake engineering criteria in appendix S to this part.

(b) *Final safety analysis report.* Each application for an operating license shall include a final safety analysis report. The final safety analysis report shall include information that describes the facility, presents the design bases and the limits on its operation, and presents a safety analysis of the structures, systems, and components and of the facility as a whole, and shall include the following:

* * * * *

(10) On or after January 10, 1997, stationary power reactor applicants who apply for an operating license, as partial conformance to General Design Criterion 2 of appendix A to this part, shall comply with the earthquake engineering criteria of appendix S to this part. However, for those operating license applicants and holders whose construction permit was issued before January 10, 1997, the earthquake engineering criteria in Section VI of appendix A to part 100 of this chapter continues to apply.

(11) On or after January 10, 1997, stationary power reactor applicants who apply for an operating license, shall provide a description and safety assessment of the site and of the facility as in § 50.34(a)(1)(ii). However, for either an operating license applicant or holder whose construction permit was issued before January 10, 1997, the reactor site criteria in part 100 of this chapter and the seismic and geologic siting criteria in appendix A to part 100 of this chapter continues to apply.

(c) *Physical Security Plan.* Each application for an operating license for a production or utilization facility must include a physical security plan. The plan must describe how the applicant will meet the requirements of part 73 of this chapter (and part 11 of this chapter, if applicable, including the identification and description of jobs as required by § 11.11(a) of this chapter, at the proposed facility). The plan must list tests, inspections, audits, and other means to be used to demonstrate compliance with the requirements of 10 CFR parts 11 and 73, if applicable.

(d) *Safeguards contingency plan.* Each application for an operating license for a production or utilization facility that will be subject to §§ 73.50, 73.55, or § 73.60 of this chapter, must include a licensee safeguards contingency plan in accordance with the criteria set forth in appendix C to 10 CFR part 73. The safeguards contingency plan shall include plans for dealing with threats, thefts, and radiological sabotage, as defined in part 73 of this chapter, relating to the special nuclear material and nuclear facilities licensed under this chapter and in the applicant's possession and control. Each application for such a license shall include the first four categories of information contained in the applicant's safeguards contingency plan. (The first four categories of information as set forth in appendix C to 10 CFR part 73

[4] Emergency planning zones (EPZs) are discussed in NUREG–0396, EPA 520/1–78–016, "Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light-Water Nuclear Power Plants," December 1978.

[5] If the State and local emergency response plans have been previously provided to the NRC for inclusion in the facility docket, the applicant need only provide the appropriate reference to meet this requirement.

of this chapter are Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix. The fifth category of information, Procedures, does not have to be submitted for approval.)[9]

(e) *Protection against unauthorized disclosure.* Each applicant for an operating license for a production or utilization facility, who prepares a physical security plan, a safeguards contingency plan, or a guard qualification and training plan, shall protect the plans and other related safeguards information against unauthorized disclosure in accordance with the requirements of § 73.21 of this chapter, as appropriate.

(f) *Additional TMI-related requirements.* In addition to the requirements of paragraph (a) of this section, each applicant for a light-water-reactor construction permit or manufacturing license whose application was pending as of February 16, 1982, shall meet the requirements in paragraphs (f)(1) through (3) of this section. This regulation applies to the pending applications by Duke Power Company (Perkins Nuclear Station, Units 1, 2, and 3), Houston Lighting & Power Company (Allens Creek Nuclear Generating Station, Unit 1), Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), Puget Sound Power & Light Company (Skagit/Hanford Nuclear Power Project, Units 1 and 2), and Offshore Power Systems (License to Manufacture Floating Nuclear Plants). The number of units that will be specified in the manufacturing license above, if issued, will be that number whose start of manufacture, as defined in the license application, can practically begin within a 10-year period commencing on the date of issuance of the manufacturing license, but in no event will that number be in excess of ten. The manufacturing license will require the plant design to be updated no later than 5 years after its approval. Paragraphs (f)(1)(xii), (2)(ix), and (3)(v) of this section, pertaining to hydrogen control measures, must be met by all applicants covered by this regulation. However, the Commission may decide to impose additional requirements and the issue of whether compliance with these provisions, together with 10 CFR 50.44 and criterion 50 of appendix A to 10 CFR part 50, is sufficient for issuance of that manufacturing license which may be considered in the manufacturing license proceeding. In addition, each applicant for a design certification, design approval, combined license, or manufacturing license under part 52 of this chapter shall demonstrate compliance with the technically relevant portions of the requirements in paragraphs (f)(1) through (3) of this section, except for paragraphs (f)(1)(xii), (f)(2)(ix), and (f)(3)(v).

(1) To satisfy the following requirements, the application shall provide sufficient information to describe the nature of the studies, how they are to be conducted, estimated submittal dates, and a program to ensure that the results of these studies are factored into the final design of the facility. For licensees identified in the introduction to paragraph (f) of this section, all studies must be completed no later than 2 years following the issuance of the construction permit or manufacturing license.[10] For all other applicants, the studies must be submitted as part of the final safety analysis report.

* * * * *

(g) *Combustible gas control.* All applicants for a reactor construction permit or operating license whose application is submitted after October 16, 2003, shall include the analyses, and the descriptions of the equipment and systems required by § 50.44 as a part of their application.

(h) * * *

(1) * * *

(ii) Applications for light-water-cooled nuclear power plant construction permits docketed after May 17, 1982, shall include an evaluation of the facility against the SRP in effect on May 17, 1982, or the SRP revision in effect six months before the docket date of the application, whichever is later.

* * * * *

■ 76. Section 50.34a is revised to read as follows:

§ 50.34a Design objectives for equipment to control releases of radioactive material in effluents—nuclear power reactors.

(a) An application for a construction permit shall include a description of the preliminary design of equipment to be installed to maintain control over radioactive materials in gaseous and liquid effluents produced during normal reactor operations, including expected operational occurrences. In the case of an application filed on or after January 2, 1971, the application shall also identify the design objectives, and the means to be employed, for keeping levels of radioactive material in effluents to unrestricted areas as low as is reasonably achievable. The term "as low as is reasonably achievable" as used in this part means as low as is reasonably achievable taking into account the state of technology, and the economics of improvements in relation to benefits to the public health and safety and other societal and socioeconomic considerations, and in relation to the use of atomic energy in the public interest. The guides set out in appendix I to this part provide numerical guidance on design objectives for light-water-cooled nuclear power reactors to meet the requirements that radioactive material in effluents released to unrestricted areas be kept as low as is reasonably achievable. These numerical guides for design objectives and limiting conditions for operation are not to be construed as radiation protection standards.

(b) Each application for a construction permit shall include:

(1) A description of the preliminary design of equipment to be installed under paragraph (a) of this section;

(2) An estimate of:

(i) The quantity of each of the principal radionuclides expected to be released annually to unrestricted areas in liquid effluents produced during normal reactor operations; and

(ii) The quantity of each of the principal radionuclides of the gases, halides, and particulates expected to be released annually to unrestricted areas in gaseous effluents produced during normal reactor operations.

(3) A general description of the provisions for packaging, storage, and shipment offsite of solid waste containing radioactive materials resulting from treatment of gaseous and liquid effluents and from other sources.

(c) Each application for an operating license shall include:

(1) A description of the equipment and procedures for the control of gaseous and liquid effluents and for the maintenance and use of equipment installed in radioactive waste systems, under paragraph (a) of this section; and

(2) A revised estimate of the information required in paragraph (b)(2) of this section if the expected releases and exposures differ significantly from the estimates submitted in the application for a construction permit.

(d) Each application for a combined license under part 52 of this chapter shall include:

[9] A physical security plan that contains all the information required in both § 73.55 and appendix C to part 73 of this chapter satisfies the requirement for a contingency plan.

[10] Alphanumeric designations correspond to the related action plan items in NUREG 0718 and NUREG–0660, "NRC Action Plan Developed as a Result of the TMI–2 Accident." They are provided herein for information only.

(1) A description of the equipment and procedures for the control of gaseous and liquid effluents and for the maintenance and use of equipment installed in radioactive waste systems, under paragraph (a) of this section; and

(2) The information required in paragraph (b)(2) of this section.

(e) Each application for a design approval, a design certification, or a manufacturing license under part 52 of this chapter shall include:

(1) A description of the equipment for the control of gaseous and liquid effluents and for the maintenance and use of equipment installed in radioactive waste systems, under paragraph (a) of this section; and

(2) The information required in paragraph (b)(2) of this section.

■ 77. In § 50.36, paragraphs (c), (d), and (e) are redesignated as paragraphs (d), (e), and (f), respectively, and a new paragraph (c) is added to read as follows:

§ 50.36 Technical specifications.

* * * * *

(c) Each applicant for a design certification or manufacturing license under part 52 of this chapter shall include in its application proposed generic technical specifications in accordance with the requirements of this section for the portion of the plant that is within the scope of the design certification or manufacturing license application.

* * * * *

■ 78. In § 50.36a, paragraph (a) is revised to read as follows:

§ 50.36a Technical specifications on effluents from nuclear power reactors.

(a) To keep releases of radioactive materials to unrestricted areas during normal conditions, including expected occurrences, as low as is reasonably achievable, each licensee of a nuclear power reactor and each applicant for a design certification or a manufacturing license will include technical specifications that, in addition to requiring compliance with applicable provisions of § 20.1301 of this chapter, require that:

(1) Operating procedures developed pursuant to § 50.34a(c) for the control of effluents be established and followed and that the radioactive waste system, pursuant to § 50.34a, be maintained and used. The licensee shall retain the operating procedures in effect as a record until the Commission terminates the license and shall retain each superseded revision of the procedures for 3 years from the date it was superseded.

(2) Each holder of an operating license, and each holder of a combined license after the Commission has made the finding under § 52.103(g) of this chapter, shall submit a report to the Commission annually that specifies the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous 12 months, including any other information as may be required by the Commission to estimate maximum potential annual radiation doses to the public resulting from effluent releases. The report must be submitted as specified in § 50.4, and the time between submission of the reports must be no longer than 12 months. If quantities of radioactive materials released during the reporting period are significantly above design objectives, the report must cover this specifically. On the basis of these reports and any additional information the Commission may obtain from the licensee or others, the Commission may require the licensee to take action as the Commission deems appropriate.

* * * * *

■ 79. Section 50.36b is revised to read as follows:

§ 50.36b Environmental conditions.

(a) Each construction permit under this part, each early site permit under part 52 of this chapter, and each combined license under part 52 of this chapter may include conditions to protect the environment during construction. These conditions are to be set out in an attachment to the permit or license, which is incorporated in and made a part of the permit or license. These conditions will be derived from information contained in the environmental report submitted pursuant to § 51.50 of this chapter as analyzed and evaluated in the NRC record of decision, and will identify the obligations of the licensee in the environmental area, including, as appropriate, requirements for reporting and keeping records of environmental data, and any conditions and monitoring requirement for the protection of the nonaquatic environment.

(b) Each license authorizing operation of a production or utilization facility, including a combined license under part 52 of this chapter, and each license for a nuclear power reactor facility for which the certification of permanent cessation of operations required under § 50.82(a)(1) or § 52.110(a) of this chapter has been submitted, which is of a type described in § 50.21(b)(2) or (3) or § 50.22 or is a testing facility, may include conditions to protect the environment during operation and decommissioning. These conditions are to be set out in an attachment to the license which is incorporated in and made a part of the license. These conditions will be derived from information contained in the environmental report or the supplement to the environmental report submitted pursuant to §§ 51.50 and 51.53 of this chapter as analyzed and evaluated in the NRC record of decision, and will identify the obligations of the licensee in the environmental area, including, as appropriate, requirements for reporting and keeping records of environmental data, and any conditions and monitoring requirement for the protection of the nonaquatic environment.

■ 80. 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 of this chapter, 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.

■ 81. The undesignated center heading before § 50.40 is revised to read as follows:

Standards for Licenses, Certifications, and Regulatory Approvals

■ 82. 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.

(b) The applicant for a construction permit, operating license, combined license, or manufacturing license is technically and financially qualified to engage in the proposed activities in accordance with the regulations in this chapter. However, no consideration of financial qualification is necessary for an electric utility applicant for an operating license for a utilization facility of the type described in § 50.21(b) or § 50.22 or for an applicant for a manufacturing license.

(c) The issuance of a construction permit, operating license, early site permit, combined license, or manufacturing license to the applicant will not, in the opinion of the Commission, be inimical to the common defense and security or to the health and safety of the public.

(d) Any applicable requirements of subpart A of 10 CFR part 51 have been satisfied.

■ 83. In § 50.43, the section heading, the introductory paragraph, and paragraph (d) are revised, and paragraph (e) is added to read as follows:

§ 50.43 Additional standards and provisions affecting class 103 licenses and certifications for commercial power.

In addition to applying the standards set forth in §§ 50.40 and 50.42, paragraphs (a) through (e) of this section apply in the case of a class 103 license for a facility for the generation of commercial power. For a design certification under part 52 of this chapter, only paragraph (e) of this section applies.

* * * * *

(d) Nothing shall preclude any government agency, now or hereafter authorized by law to engage in the production, marketing, or distribution of electric energy, if otherwise qualified, from obtaining a construction permit or operating license under this part, or a combined license under part 52 of this chapter for a utilization facility for the primary purpose of producing electric energy for disposition for ultimate public consumption.

(e) Applications for a design certification, combined license, manufacturing license, or operating license that propose nuclear reactor designs which differ significantly from light-water reactor designs that were licensed before 1997, or use simplified, inherent, passive, or other innovative means to accomplish their safety functions, will be approved only if:

(1)(i) The performance of each safety feature of the design has been demonstrated through either analysis, appropriate test programs, experience, or a combination thereof;

(ii) Interdependent effects among the safety features of the design are acceptable, as demonstrated by analysis, appropriate test programs, experience, or a combination thereof; and

(iii) Sufficient data exist on the safety features of the design to assess the analytical tools used for safety analyses over a sufficient range of normal operating conditions, transient conditions, and specified accident sequences, including equilibrium core conditions; or

(2) There has been acceptable testing of a prototype plant over a sufficient range of normal operating conditions, transient conditions, and specified accident sequences, including equilibrium core conditions. If a prototype plant is used to comply with the testing requirements, then the NRC may impose additional requirements on siting, safety features, or operational conditions for the prototype plant to protect the public and the plant staff from the possible consequences of accidents during the testing period.

■ 84. Section 50.45 is revised to read as follows:

§ 50.45 Standards for construction permits, operating licenses, and combined licenses.

(a) An applicant for an operating license or an amendment of an operating license who proposes to construct or alter a production or utilization facility will be initially granted a construction permit if the application is in conformity with and acceptable under the criteria of §§ 50.31 through 50.38, and the standards of §§ 50.40 through 50.43, as applicable.

(b) A holder of a combined license who proposes, after the Commission makes the finding under § 52.103(g) of this chapter, to alter the licensed facility will be initially granted a construction permit if the application is in conformity with and acceptable under the criteria of §§ 50.30 through 50.33, § 50.34(f), §§ 50.34a through 50.38, the standards of §§ 50.40 through 50.43, as applicable, and §§ 52.79 and 52.80 of this chapter.

■ 85. In § 50.46, paragraph (a)(3) is revised to read as follows:

§ 50.46 Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors.

(a) * * *

(3)(i) Each applicant for or holder of an operating license or construction permit issued under this part, applicant for a standard design certification under part 52 of this chapter (including an applicant after the Commission has adopted a final design certification regulation), or an applicant for or holder of a standard design approval, a combined license or a manufacturing license issued under part 52 of this chapter, shall estimate the effect of any change to or error in an acceptable evaluation model or in the application of such a model to determine if the change or error is significant. For this purpose, a significant change or error is one which results in a calculated peak fuel cladding temperature different by more than 50 °F from the temperature calculated for the limiting transient using the last acceptable model, or is a cumulation of changes and errors such that the sum of the absolute magnitudes of the respective temperature changes is greater than 50 °F.

(ii) For each change to or error discovered in an acceptable evaluation model or in the application of such a model that affects the temperature calculation, the applicant or holder of a construction permit, operating license, combined license, or manufacturing license shall report the nature of the change or error and its estimated effect on the limiting ECCS analysis to the Commission at least annually as specified in § 50.4 or § 52.3 of this chapter, as applicable. If the change or error is significant, the applicant or licensee shall provide this report within 30 days and include with the report a proposed schedule for providing a reanalysis or taking other action as may be needed to show compliance with § 50.46 requirements. This schedule may be developed using an integrated scheduling system previously approved for the facility by the NRC. For those facilities not using an NRC approved integrated scheduling system, a schedule will be established by the NRC staff within 60 days of receipt of the proposed schedule. Any change or error correction that results in a calculated ECCS performance that does not conform to the criteria set forth in paragraph (b) of this section is a reportable event as described in §§ 50.55(e), 50.72, and 50.73. The affected applicant or licensee shall propose immediate steps to demonstrate compliance or bring plant design or operation into compliance with § 50.46 requirements.

(iii) For each change to or error discovered in an acceptable evaluation model or in the application of such a model that affects the temperature

calculation, the applicant or holder of a standard design approval or the applicant for a standard design certification (including an applicant after the Commission has adopted a final design certification rule) shall report the nature of the change or error and its estimated effect on the limiting ECCS analysis to the Commission and to any applicant or licensee referencing the design approval or design certification at least annually as specified in § 52.3 of this chapter. If the change or error is significant, the applicant or holder of the design approval or the applicant for the design certification shall provide this report within 30 days and include with the report a proposed schedule for providing a reanalysis or taking other action as may be needed to show compliance with § 50.46 requirements. The affected applicant or holder shall propose immediate steps to demonstrate compliance or bring plant design into compliance with § 50.46 requirements.

* * * * *

■ 86. In § 50.47, paragraph (a)(1) is revised and paragraph (e) is added to read as follows:

§ 50.47 Emergency plans.

(a)(1)(i) Except as provided in paragraph (d) of this section, no initial operating license for a nuclear power reactor will be issued unless a finding is made by the NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. No finding under this section is necessary for issuance of a renewed nuclear power reactor operating license.

(ii) No initial combined license under part 52 of this chapter will be issued unless a finding is made by the NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. No finding under this section is necessary for issuance of a renewed combined license.

(iii) If an application for an early site permit under subpart A of part 52 of this chapter includes complete and integrated emergency plans under 10 CFR 52.17(b)(2)(ii), no early site permit will be issued unless a finding is made by the NRC that the emergency plans provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

(iv) If an application for an early site permit proposes major features of the emergency plans under 10 CFR 52.17(b)(2)(i), no early site permit will be issued unless a finding is made by the NRC that the major features are acceptable in accordance with the applicable standards of 10 CFR 50.47 and 10 CFR part 50, appendix E, within the scope of emergency preparedness matters addressed in the major features.

* * * * *

(e) Notwithstanding the requirements of paragraph (b) of this section and the provisions of § 52.103 of this chapter, a holder of a combined license under part 52 of this chapter may not load fuel or operate except as provided in accordance with appendix E to part 50 and § 50.54(gg).

■ 87. In § 50.48, the introductory text of paragraph (a)(1) is revised and paragraph (a)(4) is added to read as follows:

§ 50.48 Fire protection.

(a)(1) Each holder of an operating license issued under this part or a combined license issued under part 52 of this chapter must have a fire protection plan that satisfies Criterion 3 of appendix A to this part. This fire protection plan must:

* * * * *

(a)(4) Each applicant for a design approval, design certification, or manufacturing license under part 52 of this chapter must have a description and analysis of the fire protection design features for the standard plant necessary to demonstrate compliance with Criterion 3 of appendix A to this part.

* * * * *

■ 88. In § 50.49, paragraph (a) is revised to read as follows:

§ 50.49 Environmental qualification of electric equipment important to safety for nuclear power plants.

(a) Each holder of or an applicant for an operating license issued under this part, or a combined license or manufacturing license issued under part 52 of this chapter, other than a nuclear power plant for which the certifications required under § 50.82(a)(1) or § 52.110(a)(1) of this chapter have been submitted, shall establish a program for qualifying the electric equipment defined in paragraph (b) of this section. For a manufacturing license, only electric equipment defined in paragraph (b) which is within the scope of the manufactured reactor must be included in the program.

* * * * *

■ 89. In § 50.54, the introductory text, and paragraphs (a)(1), (i–1), (o), (p), and (q) are revised and paragraph (gg) is added to read as follows:

§ 50.54 Conditions of licenses.

The following paragraphs with the exception of paragraphs (r) and (gg) of this section are conditions in every nuclear power reactor operating license issued under this part. The following paragraphs with the exception of paragraph (r), (s), and (u) of this section are conditions in every combined license issued under part 52 of this chapter, provided, however, that paragraphs (i), (i–1), (j), (k), (l), (m), (n), (w), (x), (y), and (z) of this section are only applicable after the Commission makes the finding under § 52.103(g) of this chapter.

(a)(1) Each nuclear power plant or fuel reprocessing plant licensee subject to the quality assurance criteria in appendix B of this part shall implement, under § 50.34(b)(6)(ii) or § 52.79 of this chapter, the quality assurance program described or referenced in the safety analysis report, including changes to that report. However, a holder of a combined license under part 52 of this chapter shall implement the quality assurance program described or referenced in the safety analysis report applicable to operation 30 days prior to the scheduled date for the initial loading of fuel.

* * * * *

(i–1) Within 3 months after either the issuance of an operating license or the date that the Commission makes the finding under § 52.103(g) of this chapter for a combined license, as applicable, the licensee shall have in effect an operator requalification program. The operator requalification program must, as a minimum, meet the requirements of § 55.59(c) of this chapter. Notwithstanding the provisions of § 50.59, the licensee may not, except as specifically authorized by the Commission decrease the scope of an approved operator requalification program.

* * * * *

(o) Primary reactor containments for water cooled power reactors, other than facilities for which the certifications required under §§ 50.82(a)(1) or 52.110(a)(1) of this chapter have been submitted, shall be subject to the requirements set forth in appendix J to this part.

(p)(1) The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with appendix C of part 73 of this chapter for effecting the actions and decisions contained in the Responsibility Matrix of the safeguards contingency plan. The licensee may make no change which would decrease the effectiveness of a security plan, or guard training and

qualification plan, prepared pursuant to § 50.34(c) or § 52.79(a), or part 73 of this chapter, or of the first four categories of information (Background, Generic Planning Base, Licensee Planning Base, Responsibility Matrix) contained in a licensee safeguards contingency plan prepared pursuant to § 50.34(d) or § 52.79(a) or part 73 of this chapter, as applicable, without prior approval of the Commission. A licensee desiring to make such a change shall submit an application for an amendment to the licensee's license pursuant to § 50.90.

(2) The licensee may make changes to the plans referenced in paragraph (p)(1) of this section, without prior Commission approval if the changes do not decrease the safeguards effectiveness of the plan. The licensee shall maintain records of changes to the plans made without prior Commission approval for a period of 3 years from the date of the change, and shall submit, as specified in § 50.4 or § 52.3 of this chapter, a report containing a description of each change within 2 months after the change is made. Prior to the safeguards contingency plan being put into effect, the licensee shall have:

(i) All safeguards capabilities specified in the safeguards contingency plan available and functional;

(ii) Detailed procedures developed according to appendix C to part 73 of this chapter available at the licensee's site; and

(iii) All appropriate personnel trained to respond to safeguards incidents as outlined in the plan and specified in the detailed procedures.

(3) The licensee shall provide for the development, revision, implementation, and maintenance of its safeguards contingency plan. The licensee shall ensure that all program elements are reviewed by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program either:

(i) At intervals not to exceed 12 months; or

(ii) As necessary, based on an assessment by the licensee against performance indicators, and as soon as reasonably practicable after a change occurs in personnel, procedures, equipment, or facilities that potentially could adversely affect security, but no longer than 12 months after the change. In any case, all elements of the safeguards contingency plan must be reviewed at least once every 24 months.

(4) The review must include a review and audit of safeguards contingency procedures and practices, an audit of the security system testing and maintenance program, and a test of the safeguards systems along with commitments established for response by local law enforcement authorities. The results of the review and audit, along with recommendations for improvements, must be documented, reported to the licensee's corporate and plant management, and kept available at the plant for inspection for a period of 3 years.

(q) A holder of a nuclear power reactor operating license under this part, or a combined license under part 52 of this chapter after the Commission makes the finding under § 52.103(g) of this chapter, shall follow and maintain in effect emergency plans which meet the standards in § 50.47(b) and the requirements in appendix E of this part. A licensee authorized to possess and/or operate a research reactor or a fuel facility shall follow and maintain in effect emergency plans which meet the requirements in appendix E to this part. The licensee shall retain the emergency plan and each change that decreases the effectiveness of the plan as a record until the Commission terminates the license for the nuclear power reactor. The nuclear power reactor licensee may make changes to these plans without Commission approval only if the changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of § 50.47(b) and the requirements of appendix E to this part. The research reactor and/or the fuel facility licensee may make changes to these plans without Commission approval only if these changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the requirements of appendix E to this part. This nuclear power reactor, research reactor, or fuel facility licensee shall retain a record of each change to the emergency plan made without prior Commission approval for a period of 3 years from the date of the change. Proposed changes that decrease the effectiveness of the approved emergency plans may not be implemented without application to and approval by the Commission. The licensee shall submit, as specified in § 50.4, a report of each proposed change for approval. If a change is made without approval, the licensee shall submit, as specified in § 50.4, a report of each change within 30 days after the change is made.

* * * * *

(gg)(1) Notwithstanding 10 CFR 52.103, if following the conduct of the exercise required by paragraph IV.f.2.a of appendix E to part 50 of this chapter, DHS identifies one or more deficiencies in the state of offsite emergency preparedness, the holder of a combined license under 10 CFR part 52 may operate at up to 5 percent of rated thermal power only if the Commission finds that the state of onsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. The NRC will base this finding on its assessment of the applicant's onsite emergency plans against the pertinent standards in § 50.47 and appendix E to this part. Review of the applicant's emergency plans will include the following standards with offsite aspects:

(i) Arrangements for requesting and effectively using offsite assistance onsite have been made, arrangements to accommodate State and local staff at the licensee's near-site Emergency Operations Facility have been made, and other organizations capable of augmenting the planned onsite response have been identified.

(ii) Procedures have been established for licensee communications with State and local response organizations, including initial notification of the declaration of emergency and periodic provision of plant and response status reports.

(iii) Provisions exist for prompt communications among principal response organizations to offsite emergency personnel who would be responding onsite.

(iv) Adequate emergency facilities and equipment to support the emergency response onsite are provided and maintained.

(v) Adequate methods, systems, and equipment for assessing and monitoring actual or potential offsite consequences of a radiological emergency condition are in use onsite.

(vi) Arrangements are made for medical services for contaminated and injured onsite individuals.

(vii) Radiological emergency response training has been made available to those offsite who may be called to assist in an emergency onsite.

(2) The condition in this paragraph, regarding operation at up to 5 percent power, ceases to apply 30 days after DHS informs the NRC that the offsite deficiencies have been corrected, unless the NRC notifies the combined license holder before the expiration of the 30-day period that the Commission finds under paragraphs (s)(2) and (3) of this section that the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

■ 90. In § 50.55, the heading, the introductory text and paragraphs (a), (b), and (e) are revised, and a new paragraph (f)(4) is added to read as follows:

§ 50.55 Conditions of construction permits, early site permits, combined licenses, and manufacturing licenses.

Each construction permit is subject to the following terms and conditions; each early site permit is subject to the terms and conditions in paragraph (f) of this section; each manufacturing license is subject to the terms and conditions in paragraphs (e) and (f) of this section; and each combined license is subject to the terms and conditions in paragraphs (e) and (f) of this section until the date that the Commission makes the finding under § 52.103(g) of this chapter:

(a) The construction permit shall state the earliest and latest dates for completion of the construction or modification.

(b) If the proposed construction or modification of the facility is not completed by the latest completion date, the construction permit shall expire and all rights are forfeited. However, upon good cause shown, the Commission will extend the completion date for a reasonable period of time. The Commission will recognize, among other things, developmental problems attributable to the experimental nature of the facility or fire, flood, explosion, strike, sabotage, domestic violence, enemy action, an act of the elements, and other acts beyond the control of the permit holder, as a basis for extending the completion date.

* * * * *

(e)(1) *Definitions.* For purposes of this paragraph, the definitions in § 21.3 of this chapter apply.

(2) *Posting requirements.* (i) Each individual, partnership, corporation, dedicating entity, or other entity subject to the regulations in this part shall post current copies of the regulations in this part; Section 206 of the Energy Reorganization Act of 1974 (ERA); and procedures adopted under the regulations in this part. These documents must be posted in a conspicuous position on any premises within the United States where the activities subject to this part are conducted.

(ii) If posting of the regulations in this part or the procedures adopted under the regulations in this part is not practicable, the licensee or firm subject to the regulations in this part may, in addition to posting Section 206 of the ERA, post a notice which describes the regulations/procedures, including the name of the individual to whom reports may be made, and states where the regulation, procedures, and reports may be examined.

(3) *Procedures.* Each individual, corporation, partnership, or other entity holding a facility construction permit subject to this part, combined license (until the Commission makes the finding under 10 CFR 52.103(g)), and manufacturing license under 10 CFR part 52 must adopt appropriate procedures to—

(i) Evaluate deviations and failures to comply to identify defects and failures to comply associated with substantial safety hazards as soon as practicable, and, except as provided in paragraph (e)(3)(ii) of this section, in all cases within 60 days of discovery, to identify a reportable defect or failure to comply that could create a substantial safety hazard, were it to remain uncorrected.

(ii) Ensure that if an evaluation of an identified deviation or failure to comply potentially associated with a substantial safety hazard cannot be completed within 60 days from discovery of the deviation or failure to comply, an interim report is prepared and submitted to the Commission through a director or responsible officer or designated person as discussed in paragraph (e)(4)(v) of this section. The interim report should describe the deviation or failure to comply that is being evaluated and should also state when the evaluation will be completed. This interim report must be submitted in writing within 60 days of discovery of the deviation or failure to comply.

(iii) Ensure that a director or responsible officer of the holder of a facility construction permit subject to this part, combined license (until the Commission makes the finding under 10 CFR 52.103(g)), and manufacturing license under 10 CFR part 52 is informed as soon as practicable, and, in all cases, within the 5 working days after completion of the evaluation described in paragraph (e)(3)(i) or (e)(3)(ii) of this section, if the construction or manufacture of a facility or activity, or a basic component supplied for such facility or activity—

(A) Fails to comply with the AEA, as amended, or any applicable regulation, order, or license of the Commission, relating to a substantial safety hazard;

(B) Contains a defect; or

(C) Undergoes any significant breakdown in any portion of the quality assurance program conducted under the requirements of appendix B to 10 CFR part 50 which could have produced a defect in a basic component. These breakdowns in the quality assurance program are reportable whether or not the breakdown actually resulted in a defect in a design approved and released for construction, installation, or manufacture.

(4) *Notification.* (i) The holder of a facility construction permit subject to this part, combined license (until the Commission makes the finding under 10 CFR 52.103(g)), and manufacturing license who obtains information reasonably indicating that the facility fails to comply with the AEA, as amended, or any applicable regulation, order, or license of the Commission relating to a substantial safety hazard must notify the Commission of the failure to comply through a director or responsible officer or designated person as discussed in paragraph (e)(10) of this section.

(ii) The holder of a facility construction permit subject to this part, combined license, or manufacturing license, who obtains information reasonably indicating the existence of any defect found in the construction or manufacture, or any defect found in the final design of a facility as approved and released for construction or manufacture, must notify the Commission of the defect through a director or responsible officer or designated person as discussed in paragraph (e)(4)(v) of this section.

(iii) The holder of a facility construction permit subject to this part, combined license, or manufacturing license, who obtains information reasonably indicating that the quality assurance program has undergone any significant breakdown discussed in paragraph (e)(3)(ii)(C) of this section must notify the Commission of the breakdown in the quality assurance program through a director or responsible officer or designated person as discussed in paragraph (4)(v) of this section.

(iv) A dedicating entity is responsible for identifying and evaluating deviations and reporting defects and failures to comply associated with substantial safety hazards for dedicated items; and maintaining auditable records for the dedication process.

(v) The notification requirements of this paragraph apply to all defects and failures to comply associated with a substantial safety hazard regardless of whether extensive evaluation, redesign, or repair is required to conform to the criteria and bases stated in the safety analysis report, construction permit, combined license, or manufacturing license. Evaluation of potential defects and failures to comply and reporting of defects and failures to comply under this section satisfies the construction permit holder's, combined license holder's, and manufacturing license holder's evaluation and notification

obligations under part 21 of this chapter, and satisfies the responsibility of individual directors or responsible officers of holders of construction permits issued under § 50.23, holders of combined licenses (until the Commission makes the finding under § 52.103 of this chapter), and holders of manufacturing licenses to report defects, and failures to comply associated with substantial safety hazards under Section 206 of the ERA. The director or responsible officer may authorize an individual to provide the notification required by this section, provided that this must not relieve the director or responsible officer of his or her responsibility under this section.

(5) *Notification—timing and where sent.* The notification required by paragraph (e)(4) of this section must consist of—

(i) Initial notification by facsimile, which is the preferred method of notification, to the NRC Operations Center at (301) 816–5151 or by telephone at (301) 816–5100 within 2 days following receipt of information by the director or responsible corporate officer under paragraph (e)(3)(iii) of this section, on the identification of a defect or a failure to comply. Verification that the facsimile has been received should be made by calling the NRC Operations Center. This paragraph does not apply to interim reports described in paragraph (e)(3)(ii) of this section.

(ii) Written notification submitted to the Document Control Desk, U.S. Nuclear Regulatory Commission, by an appropriate method listed in § 50.4, with a copy to the appropriate Regional Administrator at the address specified in appendix D to part 20 of this chapter and a copy to the appropriate NRC resident inspector within 30 days following receipt of information by the director or responsible corporate officer under paragraph (e)(3)(iii) of this section, on the identification of a defect or failure to comply.

(6) *Content of notification.* The written notification required by paragraph (e)(9)(ii) of this section must clearly indicate that the written notification is being submitted under § 50.55(e) and include the following information, to the extent known.

(i) Name and address of the individual or individuals informing the Commission.

(ii) Identification of the facility, the activity, or the basic component supplied for the facility or the activity within the United States which contains a defect or fails to comply.

(iii) Identification of the firm constructing or manufacturing the facility or supplying the basic component which fails to comply or contains a defect.

(iv) Nature of the defect or failure to comply and the safety hazard which is created or could be created by the defect or failure to comply.

(v) The date on which the information of a defect or failure to comply was obtained.

(vi) In the case of a basic component which contains a defect or fails to comply, the number and location of all the basic components in use at the facility subject to the regulations in this part.

(vii) In the case of a completed reactor manufactured under part 52 of this chapter, the entities to which the reactor was supplied.

(viii) The corrective action which has been, is being, or will be taken; the name of the individual or organization responsible for the action; and the length of time that has been or will be taken to complete the action.

(ix) Any advice related to the defect or failure to comply about the facility, activity, or basic component that has been, is being, or will be given to other entities.

(7) *Procurement documents.* Each individual, corporation, partnership, dedicating entity, or other entity subject to the regulations in this part shall ensure that each procurement document for a facility, or a basic component specifies or is issued by the entity subject to the regulations, when applicable, that the provisions of 10 CFR part 21 or 10 CFR 50.55(e) applies, as applicable.

(8) *Coordination with 10 CFR part 21.* The requirements of § 50.55(e) are satisfied when the defect or failure to comply associated with a substantial safety hazard has been previously reported under part 21 of this chapter, under § 73.71 of this chapter, or under §§ 50.55(e) or 50.73. For holders of construction permits issued before October 29, 1991, evaluation, reporting and recordkeeping requirements of § 50.55(e) may be met by complying with the comparable requirements of part 21 of this chapter.

(9) *Records retention.* The holder of a construction permit, combined license, and manufacturing license must prepare and maintain records necessary to accomplish the purposes of this section, specifically—

(i) Retain procurement documents, which define the requirements that facilities or basic components must meet in order to be considered acceptable, for the lifetime of the facility or basic component.

(ii) Retain records of evaluations of all deviations and failures to comply under paragraph (e)(3)(i) of this section for the longest of:

(A) Ten (10) years from the date of the evaluation;

(B) Five (5) years from the date that an early site permit is referenced in an application for a combined license; or

(C) Five (5) years from the date of delivery of a manufactured reactor.

(iii) Retain records of all interim reports to the Commission made under paragraph (e)(3)(ii) of this section, or notifications to the Commission made under paragraph (e)(4) of this section for the minimum time periods stated in paragraph (e)(9)(ii) of this section;

(iv) Suppliers of basic components must retain records of:

(A) All notifications sent to affected licensees or purchasers under paragraph (e)(4)(iv) of this section for a minimum of ten (10) years following the date of the notification;

(B) The facilities or other purchasers to whom basic components or associated services were supplied for a minimum of fifteen (15) years from the delivery of the basic component or associated services.

(v) Maintaining records in accordance with this section satisfies the recordkeeping obligations under part 21 of this chapter of the entities, including directors or responsible officers thereof, subject to this section.

(f) * * *

(4) Each holder of an early site permit or a manufacturing license under part 52 of this chapter shall implement the quality assurance program described or referenced in the safety analysis report, including changes to that report. Each holder of a combined license shall implement the quality assurance program for design and construction described or referenced in the safety analysis report, including changes to that report, provided, however, that the holder of a combined license is not subject to the terms and conditions in this paragraph after the Commission makes the finding under § 52.103(g) of this chapter.

(i) Each holder described in paragraph (f)(4) of this section may make a change to a previously accepted quality assurance program description included or referenced in the safety analysis report, if the change does not reduce the commitments in the program description previously accepted by the NRC. Changes to the quality assurance program description that do not reduce the commitments must be submitted to NRC within 90 days. Changes to the quality assurance program description that reduce the commitments must be submitted to NRC and receive NRC

approval before implementation, as follows:

(A) Changes to the safety analysis report must be submitted for review as specified in § 50.4. Changes made to NRC-accepted quality assurance topical report descriptions must be submitted as specified in § 50.4.

(B) The submittal of a change to the safety analysis report quality assurance program description must include all pages affected by that change and must be accompanied by a forwarding letter identifying the change, the reason for the change, and the basis for concluding that the revised program incorporating the change continues to satisfy the criteria of appendix B of this part and the safety analysis report quality assurance program description commitments previously accepted by the NRC (the letter need not provide the basis for changes that correct spelling, punctuation, or editorial items).

(C) A copy of the forwarding letter identifying the changes must be maintained as a facility record for three (3) years.

(D) Changes to the quality assurance program description included or referenced in the safety analysis report shall be regarded as accepted by the Commission upon receipt of a letter to this effect from the appropriate reviewing office of the Commission or 60 days after submittal to the Commission, whichever occurs first.

(ii) [Reserved]

■ 91. In Section 50.55a, the introductory paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii), (b)(1)(v), the introductory text of paragraphs (b)(4) and (d)(1), paragraph (e)(1), the introductory text of paragraph (f)(3), paragraphs (f)(3)(iii), (f)(3)(iv)(B), (f)(4)(i), the introductory text of paragraph (g)(3), paragraphs (g)(4)(i), the introductory text of paragraph (g)(4)(v), and paragraph (h)(3) are revised to read as follows:

§ 50.55a Codes and standards.

Each construction permit for a utilization facility is subject to the following conditions in addition to those specified in § 50.55. Each combined license for a utilization facility is subject to the following conditions in addition to those specified in § 50.55, except that each combined license for a boiling or pressurized water-cooled nuclear power facility is subject to the conditions in paragraphs (f) and (g) of this section, but only after the Commission makes the finding under § 52.103(g) of this chapter. Each operating license for a boiling or pressurized water-cooled nuclear power facility is subject to the conditions in paragraphs (f) and (g) of this section in addition to those specified in § 50.55. Each manufacturing license, standard design approval, and standard design certification application under part 52 of this chapter is subject to the conditions in paragraphs (a), (b)(1), (b)(4), (c), (d), (e), (f)(3), and (g)(3) of this section.

* * * * *

(b) * * *

(1) * * *

(i) *Section III Materials.* When applying the 1992 Edition of Section III, applicants or licensees must apply the 1992 Edition with the 1992 Addenda of Section II of the ASME Boiler and Pressure Vessel Code.

(ii) *Weld leg dimensions.* When applying the 1989 Addenda through the latest edition, and addenda incorporated by reference in paragraph (b)(1) of this section, applicants or licensees may not apply paragraph NB–3683.4(c)(1), Footnote 11 to Figure NC–3673.2(b)–1, and Figure ND–3673.2(b)–1.

(iii) *Seismic design.* Applicants or licensees may use Articles NB–3200, NB–3600, NC–3600, and ND–3600 up to and including the 1993 Addenda, subject to the limitation specified in paragraph (b)(1)(ii) of this section. Applicants or licensees may not use these articles in the 1994 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(1) of this section.

* * * * *

(v) *Independence of inspection.* Applicants or licensees may not apply NCA–4134.10(a) of Section III, 1995 Edition, through the latest edition and addenda incorporated by reference in paragraph (b)(1) of this section.

* * * * *

(4) *Design, Fabrication, and Materials Code Cases.* Applicants or licensees may apply the ASME Boiler and Pressure Vessel Code cases listed in NRC Regulatory Guide 1.84, Revision 33, without prior NRC approval subject to the following:

* * * * *

(d) * * *

(1) For a nuclear power plant whose application for a construction permit under this part, or a combined license or manufacturing license under part 52 of this chapter is docketed after May 14, 1984, or for an application for a standard design approval or a standard design certification docketed after May 14, 1984, components classified Quality Group B [9] must meet the requirements for Class 2 Components in Section III of the ASME Boiler and Pressure Vessel Code.

* * * * *

(e) * * *

(1) For a nuclear power plant whose application for a construction permit under this part, or a combined license or manufacturing license under part 52 of this chapter is docketed after May 14, 1984, or for an application for a standard design approval or a standard design certification docketed after May 14, 1984, components classified Quality Group C [9] must meet the requirements for Class 3 components in Section III of the ASME Boiler and Pressure Vessel Code.

* * * * *

(f) * * *

(3) For a boiling or pressurized water-cooled nuclear power facility whose construction permit under this part or design approval, design certification, combined license, or manufacturing license under part 52 of this chapter, was issued on or after July 1, 1974:

* * * * *

(iii)(A) Pumps and valves, in facilities whose construction permit under this part, or design certification or design approval under part 52 of this chapter was issued before November 22, 1999, which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases that are listed in NRC Regulatory Guide 1.147, through Revision 14 or Regulatory Guide 1.192, that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular pump or valve or the summer 1973 Addenda, whichever is later.

(B) Pumps and valves, in facilities whose construction permit under this part, or design certification, design approval, combined license, or manufacturing license under part 52 of this chapter, is issued on or after November 22, 1999, which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in editions and addenda of the ASME OM Code (or the optional ASME Code cases listed in the NRC Regulatory Guide 1.192 that is incorporated by reference in paragraph (b) of this section)

[9] See footnotes at end of section.

referenced in paragraph (b)(3) of this section at the time the construction permit, combined license, manufacturing license, design certification, or design approval is issued.

(iv) * * *

(B) Pumps and valves, in facilities whose construction permit under this part or design certification or combined license under part 52 of this chapter is issued on or after November 22, 1999, which are classified as ASME Code Class 2 and 3 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in editions and addenda of the ASME OM Code (or the optional ASME Code cases listed in the NRC Regulatory Guide 1.192 that is incorporated by reference in paragraph (b) of this section) referenced in paragraph (b)(3) of this section at the time the construction permit, combined license, or design certification is issued.

* * * * *

(4) * * *

(i) Inservice tests to verify operational readiness of pumps and valves, whose function is required for safety, conducted during the initial 120-month interval must comply with the requirements in the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section on the date 12 months before the date of issuance of the operating license under this part, or 12 months before the date scheduled for initial loading fuel under a combined license under part 52 of this chapter (or the optional ASME Code cases listed in NRC Regulatory Guide 1.192, that is incorporated by reference in paragraph (b) of this section), subject to the limitations and modifications listed in paragraph (b) of this section.

* * * * *

(g) * * *

(3) For a boiling or pressurized water-cooled nuclear power facility whose construction permit under this part, or design certification, design approval, combined license, or manufacturing license under part 52 of this chapter, was issued on or after July 1, 1974:

* * * * *

(4) * * *

(i) Inservice examinations of components and system pressure tests conducted during the initial 120-month inspection interval must comply with the requirements in the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section on the date 12 months before the date of issuance of the operating license under this part, or 12 months before the date scheduled for initial loading of fuel under a combined license under part 52 of this chapter (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, through Revision 14, that are incorporated by reference in paragraph (b) of this section), subject to the limitations and modifications listed in paragraph (b) of this section.

* * * * *

(v) For a boiling or pressurized water-cooled nuclear power facility whose construction permit under this part or combined license under part 52 of this chapter was issued after January 1, 1956:

* * * * *

(h) * * *

(3) Safety systems. Applications filed on or after May 13, 1999, for construction permits and operating licenses under this part, and for design approvals, design certifications, and combined licenses under part 52 of this chapter, must meet the requirements for safety systems in IEEE Std. 603–1991 and the correction sheet dated January 30, 1995.

■ 92. In § 50.59, paragraphs (b), (d)(2), and (d)(3) are revised to read as follows:

§ 50.59 Changes, tests, and experiments.

* * * * *

(b) This section applies to each holder of an operating license issued under this part or a combined license issued under part 52 of this chapter, including the holder of a license authorizing operation of a nuclear power reactor that has submitted the certification of permanent cessation of operations required under § 50.82(a)(1) or § 50.110 or a reactor licensee whose license has been amended to allow possession of nuclear fuel but not operation of the facility.

* * * * *

(d) * * *

(2) The licensee shall submit, as specified in § 50.4 or § 52.3 of this chapter, as applicable, a report containing a brief description of any changes, tests, and experiments, including a summary of the evaluation of each. A report must be submitted at intervals not to exceed 24 months. For combined licenses, the report must be submitted at intervals not to exceed 6 months during the period from the date of application for a combined license to the date the Commission makes its findings under 10 CFR 52.103(g).

(3) The records of changes in the facility must be maintained until the termination of an operating license issued under this part, a combined license issued under part 52 of this chapter, or the termination of a license issued under 10 CFR part 54, whichever is later. Records of changes in procedures and records of tests and experiments must be maintained for a period of 5 years.

■ 93. In § 50.61, paragraph (b)(1) is revised to read as follows:

§ 50.61 Fracture toughness requirements for protection against pressurized thermal shock events.

* * * * *

(b) * * *.

(1) For each pressurized water nuclear power reactor for which an operating license has been issued under this part or a combined license has been issued under part 52 of this chapter, other than a nuclear power reactor facility for which the certifications required under § 50.82(a)(1) have been submitted, the licensee shall have projected values of RT_{PTS}, accepted by the NRC, for each reactor vessel beltline material for the EOL fluence of the material. The assessment of RT_{PTS} must use the calculation procedures given in paragraph (c)(1) of this section, except as provided in paragraphs (c)(2) and (c)(3) of this section. The assessment must specify the bases for the projected value of RT_{PTS} for each vessel beltline material, including the assumptions regarding core loading patterns, and must specify the copper and nickel contents and the fluence value used in the calculation for each beltline material. This assessment must be updated whenever there is a significant [2] change in projected values of RT_{PTS}, or upon request for a change in the expiration date for operation of the facility.

* * * * *

■ 94. In § 50.62, paragraph (d) is revised to read as follows:

§ 50.62 Requirements for reduction of risk from anticipated transients without scram (ATWS) events for light-water-cooled nuclear power plants.

* * * * *

(d) *Implementation.* For each light-water-cooled nuclear power plant operating license issued before September 27, 2007, by 180 days after the issuance of the QA guidance for non-safety related components, each licensee shall develop and submit to the Commission, as specified in § 50.4, a proposed schedule for meeting the

[2] Changes to RT_{PTS} values are considered significant if either the previous value or the current value, or both values, exceed the screening criterion before the expiration of the operating license or the combined license under part 52 of this chapter, including any renewed term, if applicable for the plant.

requirements of paragraphs (c)(1) through (c)(5) of this section. Each shall include an explanation of the schedule along with a justification if the schedule calls for final implementation later than the second refueling outage after July 26, 1984, or the date of issuance of a license authorizing operation above 5 percent of full power. A final schedule shall then be mutually agreed upon by the Commission and licensee. For each light-water-cooled nuclear power plant operating license application submitted after September 27, 2007, the applicant shall submit information in its final safety analysis report demonstrating how it will comply with paragraphs (c)(1) through (c)(5) of this section.

■ 95. In § 50.63, the introductory text of paragraphs (a)(1) and (c)(1) are revised to read as follows:

§ 50.63 Loss of all alternating current power.

(a) * * *

(1) Each light-water-cooled nuclear power plant licensed to operate under this part, each light-water-cooled nuclear power plant licensed under subpart C of 10 CFR part 52 after the Commission makes the finding under § 52.103(g) of this chapter, and each design for a light-water-cooled nuclear power plant approved under a standard design approval, standard design certification, and manufacturing license under part 52 of this chapter must be able to withstand for a specified duration and recover from a station blackout as defined in § 50.2. The specified station blackout duration shall be based on the following factors:

* * * * *

(c) * * *

(1) *Information Submittal.* For each light-water-cooled nuclear power plant licensed to operate on or before July 21, 1988, the licensee shall submit the information defined below to the Director of the Office of Nuclear Reactor Regulation by April 17, 1989. For each light-water-cooled nuclear power plant licensed to operate after July 21, 1988, but before September 27, 2007, the licensee shall submit the information defined in this section to the Director of the Office of Nuclear Reactor Regulation, by 270 days after the date of license issuance. For each light-water-cooled nuclear power plant operating license application submitted after September 27, 2007, the applicant shall submit the information defined below in its final safety analysis report.

* * * * *

■ 96. In § 50.65, paragraph (a)(1) is revised to read as follows:

§ 50.65 Requirements for monitoring the effectiveness of maintenance at nuclear power plants.

* * * * *

(a)(1) Each holder of an operating license for a nuclear power plant under this part and each holder of a combined license under part 52 of this chapter after the Commission makes the finding under § 52.103(g) of this chapter, shall monitor the performance or condition of structures, systems, or components, against licensee-established goals, in a manner sufficient to provide reasonable assurance that these structures, systems, and components, as defined in paragraph (b) of this section, are capable of fulfilling their intended functions. These goals shall be established commensurate with safety and, where practical, take into account industry-wide operating experience. When the performance or condition of a structure, system, or component does not meet established goals, appropriate corrective action shall be taken. For a nuclear power plant for which the licensee has submitted the certifications specified in § 50.82(a)(1) or 52.110(a)(1) of this chapter, as applicable, this section shall only apply to the extent that the licensee shall monitor the performance or condition of all structures, systems, or components associated with the storage, control, and maintenance of spent fuel in a safe condition, in a manner sufficient to provide reasonable assurance that these structures, systems, and components are capable of fulfilling their intended functions.

* * * * *

■ 97. In § 50.70 paragraphs (a) and (b)(2) are revised to read as follows:

§ 50.70 Inspections.

(a) Each applicant for or holder of a license, including a construction permit or an early site permit, shall permit inspection, by duly authorized representatives of the Commission, of his records, premises, activities, and of licensed materials in possession or use, related to the license or construction permit or early site permit as may be necessary to effectuate the purposes of the Act, as amended, including Section 105 of the Act, and the Energy Reorganization Act of 1974, as amended.

(b) * * *

(2) For a site with a single power reactor or fuel facility licensed under part 50 or part 52 of this chapter, or a facility issued a manufacturing license under part 52, the space provided shall be adequate to accommodate a full-time inspector, a part-time secretary and transient NRC personnel and will be generally commensurate with other office facilities at the site. A space of 250 square feet either within the site's office complex or in an office trailer or other onsite space is suggested as a guide. For sites containing multiple power reactor units or fuel facilities, additional space may be requested to accommodate additional full-time inspector(s). The office space that is provided shall be subject to the approval of the Director, Office of New Reactors, or the Director, Office of Nuclear Reactor Regulation. All furniture, supplies and communication equipment will be furnished by the Commission.

* * * * *

■ 98. In § 50.71, paragraphs (a), (c), (d)(1), and the introductory text of paragraph (e) are revised, paragraph (e)(3)(iii) is added, paragraph (f) is redesignated as paragraph (g) and revised, and new paragraphs (f) and (h) are added to read as follows:

§ 50.71 Maintenance of records, making of reports.

(a) Each licensee, including each holder of a construction permit or early site permit, shall maintain all records and make all reports, in connection with the activity, as may be required by the conditions of the license or permit or by the regulations, and orders of the Commission in effectuating the purposes of the Act, including Section 105 of the Act, and the Energy Reorganization Act of 1974, as amended. Reports must be submitted in accordance with § 50.4 or 10 CFR 52.3, as applicable.

* * * * *

(c) Records that are required by the regulations in this part or part 52 of this chapter, by license condition, or by technical specifications must be retained for the period specified by the appropriate regulation, license condition, or technical specification. If a retention period is not otherwise specified, these records must be retained until the Commission terminates the facility license or, in the case of an early site permit, until the permit expires.

(d)(1) Records which must be maintained under this part or part 52 of this chapter may be the original or a reproduced copy or microform if the reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability of producing legible, accurate, and complete records during

the required retention period. Records such as letters, drawings, and specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with, and loss of records.

* * * * *

(e) Each person licensed to operate a nuclear power reactor under the provisions of § 50.21 or § 50.22, and each applicant for a combined license under part 52 of this chapter, shall update periodically, as provided in paragraphs (e) (3) and (4) of this section, the final safety analysis report (FSAR) originally submitted as part of the application for the license, to assure that the information included in the report contains the latest information developed. This submittal shall contain all the changes necessary to reflect information and analyses submitted to the Commission by the applicant or licensee or prepared by the applicant or licensee pursuant to Commission requirement since the submittal of the original FSAR, or as appropriate, the last update to the FSAR under this section. The submittal shall include the effects [1] of all changes made in the facility or procedures as described in the FSAR; all safety analyses and evaluations performed by the applicant or licensee either in support of approved license amendments or in support of conclusions that changes did not require a license amendment in accordance with § 50.59(c)(2) or, in the case of a license that references a certified design, in accordance with § 52.98(c) of this chapter; and all analyses of new safety issues performed by or on behalf of the applicant or licensee at Commission request. The updated information shall be appropriately located within the update to the FSAR.

* * * * *

(3) * * *

(iii) During the period from the docketing of an application for a combined license under subpart C of part 52 of this chapter until the Commission makes the finding under § 52.103(g) of this chapter, the update to the FSAR must be submitted annually.

* * * * *

(f) Each person licensed to manufacture a nuclear power reactor under subpart F of 10 CFR part 52 shall update the FSAR originally submitted as part of the application to reflect any modification to the design that is approved by the Commission under § 52.171 of this chapter, and any new analyses of the design performed by or on behalf of the licensee at the NRC's request. This submittal shall contain all the changes necessary to reflect information and analyses submitted to the Commission by the licensee or prepared by the licensee with respect to the modification approved under § 52.171 of this chapter or the analyses requested by the Commission under § 52.171 of this chapter. The updated information shall be appropriately located within the update to the FSAR.

(g) The provisions of this section apply to nuclear power reactor licensees that have submitted the certification of permanent cessation of operations required under §§ 50.82(a)(1)(i) or 52.110(a)(1) of this chapter. The provisions of paragraphs (a), (c), and (d) of this section also apply to non-power reactor licensees that are no longer authorized to operate.

(h)(1) No later than the scheduled date for initial loading of fuel, each holder of a combined license under subpart C of 10 CFR part 52 shall develop a level 1 and a level 2 probabilistic risk assessment (PRA). The PRA must cover those initiating events and modes for which NRC-endorsed consensus standards on PRA exist one year prior to the scheduled date for initial loading of fuel.

(2) Each holder of a combined license shall maintain and upgrade the PRA required by paragraph (h)(1) of this section. The upgraded PRA must cover initiating events and modes of operation contained in NRC-endorsed consensus standards on PRA in effect one year prior to each required upgrade. The PRA must be upgraded every four years until the permanent cessation of operations under § 52.110(a) of this chapter.

(3) Each holder of a combined license shall, no later than the date on which the licensee submits an application for a renewed license, upgrade the PRA required by paragraph (h)(1) of this section to cover all modes and all initiating events.

■ 99. In § 50.72, the introductory text of paragraph (a)(1) is revised to read as follows:

§ 50.72 Immediate notification requirements for operating nuclear power reactors.

(a) * * *

(1) Each nuclear power reactor licensee licensed under §§ 50.21(b) or 50.22 holding an operating license under this part or a combined license under part 52 of this chapter after the Commission makes the finding under § 52.103(g), shall notify the NRC Operations Center via the Emergency Notification System of:

* * * * *

■ 100. In § 50.73, paragraph (a)(1) is revised to read as follows:

§ 50.73 Licensee event report system.

(a) * * *

(1) The holder of an operating license under this part or a combined license under part 52 of this chapter (after the Commission has made the finding under § 52.103(g) of this chapter) for a nuclear power plant (licensee) shall submit a Licensee Event Report (LER) for any event of the type described in this paragraph within 60 days after the discovery of the event. In the case of an invalid actuation reported under § 50.73(a)(2)(iv), other than actuation of the reactor protection system (RPS) when the reactor is critical, the licensee may, at its option, provide a telephone notification to the NRC Operations Center within 60 days after discovery of the event instead of submitting a written LER. Unless otherwise specified in this section, the licensee shall report an event if it occurred within 3 years of the date of discovery regardless of the plant mode or power level, and regardless of the significance of the structure, system, or component that initiated the event.

* * * * *

■ 101. In § 50.75, paragraphs (a) and (b) are revised, paragraph (e)(3) is added, paragraphs (f)(1), (f)(2), (f)(3), and (f)(4) are redesignated as paragraphs (f)(2), (f)(3), (f)(4), and (f)(5), respectively, and paragraph (f)(1) is added to read as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

(a) This section establishes requirements for indicating to NRC how a licensee will provide reasonable assurance that funds will be available for the decommissioning process. For power reactor licensees (except a holder of a manufacturing license under part 52 of this chapter), reasonable assurance consists of a series of steps as provided in paragraphs (b), (c), (e), and (f) of this section. Funding for the decommissioning of power reactors may also be subject to the regulation of Federal or State Government agencies (e.g., Federal Energy Regulatory Commission (FERC) and State Public Utility Commissions) that have jurisdiction over rate regulation. The requirements of this section, in particular paragraph (c) of this section, are in addition to, and not substitution for, other requirements, and are not intended to be used by themselves or by other agencies to establish rates.

[1] Effects of changes includes appropriate revisions of descriptions in the FSAR such that the FSAR (as updated) is complete and accurate.

(b) Each power reactor applicant for or holder of an operating license, and each applicant for a combined license under subpart C of 10 CFR part 52 for a production or utilization facility of the type and power level specified in paragraph (c) of this section shall submit a decommissioning report, as required by § 50.33(k).

(1) For an applicant for or holder of an operating license under part 50, the report must contain a certification that financial assurance for decommissioning will be (for a license applicant), or has been (for a license holder), provided in an amount which may be more, but not less, than the amount stated in the table in paragraph (c)(1) of this section adjusted using a rate at least equal to that stated in paragraph (c)(2) of this section. For an applicant for a combined license under subpart C of 10 CFR part 52, the report must contain a certification that financial assurance for decommissioning will be provided no later than 30 days after the Commission publishes notice in the **Federal Register** under § 52.103(a) in an amount which may be more, but not less, than the amount stated in the table in paragraph (c)(1) of this section, adjusted using a rate at least equal to that stated in paragraph (c)(2) of this section.

(2) The amount to be provided must be adjusted annually using a rate at least equal to that stated in paragraph (c)(2) of this section.

(3) The amount must be covered by one or more of the methods described in paragraph (e) of this section as acceptable to the NRC.

(4) The amount stated in the applicant's or licensee's certification may be based on a cost estimate for decommissioning the facility. As part of the certification, a copy of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section must be submitted to NRC; *provided, however,* that an applicant for or holder of a combined license need not obtain such financial instrument or submit a copy to the Commission except as provided in paragraph (e)(3) of this section.

* * * * *

(e) * * *

(3) Each holder of a combined license under subpart C of 10 CFR part 52 shall, 2 years before and 1 year before the scheduled date for initial loading of fuel, consistent with the schedule required by § 52.99(a), submit a report to the NRC containing a certification updating the information described under paragraph (b)(1) of this section, including a copy of the financial instrument to be used. No later than 30 days after the Commission publishes notice in the **Federal Register** under 10 CFR 52.103(a), the licensee shall submit a report containing a certification that financial assurance for decommissioning is being provided in an amount specified in the licensee's most recent updated certification, including a copy of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section.

(f)(1) Each power reactor licensee shall report, on a calendar-year basis, to the NRC by March 31, 1999, and at least once every 2 years on the status of its decommissioning funding for each reactor or part of a reactor that it owns. However, each holder of a combined license under part 52 of this chapter need not begin reporting until the date that the Commission has made the finding under § 52.103(g) of this chapter. The information in this report must include, at a minimum the amount of decommissioning funds estimated to be required under 10 CFR 50.75(b) and (c); the amount accumulated to the end of the calendar year preceding the date of the report; a schedule of the annual amounts remaining to be collected; the assumptions used regarding rates of escalation in decommissioning costs, rates of earnings on decommissioning funds, and rates of other factors used in funding projections; any contracts upon which the licensee is relying under paragraph (e)(1)(v) of this section; any modifications occurring to a licensee's current method of providing financial assurance since the last submitted report; and any material changes to trust agreements. Any licensee for a plant that is within 5 years of the projected end of its operation, or where conditions have changed so that it will close within 5 years (before the end of its licensed life), or has already closed (before the end of its licensed life), or for plants involved in mergers or acquisitions shall submit this report annually.

* * * * * *

■ 102. Section 50.78 is revised to read as follows:

§ 50.78 Installation information and verification.

Each holder of a construction permit and each holder of a combined license shall, if requested by the Commission, submit installation information on Form–71, permit verification thereof by the International Atomic Energy Agency, and take other action as may be necessary to implement the US/IAEA Safeguards Agreement, in the manner set forth in § 75.6 and §§ 75.11 through 75.14 of this chapter.

■ 103. In § 50.80, paragraphs (a) and (b) are revised to read as follows:

§ 50.80 Transfer of licenses.

(a) No license for a production or utilization facility (including, but not limited to, permits under this part and part 52 of this chapter, and licenses under parts 50 and 52 of this chapter), or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

(b)(1) An application for transfer of a license shall include:

(i) For a construction permit or operating license under this part, as much of the information described in §§ 50.33 and 50.34 of this part with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license. The Commission may require additional information such as data respecting proposed safeguards against hazards from radioactive materials and the applicant's qualifications to protect against such hazards.

(ii) For an early site permit under part 52 of this chapter, as much of the information described in §§ 52.16 and 52.17 of this chapter with respect to the identity and technical qualifications of the proposed transferee as would be required by those sections if the application were for an initial license.

(iii) For a combined license under part 52 of this chapter, as much of the information described in §§ 52.77 and 52.79 of this chapter with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license. The Commission may require additional information such as data respecting proposed safeguards against hazards from radioactive materials and the applicant's qualifications to protect against such hazards.

(iv) For a manufacturing license under part 52 of this chapter, as much of the information described in §§ 52.156 and 52.157 of this chapter with respect to the identity and technical qualifications of the proposed transferee as would be required by those sections if the application were for an initial license.

(2) The application shall include also a statement of the purposes for which the transfer of the license is requested,

the nature of the transaction necessitating or making desirable the transfer of the license, and an agreement to limit access to Restricted Data pursuant to § 50.37. The Commission may require any person who submits an application for license pursuant to the provisions of this section to file a written consent from the existing licensee or a certified copy of an order or judgment of a court of competent jurisdiction attesting to the person's right (subject to the licensing requirements of the Act and these regulations) to possession of the facility or site involved.

* * * * *

■ 104. In § 50.81, paragraph (d)(1) is revised, and a new paragraph (d)(3) is added to read as follows:

§ 50.81 Creditor regulations.

* * * * *

(d) * * *

(1) *License* includes any license under this chapter, any construction permit under this part, and any early site permit under part 52 of this chapter, which may be issued by the Commission with regard to a facility;

* * * * *

(3) *Facility* includes but is not limited to, a site which is the subject of an early site permit under subpart A of part 52 of this chapter, and a reactor manufactured under a manufacturing license under subpart F of part 52 of this chapter.

■ 105. Section 50.90 is revised to read as follows:

§ 50.90 Application for amendment of license, construction permit, or early site permit.

Whenever a holder of a license, including a construction permit and operating license under this part, and an early site permit, combined license, and manufacturing license under part 52 of this chapter, desires to amend the license or permit, application for an amendment must be filed with the Commission, as specified in §§ 50.4 or 52.3 of this chapter, as applicable, fully describing the changes desired, and following as far as applicable, the form prescribed for original applications.

■ 106. 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 license 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:

* * * * *

■ 107. 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, construction permit, or early site permit will be issued to the applicant, the Commission will be guided by the considerations which govern the issuance of initial licenses, construction permits, or early site 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 Commission makes the finding under § 52.103(g) of this chapter, no application for a construction permit is required. If the amendment involves a significant hazards consideration, the Commission will give notice of its proposed action:

(1) Under § 2.105 of this chapter before acting thereon; and

(2) As soon as practicable after the application has been docketed.

* * * * *

(c) The Commission may make a final determination, under the procedures in § 50.91, that a proposed amendment to an operating license or a combined license for a facility or reactor licensed under §§ 50.21(b) or 50.22, or for a testing facility involves no significant hazards consideration, if operation of the facility in accordance with the proposed amendment would not:

* * * * *

■ 108. Section 50.100 is revised to read as follows:

§ 50.100 Revocation, suspension, modification of licenses, permits, and approvals for cause.

A license, permit, or standard design approval under parts 50 or 52 of this chapter may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application or in the supplemental or other statement of fact required of the applicant; or because of conditions revealed by the application or statement of fact of any report, record, inspection, or other means which would warrant the Commission to refuse to grant a license, permit, or approval on an original application (other than those relating to §§ 50.51, 50.42(a), and 50.43(b)); or for failure to manufacture a reactor, or construct or operate a facility in accordance with the terms of the permit or license, provided, however, that failure to make timely completion of the proposed construction or alteration of a facility under a construction permit under part 50 of this chapter or a combined license under part 52 of this chapter shall be governed by the provisions of § 50.55(b); or for violation of, or failure to observe, any of the terms and provisions of the act, regulations, license, permit, approval, or order of the Commission.

■ 109. In § 50.109, paragraph (a)(1) is revised to read as follows:

§ 50.109 Backfitting.

(a)(1) Backfitting is defined as the modification of or addition to systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility; any of which may result from a new or amended provision in the Commission's regulations or the imposition of a regulatory staff position interpreting the Commission's regulations that is either new or different from a previously applicable staff position after:

(i) The date of issuance of the construction permit for the facility for facilities having construction permits issued after October 21, 1985;

(ii) Six (6) months before the date of docketing of the operating license application for the facility for facilities having construction permits issued before October 21, 1985;

(iii) The date of issuance of the operating license for the facility for facilities having operating licenses;

(iv) The date of issuance of the design approval under subpart E of part 52 of this chapter;

(v) The date of issuance of a manufacturing license under subpart F of part 52 of this chapter;

(vi) The date of issuance of the first construction permit issued for a duplicate design under appendix N of this part; or

(vii) The date of issuance of a combined license under subpart C of part 52 of this chapter, provided that if the combined license references an early site permit, the provisions in § 52.39 of this chapter apply with respect to the site characteristics, design parameters, and terms and conditions specified in the early site permit. If the combined license references a standard design certification rule under subpart B of 10 CFR part 52, the provisions in § 52.63 of this chapter apply with respect to the design matters resolved in the standard design certification rule, provided however, that if any specific backfitting limitations are included in a referenced design certification rule, those limitations shall govern. If the combined license references a standard design approval under subpart E of 10 CFR part 52, the provisions in § 52.145 of this chapter apply with respect to the design matters resolved in the standard design approval. If the combined license uses a reactor manufactured under a manufacturing license under subpart F of 10 CFR part 52, the provisions of § 52.171 of this chapter apply with respect to matters resolved in the manufacturing license proceeding.

* * * * *

■ 110. Section 50.120 is revised to read as follows:

§ 50.120 Training and qualification of nuclear power plant personnel.

(a) *Applicability.* The requirements of this section apply to each applicant for and each holder of an operating license issued under this part and each holder of a combined license issued under part 52 of this chapter for a nuclear power plant of the type specified in § 50.21(b) or § 50.22.

(b) *Requirements.* (1)(i) Each nuclear power plant operating license applicant, by 18 months prior to fuel load, and each holder of an operating license shall establish, implement, and maintain a training program that meets the requirements of paragraphs (b)(2) and (b)(3) of this section.

(ii) Each holder of a combined license shall establish, implement, and maintain the training program that meets the requirements of paragraphs (b)(2) and (b)(3) of this section, as described in the final safety analysis report no later than 18 months before the scheduled date for initial loading of fuel.

(2) The training program must be derived from a systems approach to training as defined in 10 CFR 55.4, and must provide for the training and qualification of the following categories of nuclear power plant personnel:

(i) Non-licensed operator.

(ii) Shift supervisor.

(iii) Shift technical advisor.

(iv) Instrument and control technician.

(v) Electrical maintenance personnel.

(vi) Mechanical maintenance personnel.

(vii) Radiological protection technician.

(viii) Chemistry technician.

(ix) Engineering support personnel.

(3) The training program must incorporate the instructional requirements necessary to provide qualified personnel to operate and maintain the facility in a safe manner in all modes of operation. The training program must be developed to be in compliance with the facility license, including all technical specifications and applicable regulations. The training program must be periodically evaluated and revised as appropriate to reflect industry experience as well as changes to the facility, procedures, regulations, and quality assurance requirements. The training program must be periodically reviewed by licensee management for effectiveness. Sufficient records must be maintained by the licensee to maintain program integrity and kept available for NRC inspection to verify the adequacy of the program.

■ 111. In Appendix A to Part 50, the first paragraph under the introduction and the second paragraph under Criterion 19 are revised to read as follows:

Appendix A to Part 50—General Design Criteria for Nuclear Power Plants

* * * * *

Introduction

Under the provisions of § 50.34, an application for a construction permit must include the principal design criteria for a proposed facility. Under the provisions of 10 CFR 52.47, 52.79, 52.137, and 52.157, an application for a design certification, combined license, design approval, or manufacturing license, respectively, must include the principal design criteria for a proposed facility. The principal design criteria establish the necessary design, fabrication, construction, testing, and performance requirements for structures, systems, and components important to safety; that is, structures, systems, and components that provide reasonable assurance that the facility can be operated without undue risk to the health and safety of the public.

* * * * *

Criterion 19—Control Room.

* * * * *

Applicants for and holders of construction permits and operating licenses under this part who apply on or after January 10, 1997, applicants for design approvals or certifications under part 52 of this chapter who apply on or after January 10, 1997, applicants for and holders of combined licenses or manufacturing licenses under part 52 of this chapter who do not reference a standard design approval or certification, or holders of operating licenses using an alternative source term under § 50.67, shall meet the requirements of this criterion, except that with regard to control room access and occupancy, adequate radiation protection shall be provided to ensure that radiation exposures shall not exceed 0.05 Sv (5 rem) total effective dose equivalent (TEDE) as defined in § 50.2 for the duration of the accident.

* * * * *

■ 112. In Appendix B to Part 50, the Introduction and Section I are revised to read as follows:

Appendix B to Part 50—Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants

Introduction. Every applicant for a construction permit is required by the provisions of § 50.34 to include in its preliminary safety analysis report a description of the quality assurance program to be applied to the design, fabrication, construction, and testing of the structures, systems, and components of the facility. Every applicant for an operating license is required to include, in its final safety analysis report, information pertaining to the managerial and administrative controls to be used to assure safe operation. Every applicant for a combined license under part 52 of this chapter is required by the provisions of § 52.79 of this chapter to include in its final safety analysis report a description of the quality assurance applied to the design, and to be applied to the fabrication, construction, and testing of the structures, systems, and components of the facility and to the managerial and administrative controls to be used to assure safe operation. For applications submitted after September 27, 2007, every applicant for an early site permit under part 52 of this chapter is required by the provisions of § 52.17 of this chapter to include in its site safety analysis report a description of the quality assurance program applied to site activities related to the design, fabrication, construction, and testing of the structures, systems, and components of a facility or facilities that may be constructed on the site. Every applicant for a design approval or design certification under part 52 of this chapter is required by the provisions of 10 CFR 52.137 and 52.47, respectively, to include in its final safety analysis report a description of the quality assurance program applied to the design of the structures, systems, and components of the facility. Every applicant for a manufacturing license under part 52 of this chapter is required by the provisions of 10 CFR 52.157 to include in its final safety analysis report a description of the quality assurance program applied to the design, and to be applied to the manufacture of, the structures, systems, and components of the reactor. Nuclear power plants and fuel reprocessing plants include structures, systems, and components that prevent or mitigate the consequences of

postulated accidents that could cause undue risk to the health and safety of the public. This appendix establishes quality assurance requirements for the design, manufacture, construction, and operation of those structures, systems, and components. The pertinent requirements of this appendix apply to all activities affecting the safety-related functions of those structures, systems, and components; these activities include designing, purchasing, fabricating, handling, shipping, storing, cleaning, erecting, installing, inspecting, testing, operating, maintaining, repairing, refueling, and modifying.

As used in this appendix, "quality assurance" comprises all those planned and systematic actions necessary to provide adequate confidence that a structure, system, or component will perform satisfactorily in service. Quality assurance includes quality control, which comprises those quality assurance actions related to the physical characteristics of a material, structure, component, or system which provide a means to control the quality of the material, structure, component, or system to predetermined requirements.

I. Organization

The applicant [1] shall be responsible for the establishment and execution of the quality assurance program. The applicant may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part thereof, but shall retain responsibility for the quality assurance program. The authority and duties of persons and organizations performing activities affecting the safety-related functions of structures, systems, and components shall be clearly established and delineated in writing. These activities include both the performing functions of attaining quality objectives and the quality assurance functions. The quality assurance functions are those of (1) assuring that an appropriate quality assurance program is established and effectively executed; and (2) verifying, such as by checking, auditing, and inspecting, that activities affecting the safety-related functions have been correctly performed. The persons and organizations performing quality assurance functions shall have sufficient authority and organizational freedom to identify quality problems; to initiate, recommend, or provide solutions; and to verify implementation of solutions. There persons and organizations performing quality assurance functions shall report to a management level so that the required authority and organizational freedom, including sufficient independence from cost and schedule when opposed to safety considerations, are provided. Because of the many variables involved, such as the number of personnel, the type of activity being performed, and the location or locations where activities are performed, the organizational structure for executing the quality assurance program may take various forms, provided that the persons and organizations assigned the quality assurance functions have the required authority and organizational freedom. Irrespective of the organizational structure, the individual(s) assigned the responsibility for assuring effective execution of any portion of the quality assurance program at any location where activities subject to this appendix are being performed, shall have direct access to the levels of management necessary to perform this function.

* * * * *

■ 113. In Appendix C to Part 50, the heading, the first paragraph of General Information, and the headings of Sections I.A and II.A, and Section III are revised to read as follows:

Appendix C to Part 50—A Guide for the Financial Data and Related Information Required To Establish Financial Qualifications for Construction Permits and Combined Licenses

General Information

This appendix is intended to appraise applicants for construction permits and combined licenses for production or utilization facilities of the types described in § 50.21(b) or § 50.22, or testing facilities, of the general kinds of financial data and other related information that will demonstrate the financial qualification of the applicant to carry out the activities for which the permit or license is sought. The kind and depth of information described in this guide is not intended to be a rigid and absolute requirement. In some instances, additional pertinent material may be needed. In any case, the applicant should include information other than that specified, if the information is pertinent to establishing the applicant's financial ability to carry out the activities for which the permit or license is sought.

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I. * * *

A. Applications for Construction Permits or Combined Licenses

* * * * *

II. * * *

A. Applications for Construction Permits or Combined Licenses

* * * * *

III. Annual Financial Statement

Each holder of a construction permit for a production or utilization facility of a type described in § 50.21(b) or § 50.22 or a testing facility, and each holder of a combined license issued under part 52 of this chapter, is required by § 50.71(b) to file its annual financial report with the Commission at the time of issuance. This requirement does not apply to licensees or holders of construction permits for medical and research reactors.

* * * * *

■ 114. In Appendix E to Part 50, Sections I, III, IV.F.2.a, IV.F.2.c, and V are revised, and footnotes 6, 7, 8, 9, 10, and 11 are redesignated as 7, 8, 9, 10, 11, and 12, respectively, and a new footnote 6 is added to read as follows:

Appendix E to Part 50—Emergency Planning and Preparedness for Production and Utilization Facilities

* * * * *

I. Introduction

Each applicant for a construction permit is required by § 50.34(a) to include in the preliminary safety analysis report a discussion of preliminary plans for coping with emergencies. Each applicant for an operating license is required by § 50.34(b) to include in the final safety analysis report plans for coping with emergencies. Each applicant for a combined license under subpart C of part 52 of this chapter is required by § 52.79 of this chapter to include in the application plans for coping with emergencies. Each applicant for an early site permit under subpart A of part 52 of this chapter may submit plans for coping with emergencies under § 52.17 of this chapter.

This appendix establishes minimum requirements for emergency plans for use in attaining an acceptable state of emergency preparedness. These plans shall be described generally in the preliminary safety analysis report for a construction permit and submitted as part of the final safety analysis report for an operating license. These plans, or major features thereof, may be submitted as part of the site safety analysis report for an early site permit.

* * * * *

III. The Final Safety Analysis Report; Site Safety Analysis Report

The final safety analysis report or the site safety analysis report for an early site permit that includes complete and integrated emergency plans under § 52.17(b)(2)(ii) of this chapter shall contain the plans for coping with emergencies. The plans shall be an expression of the overall concept of operation; they shall describe the essential elements of advance planning that have been considered and the provisions that have been made to cope with emergency situations. The plans shall incorporate information about the emergency response roles of supporting organizations and offsite agencies. That information shall be sufficient to provide assurance of coordination among the supporting groups and with the licensee. The site safety analysis report for an early site permit which proposes major features must address the relevant provisions of 10 CFR 50.47 and 10 CFR part 50, appendix E, within the scope of emergency preparedness matters addressed in the major features.

The plans submitted must include a description of the elements set out in Section IV for the emergency planning zones (EPZs)

[1] While the term "applicant" is used in these criteria, the requirements are, of course, applicable after such a person has received a license to construct and operate a nuclear power plant or a fuel reprocessing plant or has received an early site permit, design approval, design certification, or manufacturing license, as applicable. These criteria will also be used for guidance in evaluating the adequacy of quality assurance programs in use by holders of construction permits, operating licenses, early site permits, design approvals, combined licenses, and manufacturing licenses.

to an extent sufficient to demonstrate that the plans provide reasonable assurance that adequate protective measures can and will be taken in the event of an emergency.

IV. Content of Emergency Plans

* * * * *

F. * * *

2. * * *

a. A full participation [4] exercise which tests as much of the licensee, State, and local emergency plans as is reasonably achievable without mandatory public participation shall be conducted for each site at which a power reactor is located.

(i) For an operating license issued under this part, this exercise must be conducted within two years before the issuance of the first operating license for full power (one authorizing operation above 5 percent of rated power) of the first reactor and shall include participation by each State and local government within the plume exposure pathway EPZ and each state within the ingestion exposure pathway EPZ. If the full participation exercise is conducted more than 1 year prior to issuance of an operating licensee for full power, an exercise which tests the licensee's onsite emergency plans must be conducted within one year before issuance of an operating license for full power. This exercise need not have State or local government participation.

(ii) For a combined license issued under part 52 of this chapter, this exercise must be conducted within two years of the scheduled date for initial loading of fuel. If the first full participation exercise is conducted more than one year before the scheduled date for initial loading of fuel, an exercise which tests the licensee's onsite emergency plans must be conducted within one year before the scheduled date for initial loading of fuel. This exercise need not have State or local government participation. If DHS identifies one or more deficiencies in the state of offsite emergency preparedness as the result of the first full participation exercise, or if the Commission finds that the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, the provisions of § 50.54(gg) apply.

(iii) For a combined licensee issued under part 52 of this chapter, if the applicant currently has an operating reactor at the site, an exercise, either full or partial participation,[5] shall be conducted for each subsequent reactor constructed on the site. This exercise may be incorporated in the exercise requirements of Sections IV.F.2.b. and c. in this appendix. If DHS identifies one or more deficiencies in the state of offsite emergency preparedness as the result of this exercise for the new reactor, or if the Commission finds that the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, the provisions of § 50.54(gg) apply.

* * * * *

c. Offsite plans for each site shall be exercised biennially with full participation by each offsite authority having a role under the radiological response plan. Where the offsite authority has a role under a radiological response plan for more than one site, it shall fully participate in one exercise every two years and shall, at least, partially participate in other offsite plan exercises in this period. If two different licensees whose licensed facilities are located either on the same site or on adjacent, contiguous sites, and that share most of the elements defining co-located licensees,[6] each licensee shall:

(1) Conduct an exercise biennially of its onsite emergency plan; and

(2) Participate quadrennially in an offsite biennial full or partial participation exercise; and

(3) Conduct emergency preparedness activities and interactions in the years between its participation in the offsite full or partial participation exercise with offsite authorities, to test and maintain interface among the affected State and local authorities and the licensee. Co-located licensees shall also participate in emergency preparedness activities and interaction with offsite authorities for the period between exercises.

* * * * *

V. Implementing Procedures

No less than 180 days before the scheduled issuance of an operating license for a nuclear power reactor or a license to possess nuclear material, or the scheduled date for initial loading of fuel for a combined license under part 52 of this chapter, the applicant's or licensee's detailed implementing procedures for its emergency plan shall be submitted to the Commission as specified in § 50.4. Licensees who are authorized to operate a nuclear power facility shall submit any changes to the emergency plan or procedures to the Commission, as specified in § 50.4, within 30 days of such changes.

* * * * *

[4] Full participation when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite local and State authorities and licensee personnel physically and actively take part in testing their integrated capability to adequately assess and respond to an accident at a commercial nuclear power plant. Full participation includes testing major observable portions of the onsite and offsite emergency plans and mobilization of State, local and licensee personnel and other resources in sufficient numbers to verify the capability to respond to the accident scenario.

[5] Partial participation when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite authorities shall actively take part in the exercise sufficient to test direction and control functions; i.e., (a) protective action decision making related to emergency action levels, and (b) communication capabilities among affected State and local authorities and the licensee.

[6] Co-located licensees are two different licensees whose licensed facilities are located either on the same site or on adjacent, contiguous sites, and that share most of the following emergency planning and siting elements:

a. Plume exposure and ingestion emergency planning zones;

b. Offsite governmental authorities;

c. Offsite emergency response organizations;

d. Public notification system; and/or

e. Emergency facilities.

■ 115. In Appendix I to Part 50, the first paragraphs of Sections I, II, IV, and V are revised to read as follows:

Appendix I to Part 50—Numerical Guides for Design Objectives and Limiting Conditions for Operation To Meet the Criterion "as Low as Is Reasonably Achievable" for Radioactive Material in Light-Water-Cooled Nuclear Power Reactor Effluents

SECTION I. *Introduction.* Section 50.34a provides that an application for a construction permit shall include a description of the preliminary design of equipment to be installed to maintain control over radioactive materials in gaseous and liquid effluents produced during normal conditions, including expected occurrences. In the case of an application filed on or after January 2, 1971, the application must also identify the design objectives, and the means to be employed, for keeping levels of radioactive material in effluents to unrestricted areas as low as practicable. Sections 52.47, 52.79, 52.137, and 52.157 of this chapter provide that applications for design certification, combined license, design approval, or manufacturing license, respectively, shall include a description of the equipment and procedures for the control of gaseous and liquid effluents and for the maintenance and use of equipment installed in radioactive waste systems.

* * * * *

SECTION II. *Guides on design objectives for light-water-cooled nuclear power reactors licensed under 10 CFR part 50 or part 52 of this chapter.* The guides on design objectives set forth in this section may be used by an applicant for a construction permit as guidance in meeting the requirements of § 50.34a(a), or by an applicant for a combined license under part 52 of this chapter as guidance in meeting the requirements of § 50.34a(d), or by an applicant for a design approval, a design certification, or a manufacturing license as guidance in meeting the requirements of § 50.34a(e). The applicant shall provide reasonable assurance that the following design objectives will be met.

* * * * *

SECTION IV. *Guides on technical specifications for limiting conditions for operation for light-water-cooled nuclear power reactors licensed under 10 CFR part 50 or part 52 of this chapter.* The guides on limiting conditions for operation for light-water-cooled nuclear power reactors set forth below may be used by an applicant for an operating license under this part or a design certification or combined license under part 52 of this chapter, or a licensee who has submitted a certification of permanent cessation of operations under § 50.82(a)(1) or § 52.110 of this chapter as guidance in developing technical specifications under § 50.36a(a) to keep levels of radioactive materials in effluents to unrestricted areas as low as is reasonably achievable.

* * * * *

SECTION V. *Effective dates.* A. The guides for limiting conditions for operation set forth in this appendix shall be applicable in any case in which an application was filed on or after January 2, 1971, for a construction permit for a light-water-cooled nuclear power reactor under this part, or a design certification, a combined license, or a manufacturing license for a light-water-cooled nuclear power reactor under part 52 of this chapter.

* * * * *

■ 116. In Appendix J to Part 50 in Option A, Section I, and paragraph II.K are revised and in Option B, Section I, and paragraphs V.B.2 and 3 are revised to read as follows:

Appendix J to Part 50—Primary Reactor Containment Leakage Testing for Water-Cooled Reactors

* * * * *

Option A—Prescriptive Requirements

* * * * *

I. Introduction

One of the conditions of all operating licenses under this part and combined licenses under part 52 of this chapter for water-cooled power reactors as specified in § 50.54(o) is that primary reactor containments shall meet the containment leakage test requirements set forth in this appendix. These test requirements provide for preoperational and periodic verification by tests of the leak-tight integrity of the primary reactor containment, and systems and components which penetrate containment of water-cooled power reactors, and establish the acceptance criteria for these tests. The purposes of the tests are to assure that (a) leakage through the primary reactor containment and systems and components penetrating primary containment shall not exceed allowable leakage rate values as specified in the technical specifications or associated bases; and (b) periodic surveillance of reactor containment penetrations and isolation valves is performed so that proper maintenance and repairs are made during the service life of the containment, and systems and components penetrating primary containment. These test requirements may also be used for guidance in establishing appropriate containment leakage test requirements in technical specifications or associated bases for other types of nuclear power reactors.

II. * * *

K. La (percent/24 hours) means the maximum allowable leakage rate at pressure Pa as specified for preoperational tests in the technical specifications or associated bases, and as specified for periodic tests in the operating license or combined license, including the technical specifications in any referenced design certification or manufactured reactor used at the facility.

* * * * *

Option B—Performance-Based Requirements

* * * * *

I. Introduction

One of the conditions required of all operating licenses and combined licenses for light–water–cooled power reactors as specified in § 50.54(o) is that primary reactor containments meet the leakage-rate test requirements in either Option A or B of this appendix. These test requirements ensure that (a) leakage through these containments or systems and components penetrating these containments does not exceed allowable leakage rates specified in the technical specifications; and (b) integrity of the containment structure is maintained during its service life. Option B of this appendix identifies the performance-based requirements and criteria for preoperational and subsequent periodic leakage-rate testing.[3]

* * * * *

V. * * *

B. * * *

2. A licensee or applicant for an operating license under this part or a combined license under part 52 of this chapter may adopt Option B, or parts thereof, as specified in Section V.A of this appendix, by submitting its implementation plan and request for revision to technical specifications (see paragraph B.3 of this section) to the Director of the Office of Nuclear Reactor Regulation or the Director of the Office of New Reactors, as appropriate.

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.

* * * * *

Appendix M to Part 50 [Removed]

■ 117. Appendix M to Part 50 is removed and reserved.

■ 118. The heading for appendix N to part 50 is revised to read as follows:

Appendix N to Part 50—Standardization of Nuclear Power Plant Designs: Permits To Construct and Licenses To Operate Nuclear Power Reactors of Identical Design at Multiple Sites

Appendix O to Part 50 [Removed]

■ 119. Appendix O to Part 50 is removed and reserved.

■ 120. 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 continue to apply. Paragraphs IV.a.1.i, IV.a.1.ii, IV.4.b, and IV.4.c of this appendix apply to applicants for an early site permit under part 52.

I. Introduction

(a) Each applicant for a construction permit, operating license, design certification, combined license, design approval, or manufacturing license is required by §§ 50.34(a)(12), 50.34(b)(10), or 10 CFR 52.47, 52.79, 52.137, or 52.157, and General Design Criterion 2 of appendix A to this part, to design nuclear power plant structures, systems, and components important to safety to withstand the effects of natural phenomena, such as earthquakes, without loss of capability to perform their safety functions. Also, as specified in § 50.54(ff), nuclear power plants that have implemented the earthquake engineering criteria described herein must shut down if the criteria in paragraph IV(a)(3) of this appendix are exceeded.

* * * * *

III. Definitions

As used in these criteria:

Combined license means a combined construction permit and operating license with conditions for a nuclear power facility issued under subpart C of part 52 of this chapter.

Design Approval means an NRC staff approval, issued under subpart E of part 52 of this chapter, of a final standard design for a nuclear power reactor of the type described in 10 CFR 50.22.

Design Certification means a Commission approval, issued under subpart B of part 52 of this chapter, of a standard design for a nuclear power facility.

Manufacturing license means a license, issued under subpart F of part 52 of this chapter, authorizing the manufacture of nuclear power reactors but not their installation into facilities located at the sites on which the facilities are to be operated.

Operating basis earthquake ground motion (OBE) is the vibratory ground motion for which those features of the nuclear power plant necessary for continued operation without undue risk to the health and safety of the public will remain functional. The operating basis earthquake ground motion is only associated with plant shutdown and inspection unless specifically selected by the applicant as a design input.

[3] Specific guidance concerning a performance-based leakage-test program, acceptable leakage-rate test methods, procedures, and analyses that may be used to implement these requirements and criteria are provided in Regulatory Guide 1.163, "Performance-Based Containment Leak-Test Program."

Response spectrum is a plot of the maximum responses (acceleration, velocity, or displacement) of idealized single-degree-of-freedom oscillators as a function of the natural frequencies of the oscillators for a given damping value. The response spectrum is calculated for a specified vibratory motion input at the oscillators' supports.

Safe-shutdown earthquake ground motion (SSE) is the vibratory ground motion for which certain structures, systems, and components must be designed to remain functional.

Structures, systems, and components required to withstand the effects of the safe-shutdown earthquake ground motion or surface deformation are those necessary to assure:

(1) The integrity of the reactor coolant pressure boundary;

(2) The capability to shut down the reactor and maintain it in a safe-shutdown condition; or

(3) The capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposures comparable to the guideline exposures of § 50.34(a)(1).

Surface deformation is distortion of geologic strata at or near the ground surface by the processes of folding or faulting as a result of various earth forces. Tectonic surface deformation is associated with earthquake processes.

* * * * *

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

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

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

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

§ 51.17 Information collection requirements; OMB approval.

* * * * *

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

■ 123. In § 51.20, paragraphs (b)(1) and (b)(2) are revised, and paragraph (b)(6) is removed and reserved.

The revisions read as follows:

§ 51.20 Criteria for and identification of licensing and regulatory actions requiring environmental impact statements.

* * * * *

(b)* * *

(1) Issuance of a limited work authorization or a permit to construct a nuclear power reactor, testing facility, or fuel reprocessing plant under part 50 of this chapter, or issuance of an early site permit under part 52 of this chapter.

(2) Issuance or renewal of a full power or design capacity license to operate a nuclear power reactor, testing facility, or fuel reprocessing plant under part 50 of this chapter, or a combined license under part 52 of this chapter.

* * * * *

(6) [Reserved]

* * * * *

■ 124. In § 51.22, the introductory text of paragraph (c)(3), paragraphs (c)(3)(i) and (c)(9), the introductory text of paragraphs (c)(10) and (c)(12), and paragraph (c)(17) are revised, and paragraphs (c)(22) and (c)(23) are added to read as follows:

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

* * * * *

(c) * * *

(3) Amendments to parts 20, 30, 31, 32, 33, 34, 35, 39, 40, 50, 51, 52, 54, 60, 61, 63, 70, 71, 72, 73, 74, 81, and 100 of this chapter which relate to—

(i) Procedures for filing and reviewing applications for licenses or construction permits or early site permits or other forms of permission or for amendments to or renewals of licenses or construction permits or early site permits or other forms of permission;

* * * * *

(9) Issuance of an amendment to a permit or license for a reactor under part 50 or part 52 of this chapter, which changes a requirement with respect to installation or use of a facility component located within the restricted area, as defined in part 20 of this chapter, or which changes an inspection or a surveillance requirement, provided that—

(i) The amendment involves no significant hazards consideration;

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; and

(iii) There is no significant increase in individual or cumulative occupational radiation exposure.

(10) Issuance of an amendment to a permit or license under parts 30, 31, 32, 33, 34, 35, 36, 39, 40, 50, 52, 60, 61, 63, 70, or part 72 of this chapter which—

* * * * *

(12) Issuance of an amendment to a license under parts 50, 52, 60, 61, 63, 70, 72, or 75 of this chapter relating solely to safeguards matters (i.e., protection against sabotage or loss or diversion of special nuclear material) or issuance of an approval of a safeguards plan submitted under parts 50, 52, 70, 72, and 73 of this chapter, provided that the amendment or approval does not involve any significant construction impacts. These amendments and approvals are confined to—

* * * * *

(17) Issuance of an amendment to a permit or license under parts 30, 40, 50, 52, or part 70 of this chapter which deletes any limiting condition of operation or monitoring requirement based on or applicable to any matter subject to the provisions of the Federal Water Pollution Control Act.

* * * * *

(22) Issuance of a standard design approval under part 52 of this chapter.

(23) The Commission finding for a combined license under § 52.103(g) of this chapter.

* * * * *

■ 125. In § 51.23 paragraphs (b) and (c) are revised to read as follows:

§ 51.23 Temporary storage of spent fuel after cessation of reactor operation—generic determination of no significant environmental impact.

* * * * *

(b) Accordingly, as provided in §§ 51.30(b), 51.53, 51.61, 51.80(b), 51.95, and 51.97(a), and within the scope of the generic determination in paragraph (a) of this section, no discussion of any environmental impact of spent fuel storage in reactor facility storage pools or independent spent fuel storage installations (ISFSI) for the period following the term of the reactor operating license or amendment, reactor combined license or amendment, or initial ISFSI license or amendment for which application is made, is required in any environmental report, environmental impact statement, environmental assessment, or other analysis prepared in connection with the issuance or amendment of an

operating license for a nuclear power reactor under parts 50 and 54 of this chapter, or issuance or amendment of a combined license for a nuclear power reactor under parts 52 and 54 of this chapter, or the issuance of an initial license for storage of spent fuel at an ISFSI, or any amendment thereto.

(c) This section does not alter any requirements to consider the environmental impacts of spent fuel storage during the term of a reactor operating license or combined license, or a license for an ISFSI in a licensing proceeding.

■ 126. In § 51.26, a new paragraph (d) is added to read as follows:

§ 51.26 Requirement to publish notice of intent and conduct scoping process.

* * * * *

(d) Whenever the appropriate NRC staff director determines that a supplement to an environmental impact statement will be prepared by the NRC, a notice of intent will be prepared as provided in § 51.27, and will be published in the **Federal Register** as provided in § 51.116. The NRC staff need not conduct a scoping process (see §§ 51.27, 51.28, and 51.29), provided, however, that if scoping is conducted, then the scoping must be directed at matters to be addressed in the supplement. If scoping is conducted in a proceeding for a combined license referencing an early site permit under part 52, then the scoping must be directed at matters to be addressed in the supplement as described in § 51.92(e).

■ 127. In § 51.27, the introductory text of paragraph (a) is revised, and a new paragraph (b) is added to read as follows:

§ 51.27 Notice of intent.

(a) The notice of intent required by § 51.26(a) shall:

* * * * *

(b) The notice of intent required by § 51.26(d) shall:

(1) State that a supplement to a final environmental impact statement will be prepared in accordance with § 51.72 or § 51.92. For a combined license application that references an early site permit, the supplement to the early site permit environmental impact statement will be prepared in accordance with § 51.92(e);

(2) Describe the proposed action and, to the extent required, possible alternatives. For the case of a combined license referencing an early site permit, identify the proposed action as the issuance of a combined license for the construction and operation of a nuclear power plant as described in the combined license application at the site described in the early site permit referenced in the combined license application;

(3) Identify the environmental report prepared by the applicant and information on where copies are available for public inspection;

(4) Describe the matters to be addressed in the supplement to the final environmental impact statement;

(5) Describe any proposed scoping process that the NRC staff may conduct, including the role of participants, whether written comments will be accepted, the last date for submitting comments and where comments should be sent, whether a public scoping meeting will be held, the time and place of any scoping meeting or when the time and place of the meeting will be announced; and

(6) State the name, address, and telephone number of an individual in NRC who can provide information about the proposed action, the scoping process, and the supplement to the environmental impact statement.

■ 128. In § 51.29, the section heading and paragraph (a)(1) are revised to read as follows:

§ 51.29 Scoping-environmental impact statement and supplement to environmental impact statement.

(a) * * *

(1) Define the proposed action which is to be the subject of the statement or supplement. For environmental impact statements other than a supplement to an early site permit final environmental impact statement prepared for a combined license application, the provisions of 40 CFR 1502.4 will be used for this purpose. For a supplement to an early site permit final environmental impact statement prepared for a combined license application, the proposed action shall be as set forth in the relevant provisions of § 51.92(e).

* * * * *

■ 129. In § 51.30, the introductory text of paragraph (a) is revised, and paragraphs (d) and (e) are added to read as follows:

§ 51.30 Environmental assessment.

(a) An environmental assessment for proposed actions, other than those for a standard design certification under 10 CFR part 52 or a manufacturing license under part 52, shall identify the proposed action and include:

* * * * *

(d) An environmental assessment for a standard design certification under subpart B of part 52 of this chapter must identify the proposed action, and will be limited to the consideration of the costs and benefits of severe accident mitigation design alternatives and the bases for not incorporating severe accident mitigation design alternatives in the design certification. An environmental assessment for an amendment to a design certification will be limited to the consideration of whether the design change which is the subject of the proposed amendment renders a severe accident mitigation design alternative previously rejected in the earlier environmental assessment to become cost beneficial, or results in the identification of new severe accident mitigation design alternatives, in which case the costs and benefits of new severe accident mitigation design alternatives and the bases for not incorporating new severe accident mitigation design alternatives in the design certification must be addressed.

(e) An environmental assessment for a manufacturing license under subpart F of part 52 of this chapter must identify the proposed action, and will be limited to the consideration of the costs and benefits of severe accident mitigation design alternatives and the bases for not incorporating severe accident mitigation design alternatives in the manufacturing license. An environmental assessment for an amendment to a manufacturing license will be limited to consideration of whether the design change which is the subject of the proposed amendment either renders a severe accident mitigation design alternative previously rejected in an environmental assessment to become cost beneficial, or results in the identification of new severe accident mitigation design alternatives, in which case the costs and benefits of new severe accident mitigation design alternatives and the bases for not incorporating new severe accident mitigation design alternatives in the manufacturing license must be addressed. In either case, the environmental assessment will not address the environmental impacts associated with manufacturing the reactor under the manufacturing license.

■ 130. Section 51.31 is revised to read as follows:

§ 51.31 Determinations based on environmental assessment.

(a) *General.* Upon completion of an environmental assessment for proposed actions other than those involving a standard design certification or a manufacturing license under part 52 of this chapter, the appropriate NRC staff director will determine whether to prepare an environmental impact statement or a finding of no significant

impact on the proposed action. As provided in § 51.33, a determination to prepare a draft finding of no significant impact may be made.

(b) *Standard design certification.* (1) For actions involving the issuance or amendment of a standard design certification, the Commission shall prepare a draft environmental assessment for public comment as part of the proposed rule. The proposed rule must state that:

(i) The Commission has determined in § 51.32 that there is no significant environmental impact associated with the issuance of the standard design certification or its amendment, as applicable; and

(ii) Comments on the environmental assessment will be limited to the consideration of SAMDAs as required by § 51.30(d).

(2) The Commission will prepare a final environmental assessment following the close of the public comment period for the proposed standard design certification.

(c) *Manufacturing license.* (1) Upon completion of the environmental assessment for actions involving issuance or amendment of a manufacturing license (manufacturing license environmental assessment), the appropriate NRC staff director will determine the costs and benefits of severe accident mitigation design alternatives and the bases for not incorporating severe accident mitigation design alternatives in the design of the reactor to be manufactured under the manufacturing license. The NRC staff director may determine to prepare a draft environmental assessment.

(2) The manufacturing license environmental assessment must state that:

(i) The Commission has determined in § 51.32 that there is no significant environmental impact associated with the issuance of a manufacturing license or an amendment to a manufacturing license, as applicable;

(ii) The environmental assessment will not address the environmental impacts associated with manufacturing the reactor under the manufacturing license; and

(iii) Comments on the environmental assessment will be limited to the consideration of severe accident mitigation design alternatives as required by § 51.30(e).

(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.

(5) Only a party admitted into the proceeding with respect to a contention on the environmental assessment, or an entity participating in the proceeding pursuant to § 2.315(c) of this chapter, may take a position and offer evidence on the matters within the scope of the environmental assessment.

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

§ 51.32 Finding of no significant impact.

* * * * *

(b) The Commission finds that there is no significant environmental impact associated with the issuance of:

(1) A standard design certification under subpart B of part 52 of this chapter;

(2) An amendment to a design certification;

(3) A manufacturing license under subpart F of part 52 of this chapter; or

(4) An amendment to a manufacturing license.

■ 132. In § 51.45, paragraphs (a) and (c) are revised to read as follows:

§ 51.45 Environmental report.

(a) *General.* As required by §§ 51.50, 51.53, 51.54, 51.55, 51.60, 51.61, 51.62, or 51.68, as appropriate, each applicant or petitioner for rulemaking shall submit with its application or petition for rulemaking one signed original of a separate document entitled "Applicant's" or "Petitioner's Environmental Report," as appropriate. An applicant or petitioner for rulemaking may submit a supplement to an environmental report at any time.

* * * * *

(c) *Analysis.* The environmental report shall include an analysis that considers and balances the environmental effects of the proposed action, the environmental impacts of alternatives to the proposed action, and alternatives available for reducing or avoiding adverse environmental effects. Except for environmental reports prepared at the early site permit stage under § 51.50(b), or environmental reports prepared at the license renewal stage under § 51.53(c), the analysis in the environmental report should also include consideration of the economic, technical, and other benefits and costs of the proposed action and of alternatives. Environmental reports prepared at the license renewal stage under § 51.53(c) need not discuss the economic or technical benefits and costs of either the proposed action or alternatives except insofar as these benefits and costs are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. In addition, environmental reports prepared under § 51.53(c) need not discuss issues not related to the environmental effects of the proposed action and its alternatives. The analyses for environmental reports shall, to the fullest extent practicable, quantify the various factors considered. To the extent that there are important qualitative considerations or factors that cannot be quantified, those considerations or factors shall be discussed in qualitative terms. The environmental report should contain sufficient data to aid the Commission in its development of an independent analysis.

* * * * *

■ 133. Section 51.50 is revised to read as follows:

§ 51.50 Environmental report—construction permit, early site permit, or combined license stage.

(a) *Construction permit stage.* Each applicant for a permit to construct a production or utilization facility covered by § 51.20 shall submit with its application a separate document, entitled "Applicant's Environmental Report—Construction Permit Stage," which shall contain the information specified in §§ 51.45, 51.51, and 51.52. 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.

(b) *Early site permit stage.* Each applicant for an early site permit shall submit with its application a separate document, entitled "Applicant's Environmental Report—Early Site Permit Stage," which shall contain the information specified in §§ 51.45, 51.51, and 51.52, as modified in this paragraph.

(1) The environmental report must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed.

(2) The environmental report may address one or more of the environmental effects of construction and operation of a reactor, or reactors, which have design characteristics that fall within the site characteristics and design parameters for the early site permit application, *provided however,* that the environmental report must address all environmental effects of construction and operation necessary to determine whether there is any obviously superior alternative to the site proposed. The environmental report need not include an assessment of the economic, technical, or other benefits (for example, need for power) and costs of the proposed action or an evaluation of alternative energy sources.

(3) For other than light-water-cooled nuclear power reactors, the environmental report must contain the basis for evaluating the contribution of the environmental effects of fuel cycle activities for the nuclear power reactor.

(4) Each environmental report must identify the 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 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, as modified in this paragraph. 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.* 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 Environmental Report—Early Site Permit Stage," or resolved in the Commission's early site permit environmental impact statement, but must contain, in addition to the environmental information and analyses otherwise required:

(i) Information to demonstrate that the design of the facility falls within the site characteristics and design parameters specified in the early site permit;

(ii) Information to resolve any significant environmental issue that was not resolved in the early site permit proceeding;

(iii) Any new and significant information for issues related to the impacts of construction and operation of the facility that were resolved in the early site permit proceeding;

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

(v) A demonstration that all environmental terms and conditions that have been included in the early site permit will be satisfied by the date of issuance of the combined license. Any terms or conditions of the early site permit that could not be met by the time of issuance of the combined license, must be set forth as terms or conditions of the combined license.

(2) *Application referencing standard design certification.* If the combined license references a standard design certification, then the combined license environmental report may incorporate by reference the environmental assessment previously prepared by the NRC for the referenced design certification. If the design certification environmental assessment is referenced, then the combined license environmental report must contain information to demonstrate that the site characteristics for the combined license site fall within the site parameters in the design certification environmental assessment.

(3) *Application referencing a manufactured reactor.* If the combined license application proposes to use a manufactured reactor, then the combined license environmental report may incorporate by reference the environmental assessment previously prepared by the NRC for the underlying manufacturing license. If the manufacturing license environmental assessment is referenced, then the combined license environmental report must contain information to demonstrate that the site characteristics for the combined license site fall within the site parameters in the manufacturing license environmental assessment. The environmental report need not address the environmental impacts associated with manufacturing the reactor under the manufacturing license.

■ 134. In § 51.51 paragraph (a) is revised to read as follows:

§ 51.51 Uranium fuel cycle environmental data—Table S–3.

(a) Under § 51.50, every environmental report prepared for the construction permit stage or early site permit stage or combined license stage of a light-water-cooled nuclear power reactor, and submitted on or after September 4, 1979, shall take Table S–3, Table of Uranium Fuel Cycle Environmental Data, as the basis for evaluating the contribution of the environmental effects of uranium mining and milling, the production of uranium hexafluoride, isotopic enrichment, fuel fabrication, reprocessing of irradiated fuel, transportation of radioactive materials and management of low-level wastes and high-level wastes related to uranium fuel cycle activities to the environmental costs of licensing the nuclear power reactor. Table S–3 shall be included in the environmental report and may be supplemented by a discussion of the environmental significance of the data set forth in the table as weighed in the analysis for the proposed facility.

* * * * *

■ 135. In § 51.52, the introductory paragraph is revised to read as follows:

§ 51.52 Environmental effects of transportation of fuel and waste—Table S–4.

Under § 51.50, every environmental report prepared for the construction permit stage or early site permit stage or combined license stage of a light-water-

cooled nuclear power reactor, and submitted after February 4, 1975, shall contain a statement concerning transportation of fuel and radioactive wastes to and from the reactor. That statement shall indicate that the reactor and this transportation either meet all of the conditions in paragraph (a) of this section or all of the conditions of paragraph (b) of this section.

* * * * *

■ 136. In § 51.53, paragraph (a) and the introductory text of paragraph (c)(3) are revised to read as follows:

§ 51.53 Postconstruction environmental reports.

(a) *General.* Any environmental report prepared under the provisions of this section may incorporate by reference any information contained in a prior environmental report or supplement thereto that relates to the production or utilization facility or site, or any information contained in a final environmental document previously prepared by the NRC staff that relates to the production or utilization facility or site. Documents that may be referenced include, but are not limited to, the final environmental impact statement; supplements to the final environmental impact statement, including supplements prepared at the license renewal stage; NRC staff-prepared final generic environmental impact statements; and environmental assessments and records of decisions prepared in connection with the construction permit, operating license, early site permit, combined license and any license amendment for that facility.

* * * * *

(c) * * *

(3) For those applicants seeking an initial renewed license and holding an operating license, construction permit, or combined license as of June 30, 1995, the environmental report shall include the information required in paragraph (c)(2) of this section subject to the following conditions and considerations:

* * * * *

■ 137. Section 51.54 is revised to read as follows:

§ 51.54 Environmental report—manufacturing license.

(a) Each applicant for a manufacturing license under subpart F of part 52 of this chapter shall submit with its application a separate document entitled, "Applicant's Environmental Report—Manufacturing License." The environmental report must address the costs and benefits of severe accident mitigation design alternatives, and the bases for not incorporating severe accident mitigation design alternatives into the design of the reactor to be manufactured. The environmental report need not address the environmental impacts associated with manufacturing the reactor under the manufacturing license, the benefits and impacts of utilizing the reactor in a nuclear power plant, or an evaluation of alternative energy sources.

(b) Each applicant for an amendment to a manufacturing license shall submit with its application a separate document entitled, "Applicant's Supplemental Environmental Report—Amendment to Manufacturing License." The environmental report must address whether the design change which is the subject of the proposed amendment either renders a severe accident mitigation design alternative previously rejected in an environmental assessment to become cost beneficial, or results in the identification of new severe accident mitigation design alternatives that may be reasonably incorporated into the design of the manufactured reactor. The environmental report need not address the environmental impacts associated with manufacturing the reactor under the manufacturing license.

■ 138. Section 51.55 is redesignated as § 51.58, and is revised to read as follows:

§ 51.58 Environmental report-number of copies; distribution.

(a) Each applicant for a license or permit to site, construct, manufacture, or operate a production or utilization facility covered by §§ 51.20(b)(1), (b)(2), (b)(3), or (b)(4), each applicant for renewal of an operating or combined license for a nuclear power plant, each applicant for a license amendment authorizing the decommissioning of a production or utilization facility covered by § 51.20, and each applicant for a license or license amendment to store spent fuel at a nuclear power plant after expiration of the operating license or combined license for the nuclear power plant shall submit a copy to the Director of the Office of Nuclear Reactor Regulation, the Director of the Office of New Reactors, the Director of the Office of Nuclear Material Safety and Safeguards, as appropriate, of an environmental report or any supplement to an environmental report. These reports must be sent either by mail addressed: ATTN: Document Control Desk; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland, between the hours of 7:30 a.m. and 4:15 p.m. eastern time; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by calling (301) 415–0439, by e-mail to *EIE@nrc.gov*, or by writing the Office of 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. If a submission due date falls on a Saturday, Sunday, or Federal holiday, the next Federal working day becomes the official due date. The applicant shall maintain the capability to generate additional copies of the environmental report or any supplement to the environmental report for subsequent distribution to parties and Boards in the NRC proceedings; Federal, State, and local officials; and any affected Indian tribes, in accordance with written instructions issued by the Director of the Office of New Reactors, the Director of the Office of Nuclear Reactor Regulation, or the Director of the Office of Nuclear Material Safety and Safeguards, as appropriate.

(b) Each applicant for a license to manufacture a nuclear power reactor, or for an amendment to a license to manufacture, seeking approval of the final design of the nuclear power reactor under subpart F of part 52 of this chapter, shall submit to the Commission an environmental report or any supplement to an environmental report in the manner specified in § 50.3 of this chapter. The applicant shall maintain the capability to generate additional copies of the environmental report or any supplement to the environmental report for subsequent distribution to parties and Boards in the NRC proceeding; Federal, State, and local officials; and any affected Indian tribes, in accordance with written instructions issued by the Director of the Office of New Reactors or the Director of the Office of Nuclear Reactor Regulation.

■ 139. Section 51.55 is added to read as follows:

§ 51.55 Environmental report—standard design certification.

(a) Each applicant for a standard design certification under subpart B of part 52 of this chapter shall submit with its application a separate document entitled, "Applicant's Environmental Report—Standard Design Certification." The environmental report must address the costs and benefits of severe accident mitigation design alternatives, and the bases for not incorporating severe accident mitigation design alternatives in the design to be certified.

(b) Each applicant for an amendment to a design certification shall submit with its application a separate document entitled, "Applicant's Supplemental Environmental Report—Amendment to Standard Design Certification." The environmental report must address whether the design change which is the subject of the proposed amendment either renders a severe accident mitigation design alternative previously rejected in an environmental assessment to become cost beneficial, or results in the identification of new severe accident mitigation design alternatives that may be reasonably incorporated into the design certification.

■ 140. Section 51.66 is revised to read as follows:

§ 51.66 Environmental report—number of copies; distribution.

Each applicant for a license or other form of permission, or an amendment to or renewal of a license or other form of permission issued under parts 30, 32, 33, 34, 35, 36, 39, 40, 61, 70, and/or 72 of this chapter, and covered by §§ 51.60(b)(1) through (6); or by §§ 51.61 or 51.62 shall submit to the Director of Nuclear Material Safety and Safeguards an environmental report or any supplement to an environmental report in the manner specified in § 51.58(a). The applicant shall maintain the capability to generate additional copies of the environmental report or any supplement to the environmental report for subsequent distribution to Federal, State, and local officials, and any affected Indian tribes in accordance with written instructions issued by the Director of Nuclear Material Safety and Safeguards.

■ 141. In § 51.71 paragraph (d) and Footnote 3 are revised to read as follows:

§ 51.71 Draft environmental impact statement—contents.

* * * * *

(d) *Analysis.* Unless excepted in this paragraph or § 51.75, the draft environmental impact statement will include a preliminary analysis that considers and weighs the environmental effects of the proposed action; the environmental impacts of alternatives to the proposed action; and alternatives available for reducing or avoiding adverse environmental effects and consideration of the economic, technical, and other benefits and costs of the proposed action and alternatives and indicate what other interests and considerations of Federal policy, including factors not related to environmental quality if applicable, are relevant to the consideration of environmental effects of the proposed action identified under paragraph (a) of this section. The draft supplemental environmental impact statement prepared at the license renewal stage under § 51.95(c) need not discuss the economic or technical benefits and costs of either the proposed action or alternatives except if benefits and costs are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. In addition, the supplemental environmental impact statement prepared at the license renewal stage need not discuss other issues not related to the environmental effects of the proposed action and associated alternatives. The draft supplemental environmental impact statement for license renewal prepared under § 51.95(c) will rely on conclusions as amplified by the supporting information in the GEIS for issues designated as Category 1 in appendix B to subpart A of this part. The draft supplemental environmental impact statement must contain an analysis of those issues identified as Category 2 in appendix B to subpart A of this part that are open for the proposed action. The analysis for all draft environmental impact statements will, to the fullest extent practicable, quantify the various factors considered. To the extent that there are important qualitative considerations or factors that cannot be quantified, these considerations or factors will be discussed in qualitative terms. Consideration will be given to compliance with environmental quality standards and requirements that have been imposed by Federal, State, regional, and local agencies having responsibility for environmental protection, including applicable zoning and land-use regulations and water pollution limitations or requirements issued or imposed under the Federal Water Pollution Control Act. The environmental impact of the proposed action will be considered in the analysis with respect to matters covered by environmental quality standards and requirements irrespective of whether a certification or license from the appropriate authority has been obtained.[3] While satisfaction of Commission standards and criteria pertaining to radiological effects will be necessary to meet the licensing requirements of the Atomic Energy Act, the analysis will, for the purposes of NEPA, consider the radiological effects of the proposed action and alternatives.

* * * * *

■ 142. Section 51.75 is revised to read as follows:

§ 51.75 Draft environmental impact statement—construction permit, early site permit, or combined license.

(a) *Construction permit stage.* A draft environmental impact statement relating to issuance of a construction permit for a production or utilization facility will be prepared in accordance with the procedures and measures described in §§ 51.70, 51.71, 51.72, and 51.73. The contribution of the environmental effects of the uranium fuel cycle activities specified in § 51.51 shall be evaluated on the basis of impact values set forth in Table S–3, Table of Uranium Fuel Cycle Environmental Data, which shall be set out in the draft environmental impact statement. With the exception of radon-222 and technetium-99 releases, no further discussion of fuel cycle release values and other numerical data that appear explicitly in the table shall be required.[5]

[3] Compliance with the environmental quality standards and requirements of the Federal Water Pollution Control Act (imposed by EPA or designated permitting states) is not a substitute for, and does not negate the requirement for NRC to weigh all environmental effects of the proposed action, including the degradation, if any, of water quality, and to consider alternatives to the proposed action that are available for reducing adverse effects. Where an environmental assessment of aquatic impact from plant discharges is available from the permitting authority, the NRC will consider the assessment in its determination of the magnitude of environmental impacts for striking an overall cost-benefit balance at the construction permit and operating license and early site permit and combined license stages, and in its determination of whether the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decision-makers would be unreasonable at the license renewal stage. When no such assessment of aquatic impacts is available from the permitting authority, NRC will establish on its own, or in conjunction with the permitting authority and other agencies having relevant expertise, the magnitude of potential impacts for striking an overall cost-benefit balance for the facility at the construction permit and operating license and early site permit and combined license stages, and in its determination of whether the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decision-makers would be unreasonable at the license renewal stage.

The impact statement shall take account of dose commitments and health effects from fuel cycle effluents set forth in Table S–3 and shall in addition take account of economic, socioeconomic, and possible cumulative impacts and other fuel cycle impacts as may reasonably appear significant.

(b) *Early site permit stage.* A draft environmental impact statement relating to issuance of an early site permit for a production or utilization facility will be prepared in accordance with the procedures and measures described in §§ 51.70, 51.71, 51.72, 51.73, and this section. The contribution of the environmental effects of the uranium fuel cycle activities specified in § 51.51 shall be evaluated on the basis of impact values set forth in Table S–3, Table of Uranium Fuel Cycle Environmental Data, which shall be set out in the draft environmental impact statement. With the exception of radon-222 and technetium-99 releases, no further discussion of fuel cycle release values and other numerical data that appear explicitly in the table shall be required.[5] The impact statement shall take account of dose commitments and health effects from fuel cycle effluents set forth in Table S–3 and shall in addition take account of economic, socioeconomic, and possible cumulative impacts and other fuel cycle impacts as may reasonably appear significant. The draft environmental impact statement must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed. The draft environmental impact statement must also include an evaluation of the environmental effects of construction and operation of a reactor, or reactors, which have design characteristics that fall within the site characteristics and design parameters for the early site permit application, but only to the extent addressed in the early site permit environmental report or otherwise necessary to determine whether there is any obviously superior alternative to the site proposed. The draft environmental impact statement must not include an assessment of the economic, technical, or other benefits (for example, need for power) and costs of the proposed action or an evaluation of alternative energy sources, unless these matters are addressed in the early site permit environmental report.

(c) *Combined license stage.* A draft environmental impact statement relating to issuance of a combined license that does not reference an early site permit will be prepared in accordance with the procedures and measures described in §§ 51.70, 51.71, 51.72, and 51.73. The contribution of the environmental effects of the uranium fuel cycle activities specified in § 51.51 shall be evaluated on the basis of impact values set forth in Table S–3, Table of Uranium Fuel Cycle Environmental Data, which shall be set out in the draft environmental impact statement. With the exception of radon-222 and technetium-99 releases, no further discussion of fuel cycle release values and other numerical data that appear explicitly in the table shall be required.[5] The impact statement shall take account of dose commitments and health effects from fuel cycle effluents set forth in Table S–3 and shall in addition take account of economic, socioeconomic, and possible cumulative impacts and other fuel cycle impacts as may reasonably appear significant. The impact statement will include a discussion of the storage of spent fuel for the nuclear power plant within the scope of the generic determination in § 51.23(a) and in accordance with § 51.23(b).

(1) *Combined license application referencing an early site permit.* If the combined license application references an early site permit, then the NRC staff shall prepare a draft supplement to the early site permit environmental impact statement. The supplement must be prepared in accordance with § 51.92(e).

(2) *Combined license application referencing a standard design certification.* If the combined license application references a standard design certification and the site characteristics of the combined license's site fall within the site parameters specified in the design certification environmental assessment, then the draft combined license environmental impact statement shall incorporate by reference the design certification environmental assessment, and summarize the findings and conclusions of the environmental assessment with respect to severe accident mitigation design alternatives.

(3) *Combined license application referencing a manufactured reactor.* If the combined license application proposes 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, then the draft combined license environmental impact statement shall incorporate by reference the manufacturing license environmental assessment, and summarize the findings and conclusions of the environmental assessment with respect to severe accident mitigation design alternatives. The combined license environmental impact statement report will not address the environmental impacts associated with manufacturing the reactor under the manufacturing license.

[5] Values for releases of Rn-222 and Tc-99 are not given in the table. The amount and significance of Rn-222 releases from the fuel cycle and Tc-99 releases from waste management or reprocessing activities shall be considered in the draft environmental impact statement and may be the subject of litigation in individual licensing proceedings.

§ 51.76 [Removed]

■ 143. Section 51.76 is removed and reserved.

■ 144. Section 51.92 is revised to read as follows:

§ 51.92 Supplement to the final environmental impact statement.

(a) If the proposed action has not been taken, the NRC staff will prepare a supplement to a final environmental impact statement for which a notice of availability has been published in the **Federal Register** as provided in § 51.118, if:

(1) There are substantial changes in the proposed action that are relevant to environmental concerns; or

(2) There are new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(b) In a proceeding for a combined license application under 10 CFR part 52 referencing an early site permit under part 52, the NRC staff shall prepare a supplement to the final environmental impact statement for the referenced early site permit in accordance with paragraph (e) of this section.

(c) The NRC staff may prepare a supplement to a final environmental impact statement when, in its opinion, preparation of a supplement will further the purposes of NEPA.

(d) The supplement to a final environmental impact statement will be prepared in the same manner as the final environmental impact statement except that a scoping process need not be used.

(e) The supplement to an early site permit final environmental impact statement which is prepared for a combined license application in accordance with § 51.75(c)(1) and paragraph (b) of this section must:

(1) Identify the proposed action as the issuance of a combined license for the construction and operation of a nuclear power plant as described in the combined license application at the site described in the early site permit referenced in the combined license application;

(2) Incorporate by reference the final environmental impact statement prepared for the early site permit;

(3) Contain no separate discussion of alternative sites;

(4) Include an analysis of the economic, technical, and other benefits and costs of the proposed action, to the extent that the final environmental impact statement prepared for the early site permit did not include an assessment of these benefits and costs;

(5) Include an analysis of other energy alternatives, to the extent that the final environmental impact statement prepared for the early site permit did not include an assessment of energy alternatives;

(6) Include an analysis of any environmental issue related to the impacts of construction or operation of the facility that was not resolved in the proceeding on the early site permit; and

(7) Include an analysis of the issues related to the impacts of construction and operation of the facility that were resolved in the early site permit proceeding for which new and significant information has been identified, including, but not limited to, new and significant information demonstrating that the design of the facility falls outside the site characteristics and design parameters specified in the early site permit.

(f)(1) A supplement to a final environmental impact statement will be accompanied by or will include a request for comments as provided in § 51.73 and a notice of availability will be published in the **Federal Register** as provided in § 51.117 if paragraphs (a) or (b) of this section applies.

(2) If comments are not requested, a notice of availability of a supplement to a final environmental impact statement will be published in the **Federal Register** as provided in § 51.118.

■ 145. In § 51.95, paragraph (a), the introductory text of paragraph (c), and paragraph (d) are revised to read as follows:

§ 51.95 Postconstruction environmental impact statements.

(a) *General.* Any supplement to a final environmental impact statement or any environmental assessment prepared under the provisions of this section may incorporate by reference any information contained in a final environmental document previously prepared by the NRC staff that relates to the same production or utilization facility. Documents that may be referenced include, but are not limited to, the final environmental impact statement; supplements to the final environmental impact statement, including supplements prepared at the operating license stage; NRC staff-prepared final generic environmental impact statements; environmental assessments and records of decisions prepared in connection with the construction permit, the operating license, the early site permit, or the combined license and any license amendment for that facility. A supplement to a final environmental impact statement will include a request for comments as provided in § 51.73.

* * * * *

(c) *Operating license renewal stage.* In connection with the renewal of an operating license or combined license for a nuclear power plant under parts 52 or 54 of this chapter, the Commission shall prepare an environmental impact statement, which is a supplement to the Commission's NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (May 1996), which is available in the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland.

* * * * *

(d) *Postoperating license stage.* In connection with the amendment of an operating or combined license authorizing decommissioning activities at a production or utilization facility covered by § 51.20, either for unrestricted use or based on continuing use restrictions applicable to the site, or with the issuance, amendment or renewal of a license to store spent fuel at a nuclear power reactor after expiration of the operating or combined license for the nuclear power reactor, the NRC staff will prepare a supplemental environmental impact statement for the post operating or post combined license stage or an environmental assessment, as appropriate, which will update the prior environmental documentation prepared by the NRC for compliance with NEPA under the provisions of this part. The supplement or assessment may incorporate by reference any information contained in the final environmental impact statement—for the operating or combined license stage, as appropriate, or in the records of decision prepared in connection with the early site permit, construction permit, operating license, or combined license for that facility. The supplement will include a request for comments as provided in § 51.73. Unless otherwise required by the Commission in accordance with the generic determination in § 51.23(a) and the provisions of § 51.23(b), a supplemental environmental impact statement for the postoperating or post combined license stage or an environmental assessment, as appropriate, will address the environmental impacts of spent fuel storage only for the term of the license, license amendment or license renewal applied for.

■ 146. Section 51.105 is revised to read as follows:

§ 51.105 Public hearings in proceedings for issuance of construction permits or early site permits.

(a) In addition to complying with applicable requirements of § 51.104, in a proceeding for the issuance of a construction permit or early site permit for a nuclear power reactor, testing facility, fuel reprocessing plant or isotopic enrichment plant, the presiding officer will:

(1) Determine whether the requirements of Sections 102(2) (A), (C), and (E) of NEPA and the regulations in this subpart have been met;

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

(3) Determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the construction permit or early site permit should be issued, denied, or appropriately conditioned to protect environmental values;

(4) Determine, in an uncontested proceeding, whether the NEPA review conducted by the NRC staff has been adequate; and

(5) Determine, in a contested proceeding, whether in accordance with the regulations in this subpart, the construction permit or early site permit should be issued as proposed by the NRC's Director of New Reactors or Director of Nuclear Reactor Regulation.

(b) The presiding officer in an early site permit hearing shall not admit contentions proffered by any party concerning the benefits assessment (*e.g.*, need for power) or alternative energy sources if those issues were not addressed by the applicant in the early site permit application.

■ 147. Section 51.105a is added to read as follows:

§ 51.105a Public hearings in proceedings for issuance of manufacturing licenses.

In addition to complying with applicable requirements of § 51.31(c), in a proceeding for the issuance of a manufacturing license, the presiding officer will determine whether, in accordance with the regulations in this subpart, the manufacturing license

should be issued as proposed by the NRC's Director of New Reactors or Director of Nuclear Reactor Regulation.

■ 148. Section 51.107 is added under the undesignated center heading "Production and Utilization Facilities" to read as follows:

§ 51.107 Public hearings in proceedings for issuance of combined licenses.

(a) In addition to complying with the applicable requirements of § 51.104, in a proceeding for the issuance of a combined license for a nuclear power reactor under part 52 of this chapter, the presiding officer will:

(1) Determine whether the requirements of Sections 102(2) (A), (C), and (E) of NEPA and the regulations in this subpart have been met;

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

(3) Determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the combined license should be issued, denied, or appropriately conditioned to protect environmental values;

(4) Determine, in an uncontested proceeding, whether the NEPA review conducted by the NRC staff has been adequate; and

(5) Determine, in a contested proceeding, whether in accordance with the regulations in this subpart, the combined license should be issued as proposed by the NRC's Director of New Reactors or Director of Nuclear Reactor Regulation.

(b) If a combined license application references an early site permit, then the presiding officer in the combined license hearing shall not admit any contention proffered by any party on environmental issues which have been accorded finality under § 52.39 of this chapter, unless the contention:

(1) Demonstrates that the nuclear power reactor proposed to be built does not fit within one or more of the site characteristics or design parameters included in the early site permit;

(2) Raises any significant environmental issue that was not resolved in the early site permit proceeding; or

(3) Raises any issue involving the impacts of construction and operation of the facility that was resolved in the early site permit proceeding for which new and significant information has been identified.

(c) If the combined license application references a standard design certification, or proposes to use a manufactured reactor, then the presiding officer in a combined license hearing shall not admit contentions proffered by any party concerning severe accident mitigation design alternatives unless the contention demonstrates that the site characteristics fall outside of the site parameters in the standard design certification or underlying manufacturing license for the manufactured reactor.

■ 149. Section 51.108 is added under the undesignated center heading "Production and Utilization Facilities," to read as follows:

§ 51.108 Public hearings on Commission findings that inspections, tests, analyses, and acceptance criteria of combined licenses are met.

In any public hearing requested under 10 CFR 52.103(b), the Commission will not admit any contentions on environmental issues, the adequacy of the environmental impact statement for the combined license issued under subpart C of part 52, or the adequacy of any other environmental impact statement or environmental assessment referenced in the combined license application. The Commission will not make any environmental findings in connection with the finding under 10 CFR 52.103(g).

■ 150. Part 52 is revised to read as follows:

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

General Provisions

Subpart A—Early Site Permits

Subpart B—Standard Design Certifications

Subpart C—Combined Licenses

Subpart D—Reserved

Subpart E—Standard Design Approvals

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

General Provisions

§ 52.0 Scope; applicability of 10 CFR Chapter I provisions.

(a) This part governs the issuance of early site permits, standard design certifications, combined licenses, standard design approvals, and manufacturing licenses for nuclear power facilities licensed under Section 103 of the Atomic Energy Act of 1954, as amended (68 Stat. 919), and Title II of the Energy Reorganization Act of 1974 (88 Stat. 1242). This part also gives notice to all persons who knowingly provide to any holder of or applicant for an approval, certification, permit, or license, or to a contractor, subcontractor, or consultant of any of them, components, equipment, materials, or other goods or services that relate to the activities of a holder of or applicant for an approval, certification, permit, or license, subject to this part, that they may be individually subject to NRC enforcement action for violation of the provisions in 10 CFR 52.4.

(b) Unless otherwise specifically provided for in this part, the regulations in 10 CFR Chapter I apply to a holder of or applicant for an approval, certification, permit, or license. A holder of or applicant for an approval, certification, permit, or license issued under this part shall comply with all requirements in 10 CFR Chapter I that are applicable. A license, approval, certification, or permit issued under this part is subject to all requirements in 10 CFR Chapter I which, by their terms, are applicable to early site permits, design certifications, combined licenses, design approvals, or manufacturing licenses.

§ 52.1 Definitions.

(a) As used in this part—

Combined license means a combined construction permit and operating license with conditions for a nuclear power facility issued under subpart C of this part.

Decommission means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits—

(i) Release of the property for unrestricted use and termination of the license; or

(ii) Release of the property under restricted conditions and termination of the license.

Design characteristics are the actual features of a reactor or reactors. Design characteristics are specified in a standard design approval, a standard design certification, a combined license application, or a manufacturing license.

Design parameters are the postulated features of a reactor or reactors that could be built at a proposed site. Design parameters are specified in an early site permit.

Early site permit means a Commission approval, issued under subpart A of this part, for a site or sites for one or more nuclear power facilities. An early site permit is a partial construction permit.

License means a license, including an early site permit, combined license or manufacturing license under this part or a renewed license issued by the Commission under this part or part 54 of this chapter.

Licensee means a person who is authorized to conduct activities under a license issued by the Commission.

Major feature of the emergency plans means an aspect of those plans necessary to:

(i) Address in whole or part one or more of the 16 standards in 10 CFR 50.47(b); or

(ii) Describe the emergency planning zones as required in 10 CFR 50.33(g).

Manufacturing license means a license, issued under subpart F of this part, authorizing the manufacture of nuclear power reactors but not their construction, installation, or operation at the sites on which the reactors are to be operated.

Modular design means a nuclear power station that consists of two or more essentially identical nuclear reactors (modules) and each module is a separate nuclear reactor capable of being operated independent of the state of completion or operating condition of any other module co-located on the same site, even though the nuclear power station may have some shared or common systems.

Prototype plant means a nuclear power plant that is used to test new safety features, such as the testing required under 10 CFR 50.43(e). The prototype plant is similar to a first-of-a-kind or standard plant design in all features and size, but may include additional safety features to protect the public and the plant staff from the possible consequences of accidents during the testing period.

Site characteristics are the actual physical, environmental and demographic features of a site. Site characteristics are specified in an early site permit or in a final safety analysis report for a combined license.

Site parameters are the postulated physical, environmental and demographic features of an assumed site. Site parameters are specified in a standard design approval, standard design certification, or manufacturing license.

Standard design means a design which is sufficiently detailed and complete to support certification or approval in accordance with subpart B or E of this part, and which is usable for a multiple number of units or at a multiple number of sites without reopening or repeating the review.

Standard design approval or *design approval* means an NRC staff approval, issued under subpart E of this part, of a final standard design for a nuclear power reactor of the type described in 10 CFR 50.22. The approval may be for either the final design for the entire reactor facility or the final design of major portions thereof.

Standard design certification or *design certification* means a Commission approval, issued under subpart B of this part, of a final standard design for a nuclear power facility. This design may be referred to as a certified standard design.

(b) All other terms in this part have the meaning set out in 10 CFR 50.2, or Section 11 of the Atomic Energy Act, as applicable.

§ 52.2 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§ 52.3 Written communications.

(a) *General requirements.* All correspondence, reports, applications, and other written communications from an applicant, licensee, or holder of a standard design approval to the Nuclear Regulatory Commission concerning the regulations in this part, individual license conditions, or the terms and conditions of an early site permit or standard design approval, must be sent either by mail addressed: ATTN: Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland, between the hours of 7:30 a.m. and 4:15 p.m. eastern time; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, e-mail, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail at *EIE@nrc.gov*, or by writing the Office of 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. If a submission due date falls on a Saturday, Sunday, or Federal holiday, the next Federal working day becomes the official due date.

(b) *Distribution requirements.* Copies of all correspondence, reports, and other written communications concerning the regulations in this part or individual license conditions, or the terms and conditions of an early site permit or standard design approval, must be submitted to the persons listed in paragraph (b)(1) of this section (addresses for the NRC Regional Offices are listed in appendix D to part 20 of this chapter).

(1) *Applications for amendment of permits and licenses; reports; and other communications.* All written communications (including responses to: generic letters, bulletins, information notices, regulatory information summaries, inspection reports, and miscellaneous requests for additional information) that are required of holders of early site permits, standard design approvals, combined licenses, or manufacturing licenses issued under this part must be submitted as follows, except as otherwise specified in paragraphs (b)(2) through (b)(7) of this section: to the NRC's Document Control Desk (if on paper, the signed original), with a copy to the appropriate Regional Office, and a copy to the appropriate NRC Resident Inspector, if one has been assigned to the site of the facility or the place of manufacture of a reactor licensed under subpart F of this part.

(2) *Applications and amendments to applications.* Applications for early site permits, standard design approvals, combined licenses, manufacturing licenses and amendments to any of these types of applications must be submitted to the NRC's Document Control Desk, with a copy to the appropriate Regional Office, and a copy to the appropriate NRC Resident Inspector, if one has been assigned to the site of the facility or the place of manufacture of a reactor licensed under subpart F of this part, except as otherwise specified in paragraphs (b)(3) through (b)(7) of this section. If the application or amendment is on paper, the submission to the Document Control Desk must be the signed original.

(3) *Acceptance review application.* Written communications required for an application for determination of suitability for docketing must be submitted to the NRC's Document Control Desk, with a copy to the appropriate Regional Office. If the communication is on paper, the submission to the Document Control Desk must be the signed original.

(4) *Security plan and related submissions.* Written communications, as defined in paragraphs (b)(4)(i) through (iv) of this section, must be submitted to the NRC's Document Control Desk, with a copy to the appropriate Regional Office. If the communication is on paper, the submission to the Document Control Desk must be the signed original.

(i) Physical security plan under § 52.79 of this chapter;

(ii) Safeguards contingency plan under § 52.79 of this chapter;

(iii) Change to security plan, guard training and qualification plan, or safeguards contingency plan made without prior Commission approval under § 50.54(p) of this chapter;

(iv) Application for amendment of physical security plan, guard training and qualification plan, or safeguards contingency plan under § 50.90 of this chapter.

(5) *Emergency plan and related submissions.* Written communications as defined in paragraphs (b)(5)(i) through (iii) of this section must be submitted to the NRC's Document Control Desk, with a copy to the appropriate Regional Office, and a copy to the appropriate NRC Resident Inspector if one has been assigned to the site of the facility. If the communication is on paper, the submission to the Document Control Desk must be the signed original.

(i) Emergency plan under § 52.17(b) or § 52.79(a);

(ii) Change to an emergency plan under § 50.54(q) of this chapter;

(iii) Emergency implementing procedures under appendix E, Section V of part 50 of this chapter.

(6) *Updated FSAR.* An updated final safety analysis report (FSAR) or replacement pages under § 50.71(e) of this chapter, or the regulations in this part must be submitted to the NRC's Document Control Desk, with a copy to the appropriate Regional Office, and a copy to the appropriate NRC Resident Inspector if one has been assigned to the site of the facility or the place of manufacture of a reactor licensed under subpart F of this part. Paper copy submissions may be made using replacement pages; however, if a licensee chooses to use electronic submission, all subsequent updates or submissions must be performed electronically on a total replacement basis. If the communication is on paper, the submission to the Document Control Desk must be the signed original. If the communications are submitted electronically, see Guidance for

Electronic Submissions to the Commission.

(7) *Quality assurance related submissions.* (i) A change to the safety analysis report quality assurance program description under § 50.54(a)(3) or § 50.55(f)(4) of this chapter, or a change to a licensee's NRC-accepted quality assurance topical report under § 50.54(a)(3) or § 50.55(f)(4) of this chapter, must be submitted to the NRC's Document Control Desk, with a copy to the appropriate Regional Office, and a copy to the appropriate NRC Resident Inspector if one has been assigned to the site of the facility. If the communication is on paper, the submission to the Document Control Desk must be the signed original.

(ii) A change to an NRC-accepted quality assurance topical report from nonlicensees (*i.e.*, architect/engineers, NSSS suppliers, fuel suppliers, constructors, etc.) must be submitted to the NRC's Document Control Desk. If the communication is on paper, the signed original must be sent.

(8) *Certification of permanent cessation of operations.* The licensee's certification of permanent cessation of operations under § 52.110(a)(1), must state the date on which operations have ceased or will cease, and must be submitted to the NRC's Document Control Desk. This submission must be under oath or affirmation.

(9) *Certification of permanent fuel removal.* The licensee's certification of permanent fuel removal under § 52.110(a)(1), must state the date on which the fuel was removed from the reactor vessel and the disposition of the fuel, and must be submitted to the NRC's Document Control Desk. This submission must be under oath or affirmation.

(c) *Form of communications.* All paper copies submitted to meet the requirements set forth in paragraph (b) of this section must be typewritten, printed or otherwise reproduced in permanent form on unglazed paper. Exceptions to these requirements imposed on paper submissions may be granted for the submission of micrographic, photographic, or similar forms.

(d) *Regulation governing submission.* Applicants, licensees, and holders of standard design approvals submitting correspondence, reports, and other written communications under the regulations of this part are requested but not required to cite whenever practical, in the upper right corner of the first page of the submission, the specific regulation or other basis requiring submission.

§ 52.4 Deliberate misconduct.

(a) *Applicability:* This section applies to any:

(1) Licensee;

(2) Holder of a standard design approval;

(3) Applicant for a standard design certification;

(4) Applicant for a license or permit;

(5) Applicant for a standard design approval;

(6) Employee of a licensee;

(7) Employee of an applicant for a license, a standard design certification, or a standard design approval;

(8) Any contractor (including a supplier or consultant), subcontractor, or employee of a contractor or subcontractor of any licensee; or

(9) Any contractor (including a supplier or consultant), subcontractor, or employee of a contractor or subcontractor of any applicant for a license, a standard design certification, or a standard design approval.

(b) *Definitions.* For purposes of this section:

Deliberate misconduct means an intentional act or omission that a person or entity knows:

(i) Would cause a licensee or an applicant for a license, standard design certification, or standard design approval to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license, standard design certification, or standard design approval; or

(ii) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, holder of a standard design approval, applicant for a license, standard design certification, or standard design approval, or contractor, or subcontractor.

(c) *Prohibition against deliberate misconduct.* Any person or entity subject to this section, who knowingly provides to any licensee, any applicant for a license, standard design certification or standard design approval, or a contractor, or subcontractor of a person or entity subject to this section, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities under this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, holder of a standard design approval, or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission, any standard design approval, or standard design certification; or

(2) Deliberately submit to the NRC; a licensee, an applicant for a license, standard design certification or standard design approval; or a licensee's, standard design approval holder's, or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(d) A person or entity who violates paragraph (c)(1) or (c)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

§ 52.5 Employee protection.

(a) Discrimination by a Commission licensee, holder of a standard design approval, an applicant for a license, standard design certification, or standard design approval, a contractor or subcontractor of a Commission licensee, holder of a standard design approval, applicant for a license, standard design certification, or standard design approval, against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in Section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in the introductory text of paragraph (a) of this section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in the introductory text of paragraph (a) of this section or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in the introductory text of paragraph (a) of this section; and

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraph (a), (e), or (f) of this section by a Commission licensee, a holder of a standard design approval, an applicant for a Commission license, standard design certification, or a standard design approval, or a contractor or subcontractor of a Commission licensee, holder of a standard design approval, or any applicant may be grounds for—

(1) Denial, revocation, or suspension of the license or standard design approval;

(2) Withdrawal or revocation of a proposed or final standard design certification;

(3) Imposition of a civil penalty on the licensee, holder of a standard design approval, or applicant (including an applicant for a standard design certification under this part following Commission adoption of final design certification rule).

(4) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e)(1) Each licensee, each holder of a standard design approval, and each applicant for a license, standard design certification, or standard design approval, shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(e). This form must be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than thirty (30) days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, standard design certification, or standard design approval under 10 CFR part 52, and for 30 days following license termination or the expiration or termination of the standard design certification or standard design approval under 10 CFR part 52.

(2) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter, by calling (301) 415–7232, via e-mail to *forms@nrc.gov*, or by visiting the NRC's Web site at *http://www.nrc.gov* and selecting forms from the index found on the NRC's home page.

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor under Section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

(g) Part 19 of this chapter sets forth requirements and regulatory provisions applicable to licensees, holders of a standard design approval, applicants for a license, standard design certification, or standard design approval, and contractors or subcontractors of a Commission licensee, or holder of a standard design approval, and are in addition to the requirements in this section.

§ 52.6 Completeness and accuracy of information.

(a) Information provided to the Commission by a licensee (including an early site permit holder, a combined license holder, and a manufacturing license holder), a holder of a standard design approval under this part, and an applicant for a license or an applicant for a standard design certification or a standard design approval under this part, and information required by statute or by the Commission's regulations, orders, license conditions, or terms and conditions of a standard design approval to be maintained by the licensee, the holder of a standard design approval under this part, the applicant for a standard design certification under this part following Commission adoption of a final design certification rule, and an applicant for a license, a standard design certification, or a standard design approval under this part shall be complete and accurate in all material respects.

(b) Each applicant or licensee, each holder of a standard design approval under this part, and each applicant for a standard design certification under this part following Commission adoption of a final design certification regulation, shall notify the Commission of information identified by the applicant or the licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant, licensee, or holder violates this paragraph only if the applicant, licensee, or holder fails to notify the Commission of information that the applicant, licensee, or holder has been identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within 2 working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

§ 52.7 Specific exemptions.

The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part. The Commission's consideration will be governed by § 50.12 of this chapter, unless other criteria are provided for in this part, in which case the Commission's consideration will be governed by the criteria in this part. Only if those criteria are not met will the Commission's consideration be

governed by § 50.12 of this chapter. The Commission's consideration of requests for exemptions from requirements of the regulations of other parts in this chapter, which are applicable by virtue of this part, shall be governed by the exemption requirements of those parts.

§ 52.8 Combining licenses; elimination of repetition.

(a) An applicant for a license under this part may combine in its application several applications for different kinds of licenses under the regulations of this chapter.

(b) An applicant may incorporate by reference in its application information contained in previous applications, statements or reports filed with the Commission, provided, however, that such references are clear and specific.

(c) The Commission may combine in a single license the activities of an applicant which would otherwise be licensed separately.

§ 52.9 Jurisdictional limits.

No permit, license, standard design approval, or standard design certification under this part shall be deemed to have been issued for activities which are not under or within the jurisdiction of the United States.

§ 52.10 Attacks and destructive acts.

Neither an applicant for a license to manufacture, construct, and operate a utilization facility under this part, nor for an amendment to this license, or an applicant for an early site permit, a standard design certification, or standard design approval under this part, or for an amendment to the early site permit, standard design certification, or standard design approval, is required to provide for design features or other measures for the specific purpose of protection against the effects of—

(a) Attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States, whether a foreign government or other person; or

(b) Use or deployment of weapons incident to U.S. defense activities.

§ 52.11 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under Control Number 3150–0151.

(b) The approved information collection requirements contained in this part appear in §§ 52.7, 52.15, 52.16, 52.17, 52.29, 52.35, 52.39, 52.45, 52.46, 52.47, 52.57, 52.63, 52.75, 52.77, 52.79, 52.80, 52.93, 52.99, 52.110, 52.135, 52.136, 52.137, 52.155, 52.156, 52.157, 52.158, 52.171, 52.177, and appendices A, B, C, D, and N of part 52.

Subpart A—Early Site Permits

§ 52.12 Scope of subpart.

This subpart sets out the requirements and procedures applicable to Commission issuance of an early site permit for approval of a site for one or more nuclear power facilities separate from the filing of an application for a construction permit or combined license for the facility.

§ 52.13 Relationship to other subparts.

This subpart applies when any person who may apply for a construction permit under 10 CFR part 50, or for a combined license under this part seeks an early site permit from the Commission separately from an application for a construction permit or a combined license.

§ 52.15 Filing of applications.

(a) Any person who may apply for a construction permit under 10 CFR part 50, or for a combined license under this part, may file an application for an early site permit with the Director, Office of New Reactors, or the Director, Office of Nuclear Reactor Regulation, as appropriate. An application for an early site permit may be filed notwithstanding the fact that an application for a construction permit or a combined license has not been filed in connection with the site for which a permit is sought.

(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 an application for the initial issuance or renewal of an early site permit are set forth in 10 CFR part 170.

§ 52.16 Contents of applications; general information.

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

§ 52.17 Contents of applications; technical information.

(a) For applications submitted before September 27, 2007, the rule provisions in effect at the date of docketing apply unless otherwise requested by the applicant in writing. The application must contain:

(1) A site safety analysis report. The site safety analysis report shall include the following:

(i) The specific number, type, and thermal power level of the facilities, or range of possible facilities, for which the site may be used;

(ii) The anticipated maximum levels of radiological and thermal effluents each facility will produce;

(iii) The type of cooling systems, intakes, and outflows that may be associated with each facility;

(iv) The boundaries of the site;

(v) The proposed general location of each facility on the site;

(vi) The seismic, meteorological, hydrologic, and geologic characteristics of the proposed site with 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 period of time in which the historical data have been accumulated;

(vii) The location and description of any nearby industrial, military, or transportation facilities and routes;

(viii) The existing and projected future population profile of the area surrounding the site;

(ix) A description and safety assessment of the site on which a facility is to be located. The assessment must contain an analysis and evaluation of the major structures, systems, and components of the facility that bear significantly on the acceptability of the site under the radiological consequence evaluation factors identified in paragraphs (a)(1)(ix)(A) and (a)(1)(ix)(B) of this section. In performing this assessment, an applicant shall assume a fission product release [1] from the core into the containment assuming that the facility is operated at the ultimate power level contemplated. The applicant shall perform an evaluation and analysis of the postulated fission product release, using the expected demonstrable

[1] The fission product release assumed for this evaluation should be based upon a major accident, hypothesized for purposes of site analysis or postulated from considerations of possible accidental events. Such accidents have generally been assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products.

containment leak rate and any fission product cleanup systems intended to mitigate the consequences of the accidents, together with applicable site characteristics, including site meteorology, to evaluate the offsite radiological consequences. Site characteristics must comply with part 100 of this chapter. The evaluation must determine that:

(A) An individual located at any point on the boundary of the exclusion area for any 2 hour period following the onset of the postulated fission product release, would not receive a radiation dose in excess of 25 rem [2] total effective dose equivalent (TEDE).

(B) An individual located at any point on the outer boundary of the low population zone, who is exposed to the radioactive cloud resulting from the postulated fission product release (during the entire period of its passage) would not receive a radiation dose in excess of 25 rem TEDE;

(x) Information demonstrating that site characteristics are such that adequate security plans and measures can be developed;

(xi) For applications submitted after September 27, 2007, a description of the quality assurance program applied to site-related activities for 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. Appendix B to 10 CFR part 50 sets forth the requirements for quality assurance programs for nuclear power plants. The description of the quality assurance program for a nuclear power plant site shall include a discussion of how the applicable requirements of appendix B to part 50 of this chapter will be satisfied; and

(xii) An evaluation of the site against applicable sections of the Standard Review Plan (SRP) revision in effect 6 months before the docket date of the application. The evaluation required by this section shall include an identification and description of all differences in analytical techniques and procedural measures proposed for a site and those corresponding techniques and measures given in the SRP acceptance criteria. Where such a difference exists, the evaluation shall discuss how the proposed alternative provides an acceptable method of complying with the Commission's regulations, or portions thereof, that underlie the corresponding SRP acceptance criteria. The SRP is not a substitute for the regulations, and compliance is not a requirement.

(2) A complete environmental report as required by 10 CFR 51.50(b).

(b)(1) The site safety analysis report must identify physical characteristics of the proposed site, such as egress limitations from the area surrounding the site, that could pose a significant impediment to the development of emergency plans. If physical characteristics are identified that could pose a significant impediment to the development of emergency plans, the application must identify measures that would, when implemented, mitigate or eliminate the significant impediment.

(2) The site safety analysis report may also:

(i) Propose major features of the emergency plans, in accordance with the pertinent standards of 10 CFR 50.47, and the requirements of appendix E to 10 CFR part 50, such as the exact size and configuration of the emergency planning zones, for review and approval by NRC, in consultation with the Department of Homeland Security (DHS) in the absence of complete and integrated emergency plans; or

(ii) Propose complete and integrated emergency plans for review and approval by the NRC, in consultation with DHS, in accordance with the applicable standards of 10 CFR 50.47, and the requirements of appendix E to 10 CFR part 50. To the extent approval of emergency plans is sought, the application must contain the information required by §§ 50.33(g) and (j) of this chapter.

(3) Emergency plans submitted under paragraph (b)(2)(ii) of this section must include the proposed inspections, tests, and analyses that the holder of a combined license referencing the early site permit shall perform, and the acceptance criteria that are necessary and sufficient to provide reasonable assurance that, if the inspections, tests, and analyses are performed and the acceptance criteria met, the facility has been constructed and will be operated in conformity with the emergency plans, the provisions of the Act, and the Commission's rules and regulations. Major features of an emergency plan submitted under paragraph (b)(2)(i) of this section may include proposed inspections, tests, analyses, and acceptance criteria.

(4) Under paragraphs (b)(1) and (b)(2)(i) of this section, the site safety analysis report must include a description of contacts and arrangements made with Federal, State, and local governmental agencies with emergency planning responsibilities. The site safety analysis report must contain any certifications that have been obtained. If these certifications cannot be obtained, the site safety analysis report must contain information, including a utility plan, sufficient to show that the proposed plans provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the site. Under the option set forth in paragraph (b)(2)(ii) of this section, the applicant shall make good faith efforts to obtain from the same governmental agencies certifications that:

(i) The proposed emergency plans are practicable;

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

(iii) That these agencies are committed to executing their responsibilities under the plans in the event of an emergency.

(c) If the applicant requests authorization to perform activities at the site, which are identified in 10 CFR 50.10(e)(1), after issuance of the early site permit and without a separate authorization under 10 CFR 50.10(e)(1), the applicant must identify the activities that are requested, and propose a plan for redress of the site in the event that the activities are performed and the early site permit expires before it is referenced in an application for a construction permit or a combined license. The application must demonstrate that there is reasonable assurance that redress carried out under the plan will achieve an environmentally stable and aesthetically acceptable site suitable for whatever non-nuclear use may conform with local zoning laws.

§ 52.18 Standards for review of applications.

Applications filed under this subpart will be reviewed according to the applicable standards set out in 10 CFR part 50 and its appendices and 10 CFR part 100. In addition, the Commission shall prepare an environmental impact statement during review of the application, in accordance with the applicable provisions of 10 CFR part 51. The Commission shall determine, after

[2] A whole body dose of 25 rem has been stated to correspond numerically to the once in a lifetime accidental or emergency dose for radiation workers which, according to NCRP recommendations at the time could be disregarded in the determination of their radiation exposure status (see NBS Handbook 69 dated June 5, 1959). However, its use is not intended to imply that this number constitutes an acceptable limit for an emergency dose to the public under accident conditions. Rather, this dose value has been set forth in this section as a reference value, which can be used in the evaluation of plant design features with respect to postulated reactor accidents, to assure that these designs provide assurance of low risk of public exposure to radiation, in the event of an accidents.

consultation with DHS, whether the information required of the applicant by § 52.17(b)(1) shows that there is no significant impediment to the development of emergency plans that cannot be mitigated or eliminated by measures proposed by the applicant, whether any major features of emergency plans submitted by the applicant under § 52.17(b)(2)(i) are acceptable in accordance with the applicable standards of 10 CFR 50.47 and the requirements of appendix E to 10 CFR part 50, and whether any emergency plans submitted by the applicant under § 52.17(b)(2)(ii) provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

§ 52.21 Administrative review of applications; hearings.

An early site permit is subject to all procedural requirements in 10 CFR part 2, including the requirements for docketing in § 2.101(a)(1) through (4) of this chapter, and the requirements for issuance of a notice of hearing in §§ 2.104(a) and (d) of this chapter, provided that the designated sections may not be construed to require that the environmental report, or draft or final environmental impact statement include an assessment of the benefits of construction and operation of the reactor or reactors, or an analysis of alternative energy sources. The presiding officer in an early site permit hearing shall not admit contentions proffered by any party concerning an assessment of the benefits of construction and operation of the reactor or reactors, or an analysis of alternative energy sources if those issues were not addressed by the applicant in the early site permit application. All hearings conducted on applications for early site permits filed under this part are governed by the procedures contained in subparts C, G, L, and N 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 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.

(b) The early site permit must specify the site characteristics, design parameters, and terms and conditions of the early site permit the Commission deems appropriate. Before issuance of either a construction permit or combined license referencing an early site permit, the Commission shall find that any relevant terms and conditions of the early site permit have been met. Any terms or conditions of the early site permit that could not be met by the time of issuance of the construction permit or combined license, must be set forth as terms or conditions of the construction permit or combined license.

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

§ 52.25 Extent of activities permitted.

If the activities authorized by § 52.24(c) are performed and the site is not referenced in an application for a construction permit or a combined license issued under subpart C of this part while the permit remains valid, then the early site permit remains in effect solely for the purpose of site redress, and the holder of the permit shall redress the site in accordance with the terms of the site redress plan required by § 52.17(c). If, before redress is complete, a use not envisaged in the redress plan is found for the site or parts thereof, the holder of the permit shall carry out the redress plan to the greatest extent possible consistent with the alternate use.

§ 52.27 Duration of permit.

(a) Except as provided in paragraph (b) of this section, an early site permit issued under this subpart may be valid for not less than 10, nor more than 20 years from the date of issuance.

(b) An early site permit continues to be valid beyond the date of expiration in any proceeding on a construction permit application or a combined license application that references the early site permit and is docketed before the date of expiration of the early site permit, or, if a timely application for renewal of the permit has been docketed, before the Commission has determined whether to renew the permit.

(c) An applicant for a construction permit or combined license may, at its own risk, reference in its application a site for which an early site permit application has been docketed but not granted.

(d) Upon issuance of a construction permit or combined license, a referenced early site permit is subsumed, to the extent referenced, into the construction permit or combined license.

§ 52.28 Transfer of early site permit.

An application to transfer an early site permit will be processed under 10 CFR 50.80.

§ 52.29 Application for renewal.

(a) Not less than 12, nor more than 36 months before the expiration date stated in the early site permit, or any later renewal period, the permit holder may apply for a renewal of the permit. An application for renewal must contain all information necessary to bring up to date the information and data contained in the previous application.

(b) Any person whose interests 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.

(c) An early site permit, either original or renewed, for which a timely application for renewal has been filed, remains in effect until the Commission has determined whether to renew the permit. If the permit is not renewed, it continues to be valid in certain proceedings in accordance with the provisions of § 52.27(b).

(d) The Commission shall refer a copy of the application for renewal to the

ACRS. The ACRS shall report on those portions of the application which concern safety and shall apply the criteria set forth in § 52.31.

§ 52.31 Criteria for renewal.

(a) The Commission shall grant the renewal if it determines that:

(1) The site complies with the Act, the Commission's regulations, and orders applicable and in effect at the time the site permit was originally issued; and

(2) Any new requirements the Commission may wish to impose are:

(i) Necessary for adequate protection to public health and safety or common defense and security;

(ii) Necessary for compliance with the Commission's regulations, and orders applicable and in effect at the time the site permit was originally issued; or

(iii) A substantial increase in overall protection of the public health and safety or the common defense and security to be derived from the new requirements, and the direct and indirect costs of implementation of those requirements are justified in view of this increased protection.

(b) A denial of renewal for failure to comply with the provisions of § 52.31(a) does not bar the permit holder or another applicant from filing a new application for the site which proposes changes to the site or the way that it is used to correct the deficiencies cited in the denial of the renewal.

§ 52.33 Duration of renewal.

Each renewal of an early site permit may be for not less than 10, nor more than 20 years, plus any remaining years on the early site permit then in effect before renewal.

§ 52.35 Use of site for other purposes.

A site for which an early site permit has been issued under this subpart may be used for purposes other than those described in the permit, including the location of other types of energy facilities. The permit holder shall inform the Director of New Reactors or the Director of Nuclear Reactor Regulation, as appropriate, (Director) of any significant uses for the site which have not been approved in the early site permit. The information about the activities must be given to the Director at least 30 days in advance of any actual construction or site modification for the activities. The information provided could be the basis for imposing new requirements on the permit, in accordance with the provisions of § 52.39. If the permit holder informs the Director that the holder no longer intends to use the site for a nuclear power plant, the Director may terminate the permit.

§ 52.39 Finality of early site permit determinations.

(a) *Commission finality.* (1) Notwithstanding any provision in 10 CFR 50.109, while an early site permit is in effect under §§ 52.27 or 52.33, the Commission may not change or impose new site characteristics, design parameters, or terms and conditions, including emergency planning requirements, on the early site permit unless the Commission:

(i) Determines that a modification is necessary to bring the permit or the site into compliance with the Commission's regulations and orders applicable and in effect at the time the permit was issued;

(ii) Determines the modification is necessary to assure adequate protection of the public health and safety or the common defense and security;

(iii) Determines that a modification is necessary based on an update under paragraph (b) of this section; or

(iv) Issues a variance requested under paragraph (d) of this section.

(2) In making the findings required for issuance of a construction permit or combined license, or the findings required by § 52.103, or in any enforcement hearing other than one initiated by the Commission under paragraph (a)(1) of this section, if the application for the construction permit or combined license references an early site permit, the Commission shall treat as resolved those matters resolved in the proceeding on the application for issuance or renewal of the early site permit, except as provided for in paragraphs (b), (c), and (d) of this section.

(i) If the early site permit approved an emergency plan (or major features thereof) that is in use by a licensee of a nuclear power plant, the Commission shall treat as resolved changes to the early site permit emergency plan (or major features thereof) that are identical to changes made to the licensee's emergency plans in compliance with § 50.54(q) of this chapter occurring after issuance of the early site permit.

(ii) If the early site permit approved an emergency plan (or major features thereof) that is not in use by a licensee of a nuclear power plant, the Commission shall treat as resolved changes that are equivalent to those that could be made under § 50.54(q) of this chapter without prior NRC approval had the emergency plan been in use by a licensee.

(b) *Updating of early site permit-emergency preparedness.* An applicant for a construction permit, operating license, or combined license who has filed an application referencing an early site permit issued under this subpart shall update the emergency preparedness information that was provided under § 52.17(b), and discuss whether the updated information materially changes the bases for compliance with applicable NRC requirements.

(c) *Hearings and petitions.* (1) In any proceeding for the issuance of a construction permit, operating license, or combined license referencing an early site permit, contentions on the following matters may be litigated in the same manner as other issues material to the proceeding:

(i) The nuclear power reactor proposed to be built does not fit within one or more of the site characteristics or design parameters included in the early site permit;

(ii) One or more of the terms and conditions of the early site permit have not been met;

(iii) A variance requested under paragraph (d) of this section is unwarranted or should be modified;

(iv) New or additional information is provided in the application that substantially alters the bases for a previous NRC conclusion or constitutes a sufficient basis for the Commission to modify or impose new terms and conditions related to emergency preparedness; or

(v) Any significant environmental issue that was not resolved in the early site permit proceeding, or any issue involving the impacts of construction and operation of the facility that was resolved in the early site permit proceeding for which significant new information has been identified.

(2) Any person may file a petition requesting that the site characteristics, design parameters, or terms and conditions of the early site permit should be modified, or that the permit should be suspended or revoked. The petition will be considered in accordance with § 2.206 of this chapter. Before construction commences, the Commission shall consider the petition and determine whether any immediate action is required. If the petition is granted, an appropriate order will be issued. Construction under the construction permit or combined license will not be affected by the granting of the petition unless the order is made immediately effective. Any change required by the Commission in response to the petition must meet the requirements of paragraph (a)(1) of this section.

(d) *Variances.* An applicant for a construction permit, operating license, or combined license referencing an early site permit may include in its application a request for a variance from

one or more site characteristics, design parameters, or terms and conditions of the early site permit, or from the site safety analysis report. In determining whether to grant the variance, the Commission shall apply the same technically relevant criteria applicable to the application for the original or renewed early site permit. Once a construction permit or combined license referencing an early site permit is issued, variances from the early site permit will not be granted for that construction permit or combined license.

(e) *Early site permit amendment.* The holder of an early site permit may not make changes to the early site permit, including the site safety analysis report, without prior Commission approval. The request for a change to the early site permit must be in the form of an application for a license amendment, and must meet the requirements of 10 CFR 50.90 and 50.92.

(f) *Information requests.* Except for information requests seeking to verify compliance with the current licensing basis of the early site permit, information requests to the holder of an early site permit 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.

Subpart B—Standard Design Certifications

§ 52.41 Scope of subpart.

(a) This subpart sets forth the requirements and procedures applicable to Commission issuance of rules granting standard design certifications for nuclear power facilities separate from the filing of an application for a construction permit or combined license for such a facility.

(b)(1) Any person may seek a standard design certification for an essentially complete nuclear power plant design which is an evolutionary change from light water reactor designs of plants which have been licensed and in commercial operation before April 18, 1989.

(2) Any person may also seek a standard design certification for a nuclear power plant design which differs significantly from the light water reactor designs described in paragraph (b)(1) of this section or uses simplified, inherent, passive, or other innovative means to accomplish its safety functions.

§ 52.43 Relationship to other subparts.

(a) This subpart applies to a person that requests a standard design certification from the NRC separately from an application for a combined license filed under subpart C of this part for a nuclear power facility. An applicant for a combined license may reference a standard design certification.

(b) Subpart E of this part governs the NRC staff review and approval of a final standard design. Subpart E may be used independently of the provisions in this subpart.

(c) Subpart F of this part governs the issuance of licenses to manufacture nuclear power reactors to be installed and operated at sites not identified in the manufacturing license application. Subpart F may be used independently of the provisions in this subpart. However, an applicant for a manufacturing license under subpart F may reference a design certification.

§ 52.45 Filing of applications.

(a) An application for design certification may be filed notwithstanding the fact that an application for a construction permit, combined license, or manufacturing license for such a facility has not been filed.

(b) The application must comply with the applicable filing requirements of §§ 52.3 and §§ 2.811 through 2.819 of this chapter.

(c) The fees associated with the review of an application for the initial issuance or renewal of a standard design certification are set forth in 10 CFR part 170.

§ 52.46 Contents of applications; general information.

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

§ 52.47 Contents of applications; technical information.

The application must contain a level of design information sufficient to enable the Commission to judge the applicant's proposed means of assuring that construction conforms to the design and to reach a final conclusion on all safety questions associated with the design before the certification is granted. The information submitted for a design certification must include performance requirements and design information sufficiently detailed to permit the preparation of acceptance and inspection requirements by the NRC, and procurement specifications and construction and installation specifications by an applicant. The Commission will require, before design certification, that information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if the information is necessary for the Commission to make its safety determination.

(a) The application must contain a final safety analysis report (FSAR) that describes the facility, presents the design bases and the limits on its operation, and presents a safety analysis of the structures, systems, and components and of the facility as a whole, and must include the following information:

(1) The site parameters postulated for the design, and an analysis and evaluation of the design in terms of those site parameters;

(2) A description and analysis of the structures, systems, and components (SSCs) of the facility, with emphasis upon performance requirements, the bases, with technical justification therefor, upon which these requirements have been established, and the evaluations required to show that safety functions will be accomplished. It is expected that the standard plant will reflect through its design, construction, and operation an extremely low probability for accidents that could result in the release of significant quantities of radioactive fission products. The description shall be sufficient to permit understanding of the system designs and their relationship to the safety evaluations. Such items as the reactor core, reactor coolant system, instrumentation and control systems, electrical systems, containment system, other engineered safety features, auxiliary and emergency systems, power conversion systems, radioactive waste handling systems, and fuel handling systems shall be discussed insofar as they are pertinent. The following power reactor design characteristics will be taken into consideration by the Commission:

(i) Intended use of the reactor including the proposed maximum power level and the nature and inventory of contained radioactive materials;

(ii) The extent to which generally accepted engineering standards are applied to the design of the reactor;

(iii) The extent to which the reactor incorporates unique, unusual or enhanced safety features having a significant bearing on the probability or consequences of accidental release of radioactive materials; and

(iv) The safety features that are to be engineered into the facility and those barriers that must be breached as a result of an accident before a release of radioactive material to the environment can occur. Special attention must be directed to plant design features intended to mitigate the radiological consequences of accidents. In performing this assessment, an applicant shall assume a fission product release [3] from the core into the containment assuming that the facility is operated at the ultimate power level contemplated. The applicant shall perform an evaluation and analysis of the postulated fission product release, using the expected demonstrable containment leak rate and any fission product cleanup systems intended to mitigate the consequences of the accidents, together with applicable postulated site parameters, including site meteorology, to evaluate the offsite radiological consequences. The evaluation must determine that:

(A) An individual located at any point on the boundary of the exclusion area for any 2-hour period following the onset of the postulated fission product release, would not receive a radiation dose in excess of 25 rem [4] total effective dose equivalent (TEDE);

(B) An individual located at any point on the outer boundary of the low population zone, who is exposed to the radioactive cloud resulting from the postulated fission product release (during the entire period of its passage) would not receive a radiation dose in excess of 25 rem TEDE;

(3) The design of the facility including:

(i) The principal design criteria for the facility. Appendix A to 10 CFR part 50, general design criteria (GDC), establishes minimum requirements for the principal design criteria for water-cooled nuclear power plants similar in design and location to plants for which construction permits have previously been issued by the Commission and provides guidance to applicants in establishing principal design criteria for other types of nuclear power units;

(ii) The design bases and the relation of the design bases to the principal design criteria;

(iii) Information relative to materials of construction, general arrangement, and approximate dimensions, sufficient to provide reasonable assurance that the design will conform to the design bases with an adequate margin for safety;

(4) An analysis and evaluation of the design and performance of structures, systems, and components with the objective of assessing the risk to public health and safety resulting from operation of the facility and including determination of the margins of safety during normal operations and transient conditions anticipated during the life of the facility, and the adequacy of structures, systems, and components provided for the prevention of accidents and the mitigation of the consequences of accidents. Analysis and evaluation of emergency core cooling system (ECCS) cooling performance and the need for high-point vents following postulated loss-of-coolant accidents shall be performed in accordance with the requirements of §§ 50.46 and 50.46a of this chapter;

(5) The kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in part 20 of this chapter;

(6) The information required by § 20.1406 of this chapter;

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

(8) The information necessary to demonstrate compliance with any technically relevant portions of the Three Mile Island requirements set forth in 10 CFR 50.34(f), except paragraphs (f)(1)(xii), (f)(2)(ix), and (f)(3)(v);

(9) For applications for light-water-cooled nuclear power plants, an evaluation of the standard plant design against the Standard Review Plan (SRP) revision in effect 6 months before the docket date of the application. The evaluation required by this section shall include an identification and description of all differences in design features, analytical techniques, and procedural measures proposed for the design and those corresponding features, techniques, and measures given in the SRP acceptance criteria. Where a difference exists, the evaluation shall discuss how the proposed alternative provides an acceptable method of complying with the Commission's regulations, or portions thereof, that underlie the corresponding SRP acceptance criteria. The SRP is not a substitute for the regulations, and compliance is not a requirement.

(10) 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 described in 10 CFR 50.34a(e);

(11) Proposed technical specifications prepared in accordance with the requirements of §§ 50.36 and 50.36a of this chapter;

(12) An analysis and description of the equipment and systems for combustible gas control as required by 10 CFR 50.44;

(13) The list of electric equipment important to safety that is required by 10 CFR 50.49(d);

(14) 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 10 CFR 50.60 and 50.61;

(15) Information demonstrating how the applicant will comply with requirements for reduction of risk from anticipated transients without scram events in § 50.62;

(16) A coping analysis, and any design features necessary to address station blackout, as required by 10 CFR 50.63;

(17) Information demonstrating how the applicant will comply with requirements for criticality accidents in § 50.68(b)(2)–(b)(4);

(18) A description and analysis of the fire protection design features for the standard plant necessary to comply with 10 CFR part 50, appendix A, GDC 3, and § 50.48 of this chapter;

(19) A description of the quality assurance program applied to the design of the structures, systems, and components of the facility. Appendix B to 10 CFR part 50, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," sets forth the requirements for quality assurance programs for nuclear power plants. The description of the quality assurance program for a nuclear power plant shall include a discussion of how the applicable requirements of appendix B to 10 CFR part 50 were satisfied;

(20) The information necessary to demonstrate that the standard plant complies with the earthquake

[3] The fission product release assumed for this evaluation should be based upon a major accident, hypothesized for purposes of site analysis or postulated from considerations of possible accidental events. These accidents have generally been assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products.

[4] A whole body dose of 25 rem has been stated to correspond numerically to the once in a lifetime accidental or emergency dose for radiation workers which, according to NCRP recommendations at the time could be disregarded in the determination of their radiation exposure status (see NBS Handbook 69 dated June 5, 1959). However, its use is not intended to imply that this number constitutes an acceptable limit for an emergency dose to the public under accident conditions. This dose value has been set forth in this section as a reference value, which can be used in the evaluation of plant design features with respect to postulated reactor accidents, to assure that these designs provide assurance of low risk of public exposure to radiation, in the event of an accident.

engineering criteria in 10 CFR part 50, appendix S;

(21) Proposed technical resolutions of those Unresolved Safety Issues and medium- and high-priority generic safety issues which are identified in the version of NUREG–0933 current on the date up to 6 months before the docket date of the application and which are technically relevant to the design;

(22) The information necessary to demonstrate how operating experience insights have been incorporated into the plant design;

(23) For light-water reactor designs, a description and analysis of design features for the prevention and mitigation of severe accidents, e.g., challenges to containment integrity caused by core-concrete interaction, steam explosion, high-pressure core melt ejection, hydrogen combustion, and containment bypass;

(24) A representative conceptual design for those portions of the plant for which the application does not seek certification, to aid the NRC in its review of the FSAR and to permit assessment of the adequacy of the interface requirements in paragraph (a)(25) of this section;

(25) The interface requirements to be met by those portions of the plant for which the application does not seek certification. These requirements must be sufficiently detailed to allow completion of the FSAR;

(26) Justification that compliance with the interface requirements of paragraph (a)(25) of this section is verifiable through inspections, tests, or analyses. The method to be used for verification of interface requirements must be included as part of the proposed ITAAC required by paragraph (b)(1) of this section; and

(27) A description of the design-specific probabilistic risk assessment (PRA) and its results.

(b) The application must also contain:

(1) The proposed inspections, tests, analyses, and acceptance criteria that are necessary and sufficient to provide reasonable assurance that, if the inspections, tests, and analyses are performed and the acceptance criteria met, a facility that incorporates the design certification has been constructed and will be operated in conformity with the design certification, the provisions of the Act, and the Commission's rules and regulations; and

(2) An environmental report as required by 10 CFR 51.55.

(c) This paragraph applies, according to its provisions, to particular applications:

(1) An application for certification of a nuclear power reactor design that is an evolutionary change from light-water reactor designs of plants that have been licensed and in commercial operation before April 18, 1989, must provide an essentially complete nuclear power plant design except for site-specific elements such as the service water intake structure and the ultimate heat sink;

(2) An application for certification of a nuclear power reactor design that differs significantly from the light-water reactor designs described in paragraph (c)(1) of this section or uses simplified, inherent, passive, or other innovative means to accomplish its safety functions must provide an essentially complete nuclear power reactor design except for site-specific elements such as the service water intake structure and the ultimate heat sink, and must meet the requirements of 10 CFR 50.43(e); and

(3) An application for certification of a modular nuclear power reactor design must describe and analyze the possible operating configurations of the reactor modules with common systems, interface requirements, and system interactions. The final safety analysis must also account for differences among the configurations, including any restrictions that will be necessary during the construction and startup of a given module to ensure the safe operation of any module already operating.

§ 52.48 Standards for review of applications.

Applications filed under this subpart will be reviewed for compliance with the standards set out in 10 CFR parts 20, 50 and its appendices, 51, 73, and 100.

§ 52.51 Administrative review of applications.

(a) A standard design certification is a rule that will be issued in accordance with the provisions of subpart H of 10 CFR part 2, as supplemented by the provisions of this section. The Commission shall initiate the rulemaking after an application has been filed under § 52.45 and shall specify the procedures to be used for the rulemaking. The notice of proposed rulemaking published in the **Federal Register** must provide an opportunity for the submission of comments on the proposed design certification rule. If, at the time a proposed design certification rule is published in the **Federal Register** under this paragraph (a), the Commission decides that a legislative hearing should be held, the information required by 10 CFR 2.1502(c) must be included in the **Federal Register** document for the proposed design certification.

(b) Following the submission of comments on the proposed design certification rule, the Commission may, at its discretion, hold a legislative hearing under the procedures in subpart O of part 2 of this chapter. The Commission shall publish a document in the **Federal Register** of its decision to hold a legislative hearing. The document shall contain the information specified in paragraph (c) of this section, and specify whether the Commission or a presiding officer will conduct the legislative hearing.

(c) Notwithstanding anything in 10 CFR 2.390 to the contrary, proprietary information will be protected in the same manner and to the same extent as proprietary information submitted in connection with applications for licenses, provided that the design certification shall be published in Chapter I of this title.

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

The Commission shall refer a copy of the application to the ACRS. The ACRS shall report on those portions of the application which concern safety.

§ 52.54 Issuance of standard design certification.

(a) After conducting a rulemaking proceeding under § 52.51 on an application for a standard design certification and receiving the report to be submitted by the Advisory Committee on Reactor Safeguards under § 52.53, the Commission may issue a standard design certification in the form of a rule for the design which is the subject of the application, if the Commission determines that:

(1) The application meets the applicable standards and requirements of the Atomic Energy 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 standard design conforms with the provisions of the Act, and the Commission's regulations;

(4) The applicant is technically qualified;

(5) The proposed inspections, tests, analyses, and acceptance criteria are necessary and sufficient, within the scope of the standard design, to provide reasonable assurance that, if the inspections, tests, and analyses are performed and the acceptance criteria met, the facility has been constructed and will be operated in accordance with the design certification, the provisions of the Act, and the Commission's regulations;

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

(7) The findings required by subpart A of part 51 of this chapter have been made; and

(8) The applicant has implemented the quality assurance program described or referenced in the safety analysis report.

(b) The design certification rule must specify the site parameters, design characteristics, and any additional requirements and restrictions of the design certification rule.

(c) After the Commission has adopted a final design certification rule, the applicant shall not permit any individual to have access to or 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, as applicable.

§ 52.55 Duration of certification.

(a) Except as provided in paragraph (b) of this section, a standard design certification issued under this subpart is valid for 15 years from the date of issuance.

(b) A standard design certification continues to be valid beyond the date of expiration in any proceeding on an application for a combined license or an operating license that references the standard design certification and is docketed either before the date of expiration of the certification, or, if a timely application for renewal of the certification has been filed, before the Commission has determined whether to renew the certification. A design certification also continues to be valid beyond the date of expiration in any hearing held under § 52.103 before operation begins under a combined license that references the design certification.

(c) An applicant for a construction permit or a combined license may, at its own risk, reference in its application a design for which a design certification application has been docketed but not granted.

§ 52.57 Application for renewal.

(a) Not less than 12 nor more than 36 months before the expiration of the initial 15-year period, or any later renewal period, any person may apply for renewal of the certification. An application for renewal must contain all information necessary to bring up to date the information and data contained in the previous application. The Commission will require, before renewal of certification, that information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if this information is necessary for the Commission to make its safety determination. Notice and comment procedures must be used for a rulemaking proceeding on the application for renewal. The Commission, in its discretion, may require the use of additional procedures in individual renewal proceedings.

(b) A design certification, either original or renewed, for which a timely application for renewal has been filed remains in effect until the Commission has determined whether to renew the certification. If the certification is not renewed, it continues to be valid in certain proceedings, in accordance with the provisions of § 52.55.

(c) The Commission shall refer a copy of the application for renewal to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS shall report on those portions of the application which concern safety and shall apply the criteria set forth in § 52.59.

§ 52.59 Criteria for renewal.

(a) The Commission shall issue a rule granting the renewal if the design, either as originally certified or as modified during the rulemaking on the renewal, complies with the Atomic Energy Act and the Commission's regulations applicable and in effect at the time the certification was issued.

(b) The Commission may impose other requirements if it determines that:

(1) They are necessary for adequate protection to public health and safety or common defense and security;

(2) They are necessary for compliance with the Commission's regulations and orders applicable and in effect at the time the design certification was issued; or

(3) There is a substantial increase in overall protection of the public health and safety or the common defense and security to be derived from the new requirements, and the direct and indirect costs of implementing those requirements are justified in view of this increased protection.

(c) In addition, the applicant for renewal may request an amendment to the design certification. The Commission shall grant the amendment request if it determines that the amendment will comply with the Atomic Energy Act and the Commission's regulations in effect at the time of renewal. If the amendment request entails such an extensive change to the design certification that an essentially new standard design is being proposed, an application for a design certification must be filed in accordance with this subpart.

(d) Denial of renewal does not bar the applicant, or another applicant, from filing a new application for certification of the design, which proposes design changes that correct the deficiencies cited in the denial of the renewal.

§ 52.61 Duration of renewal.

Each renewal of certification for a standard design will be for not less than 10, nor more than 15 years.

§ 52.63 Finality of standard design certifications.

(a)(1) Notwithstanding any provision in 10 CFR 50.109, while a standard design certification rule is in effect under §§ 52.55 or 52.61, the Commission may not modify, rescind, or impose new requirements on the certification information, whether on its own motion, or in response to a petition from any person, unless the Commission determines in a rulemaking that the change:

(i) Is necessary either to bring the certification information or the referencing plants into compliance with the Commission's regulations applicable and in effect at the time the certification was issued;

(ii) Is necessary to provide adequate protection of the public health and safety or the common defense and security;

(iii) Reduces unnecessary regulatory burden and maintains protection to public health and safety and the common defense and security;

(iv) Provides the detailed design information to be verified under those inspections, tests, analyses, and acceptance criteria (ITAAC) which are directed at certification information (*i.e.*, design acceptance criteria);

(v) Is necessary to correct material errors in the certification information;

(vi) Substantially increases overall safety, reliability, or security of facility design, construction, or operation, and the direct and indirect costs of implementation of the rule change are justified in view of this increased safety, reliability, or security; or

(vii) Contributes to increased standardization of the certification information.

(2)(i) In a rulemaking under § 52.63(a)(1), except for § 52.63(a)(1)(ii), the Commission will give consideration to whether the benefits justify the costs for plants that are already licensed or for which an application for a permit or license is under consideration.

(ii) The rulemaking procedures for changes under § 52.63(a)(1) must provide for notice and opportunity for public comment.

(3) Any modification the NRC imposes on a design certification rule under paragraph (a)(1) of this section will be applied to all plants referencing the certified design, except those to which the modification has been rendered technically irrelevant by action taken under paragraphs (a)(4) or (b)(1) of this section.

(4) The Commission may not impose new requirements by plant-specific order on any part of the design of a specific plant referencing the design certification rule if that part was approved in the design certification while a design certification rule is in effect under § 52.55 or § 52.61, unless:

(i) A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time the certification was issued, or to assure adequate protection of the public health and safety or the common defense and security; and

(ii) Special circumstances as defined in 10 CFR 52.7 are present. In addition to the factors listed in § 52.7, the Commission shall consider whether the special circumstances which § 52.7 requires to be present outweigh any decrease in safety that may result from the reduction in standardization caused by the plant-specific order.

(5) Except as provided in 10 CFR 2.335, in making the findings required for issuance of a combined license, construction permit, operating license, or manufacturing license, or for any hearing under § 52.103, the Commission shall treat as resolved those matters resolved in connection with the issuance or renewal of a design certification rule.

(b)(1) An applicant or licensee who references a design certification rule may request an exemption from one or more elements of the certification information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of § 52.7. In addition to the factors listed in § 52.7, the Commission shall consider whether the special circumstances that § 52.7 requires to be present outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption. The granting of an exemption on request of an applicant is subject to litigation in the same manner as other issues in the operating license or combined license hearing.

(2) Subject to § 50.59 of this chapter, a licensee who references a design certification rule may make departures from the design of the nuclear power facility, without prior Commission approval, unless the proposed departure involves a change to the design as described in the rule certifying the design. The licensee shall maintain records of all departures from the facility and these records must be maintained and available for audit until the date of termination of the license.

(c) The Commission will require, before granting a construction permit, combined license, operating license, or manufacturing license which references a design certification rule, that information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if the information is necessary for the Commission to make its safety determinations, including the determination that the application is consistent with the certification information. This information may be acquired by appropriate arrangements with the design certification applicant.

Subpart C—Combined Licenses

§ 52.71 Scope of subpart.

This subpart sets out the requirements and procedures applicable to Commission issuance of combined licenses for nuclear power facilities.

§ 52.73 Relationship to other subparts.

(a) An application for a combined license under this subpart may, but need not, reference a standard design certification, standard design approval, or manufacturing license issued under subparts B, E, or F of this part, respectively, or an early site permit issued under subpart A of this part. In the absence of a demonstration that an entity other than the one originally sponsoring and obtaining a design certification is qualified to supply a design, the Commission will entertain an application for a combined license that references a standard design certification issued under subpart B of this part only if the entity that sponsored and obtained the certification supplies the design for the applicant's use.

(b) The Commission will require, before granting a combined license that references a standard design certification, that information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if the information is necessary for the Commission to make its safety determinations, including the determination that the application is consistent with the certification information.

§ 52.75 Filing of applications.

(a) Any person except one excluded by 10 CFR 50.38 may file an application for a combined license for a nuclear power facility with the Director of New Reactors or the Director of Nuclear Reactor Regulation, as appropriate.

(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.

§ 52.77 Contents of applications; general information.

The application must contain all of the information required by 10 CFR 50.33.

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

(a) The application must contain a final safety analysis report that describes the facility, presents the design bases and the limits on its operation, and presents a safety analysis of the structures, systems, and components of the facility as a whole. The final safety analysis report shall include the following information, at a level of information sufficient to enable the Commission to reach a final conclusion on all safety matters that must be resolved by the Commission before issuance of a combined license:

(1)(i) The boundaries of the site;

(ii) The proposed general location of each facility on the site;

(iii) The seismic, meteorological, hydrologic, and geologic characteristics of the proposed site with 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;

(iv) The location and description of any nearby industrial, military, or transportation facilities and routes;

(v) The existing and projected future population profile of the area surrounding the site;

(vi) A description and safety assessment of the site on which the facility is to be located. The assessment must contain an analysis and evaluation of the major structures, systems, and components of the facility that bear significantly on the acceptability of the site under the radiological consequence evaluation factors identified in paragraphs (a)(1)(vi)(A) and (a)(1)(vi)(B)

of this section. In performing this assessment, an applicant shall assume a fission product release [5] from the core into the containment assuming that the facility is operated at the ultimate power level contemplated. The applicant shall perform an evaluation and analysis of the postulated fission product release, using the expected demonstrable containment leak rate and any fission product cleanup systems intended to mitigate the consequences of the accidents, together with applicable site characteristics, including site meteorology, to evaluate the offsite radiological consequences. Site characteristics must comply with part 100 of this chapter. The evaluation must determine that:

(A) An individual located at any point on the boundary of the exclusion area for any 2-hour period following the onset of the postulated fission product release, would not receive a radiation dose in excess of 25 rem [6] total effective dose equivalent (TEDE).

(B) An individual located at any point on the outer boundary of the low population zone, who is exposed to the radioactive cloud resulting from the postulated fission product release (during the entire period of its passage) would not receive a radiation dose in excess of 25 rem TEDE; and

(2) A description and analysis of the structures, systems, and components of the facility with emphasis upon performance requirements, the bases, with technical justification therefor, upon which these requirements have been established, and the evaluations required to show that safety functions will be accomplished. It is expected that reactors will reflect through their design, construction, and operation an extremely low probability for accidents that could result in the release of significant quantities of radioactive fission products. The descriptions shall be sufficient to permit understanding of the system designs and their relationship to safety evaluations. Items such as the reactor core, reactor coolant system, instrumentation and control systems, electrical systems, containment system, other engineered safety features, auxiliary and emergency systems, power conversion systems, radioactive waste handling systems, and fuel handling systems shall be discussed insofar as they are pertinent. The following power reactor design characteristics and proposed operation will be taken into consideration by the Commission:

(i) Intended use of the reactor including the proposed maximum power level and the nature and inventory of contained radioactive materials;

(ii) The extent to which generally accepted engineering standards are applied to the design of the reactor;

(iii) The extent to which the reactor incorporates unique, unusual or enhanced safety features having a significant bearing on the probability or consequences of accidental release of radioactive materials;

(iv) The safety features that are to be engineered into the facility and those barriers that must be breached as a result of an accident before a release of radioactive material to the environment can occur. Special attention must be directed to plant design features intended to mitigate the radiological consequences of accidents. In performing this assessment, an applicant shall assume a fission product release [7] from the core into the containment assuming that the facility is operated at the ultimate power level contemplated;

(3) The kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in part 20 of this chapter;

(4) The design of the facility including:

(i) The principal design criteria for the facility. Appendix A to part 50 of this chapter, "General Design Criteria for Nuclear Power Plants," establishes minimum requirements for the principal design criteria for water-cooled nuclear power plants similar in design and location to plants for which construction permits have previously been issued by the Commission and provides guidance to applicants in establishing principal design criteria for other types of nuclear power units;

(ii) The design bases and the relation of the design bases to the principal design criteria;

(iii) Information relative to materials of construction, arrangement, and dimensions, sufficient to provide reasonable assurance that the design will conform to the design bases with adequate margin for safety.

(5) An analysis and evaluation of the design and performance of structures, systems, and components with the objective of assessing the risk to public health and safety resulting from operation of the facility and including determination of the margins of safety during normal operations and transient conditions anticipated during the life of the facility, and the adequacy of structures, systems, and components provided for the prevention of accidents and the mitigation of the consequences of accidents. Analysis and evaluation of ECCS cooling performance and the need for high-point vents following postulated loss-of-coolant accidents shall be performed in accordance with the requirements of §§ 50.46 and 50.46a of this chapter;

(6) A description and analysis of the fire protection design features for the reactor necessary to comply with 10 CFR part 50, appendix A, GDC 3, and § 50.48 of this chapter;

(7) 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(b)(1) and (b)(2) of this chapter;

(8) An analysis and description of the equipment and systems for combustible gas control as required by § 50.44 of this chapter;

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

(10) A description of the program, and its implementation, required by § 50.49(a) of this chapter for the environmental qualification of electric equipment important to safety and the list of electric equipment important to safety that is required by 10 CFR 50.49(d);

(11) A description of the program(s), and their implementation, necessary to ensure that the systems and components meet the requirements of the ASME

[5] The fission product release assumed for this evaluation should be based upon a major accident, hypothesized for purposes of site analysis or postulated from considerations of possible accidental events. These accidents have generally been assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products.

[6] A whole body dose of 25 rem has been stated to correspond numerically to the once in a lifetime accidental or emergency dose for radiation workers which, according to NCRP recommendations at the time could be disregarded in the determination of their radiation exposure status (see NBS Handbook 69 dated June 5, 1959). However, its use is not intended to imply that this number constitutes an acceptable limit for an emergency dose to the public under accident conditions. Rather, this dose value has been set forth in this section as a reference value, which can be used in the evaluation of plant design features with respect to postulated reactor accidents, to assure that these designs provide assurance of low risk of public exposure to radiation, in the event of an accident.

[7] The fission product release assumed for this evaluation should be based upon a major accident, hypothesized for purposes of site analysis or postulated from considerations of possible accidental events. These accidents have generally been assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products.

Boiler and Pressure Vessel Code and the ASME Code for Operation and Maintenance of Nuclear Power Plants in accordance with 50.55a of this chapter;

(12) A description of the primary containment leakage rate testing program, and its implementation, necessary to ensure that the containment meets the requirements of appendix J to 10 CFR part 50;

(13) A description of the reactor vessel material surveillance program required by appendix H to 10 CFR part 50 and its implementation;

(14) A description of the operator training program, and its implementation, necessary to meet the requirements of 10 CFR part 55;

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

(16)(i) 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;

(ii) A description of the process and effluent monitoring and sampling program required by appendix I to 10 CFR part 50 and its implementation.

(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 plant complies 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 which are identified in the version of NUREG–0933 current on the date up to 6 months before the docket date of the application and which 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;

(ii) If certifications cannot be obtained after sustained, good faith efforts by the applicant, then the application must contain information, including a utility plan, sufficient to show that the proposed plans provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the site.

(23) [Reserved]

(24) If the application is for a nuclear power reactor design which differs significantly from light-water reactor designs that were licensed before 1997 or use simplified, inherent, passive, or other innovative means to accomplish their safety functions, the application must describe how the design meets the requirements in § 50.43(e) of this chapter;

(25) A description of the quality assurance program, applied to the design, and to be applied to the fabrication, construction, and testing, of the structures, systems, and components of the facility. Appendix B to 10 CFR part 50 sets forth the requirements for quality assurance programs for nuclear power plants. The description of the quality assurance program for a nuclear power plant must include a discussion of how the applicable requirements of appendix B to 10 CFR part 50 have been and will be satisfied, including a discussion of how the quality assurance program will be implemented;

(26) The applicant's organizational structure, allocations or responsibilities and authorities, and personnel qualifications requirements for operation;

(27) Managerial and administrative controls to be used to assure safe operation. Appendix B to 10 CFR part 50 sets forth the requirements for these controls for nuclear power plants. The information on the controls to be used for a nuclear power plant shall include a discussion of how the applicable requirements of appendix B to 10 CFR part 50 will be satisfied;

(28) Plans for preoperational testing and initial operations;

(29)(i) Plans for conduct of normal operations, including maintenance, surveillance, and periodic testing of structures, systems, and components;

(ii) Plans for coping with emergencies, other than the plans required by § 52.79(a)(21);

(30) Proposed technical specifications prepared in accordance with the requirements of §§ 50.36 and 50.36a of this chapter;

(31) For nuclear power plants to be operated on multi-unit sites, an evaluation of the potential hazards to the structures, systems, and components important to safety of operating units resulting from construction activities, as well as a description of the managerial and administrative controls to be used to provide assurance that the limiting conditions for operation are not exceeded as a result of construction activities at the multi-unit sites;

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

(33) A description of the training program required by § 50.120 of this chapter and its implementation;

(34) A description and plans for implementation of an operator requalification program. The operator requalification program must as a minimum, meet the requirements for those programs contained in § 55.59 of this chapter;

(35)(i) A physical security plan, describing how the applicant will meet the requirements of 10 CFR part 73 (and 10 CFR part 11, if applicable, including the identification and description of jobs as required by § 11.11(a) of this chapter, at the proposed facility). The plan must list tests, inspections, audits, and other means to be used to demonstrate compliance with the requirements of 10 CFR parts 11 and 73, if applicable;

(ii) A description of the implementation of the physical security plan;

(36)(i) A safeguards contingency plan in accordance with the criteria set forth in appendix C to 10 CFR part 73. The safeguards contingency plan shall include plans for dealing with threats, thefts, and radiological sabotage, as defined in part 73 of this chapter, relating to the special nuclear material and nuclear facilities licensed under this chapter and in the applicant's possession and control. Each application for this type of license shall include the information contained in the applicant's safeguards contingency plan.[8] (Implementing procedures required for this plan need not be submitted for approval.)

(ii) A training and qualification plan in accordance with the criteria set forth in appendix B to 10 CFR part 73.

(iii) A description of the implementation of the safeguards

[8] A physical security plan that contains all the information required in both § 73.55 of this chapter and appendix C to 10 CFR part 73 satisfies the requirement for a contingency plan.

contingency plan and the training and qualification plan;

(iv) Each applicant who prepares a physical security plan, a safeguards contingency plan, or a guard qualification and training plan, shall protect the plans and other related Safeguards Information against unauthorized disclosure in accordance with the requirements of § 73.21 of this chapter, as appropriate.

(37) The information necessary to demonstrate how operating experience insights have been incorporated into the plant design;

(38) For light-water reactor designs, a description and analysis of design features for the prevention and mitigation of severe accidents, e.g., challenges to containment integrity caused by core-concrete interaction, steam explosion, high-pressure core melt ejection, hydrogen combustion, and containment bypass;

(39) A description of the radiation protection program required by § 20.1101 of this chapter and its implementation.

(40) A description of the fire protection program required by § 50.48 of this chapter and its implementation.

(41) For applications for light-water-cooled nuclear power plant combined licenses, an evaluation of the facility against the Standard Review Plan (SRP) revision in effect 6 months before the docket date of the application. The evaluation required by this section shall include an identification and description of all differences in design features, analytical techniques, and procedural measures proposed for a facility and those corresponding features, techniques, and measures given in the SRP acceptance criteria. Where a difference exists, the evaluation shall discuss how the proposed alternative provides an acceptable method of complying with the Commission's regulations, or portions thereof, that underlie the corresponding SRP acceptance criteria. The SRP is not a substitute for the regulations, and compliance is not a requirement;

(42) Information demonstrating how the applicant will comply with requirements for reduction of risk from anticipated transients without scram (ATWS) events in § 50.62 of this chapter;

(43) Information demonstrating how the applicant will comply with requirements for criticality accidents in § 50.68 of this chapter;

(44) A description of the fitness-for-duty program required by 10 CFR part 26 and its implementation.

(45) The information required by § 20.1406 of this chapter.

(46) A description of the plant-specific probabilistic risk assessment (PRA) and its results.

(b) If the combined license application references an early site permit, then the following requirements apply:

(1) The final safety analysis report need not contain information or analyses submitted to the Commission in connection with the early site permit, *provided, however,* that the final safety analysis report must either include or incorporate by reference the early site permit site safety analysis report and must contain, in addition to the information and analyses otherwise required, information sufficient to demonstrate that the design of the facility falls within the site characteristics and design parameters specified in the early site permit.

(2) If the final safety analysis report does not demonstrate that design of the facility falls within the site characteristics and design parameters, the application shall include a request for a variance that complies with the requirements of §§ 52.39 and 52.93.

(3) The final safety analysis report must demonstrate that all terms and conditions that have been included in the early site permit, other than those imposed under § 50.36b, will be satisfied by the date of issuance of the combined license. Any terms or conditions of the early site permit that could not be met by the time of issuance of the combined license, must be set forth as terms or conditions of the combined license.

(4) If the early site permit approves complete and integrated emergency plans, or major features of emergency plans, then the final safety analysis report must include any new or additional information that updates and corrects the information that was provided under § 52.17(b), and discuss whether the new or additional information materially changes the bases for compliance with the applicable requirements. The application must identify changes to the emergency plans or major features of emergency plans that have been incorporated into the proposed facility emergency plans and that constitute or would constitute a decrease in effectiveness under § 50.54(q) of this chapter.

(5) If complete and integrated emergency plans are approved as part of the early site permit, new certifications meeting the requirements of paragraph (a)(22) of this section are not required.

(c) If the combined license application references a standard design approval, then the following requirements apply:

(1) The final safety analysis report need not contain information or analyses submitted to the Commission in connection with the design approval, *provided, however,* that the final safety analysis report must either include or incorporate by reference the standard design approval final safety analysis report and must contain, in addition to the information and analyses otherwise required, information sufficient to demonstrate that the characteristics of the site fall within the site parameters specified in the design approval. In addition, the plant-specific PRA information must use the PRA information for the design approval and must be updated to account for site-specific design information and any design changes or departures.

(2) The final safety analysis report must demonstrate that all terms and conditions that have been included in the final design approval will be satisfied by the date of issuance of the combined license.

(d) If the combined license application references a standard design certification, then the following requirements apply:

(1) The final safety analysis report need not contain information or analyses submitted to the Commission in connection with the design certification, *provided, however,* that the final safety analysis report must either include or incorporate by reference the standard design certification final safety analysis report and must contain, in addition to the information and analyses otherwise required, information sufficient to demonstrate that the site characteristics fall within the site parameters specified in the design certification. In addition, the plant-specific PRA information must use the PRA information for the design certification and must be updated to account for site-specific design information and any design changes or departures.

(2) The final safety analysis report must demonstrate that the interface requirements established for the design under § 52.47 have been met.

(3) The final safety analysis report must demonstrate that all requirements and restrictions set forth in the referenced design certification rule, other than those imposed under § 50.36b, must be satisfied by the date of issuance of the combined license. Any requirements and restrictions set forth in the referenced design certification rule that could not be satisfied by the time of issuance of the combined license, must be set forth as terms or conditions of the combined license.

(e) If the combined license application references the use of one or more manufactured nuclear power reactors licensed under subpart F of this part, then the following requirements apply:

(1) The final safety analysis report need not contain information or analyses submitted to the Commission in connection with the manufacturing license, *provided, however,* that the final safety analysis report must either include or incorporate by reference the manufacturing license final safety analysis report and must contain, in addition to the information and analyses otherwise required, information sufficient to demonstrate that the site characteristics fall within the site parameters specified in the manufacturing license. In addition, the plant-specific PRA information must use the PRA information for the manufactured reactor and must be updated to account for site-specific design information and any design changes or departures.

(2) The final safety analysis report must demonstrate that the interface requirements established for the design have been met.

(3) The final safety analysis report must demonstrate that all terms and conditions that have been included in the manufacturing license, other than those imposed under § 50.36b, will be satisfied by the date of issuance of the combined license. Any terms or conditions of the manufacturing license that could not be met by the time of issuance of the combined license, must be set forth as terms or conditions of the combined license.

§ 52.80 Contents of applications; additional technical information.

The application must contain:

(a) The proposed inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and the acceptance criteria that are necessary and sufficient to provide reasonable assurance that, if the inspections, tests, and analyses are performed and the acceptance criteria met, the facility has been constructed and will be operated in conformity with the combined license, the provisions of the Act, and the Commission's rules and regulations.

(1) If the application references an early site permit with ITAAG, the early site permit ITAAC must apply to those aspects of the combined license which are approved in the early site permit.

(2) If the application references a standard design certification, the ITAAC contained in the certified design must apply to those portions of the facility design which are approved in the design certification.

(3) If the application references an early site permit with ITAAC or a standard design certification or both, the application may include a notification that a required inspection, test, or analysis in the ITAAC has been successfully completed and that the corresponding acceptance criterion has been met. The **Federal Register** notification required by § 52.85 must indicate that the application includes this notification.

(b) A complete environmental report as required by 10 CFR 51.50(c).

(c) If the applicant wishes to be able to perform the activities at the site allowed by 10 CFR 50.10(e) before issuance of the combined license, the applicant must identify and describe the activities that are requested and propose a plan for redress of the site in the event that the activities are performed and either construction is abandoned or the combined license is revoked. The application must demonstrate that there is reasonable assurance that redress carried out under the plan will achieve an environmentally stable and aesthetically acceptable site suitable for whatever non-nuclear use may conform with local zoning laws.

§ 52.81 Standards for review of applications.

Applications filed under this subpart will be reviewed according to the standards set out in 10 CFR parts 20, 50, 51, 54, 55, 73, 100, and 140.

§ 52.83 Finality of referenced NRC approvals; partial initial decision on site suitability.

(a) If the application for a combined license under this subpart references an early site permit, design certification rule, standard design approval, or manufacturing license, the scope and nature of matters resolved for the application and any combined license issued are governed by the relevant provisions addressing finality, including §§ 52.39, 52.63, 52.98, 52.145, and 52.171.

(b) While a partial decision on site suitability is in effect under 10 CFR 2.617(b)(2), the scope and nature of matters resolved in the proceeding are governed by the finality provisions in 10 CFR 2.629.

§ 52.85 Administrative review of applications; hearings.

A proceeding on a combined license is subject to all applicable procedural requirements contained in 10 CFR part 2, including the requirements for docketing (§ 2.101 of this chapter) and issuance of a notice of hearing (§ 2.104 of this chapter). If an applicant requests a Commission finding on certain ITAAC with the issuance of the combined license, then those ITAAC will be identified in the notice of hearing. All hearings on combined licenses are governed by the procedures contained in 10 CFR part 2.

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

The Commission shall refer a copy of the application to the ACRS. The ACRS shall report on those portions of the application that concern safety and shall apply the standards referenced in § 52.81, in accordance with the finality provisions in § 52.83.

§ 52.89 [Reserved].

§ 52.91 Authorization to conduct site activities.

(a) If the application does not reference an early site permit which authorizes the applicant to perform site preparation activities, the applicant may not perform the site preparation activities allowed by 10 CFR 50.10(e)(1) without obtaining the separate authorization required by 10 CFR 50.10(e)(1). Authorization may be granted only after the presiding officer in the proceeding on the application has made the findings and determination required by 10 CFR 50.10(e)(2) and has determined that there is reasonable assurance that redress carried out under the site redress plan will achieve an environmentally stable and aesthetically acceptable site suitable for whatever non-nuclear use may conform with local zoning laws.

(b) Authorization to conduct the activities described in 10 CFR 50.10(e)(3)(i) may be granted only after the presiding officer in the combined license proceeding makes the additional finding required by 10 CFR 50.10(e)(3)(ii).

(c) If, after an applicant for a combined license has performed the activities permitted by paragraph (a) or (b) of this section, and the application for the license is withdrawn or denied, then the applicant shall redress the site in accord with the terms of the site redress plan. If a use not envisaged in the redress plan is found for the site or parts before redress is complete, the applicant shall carry out the redress plan to the greatest extent possible consistent with the alternate use.

§ 52.93 Exemptions and variances.

(a) Applicants for a combined license under this subpart, or any amendment to a combined license, may include in the application a request for an

exemption from one or more of the Commission's regulations.

(1) If the request is for an exemption from any part of a referenced design certification rule, the Commission may grant the request if it determines that the exemption complies with any exemption provisions of the referenced design certification rule, or with § 52.63 if there are no applicable exemption provisions in the referenced design certification rule.

(2) For all other requests for exemptions, the Commission may grant a request if it determines that the exemption complies with § 52.7.

(b) An applicant for a combined license who has filed an application referencing an early site permit issued under subpart A of this part may include in the application a request for a variance from one or more site characteristics, design parameters, or terms and conditions of the permit, or from the site safety analysis report. In determining whether to grant the variance, the Commission shall apply the same technically relevant criteria as were applicable to the application for the original or renewed site permit. Once a construction permit or combined license referencing an early site permit is issued, variances from the early site permit will not be granted for that construction permit or combined license.

(c) An applicant for a combined license who has filed an application referencing a nuclear power reactor manufactured under a manufacturing license issued under subpart F of this part may include in the application a request for a departure from one or more 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 departure will comply with the requirements of 10 CFR 52.7, and that the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the departure.

(d) Issuance of a variance under paragraph (b) or a departure under paragraph (c) of this section is subject to litigation during the combined license proceeding in the same manner as other issues material to that proceeding.

§ 52.97 Issuance of combined licenses.

(a)(1) After conducting a hearing in accordance with § 52.85 and receiving the report submitted by the ACRS, the Commission may issue a combined license if the Commission finds that:

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

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

(iii) There is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of the Act, and the Commission's regulations.

(iv) The applicant is technically and financially qualified to engage in the activities authorized; and

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

(vi) The findings required by subpart A of part 51 of this chapter have been made.

(2) The Commission may also find, at the time it issues the combined license, that certain acceptance criteria in one or more of the inspections, tests, analyses, and acceptance criteria (ITAAC) in a referenced early site permit or standard design certification have been met. This finding will finally resolve that those acceptance criteria have been met, those acceptance criteria will be deemed to be excluded from the combined license, and findings under § 52.103(g) with respect to those acceptance criteria are unnecessary.

(b) The Commission shall identify within the combined license the inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and the acceptance criteria that, if met, are necessary and sufficient 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 rules and regulations.

(c) A combined license shall contain the terms and conditions, including technical specifications, as the Commission deems necessary and appropriate.

§ 52.98 Finality of combined licenses; information requests.

(a) After issuance of a combined license, the Commission may not modify, add, or delete any term or condition of the combined license, the design of the facility, the inspections, tests, analyses, and acceptance criteria contained in the license which are not derived from a referenced standard design certification or manufacturing license, except in accordance with the provisions of § 52.103 or § 50.109 of this chapter, as applicable.

(b) If the combined license does not reference a design certification or a reactor manufactured under a subpart F of this part manufacturing license, then a licensee may make changes in the facility as described in the final safety analysis report (as updated), make changes in the procedures as described in the final safety analysis report (as updated), and conduct tests or experiments not described in the final safety analysis report (as updated) under the applicable change processes in 10 CFR part 50 (e.g., §§ 50.54, 50.59, or 50.90 of this chapter).

(c) If the combined license references a certified design, then—

(1) Changes to or departures from information within the scope of the referenced design certification rule are subject to the applicable change processes in that rule; and

(2) Changes that are not within the scope of the referenced design certification rule are subject to the applicable change processes in 10 CFR part 50, unless they also involve changes to or noncompliance with information within the scope of the referenced design certification rule. In these cases, the applicable provisions of this section and the design certification rule apply.

(d) If the combined license references a reactor manufactured under a subpart F of this part manufacturing license, then—

(1) Changes to or departures from information within the scope of the manufactured reactor's design are subject to the change processes in § 52.171; and

(2) Changes that are not within the scope of the manufactured reactor's design are subject to the applicable change processes in 10 CFR part 50.

(e) The Commission may issue and make immediately effective any amendment to a combined license upon a determination by the Commission that the amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. The amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. The amendment will be processed in accordance with the procedures specified in 10 CFR 50.91.

(f) Any modification to, addition to, or deletion from the terms and conditions of a combined license, including any modification to, addition to, or deletion from the inspections, tests, analyses, or related acceptance criteria contained in the license is a proposed amendment to the license. There must be an opportunity for a hearing on the amendment.

(g) Except for information sought to verify licensee compliance with the

current licensing basis for that facility, information requests to the holder of a combined license must be evaluated before issuance to ensure that the burden to be imposed on the licensee 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.

§ 52.99 Inspection during construction.

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

(b) With respect to activities subject to an ITAAC, an applicant for a combined license may proceed at its own risk with design and procurement activities, and a licensee may proceed at its own risk with design, procurement, construction, and pre-operational activities, even though the NRC may not have found that any one of the prescribed acceptance criteria have been met.

(c)(1) The licensee shall notify the NRC that the prescribed inspections, tests, and analyses have been performed and that the prescribed acceptance criteria have been met. The notification must contain sufficient information to demonstrate that the prescribed inspections, tests, and analyses have been performed and that the prescribed acceptance criteria have been met.

(2) If the licensee has not provided, by the date 225 days before the scheduled date for initial loading of fuel, the notification required by paragraph (c)(1) of this section for all ITAAC, then the licensee shall notify the NRC that the prescribed inspections, tests, or analyses for all uncompleted ITAAC will be performed and that the prescribed acceptance criteria will be met prior to operation. The notification must be provided no later than the date 225 days before the scheduled date for initial loading of fuel, and must provide sufficient information to demonstrate that the prescribed inspections, tests, or analyses will be performed and the prescribed acceptance criteria for the uncompleted ITAAC will be met, including, but not limited to, a description of the specific procedures and analytical methods to be used for performing the prescribed inspections, tests, and analyses and determining that the prescribed acceptance criteria have been met.

(d)(1) In the event that an activity is subject to an ITAAC derived from a referenced standard design certification and the licensee has not demonstrated that the ITAAC has been met, the licensee may take corrective actions to successfully complete that ITAAC or request an exemption from the standard design certification ITAAC, as applicable. A request for an exemption must also be accompanied by a request for a license amendment under § 52.98(f).

(2) In the event that an activity is subject to an ITAAC not derived from a referenced standard design certification and the licensee has not demonstrated that the ITAAC has been met, the licensee may take corrective actions to successfully complete that ITAAC or request a license amendment under § 52.98(f).

(e) The NRC shall ensure that the prescribed inspections, tests, and analyses in the ITAAC are performed.

(1) At appropriate intervals until the last date for submission of requests for hearing under § 52.103(a), the NRC shall publish notices in the **Federal Register** of the NRC staff's determination of the successful completion of inspections, tests, and analyses.

(2) The NRC shall make publicly available the licensee notifications under paragraph (c)(1), and, no later than the date of publication of the notice of intended operation required by § 52.103(a), make available all licensee notifications under paragraphs (c)(1) and (c)(2) of this section.

§ 52.103 Operation under a combined license.

(a) The licensee shall notify the NRC of its scheduled date for initial loading of fuel no later than 270 days before the scheduled date and shall notify the NRC of updates to its schedule every 30 days thereafter. Not less than 180 days before the date scheduled for initial loading of fuel into a plant by a licensee that has been issued a combined license under this part, the Commission shall publish notice of intended operation in the **Federal Register**. The notice must provide that any person whose interest may be affected by operation of the plant may, within 60 days, request that the Commission hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria in the combined license, except that a hearing shall not be granted for those ITAAC which the Commission found were met under § 52.97(a)(2).

(b) A request for hearing under paragraph (a) of this section must show, prima facie, that—

(1) One or more of the acceptance criteria of the ITAAC in the combined license have not been, or will not be, met; and

(2) The specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety.

(c) The Commission, acting as the presiding officer, shall determine whether to grant or deny the request for hearing in accordance with the applicable requirements of 10 CFR 2.309. If the Commission grants the request, the Commission, acting as the presiding officer, shall determine whether during a period of interim operation there will be reasonable assurance of adequate protection to the public health and safety. The Commission's determination must consider the petitioner's *prima facie* showing and any answers thereto. If the Commission determines there is such reasonable assurance, it shall allow operation during an interim period under the combined license.

(d) The Commission, in its discretion, shall determine appropriate hearing procedures, whether informal or formal adjudicatory, for any hearing under paragraph (a) of this section, and shall state its reasons therefore.

(e) The Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within 180 days of the publication of the notice provided by paragraph (a) of this section or by the anticipated date for initial loading of fuel into the reactor, whichever is later.

(f) A petition to modify the terms and conditions of the combined license will be processed as a request for action in accordance with 10 CFR 2.206. The petitioner shall file the petition with the Secretary of the Commission. Before the licensed activity allegedly affected by the petition (fuel loading, low power testing, etc.) commences, the Commission shall determine whether any immediate action is required. If the petition is granted, then an appropriate order will be issued. Fuel loading and operation under the combined license will not be affected by the granting of the petition unless the order is made immediately effective.

(g) The licensee shall not operate the facility until the Commission makes a finding that the acceptance criteria in the combined license are met, except for those acceptance criteria that the Commission found were met under § 52.97(a)(2). If the combined license is for a modular design, each reactor module may require a separate finding as construction proceeds.

(h) After the Commission has made the finding in paragraph (g) of this section, the ITAAC do not, by virtue of their inclusion in the combined license, constitute regulatory requirements either for licensees or for renewal of the license; except for the specific ITAAC for which the Commission has granted a hearing under paragraph (a) of this section, all ITAAC expire upon final Commission action in the proceeding. However, subsequent changes to the facility or procedures described in the final safety analysis report (as updated) must comply with the requirements in §§ 52.98(e) or (f), as applicable.

§ 52.104 Duration of combined license.

A combined license is issued for a specified period not to exceed 40 years from the date on which the Commission makes a finding that acceptance criteria are met under § 52.103(g) or allowing operation during an interim period under the combined license under § 52.103(c).

§ 52.105 Transfer of combined license.

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

§ 52.107 Application for renewal.

The filing of an application for a renewed license must be in accordance with 10 CFR part 54.

§ 52.109 Continuation of combined license.

Each combined license for a facility that has permanently ceased operations, continues in effect beyond the expiration date to authorize ownership and possession of the production or utilization facility, until the Commission notifies the licensee in writing that the license is terminated. During this period of continued effectiveness the licensee shall—

(1) Take actions necessary to decommission and decontaminate the facility and continue to maintain the facility, including, where applicable, the storage, control and maintenance of the spent fuel, in a safe condition; and

(2) Conduct activities in accordance with all other restrictions applicable to the facility in accordance with the NRC's regulations and the provisions of the combined license for the facility.

§ 52.110 Termination of license.

(a)(1) When a licensee has determined to permanently cease operations the licensee shall, within 30 days, submit a written certification to the NRC, consistent with the requirements of § 52.3(b)(8);

(2) Once fuel has been permanently removed from the reactor vessel, the licensee shall submit a written certification to the NRC that meets the requirements of § 52.3(b)(9); and

(3) For licensees whose licenses have been permanently modified to allow possession but not operation of the facility, before September 27, 2007, the certification required in paragraph (a)(1) of this section shall be deemed to have been submitted.

(b) Upon docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel, or when a final legally effective order to permanently cease operations has come into effect, the 10 CFR part 52 license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel.

(c) Decommissioning will be completed within 60 years of permanent cessation of operations. Completion of decommissioning beyond 60 years will be approved by the Commission only when necessary to protect public health and safety. Factors that will be considered by the Commission in evaluating an alternative that provides for completion of decommissioning beyond 60 years of permanent cessation of operations include unavailability of waste disposal capacity and other site-specific factors affecting the licensee's capability to carry out decommissioning, including presence of other nuclear facilities at the site.

(d)(1) Before or within 2 years following permanent cessation of operations, the licensee shall submit a post-shutdown decommissioning activities report (PSDAR) to the NRC, and a copy to the affected State(s). The report must include a description of the planned decommissioning activities along with a schedule for their accomplishment, an estimate of expected costs, and a discussion that provides the reasons for concluding that the environmental impacts associated with site-specific decommissioning activities will be bounded by appropriate previously issued environmental impact statements.

(2) The NRC shall notice receipt of the PSDAR and make the PSDAR available for public comment. The NRC shall also schedule a public meeting in the vicinity of the licensee's facility upon receipt of the PSDAR. The NRC shall publish a document in the **Federal Register** and in a forum, such as local newspapers, that is readily accessible to individuals in the vicinity of the site, announcing the date, time and location of the meeting, along with a brief description of the purpose of the meeting.

(e) Licensees shall not perform any major decommissioning activities, as defined in § 50.2 of this chapter, until 90 days after the NRC has received the licensee's PSDAR submittal and until certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessel, as required under § 52.110(a)(1), have been submitted.

(f) Licensees shall not perform any decommissioning activities, as defined in § 52.1, that—

(1) Foreclose release of the site for possible unrestricted use;

(2) Result in significant environmental impacts not previously reviewed; or

(3) Result in there no longer being reasonable assurance that adequate funds will be available for decommissioning.

(g) In taking actions permitted under § 50.59 of this chapter following submittal of the PSDAR, the licensee shall notify the NRC in writing and send a copy to the affected State(s), before performing any decommissioning activity inconsistent with, or making any significant schedule change from, those actions and schedules described in the PSDAR, including changes that significantly increase the decommissioning cost.

(h)(1) Decommissioning trust funds may be used by licensees if—

(i) The withdrawals are for expenses for legitimate decommissioning activities consistent with the definition of decommissioning in § 52.1;

(ii) The expenditure would not reduce the value of the decommissioning trust below an amount necessary to place and maintain the reactor in a safe storage condition if unforeseen conditions or expenses arise and;

(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 may use any funding in excess of these amounts.

(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;

(vii) A supplement to the environmental report, under § 51.53 of this chapter, describing any new information or significant environmental change associated with the licensee's proposed termination activities; and

(viii) Identification of parts, if any, of the facility or site that were released for use before approval of the license termination plan.

(3) The NRC shall notice receipt of the license termination plan and make the license termination plan available for public comment. The NRC shall also schedule a public meeting in the vicinity of the licensee's facility upon receipt of the license termination plan. The NRC shall publish a document in the **Federal Register** and in a forum, such as local newspapers, which is readily accessible to individuals in the vicinity of the site, announcing the date, time and location of the meeting, along with a brief description of the purpose of the meeting.

(j) If the license termination plan demonstrates that the remainder of decommissioning activities will be performed in accordance with the regulations in this chapter, will not be inimical to the common defense and security or to the health and safety of the public, and will not have a significant effect on the quality of the environment and after notice to interested persons, the Commission shall approve the plan, by license amendment, subject to terms and conditions as it deems appropriate and necessary and authorize implementation of the license termination plan.

(k) The Commission shall terminate the license if it determines that—

(1) The remaining dismantlement has been performed in accordance with the approved license termination plan; and

(2) The final radiation survey and associated documentation, including an assessment of dose contributions associated with parts released for use before approval of the license termination plan, demonstrate that the facility and site have met the criteria for decommissioning in subpart E to 10 CFR part 20.

(l) For a facility that has permanently ceased operation before the expiration of its license, the collection period for any shortfall of funds will be determined, upon application by the licensee, on a case-by-case basis taking into account the specific financial situation of each licensee.

Subpart D—Reserved

Subpart E—Standard Design Approvals

§ 52.131 Scope of subpart.

This subpart sets out procedures for the filing, NRC staff review, and referral to the Advisory Committee on Reactor Safeguards of standard designs for a nuclear power reactor of the type described in § 50.22 of this chapter or major portions thereof.

§ 52.133 Relationship to other subparts.

(a) This subpart applies to a person that requests a standard design approval from the NRC staff separately from an application for a construction permit filed under 10 CFR part 50 or a combined license filed under subpart C of this part. An applicant for a construction permit or combined license may reference a standard design approval.

(b) Subpart B of this part governs the certification by rulemaking of the design of a nuclear power plant. Subpart B may be used independently of the provisions in this subpart.

(c) Subpart F of this part governs the issuance of licenses to manufacture nuclear power reactors to be installed and operated at sites not identified in the manufacturing license application. Subpart F of this part may be used independently of the provisions in this subpart.

§ 52.135 Filing of applications.

(a) Any person may submit a proposed standard design for a nuclear power reactor of the type described in 10 CFR 50.22 to the NRC staff for its review. The submittal may consist of either the final design for the entire facility or the final design of major portions thereof.

(b) The submittal for review of the proposed standard design must be made in the same manner and in the same number of copies as provided in 10 CFR 50.30 and 52.3 for license applications.

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

§ 52.136 Contents of applications; general information.

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

§ 52.137 Contents of applications; technical information.

If the applicant seeks review of a major portion of a standard design, the application need only contain the information required by this section to the extent the requirements are applicable to the major portion of the standard design for which NRC staff approval is sought.

(a) The application must contain a final safety analysis report that describes the facility, presents the design bases and the limits on its operation, and presents a safety analysis of the structures, systems, and components and of the facility, or major portion thereof, and must include the following information:

(1) The site parameters postulated for the design, and an analysis and evaluation of the design in terms of those site parameters;

(2) A description and analysis of the SSCs of the facility, with emphasis upon performance requirements, the bases, with technical justification, upon which the requirements have been established, and the evaluations required to show that safety functions will be accomplished. It is expected that the standard plant will reflect through its design, construction, and operation an extremely low probability for accidents that could result in the release of significant quantities of radioactive fission products. The description shall be sufficient to permit understanding of the system designs and their

relationship to the safety evaluations. Items such as the reactor core, reactor coolant system, instrumentation and control systems, electrical systems, containment system, other engineered safety features, auxiliary and emergency systems, power conversion systems, radioactive waste handling systems, and fuel handling systems shall be discussed insofar as they are pertinent. The following power reactor design characteristics will be taken into consideration by the Commission:

(i) Intended use of the reactor including the proposed maximum power level and the nature and inventory of contained radioactive materials;

(ii) The extent to which generally accepted engineering standards are applied to the design of the reactor;

(iii) The extent to which the reactor incorporates unique, unusual or enhanced safety features having a significant bearing on the probability or consequences of accidental release of radioactive materials; and

(iv) The safety features that are to be engineered into the facility and those barriers that must be breached as a result of an accident before a release of radioactive material to the environment can occur. Special attention must be directed to plant design features intended to mitigate the radiological consequences of accidents. In performing this assessment, an applicant shall assume a fission product release [9] from the core into the containment assuming that the facility is operated at the ultimate power level contemplated. The applicant shall perform an evaluation and analysis of the postulated fission product release, using the expected demonstrable containment leak rate and any fission product cleanup systems intended to mitigate the consequences of the accidents, together with applicable postulated site parameters, including site meteorology, to evaluate the offsite radiological consequences. The evaluation must determine that:

(A) An individual located at any point on the boundary of the exclusion area for any 2-hour period following the onset of the postulated fission product release, would not receive a radiation dose in excess of 25 rem [10] total effective dose equivalent (TEDE); and

(B) An individual located at any point on the outer boundary of the low population zone, who is exposed to the radioactive cloud resulting from the postulated fission product release (during the entire period of its passage) would not receive a radiation dose in excess of 25 rem TEDE;

(3) The design of the facility including:

(i) The principal design criteria for the facility. Appendix A to 10 CFR part 50, general design criteria (GDC), establishes minimum requirements for the principal design criteria for water-cooled nuclear power plants similar in design and location to plants for which construction permits have previously been issued by the Commission and provides guidance to applicants in establishing principal design criteria for other types of nuclear power units;

(ii) The design bases and the relation of the design bases to the principal design criteria; and

(iii) Information relative to materials of construction, general arrangement, and approximate dimensions, sufficient to provide reasonable assurance that the design will conform to the design bases with adequate margin for safety;

(4) An analysis and evaluation of the design and performance of SSC with the objective of assessing the risk to public health and safety resulting from operation of the facility and including determination of the margins of safety during normal operations and transient conditions anticipated during the life of the facility, and the adequacy of SSCs provided for the prevention of accidents and the mitigation of the consequences of accidents. Analysis and evaluation of ECCS cooling performance and the need for high-point vents following postulated loss-of-coolant accidents shall be performed in accordance with the requirements of 10 CFR 50.46 and 50.46a;

(5) The kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in part 20 of this chapter;

(6) The information required by § 20.1406 of this chapter;

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

(8) The information necessary to demonstrate compliance with any technically relevant portions of the Three Mile Island requirements set forth in 10 CFR 50.34(f), except paragraphs (f)(1)(xii), (f)(2)(ix), and (f)(3)(v) of 10 CFR 50.34(f);

(9) For applications for light-water-cooled nuclear power plants, an evaluation of the standard plant design against the Standard Review Plan (SRP) revision in effect 6 months before the docket date of the application. The evaluation required by this section shall include an identification and description of all differences in design features, analytical techniques, and procedural measures proposed for the design and those corresponding features, techniques, and measures given in the SRP acceptance criteria. Where a difference exists, the evaluation shall discuss how the proposed alternative provides an acceptable method of complying with the Commission's regulations, or portions thereof, that underlie the corresponding SRP acceptance criteria. The SRP is not a substitute for the regulations, and compliance is not a requirement;

(10) 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 described in 10 CFR 50.34a(e);

(11) The information pertaining to design features that affect plans for coping with emergencies in the operation of the reactor facility or a major portion thereof;

(12) An analysis and description of the equipment and systems for combustible gas control as required by § 50.44 of this chapter;

(13) The list of electric equipment important to safety that is required by 10 CFR 50.49(d);

(14) 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 10 CFR 50.60 and 50.61;

(15) Information demonstrating how the applicant will comply with requirements for reduction of risk from anticipated transients without scram (ATWS) events in § 50.62;

[9] The fission product release assumed for this evaluation should be based upon a major accident, hypothesized for purposes of site analysis or postulated from considerations of possible accidental events. These accidents have generally been assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products.

[10] A whole body dose of 25 rem has been stated to correspond numerically to the once in a lifetime accidental or emergency dose for radiation workers which, according to NCRP recommendations at the time could be disregarded in the determination of their radiation exposure status (see NBS Handbook 69 dated June 5, 1959). However, its use is not intended to imply that this number constitutes an acceptable limit for an emergency dose to the public under accident conditions. Rather, this dose value has been set forth in this section as a reference value, which can be used in the evaluation of plant design features with respect to postulated reactor accidents, to assure that these designs provide assurance of low risk of public exposure to radiation, in the event of an accident.

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

(17) Information demonstrating how the applicant will comply with requirements for criticality accidents in § 50.68(b)(2)–(b)(4);

(18) A description and analysis of the fire protection design features for the standard plant necessary to comply with part 50, appendix A, GDC 3, and § 50.48 of this chapter;

(19) A description of the quality assurance program applied to the design of the SSCs of the facility. Appendix B to 10 CFR part 50, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," sets forth the requirements for quality assurance programs for nuclear power plants. The description of the quality assurance program for a nuclear power plant shall include a discussion of how the applicable requirements of appendix B to 10 CFR part 50 were satisfied;

(20) The information necessary to demonstrate that the standard plant complies with the earthquake engineering criteria in 10 CFR part 50, appendix S;

(21) Proposed technical resolutions of those Unresolved Safety Issues and medium- and high-priority generic safety issues which are identified in the version of NUREG–0933 current on the date up to 6 months before the docket date of the application and which are technically relevant to the design;

(22) The information necessary to demonstrate how operating experience insights have been incorporated into the plant design;

(23) For light-water reactor designs, a description and analysis of design features for the prevention and mitigation of severe accidents, e.g., challenges to containment integrity caused by core-concrete interaction, steam explosion, high-pressure core melt ejection, hydrogen combustion, and containment bypass;

(24) A description, analysis, and evaluation of the interfaces between the standard design and the balance of the nuclear power plant; and

(25) A description of the design-specific probabilistic risk assessment and its results.

(b) An application for approval of a standard design, which differs significantly from the light-water reactor designs of plants that have been licensed and in commercial operation before April 18, 1989, or uses simplified, inherent, passive, or other innovative means to accomplish its safety functions, must meet the requirements of 10 CFR 50.43(e).

§ 52.139 Standards for review of applications.

Applications filed under this subpart will be reviewed for compliance with the standards set out in 10 CFR parts 20, 50 and its appendices, and 10 CFR parts 73 and 100.

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

The Commission shall refer a copy of the application to the ACRS. The ACRS shall report on those portions of the application which concern safety.

§ 52.143 Staff approval of design.

Upon completion of its review of a submittal under this subpart and receipt of a report by the Advisory Committee on Reactor Safeguards under § 52.141 of this subpart, the NRC staff shall publish a determination in the **Federal Register** as to whether or not the design is acceptable, subject to appropriate terms and conditions, and make an analysis of the design in the form of a report available at the NRC Web site, *http://www.nrc.gov.*

§ 52.145 Finality of standard design approvals; information requests.

(a) An approved design must be used by and relied upon by the NRC staff and the ACRS in their review of any individual facility license application that incorporates by reference a standard design approved in accordance with this paragraph unless there exists significant new information that substantially affects the earlier determination or other good cause.

(b) The determination and report by the NRC staff do not constitute a commitment to issue a permit or license, or in any way affect the authority of the Commission, Atomic Safety and Licensing Board Panel, or presiding officers in any proceeding under part 2 of this chapter.

(c) Except for information requests seeking to verify compliance with the current licensing basis of the standard design approval, information requests to the holder of a standard design approval 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.

§ 52.147 Duration of design approval.

A standard design approval issued under this subpart is valid for 15 years from the date of issuance and may not be renewed. A design approval continues to be valid beyond the date of expiration in any proceeding on an application for a construction permit or an operating license under part 50 or a combined license or manufacturing license under part 52 that references the final design approval and is docketed before the date of expiration of the design approval.

Subpart F—Manufacturing Licenses

§ 52.151 Scope of subpart.

This subpart sets out the requirements and procedures applicable to Commission issuance of a license authorizing manufacture of nuclear power reactors to be installed at sites not identified in the manufacturing license application.

§ 52.153 Relationship to other subparts.

(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 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 New Reactors or the Director of Nuclear Reactor Regulation, as appropriate.

(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), and (j).

§ 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 reach a final conclusion on all safety questions associated with the design, permit the preparation of construction and installation specifications by an applicant who seeks to use the manufactured reactor, and permit the preparation of acceptance and inspection requirements by the NRC:

(a) The principal design criteria for the reactor to be manufactured. Appendix A of 10 CFR part 50, "General Design Criteria for Nuclear Power Plants," establishes minimum requirements for the principal design criteria for water-cooled nuclear power plants similar in design and location to plants for which construction permits have previously been issued by the Commission and provides guidance to applicants in establishing principal design criteria for other types of nuclear power units;

(b) The design bases and the relation of the design bases to the principal design criteria;

(c) A description and analysis of the structures, systems, and components of the reactor to be manufactured, with emphasis upon the materials of manufacture, performance requirements, the bases, with technical justification therefor, upon which the performance requirements have been established, and the evaluations required to show that safety functions will be accomplished. The description shall be sufficient to permit understanding of the system designs and their relationship to safety evaluations. Items such as the reactor core, reactor coolant system, instrumentation and control systems, electrical systems, containment system, other engineered safety features, auxiliary and emergency systems, power conversion systems, radioactive waste handling systems, and fuel handling systems shall be discussed insofar as they are pertinent. The following power reactor design characteristics will be taken into consideration by the Commission:

(1) Intended use of the manufactured reactor including the proposed maximum power level and the nature and inventory of contained radioactive materials;

(2) The extent to which generally accepted engineering standards are applied to the design of the reactor; and

(3) The extent to which the reactor incorporates unique, unusual or enhanced safety features having a significant bearing on the probability or consequences of accidental release of radioactive materials;

(d) The safety features that are engineered into the reactor and those barriers that must be breached as a result of an accident before a release of radioactive material to the environment can occur. Special attention must be directed to reactor design features intended to mitigate the radiological consequences of accidents. In performing this assessment, an applicant shall assume a fission product release [11] from the core into the containment assuming that the facility is operated at the ultimate power level contemplated. The applicant shall perform an evaluation and analysis of the postulated fission product release, using the expected demonstrable containment leak rate and any fission product cleanup systems intended to mitigate the consequences of the accidents, together with applicable postulated site parameters, including site meteorology, to evaluate the offsite radiological consequences. The evaluation must determine that:

(1) An individual located at any point on the boundary of the exclusion area for any 2 hour period following the onset of the postulated fission product release, would not receive a radiation dose in excess of 25 rem [12] total effective dose equivalent (TEDE);

(2) An individual located at any point on the outer boundary of the low population zone, who is exposed to the radioactive cloud resulting from the postulated fission product release (during the entire period of its passage) would not receive a radiation dose in excess of 25 rem TEDE; and

(e) The kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in part 20 of this chapter.

(f) Information necessary to establish that the design of the reactor to be manufactured complies with the technical requirements in 10 CFR Chapter I, including:

(1) An analysis and evaluation of the design and performance of structures, systems, and components with the objective of assessing the risk to public health and safety resulting from operation of the facility and including determination of the margins of safety during normal operations and transient conditions anticipated during the life of the facility, and the adequacy of structures, systems, and components provided for the prevention of accidents and the mitigation of the consequences of accidents. Analysis and evaluation of ECCS cooling performance and the need for high-point vents following postulated loss-of-coolant accidents shall be performed in accordance with the requirements of §§ 50.46 and 50.46a of this chapter;

(2) A description and analysis of the fire protection design features for the reactor necessary to comply with 10 CFR part 50, appendix A, GDC 3 and § 50.48 of this chapter;

(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) An analysis and description of the equipment and systems for combustible gas control as required by § 50.44 of this chapter;

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

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

(7) Information demonstrating how the applicant will comply with requirements for reduction of risk from anticipated transients without scram (ATWS) events in § 50.62;

(8) Information demonstrating how the applicant will comply with requirements for criticality accidents in § 50.68(b)(2)–(b)(4);

(9) The information required by § 20.1406 of this chapter;

(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;

[11] The fission product release assumed for this evaluation should be based upon a major accident, hypothesized for purposes of site analysis or postulated from considerations of possible accidental events. These accidents have generally been assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products.

[12] A whole body dose of 25 rem has been stated to correspond numerically to the once in a lifetime accidental or emergency dose for radiation workers which, according to NCRP recommendations at the time could be disregarded in the determination of their radiation exposure status (see NBS Handbook 69 dated June 5, 1959). However, its use is not intended to imply that this number constitutes an acceptable limit for an emergency dose to the public under accident conditions. Rather, this dose value has been set forth in this section as a reference value, which can be used in the evaluation of plant design features with respect to postulated reactor accidents, to assure that these designs provide assurance of low risk of public exposure to radiation, in the event of an accident.

(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 information necessary to demonstrate that the manufactured reactor complies with 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 applied to the design, and to be applied to the manufacture of, the structures, systems, and components of the reactor. Appendix B to 10 CFR part 50, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," sets forth the requirements for quality assurance programs for nuclear power plants. The description of the quality assurance program must include a discussion of how the applicable requirements of appendix B to 10 CFR part 50 have been and will be satisfied; and

(18) Proposed technical specifications applicable to the reactor being manufactured, prepared in accordance with the requirements of §§ 50.36 and 50.36a of this chapter;

(19) The site parameters postulated for the design, and an analysis and evaluation of the reactor design in terms of those site parameters;

(20) The interface requirements between the manufactured reactor and the remaining portions of the nuclear power plant. These requirements must be sufficiently detailed to allow for completion of the final safety analysis;

(21) Justification that compliance with the interface requirements of paragraph (f)(20) of this section is verifiable through inspections, testing, or analysis. The method to be used for verification of interface requirements must be included as part of the proposed ITAAC required by § 52.158(a);

(22) A representative conceptual design for a nuclear power facility using the manufactured reactor, to aid the NRC in its review of the final safety analysis required by this section and to permit assessment of the adequacy of the interface requirements in paragraph (f)(20) of this section;

(23) For light-water reactor designs, a description and analysis of design features for the prevention and mitigation of severe accidents, *e.g.*, challenges to containment integrity caused by core-concrete interaction, steam explosion, high-pressure core melt ejection, hydrogen combustion, and containment bypass;

(24) [Reserved];

(25) If the reactor is to be used in modular plant design, a description of the possible operating configurations of the reactor modules with common systems, interface requirements, and system interactions. The final safety analysis must also account for differences among the configurations, including any restrictions that will be necessary during the construction and startup of a given module to ensure the safe operation of any module already operating;

(26) A description of the management plan for design and manufacturing activities, including:

(i) The organizational and management structure singularly responsible for direction of design and manufacture of the reactor;

(ii) Technical resources directed by the applicant, and the qualifications requirements;

(iii) Details of the interaction of design and manufacture within the applicant's organization and the manner by which the applicant will ensure close integration of the architect engineer and the nuclear steam supply vendor, as applicable;

(iv) Proposed procedures governing the preparation of the manufactured reactor for shipping to the site where it is to be operated, the conduct of shipping, and verifying the condition of the manufactured reactor upon receipt at the site; and

(v) The degree of top level management oversight and technical control to be exercised by the applicant during design and manufacture, including the preparation and implementation of procedures necessary to guide the effort;

(27) Necessary parameters to be used in developing plans for preoperational testing and initial operation;

(28) Proposed technical resolutions of those Unresolved Safety Issues and medium- and high-priority generic safety issues which are identified in the version of NUREG–0933 current on the date up to 6 months before the docket date of the application and which are technically relevant to the design;

(29) The information necessary to demonstrate how operating experience insights have been incorporated into the manufactured reactor design;

(30) For applications for light-water-cooled nuclear power plants, an evaluation of the design to be manufactured against the Standard Review Plan (SRP) revision in effect 6 months before the docket date of the application. The evaluation required by this section shall include an identification and description of all differences in design features, analytical techniques, and procedural measures proposed for the design and those corresponding features, techniques, and measures given in the SRP acceptance criteria. Where a difference exists, the evaluation shall discuss how the proposed alternative provides an acceptable method of complying with the Commission's regulations, or portions thereof, that underlie the corresponding SRP acceptance criteria. The SRP is not a substitute for the regulations, and compliance is not a requirement; and

(31) A description of the design-specific probabilistic risk assessment and its results.

§ 52.158 Contents of application; additional technical information.

The application must contain:

(a)(1) *Inspections, tests, analyses, and acceptance criteria (ITAAC).* The proposed inspections, tests, and analyses that the licensee who will be operating the reactor shall perform, and the acceptance criteria that are necessary and sufficient to provide reasonable assurance that, if the inspections, tests, and analyses are performed and the acceptance criteria met:

(i) The reactor has been manufactured in conformity with the manufacturing license; the provisions of the Act, and the Commission's rules and regulations; and

(ii) The manufactured reactor will be operated in conformity with the approved design and any license authorizing operation of the manufactured reactor.

(2) If the application references a standard design certification, the ITAAC contained in the certified design must apply to those portions of the facility design which are covered by the design certification.

(3) If the application references a standard design certification, the application may include a notification that a required inspection, test, or analysis in the design certification ITAAC has been successfully completed and that the corresponding acceptance

criterion has been met. The **Federal Register** notification required by § 52.163 must indicate that the application includes this notification.

(b)(1) An environmental report as required by 10 CFR 51.54.

(2) If the manufacturing license application references a standard design certification, the environmental report need not contain a discussion of severe accident mitigation design alternatives for the reactor.

§ 52.159 Standards for review of application.

Applications filed under this subpart will be reviewed according to the applicable standards set out in 10 CFR parts 20, 50 and its appendices, 51, 73, and 100 and its appendices.

§ 52.161 Reserved.

§ 52.163 Administrative review of applications; hearings.

A proceeding on a manufacturing license is subject to all applicable procedural requirements contained in 10 CFR part 2, including the requirements for docketing in § 2.101(a)(1) through (4) of this chapter, and the requirements for issuance of a notice of proposed action in § 2.105 of this chapter, *provided, however*, that the designated sections may not be construed to require that the environmental report or draft or final environmental impact statement include an assessment of the benefits of constructing and/or operating the manufactured reactor or an evaluation of alternative energy sources. All hearings on manufacturing licenses are governed by the hearing procedures contained in 10 CFR part 2, subparts C, G, L, and N.

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

The Commission shall refer a copy of the application to the ACRS. The ACRS shall report on those portions of the application which concern safety.

§ 52.167 Issuance of manufacturing license.

(a) After completing any hearing under § 52.163, and receiving the report submitted by the ACRS, the Commission may issue a manufacturing license if the Commission finds that:

(1) Applicable standards and requirements of the Act and the Commission's regulations have been met;

(2) 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 provision of the Act, and the Commission's regulations;

(3) The proposed reactor(s) can be incorporated into a nuclear power plant and operated 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;

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

(5) 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 manufactured reactor has been manufactured and will be operated in conformity with the license, the provisions of the Act, and the Commission's regulations;

(6) The issuance of a license to the applicant will not be inimical to the common defense and security or to the health and safety of the public; and

(7) The findings required by subpart A of part 51 of this chapter have been made.

(b) Each manufacturing license issued under this subpart shall specify:

(1) Terms and conditions as the Commission deems necessary and appropriate;

(2) Technical specifications for operation of the manufactured reactor, as the Commission deems necessary and appropriate;

(3) Site parameters and design characteristics for the manufactured reactor; and

(4) The interface requirements to be met by the site-specific elements of the facility, such as the service water intake structure and the ultimate heat sink, not within the scope of the manufactured reactor.

(c)(1) A holder of a manufacturing license may not transport or allow to be removed from the place of manufacture the manufactured reactor except to the site of a licensee with either a construction permit under part 50 of this chapter or a combined license under subpart C of this part. The construction permit or combined license must authorize the construction of a nuclear power facility using the manufactured reactor(s).

(2) A holder of a manufacturing license shall include, in any contract governing the transport of a manufactured reactor from the place of manufacture to any other location, a provision requiring that the person or entity transporting the manufactured reactor to comply with all NRC-approved shipping requirements in the manufacturing license.

§ 52.169 [Reserved].

§ 52.171 Finality of manufacturing licenses; Information requests.

(a)(1) Notwithstanding any provision in 10 CFR 50.109, during the term of a manufacturing license the Commission may not modify, rescind, or impose new requirements on the design of the nuclear power reactor being manufactured, or the requirements for the manufacture of the nuclear power reactor, unless the Commission determines that a modification is necessary to bring the design of the reactor or its manufacture into compliance with the Commission's requirements applicable and in effect at the time the manufacturing license was issued, or to provide reasonable assurance of adequate protection to public health and safety or common defense and security.

(2) Any modification to the design of a manufactured nuclear power reactor which is imposed by the Commission under paragraph (a)(1) of this section will be applied to all reactors manufactured under the license, including those that have already been transported and sited, except those reactors to which the modification has been rendered technically irrelevant by action taken under paragraph (b) of this section.

(3) In making the findings required for issuance of a construction permit, operating license, combined license, in any hearing under § 52.103, or in any enforcement hearing other than one initiated by the Commission under paragraph (a)(1) of this section, for which a nuclear power 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, the costs and benefits of severe accident mitigation design alternatives, and the bases for not incorporating severe accident mitigation design alternatives into the design of the reactor to be manufactured.

(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 and 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 departure 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 departure will comply with the requirements of 10 CFR 52.7, and that the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the departure. The granting of a departure on request of an applicant is subject to litigation in the same manner as other issues in the construction permit 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 docketed 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 docketed 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. An application for renewal must contain all information necessary to bring up to date the information and data contained in the previous application.

(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 2.104.

(e) The Commission shall refer a copy of the application for renewal to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS shall report on those portions of the application which concern safety and shall apply the criteria set forth in § 52.159.

§ 52.179 Criteria for renewal.

The Commission may grant the renewal if the Commission determines:

(a) The manufacturing license complies with the Atomic Energy Act and the Commission's regulations and orders applicable and in effect at the time the manufacturing license was originally issued; and

(b) Any new requirements the Commission may wish to impose are:

(1) Necessary for adequate protection to public health and safety or common defense and security;

(2) Necessary for compliance with the Commission's regulations and orders applicable and in effect at the time the manufacturing license was originally issued; or

(3) A substantial increase in overall protection of the public health and safety or the common defense and security to be derived from the new requirements, and the direct and indirect costs of implementation of those requirements are justified in view of this increased protection.

§ 52.181 Duration of renewal.

A renewed manufacturing license may be issued for a term of not less than 5, nor more than 15 years, plus any remaining years on the manufacturing license then in effect before renewal. The renewed license shall be subject to the requirements of §§ 52.171 and 52.175.

Subpart G—Reserved

Subpart H—Enforcement

§ 52.301 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued under those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under Section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any regulation, or order issued under the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under Section 186 of the Atomic Energy Act of 1954, as amended.

§ 52.303 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under Sections 161b, 161i, or 161o of the Act. For purposes of Section 223, all the regulations in part 52 are issued under one or more of Sections 161b, 161i, or 160o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 52 that are not issued under Sections 161b, 161i, or 161o for the purposes of Section 223 are as follows: §§ 52.0, 52.1, 52.2, 52.3, 52.7, 52.8, 52.9, 52.10, 52.11, 52.12, 52.13, 52.15, 52.16, 52.17, 52.18, 52.21, 52.23, 52.24, 52.27, 52.28, 52.29, 52.31, 52.33, 52.39, 52.41, 52.43, 52.45, 52.46, 52.47, 52.48, 52.51, 52.53, 52.54, 52.55, 52.57, 52.59, 52.61, 52.63, 52.71, 52.73, 52.75, 52.77, 52.79, 52.80, 52.81, 52.83, 52.85, 52.87, 52.93, 52.97, 52.98, 52.103, 52.104, 52.105, 52.107, 52.109, 52.131,

52.133, 52.135, 52.136, 52.137, 52.139, 52.141, 52.143, 52.145, 52.147, 52.151, 52.153, 52.155, 52.156, 52.157, 52.158, 52.159, 52.161, 52.163, 52.165, 52.167, 52.171, 52.173, 52.175, 52.177, 52.179, 52.181, 52.301, and 52.303.

Appendix A to Part 52—Design Certification Rule for the U.S. Advanced Boiling Water Reactor

I. Introduction

Appendix A constitutes the standard design certification for the U.S. Advanced Boiling Water Reactor (ABWR) design, in accordance with 10 CFR part 52, subpart B. The applicant for certification of the U.S. ABWR design was GE Nuclear Energy.

II. Definitions

A. Generic design control document (generic DCD) means the document containing the Tier 1 and Tier 2 information and generic technical specifications that is incorporated by reference into this appendix.

B. Generic technical specifications means the information, required by 10 CFR 50.36 and 50.36a, for the portion of the plant that is within the scope of this appendix.

C. Plant-specific DCD means the document, maintained by an applicant or licensee who references this appendix, consisting of the information in the generic DCD, as modified and supplemented by the plant-specific departures and exemptions made under Section VIII of this appendix.

D. *Tier 1* means the portion of the design-related information contained in the generic DCD that is approved and certified by this appendix (hereinafter Tier 1 information). The design descriptions, interface requirements, and site parameters are derived from Tier 2 information. Tier 1 information includes:

1. Definitions and general provisions;
2. Design descriptions;
3. Inspections, tests, analyses, and acceptance criteria (ITAAC);
4. Significant site parameters; and
5. Significant interface requirements.

E. *Tier 2* means the portion of the design-related information contained in the generic DCD that is approved but not certified by this appendix (Tier 2 information). Compliance with Tier 2 is required, but generic changes to and plant-specific departures from Tier 2 are governed by Section VIII of this appendix. Compliance with Tier 2 provides a sufficient, but not the only acceptable, method for complying with Tier 1. Compliance methods differing from Tier 2 must satisfy the change process in Section VIII of this appendix. Regardless of these differences, an applicant or licensee must meet the requirement in Section III.B of this appendix to reference Tier 2 when referencing Tier 1. Tier 2 information includes:

1. Information required by §§ 52.47(a) and 52.47(c), with the exception of generic technical specifications and conceptual design information;
2. Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met; and
3. Combined license (COL) action items (COL license information), which identify certain matters that must be addressed in the site-specific portion of the final safety analysis report (FSAR) by an applicant who references this appendix. These items constitute information requirements but are not the only acceptable set of information in the FSAR. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items are not requirements for the licensee unless such items are restated in the FSAR.

F. *Tier 2** means the portion of the Tier 2 information, designated as such in the generic DCD, which is subject to the change process in Section VIII.B.6 of this appendix. This designation expires for some Tier 2* information under Section VIII.B.6.

G. Departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses means:

(1) Changing any of the elements of the method described in the plant-specific DCD unless the results of the analysis are conservative or essentially the same; or

(2) Changing from a method described in the plant-specific DCD to another method unless that method has been approved by NRC for the intended application.

H. All other terms in this appendix have the meaning set out in 10 CFR 50.2 or 52.1, or Section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

III. Scope and Contents

A. Tier 1, Tier 2, and the generic technical specifications in the U.S. ABWR Design Control Document, GE Nuclear Energy, Revision 4 dated March 1997, are approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the generic DCD may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy is available for examination and copying at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Copies are also available for examination at the NRC Library located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20582 and the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

B. An applicant or licensee referencing this appendix, in accordance with Section IV of this appendix, shall incorporate by reference and comply with the requirements of this appendix, including Tier 1, Tier 2, and the generic technical specifications except as otherwise provided in this appendix. Conceptual design information, as set forth in the generic DCD, and the "Technical Support Document for the ABWR" are not part of this appendix. Tier 2 references to the probabilistic risk assessment (PRA) in the ABWR standard safety analysis report do not incorporate the PRA into Tier 2.

C. If there is a conflict between Tier 1 and Tier 2 of the DCD, then Tier 1 controls.

D. If there is a conflict between the generic DCD and either the application for design certification of the U.S. ABWR design or NUREG–1503, "Final Safety Evaluation Report related to the Certification of the Advanced Boiling Water Reactor Design" (FSER), and Supplement No. 1, then the generic DCD controls.

E. Design activities for structures, systems, and components that are wholly outside the scope of this appendix may be performed using site characteristics, provided the design activities do not affect the DCD or conflict with the interface requirements.

IV. Additional Requirements and Restrictions

A. An applicant for a combined license that wishes to reference this appendix shall, in addition to complying with the requirements of 10 CFR 52.77, 52.79, and 52.80, comply with the following requirements:

1. Incorporate by reference, as part of its application, this appendix;

2. Include, as part of its application:

a. A plant-specific DCD containing the same type of information and using the same organization and numbering as the generic DCD for the U.S. ABWR design, as modified and supplemented by the applicant's exemptions and departures;

b. The reports on departures from and updates to the plant-specific DCD required by paragraph X.B of this appendix;

c. Plant-specific technical specifications, consisting of the generic and site-specific technical specifications, that are required by 10 CFR 50.36 and 50.36a;

d. Information demonstrating compliance with the site parameters and interface requirements;

e. Information that addresses the COL action items; and

f. Information required by 10 CFR 52.47 that is not within the scope of this appendix.

3. Include, in the plant-specific DCD, the proprietary information and safeguards information referenced in the U.S. ABWR DCD.

B. The Commission reserves the right to determine in what manner this appendix may be referenced by an applicant for a construction permit or operating license under 10 CFR part 50.

V. Applicable Regulations

A. Except as indicated in paragraph B of this section, the regulations that apply to the U.S. ABWR design are in 10 CFR parts 20, 50, 73, and 100, codified as of May 2, 1997, that are applicable and technically relevant, as described in the FSER (NUREG–1503) and Supplement No. 1.

B. The U.S. ABWR design is exempt from portions of the following regulations:

1. Paragraph (f)(2)(iv) of 10 CFR 50.34—Separate Plant Safety Parameter Display Console;

2. Paragraph (f)(2)(viii) of 10 CFR 50.34—Post-Accident Sampling for Boron, Chloride, and Dissolved Gases; and

3. Paragraph (f)(3)(iv) of 10 CFR 50.34—Dedicated Containment Penetration.

VI. Issue Resolution

A. The Commission has determined that the structures, systems, components, and design features of the U.S. ABWR design comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in Section V of this appendix; and therefore, provide adequate protection to the health and safety of the public. A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for the U.S. ABWR design.

B. The Commission considers the following matters resolved within the meaning of 10 CFR 52.63(a)(5) in subsequent proceedings for issuance of a combined license, amendment of a combined license, or renewal of a combined license, proceedings held under 10 CFR 52.103, and enforcement proceedings involving plants referencing this appendix:

1. All nuclear safety issues, except for the generic technical specifications and other operational requirements, associated with the information in the FSER and Supplement No. 1, Tier 1, Tier 2 (including referenced information which the context indicates is intended as requirements), and the rulemaking record for certification of the U.S. ABWR design;

2. All nuclear safety and safeguards issues associated with the information in proprietary and safeguards documents, referenced and in context, are intended as requirements in the generic DCD for the U.S. ABWR design;

3. All generic changes to the DCD under and in compliance with the change processes in Sections VIII.A.1 and VIII.B.1 of this appendix;

4. All exemptions from the DCD under and in compliance with the change processes in Sections VIII.A.4 and VIII.B.4 of this appendix, but only for that plant;

5. All departures from the DCD that are approved by license amendment, but only for that plant;

6. Except as provided in paragraph VIII.B.5.f of this appendix, all departures from Tier 2 pursuant to and in compliance with the change processes in paragraph VIII.B.5 of this appendix that do not require prior NRC approval, but only for that plant;

7. All environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's final environmental assessment for the U.S. ABWR design and Revision 1 of the technical support document for the U.S. ABWR, dated December 1994, for plants referencing this appendix whose site parameters are within those specified in the technical support document.

C. The Commission does not consider operational requirements for an applicant or licensee who references this appendix to be matters resolved within the meaning of 10 CFR 52.63(a)(5). The Commission reserves the right to require operational requirements for an applicant or licensee who references this appendix by rule, regulation, order, or license condition.

D. Except in accordance with the change processes in Section VIII of this appendix, the Commission may not require an applicant or licensee who references this appendix to:

1. Modify structures, systems, components, or design features as described in the generic DCD;

2. Provide additional or alternative structures, systems, components, or design features not discussed in the generic DCD; or

3. Provide additional or alternative design criteria, testing, analyses, acceptance criteria, or justification for structures, systems, components, or design features discussed in the generic DCD.

E.1. Persons who wish to review proprietary and safeguards information or other secondary references in the DCD for the U.S. ABWR design, in order to request or participate in the hearing required by 10 CFR 52.85 or the hearing provided under 10 CFR 52.103, or to request or participate in any other hearing relating to this appendix in which interested persons have adjudicatory hearing rights, shall first request access to such information from GE Nuclear Energy. The request must state with particularity:

a. The nature of the proprietary or other information sought;

b. The reason why the information currently available to the public at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room, is insufficient;

c. The relevance of the requested information to the hearing issue(s) which the person proposes to raise; and

d. A showing that the requesting person has the capability to understand and utilize the requested information.

2. If a person claims that the information is necessary to prepare a request for hearing, the request must be filed no later than 15 days after publication in the **Federal Register** of the notice required either by 10 CFR 52.85 or 10 CFR 52.103. If GE Nuclear Energy declines to provide the information sought, GE Nuclear Energy shall send a written response within 10 days of receiving the request to the requesting person setting forth with particularity the reasons for its refusal. The person may then request the Commission (or presiding officer, if a proceeding has been established) to order disclosure. The person shall include copies of the original request (and any subsequent clarifying information provided by the requesting party to the applicant) and the applicant's response. The Commission and presiding officer shall base their decisions solely on the person's original request (including any clarifying information provided by the requesting person to GE Nuclear Energy), and GE Nuclear Energy's response. The Commission and presiding officer may order GE Nuclear Energy to provide access to some or all of the requested information, subject to an appropriate non-disclosure agreement.

VII. Duration of This Appendix

This appendix may be referenced for a period of 15 years from June 11, 1997, except as provided for in 10 CFR 52.55(b) and 52.57(b). This appendix remains valid for an applicant or licensee who references this appendix until the application is withdrawn or the license expires, including any period of extended operation under a renewed license.

VIII. Processes for Changes and Departures

A. Tier 1 information.

1. Generic changes to Tier 1 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 1 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs A.3 or A.4 of this section.

3. Departures from Tier 1 information that are required by the Commission through plant-specific orders are governed by the requirements in 10 CFR 52.63(a)(4).

4. Exemptions from Tier 1 information are governed by the requirements in 10 CFR 52.63(b)(1) and 52.98(f). The Commission will deny a request for an exemption from Tier 1, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design.

B. Tier 2 information.

1. Generic changes to Tier 2 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 2 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs B.3, B.4, B.5, or B.6 of this section.

3. The Commission may not require new requirements on Tier 2 information by plant-specific order while this appendix is in effect under §§ 52.55 or 52.61, unless:

a. A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time this appendix was approved, as set forth in Section V of this appendix, or to assure adequate protection of the public health and safety or the common defense and security; and

b. Special circumstances as defined in 10 CFR 52.7 are present.

4. An applicant or licensee who references this appendix may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 52.7. The Commission will deny a request for an exemption from Tier 2, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design. The grant of an exemption to an applicant must be subject to litigation in the same manner as other issues material to the license hearing. The grant of an exemption to a licensee must be subject to an opportunity for a hearing in the same manner as license amendments.

5.a. An applicant or licensee who references this appendix may depart from Tier 2 information, without prior NRC approval, unless the proposed departure involves a change to or departure from Tier 1 information, Tier 2* information, or the technical specifications, or requires a license amendment under paragraphs B.5.b or B.5.c

of this section. When evaluating the proposed departure, an applicant or licensee shall consider all matters described in the plant-specific DCD.

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if it would:

(1) Result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the plant-specific DCD;

(2) Result in more than a minimal increase in the likelihood of occurrence of a malfunction of a structure, system, or component (SSC) important to safety previously evaluated in the plant-specific DCD;

(3) Result in more than a minimal increase in the consequences of an accident previously evaluated in the plant-specific DCD;

(4) Result in more than a minimal increase in the consequences of a malfunction of a SSC important to safety previously evaluated in the plant-specific DCD;

(5) Create a possibility for an accident of a different type than any evaluated previously in the plant-specific DCD;

(6) Create a possibility for a malfunction of an SSC important to safety with a different result than any evaluated previously in the plant-specific DCD;

(7) Result in a design basis limit for a fission product barrier as described in the plant-specific DCD being exceeded or altered; or

(8) Result in a departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses.

c. A proposed departure from Tier 2 affecting resolution of an ex-vessel severe accident design feature identified in the plant-specific DCD, requires a license amendment if:

(1) There is a substantial increase in the probability of an ex-vessel severe accident such that a particular ex-vessel severe accident previously reviewed and determined to be not credible could become credible; or

(2) There is a substantial increase in the consequences to the public of a particular ex-vessel severe accident previously reviewed.

d. If a departure requires a license amendment pursuant to paragraphs B.5.b or B.5.c of this section, it is governed by 10 CFR 50.90.

e. A departure from Tier 2 information that is made under paragraph B.5 of this section does not require an exemption from this appendix.

f. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an applicant or licensee who references this appendix has not complied with paragraph VIII.B.5 of this appendix when departing from Tier 2 information, may petition the NRC to admit into the proceeding such a contention. In addition to compliance with the general requirements of 10 CFR 2.309, the petition must demonstrate that the departure does not comply with paragraph VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an asserted noncompliance with an ITAAC acceptance criterion in the case of a 10 CFR 52.103 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of material fact regarding compliance with paragraph VIII.B.5 of this appendix.

6.a. An applicant who references this appendix may not depart from Tier 2* information, which is designated with italicized text or brackets and an asterisk in the generic DCD, without NRC approval. The departure will not be considered a resolved issue, within the meaning of Section VI of this appendix and 10 CFR 52.63(a)(5).

b. A licensee who references this appendix may not depart from the following Tier 2* matters without prior NRC approval. A request for a departure will be treated as a request for a license amendment under 10 CFR 50.90.

(1) Fuel burnup limit (4.2).

(2) Fuel design evaluation (4.2.3).

(3) Fuel licensing acceptance criteria (appendix 4B).

c. A licensee who references this appendix may not, before the plant first achieves full power following the finding required by 10 CFR 52.103(g), depart from the following Tier 2* matters except in accordance with paragraph B.6.b of this section. After the plant first achieves full power, the following Tier 2* matters revert to Tier 2 status and are thereafter subject to the departure provisions in paragraph B.5 of this section.

(1) ASME Boiler & Pressure Vessel Code, Section III.

(2) ACI 349 and ANSI/AISC–690.

(3) Motor-operated valves.

(4) Equipment seismic qualification methods.

(5) Piping design acceptance criteria.

(6) Fuel system and assembly design (4.2), except burnup limit.

(7) Nuclear design (4.3).

(8) Equilibrium cycle and control rod patterns (App. 4A).

(9) Control rod licensing acceptance criteria (App. 4C).

(10) Instrument setpoint methodology.

(11) EMS performance specifications and architecture.

(12) SSLC hardware and software qualification.

(13) Self-test system design testing features and commitments.

(14) Human factors engineering design and implementation process.

d. Departures from Tier 2* information that are made under paragraph B.6 of this section do not require an exemption from this appendix.

C. Operational requirements.

1. Generic changes to generic technical specifications and other operational requirements that were completely reviewed and approved in the design certification rulemaking and do not require a change to a design feature in the generic DCD are governed by the requirements in 10 CFR 50.109. Generic changes that do require a change to a design feature in the generic DCD are governed by the requirements in paragraphs A or B of this section.

2. Generic changes to generic TS and other operational requirements are applicable to all applicants who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs C.3 or C.4 of this section.

3. The Commission may require plant-specific departures on generic technical specifications and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances as defined in 10 CFR 2.335 are present. The Commission may modify or supplement generic technical specifications and other operational requirements that were not completely reviewed and approved or require additional technical specifications and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

4. An applicant who references this appendix may request an exemption from the generic technical specifications or other operational requirements. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 52.7. The grant of an exemption must be subject to litigation in the same manner as other issues material to the license hearing.

5. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an operational requirement approved in the DCD or a technical specification derived from the generic technical specifications must be changed may petition to admit into the proceeding such a contention. Such petition must comply with the general requirements of 10 CFR 2.309 and must demonstrate why special circumstances as defined in 10 CFR 2.335 are present, or for compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response thereto. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific technical specifications or other operational requirements are subject to a hearing as part of the license proceeding.

6. After issuance of a license, the generic technical specifications have no further effect on the plant-specific technical specifications and changes to the plant-specific technical specifications will be treated as license amendments under 10 CFR 50.90.

IX. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

A.1. An applicant or licensee who references this appendix shall perform and demonstrate conformance with the ITAAC before fuel load. With respect to activities subject to an ITAAC, an applicant for a license may proceed at its own risk with design and procurement activities, and a licensee may proceed at its own risk with design, procurement, construction, and preoperational activities, even though the NRC may not have found that any particular ITAAC has been met.

2. The licensee who references this appendix shall notify the NRC that the required inspections, tests, and analyses in the ITAAC have been successfully completed and that the corresponding acceptance criteria have been met.

3. In the event that an activity is subject to an ITAAC, and the applicant or licensee who references this appendix has not demonstrated that the ITAAC has been met, the applicant or licensee may either take corrective actions to successfully complete that ITAAC, request an exemption from the ITAAC in accordance with Section VIII of this appendix and 10 CFR 52.97(b), or petition for rulemaking to amend this appendix by changing the requirements of the ITAAC, under 10 CFR 2.802 and 52.97(b). Such rulemaking changes to the ITAAC must meet the requirements of paragraph VIII.A.1 of this appendix.

B.1. The NRC shall ensure that the required inspections, tests, and analyses in the ITAAC are performed. The NRC shall verify that the inspections, tests, and analyses referenced by the licensee have been successfully completed and, based solely thereon, find the prescribed acceptance criteria have been met. At appropriate intervals during construction, the NRC shall publish notices of the successful completion of ITAAC in the **Federal Register**.

2. In accordance with 10 CFR 52.103(g), the Commission shall find that the acceptance criteria in the ITAAC for the license are met before fuel load.

3. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not, by virtue of their inclusion within the DCD, constitute regulatory requirements either for licensees or for renewal of the license; except for specific ITAAC, which are the subject of a § 52.103(a) hearing, their expiration will occur upon final Commission action in such proceeding. However, subsequent modifications must comply with the Tier 1 and Tier 2 design descriptions in the plant-specific DCD unless the licensee has complied with the applicable requirements of 10 CFR 52.98 and Section VIII of this appendix.

X. Records and Reporting

A. Records.

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes to Tier 1, Tier 2, and the generic TS and other operational requirements. The applicant shall maintain the proprietary and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

2. An applicant or licensee who references this appendix shall maintain the plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made under Section VIII of this appendix throughout the period of application and for the term of the license (including any period of renewal).

3. An applicant or licensee who references this appendix shall prepare and maintain written evaluations which provide the bases for the determinations required by Section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any period of renewal).

B. Reporting.

1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any plant-specific departures from the DCD, including a summary of the evaluation of each. This report must be filed in accordance with the filing requirements applicable to reports in 10 CFR 52.3.

2. An applicant or licensee who references this appendix shall submit updates to its DCD, which reflect the generic changes and the plant-specific departures from the generic DCD made under Section VIII of this appendix. These updates must be filed under the filing requirements applicable to final safety analysis report updates in 10 CFR 52.3 and 50.71(e).

3. The reports and updates required by paragraphs X.B.1 and X.B.2 must be submitted as follows:

a. On the date that an application for a license referencing this appendix is submitted, the application must include the report and any updates to the generic DCD.

b. During the interval from the date of application for a license to the date the Commission makes the finding required by 10 CFR 52.103(g), the report must be submitted semiannually. Updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

c. After the Commission makes the finding required by 10 CFR 52.103(g), reports and updates to the plant-specific DCD must be submitted, along with updates to the site-specific portion of the final safety analysis report for the facility, at the intervals required by 10 CFR 50.59(d)(2) and 10 CFR 50.71(e)(4), respectively, or at shorter intervals as specified in the license.

Appendix B to Part 52—Design Certification Rule for the System 80+ Design

I. Introduction

Appendix B constitutes design certification for the System 80+ [1] standard plant design, in accordance with 10 CFR part 52, subpart B. The applicant for certification of the System 80+ design was Combustion Engineering, Inc. (ABB–CE), which is now Westinghouse Electric Company LLC.

[1] "System 80+" is a trademark of Westinghouse Electric Company LLC.

II. Definitions

A. Generic design control document (generic DCD) means the document containing the Tier 1 and Tier 2 information and generic technical specifications that is incorporated by reference into this appendix.

B. Generic technical specifications means the information, required by 10 CFR 50.36 and 50.36a, for the portion of the plant that is within the scope of this appendix.

C. Plant-specific DCD means the document, maintained by an applicant or licensee who references this appendix, consisting of the information in the generic DCD, as modified and supplemented by the plant-specific departures and exemptions made under Section VIII of this appendix.

D. *Tier 1* means the portion of the design-related information contained in the generic DCD that is approved and certified by this appendix (hereinafter Tier 1 information). The design descriptions, interface requirements, and site parameters are derived from Tier 2 information. Tier 1 information includes:

1. Definitions and general provisions;

2. Design descriptions;

3. Inspections, tests, analyses, and acceptance criteria (ITAAC);

4. Significant site parameters; and

5. Significant interface requirements.

E. *Tier 2* means the portion of the design-related information contained in the generic DCD that is approved but not certified by this appendix (Tier 2 information). Compliance with Tier 2 is required, but generic changes to and plant-specific departures from Tier 2 are governed by Section VIII of this appendix. Compliance with Tier 2 provides a sufficient, but not the only acceptable, method for complying with Tier 1. Compliance methods differing from Tier 2 must satisfy the change process in Section VIII of this appendix. Regardless of these differences, an applicant or licensee must meet the requirement in Section III.B of this appendix to reference Tier 2 when referencing Tier 1. Tier 2 information includes:

1. Information required by §§ 52.47(a) and 52.47(c), with the exception of generic technical specifications and conceptual design information;

2. Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met; and

3. Combined license (COL) action items (COL license information), which identify certain matters that must be addressed in the site-specific portion of the final safety analysis report (FSAR) by an applicant who references this appendix. These items constitute information requirements but are not the only acceptable set of information in the FSAR. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items are not requirements for the licensee unless such items are restated in the FSAR.

F. *Tier 2** means the portion of the Tier 2 information, designated as such in the generic DCD, which is subject to the change process in Section VIII.B.6 of this appendix.

This designation expires for some Tier 2* information under Section VIII.B.6 of this appendix.

G. Departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses means:

(1) Changing any of the elements of the method described in the plant-specific DCD unless the results of the analysis are conservative or essentially the same; or

(2) Changing from a method described in the plant-specific DCD to another method unless that method has been approved by NRC for the intended application.

H. All other terms in this appendix have the meaning set out in 10 CFR 50.2 or 52.1, or Section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

III. Scope and Contents

A. Tier 1, Tier 2, and the generic technical specifications in the System 80+ Design Control Document, ABB–CE, with revisions dated January 1997, are approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the generic DCD may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy is available for examination and copying at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Copies are also available for examination at the NRC Library located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20582 and the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

B. An applicant or licensee referencing this appendix, in accordance with Section IV of this appendix, shall incorporate by reference and comply with the requirements of this appendix, including Tier 1, Tier 2, and the generic technical specifications except as otherwise provided in this appendix. Conceptual design information, as set forth in the generic DCD, and the Technical Support Document for the System 80+ design are not part of this appendix.

C. If there is a conflict between Tier 1 and Tier 2 of the DCD, then Tier 1 controls.

D. If there is a conflict between the generic DCD and either the application for design certification of the System 80+ design or NUREG–1462, "Final Safety Evaluation Report Related to the Certification of the System 80+ Design," (FSER) and Supplement No. 1, then the generic DCD controls.

E. Design activities for structures, systems, and components that are wholly outside the scope of this appendix may be performed using site characteristics, provided the design activities do not affect the DCD or conflict with the interface requirements.

IV. Additional Requirements and Restrictions

A. An applicant for a combined license that wishes to reference this appendix shall, in addition to complying with the requirements of 10 CFR 52.77, 52.79, and 52.80, comply with the following requirements:

1. Incorporate by reference, as part of its application, this appendix;

2. Include, as part of its application:

a. A plant-specific DCD containing the same type of information and using the same organization and numbering as the generic DCD for the System 80+ design, as modified and supplemented by the applicant's exemptions and departures;

b. The reports on departures from and updates to the plant-specific DCD required by paragraph X.B of this appendix;

c. Plant-specific technical specifications, consisting of the generic and site-specific technical specifications, that are required by 10 CFR 50.36 and 50.36a;

d. Information demonstrating compliance with the site parameters and interface requirements;

e. Information that addresses the COL action items; and

f. Information required by 10 CFR 52.47 that is not within the scope of this appendix.

3. Include, in the plant-specific DCD, the proprietary information referenced in the System 80+ DCD.

B. The Commission reserves the right to determine in what manner this appendix may be referenced by an applicant for a construction permit or operating license under 10 CFR part 50.

V. Applicable Regulations

A. Except as indicated in paragraph B of this section, the regulations that apply to the System 80+ design are in 10 CFR parts 20, 50, 73, and 100, codified as of May 9, 1997, that are applicable and technically relevant, as described in the FSER (NUREG–1462) and Supplement No. 1.

B. The System 80+ design is exempt from portions of the following regulations:

1. Paragraph (f)(2)(iv) of 10 CFR 50.34—Separate Plant Safety Parameter Display Console;

2. Paragraphs (f)(2) (vii), (viii), (xxvi), and (xxviii) of 10 CFR 50.34—Accident Source Terms;

3. Paragraph (f)(2)(viii) of 10 CFR 50.34—Post-Accident Sampling for Hydrogen, Boron, Chloride, and Dissolved Gases;

4. Paragraph (f)(3)(iv) of 10 CFR 50.34—Dedicated Containment Penetration; and

5. Paragraphs III.A.1(a) and III.C.3(b) of Appendix J to 10 CFR 50—Containment Leakage Testing.

VI. Issue Resolution

A. The Commission has determined that the structures, systems, components, and design features of the System 80+ design comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in Section V of this appendix; and therefore, provide adequate protection to the health and safety of the public. A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for the System 80+ design.

B. The Commission considers the following matters resolved within the meaning of 10 CFR 52.63(a)(5) in subsequent proceedings for issuance of a combined license, amendment of a combined license, or renewal of a combined license, proceedings held under 10 CFR 52.103, and enforcement proceedings involving plants referencing this appendix:

1. All nuclear safety issues, except for the generic technical specifications and other operational requirements, associated with the information in the FSER and Supplement No. 1, Tier 1. Tier 2 (including referenced information which the context indicates is intended as requirements), and the rulemaking record for certification of the System 80+ design;

2. All nuclear safety and safeguards issues associated with the information in proprietary and safeguards documents, referenced and in context, are intended as requirements in the generic DCD for the System 80+ design;

3. All generic changes to the DCD under and in compliance with the change processes in Sections VIII.A.1 and VIII.B.1 of this appendix;

4. All exemptions from the DCD under and in compliance with the change processes in Sections VIII.A.4 and VIII.B.4 of this appendix, but only for that plant;

5. All departures from the DCD that are approved by license amendment, but only for that plant;

6. Except as provided in paragraph VIII.B.5.f of this appendix, all departures from Tier 2 under and in compliance with the change processes in paragraph VIII.B.5 of this appendix that do not require prior NRC approval, but only for that plant;

7. All environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's final environmental assessment for the System 80+ design and the technical support document for the System 80+ design, dated January 1995, for plants referencing this appendix whose site parameters are within those specified in the technical support document.

C. The Commission does not consider operational requirements for an applicant or licensee who references this appendix to be matters resolved within the meaning of 10 CFR 52.63(a)(5). The Commission reserves the right to require operational requirements for an applicant or licensee who references this appendix by rule, regulation, order, or license condition.

D. Except in accordance with the change processes in Section VIII of this appendix, the Commission may not require an applicant or licensee who references this appendix to:

1. Modify structures, systems, components, or design features as described in the generic DCD;

2. Provide additional or alternative structures, systems, components, or design features not discussed in the generic DCD; or

3. Provide additional or alternative design criteria, testing, analyses, acceptance criteria, or justification for structures, systems, components, or design features discussed in the generic DCD.

E.1. Persons who wish to review proprietary information or other secondary references in the DCD for the System 80+ design, in order to request or participate in

the hearing required by 10 CFR 52.85 or the hearing provided under 10 CFR 52.103, or to request or participate in any other hearing relating to this appendix in which interested persons have adjudicatory hearing rights, shall first request access to such information from Westinghouse. The request must state with particularity:

a. The nature of the proprietary or other information sought;

b. The reason why the information currently available to the public at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room, is insufficient;

c. The relevance of the requested information to the hearing issue(s) which the person proposes to raise; and

d. A showing that the requesting person has the capability to understand and utilize the requested information.

2. If a person claims that the information is necessary to prepare a request for hearing, the request must be filed no later than 15 days after publication in the **Federal Register** of the notice required either by 10 CFR 52.85 or 10 CFR 52.103. If Westinghouse declines to provide the information sought, Westinghouse shall send a written response within ten (10) days of receiving the request to the requesting person setting forth with particularity the reasons for its refusal. The person may then request the Commission (or presiding officer, if a proceeding has been established) to order disclosure. The person shall include copies of the original request (and any subsequent clarifying information provided by the requesting party to the applicant) and the applicant's response. The Commission and presiding officer shall base their decisions solely on the person's original request (including any clarifying information provided by the requesting person to Westinghouse), and Westinghouse's response. The Commission and presiding officer may order Westinghouse to provide access to some or all of the requested information, subject to an appropriate non-disclosure agreement.

VII. Duration of This Appendix

This appendix may be referenced for a period of 15 years from June 20, 1997, except as provided for in 10 CFR 52.55(b) and 52.57(b). This appendix remains valid for an applicant or licensee who references this appendix until the application is withdrawn or the license expires, including any period of extended operation under a renewed license.

VIII. Processes for Changes and Departures

A. Tier 1 information.

1. Generic changes to Tier 1 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 1 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs A.3 or A.4 of this section.

3. Departures from Tier 1 information that are required by the Commission through plant-specific orders are governed by the requirements in 10 CFR 52.63(a)(4).

4. Exemptions from Tier 1 information are governed by the requirements in 10 CFR 52.63(b)(1) and 52.98(f). The Commission will deny a request for an exemption from Tier 1, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design.

B. Tier 2 Information

1. Generic changes to Tier 2 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 2 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs B.3, B.4, B.5, or B.6 of this section.

3. The Commission may not require new requirements on Tier 2 information by plant-specific order while this appendix is in effect under §§ 52.55 or 52.61, unless:

a. A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time this appendix was approved, as set forth in Section V of this appendix, or to assure adequate protection of the public health and safety or the common defense and security; and

b. Special circumstances as defined in 10 CFR 52.7 are present.

4. An applicant or licensee who references this appendix may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 52.7. The Commission will deny a request for an exemption from Tier 2, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design. The grant of an exemption to an applicant must be subject to litigation in the same manner as other issues material to the license hearing. The grant of an exemption to a licensee must be subject to an opportunity for a hearing in the same manner as license amendments.

5.a. An applicant or licensee who references this appendix may depart from Tier 2 information, without prior NRC approval, unless the proposed departure involves a change to or departure from Tier 1 information, Tier 2* information, or the technical specifications, or requires a license amendment under paragraphs B.5.b or B.5.c of this section. When evaluating the proposed departure, an applicant or licensee shall consider all matters described in the plant-specific DCD.

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if it would—

(1) Result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the plant-specific DCD;

(2) Result in more than a minimal increase in the likelihood of occurrence of a malfunction of a structure, system, or component (SSC) important to safety previously evaluated in the plant-specific DCD;

(3) Result in more than a minimal increase in the consequences of an accident previously evaluated in the plant-specific DCD;

(4) Result in more than a minimal increase in the consequences of a malfunction of an SSC important to safety previously evaluated in the plant-specific DCD;

(5) Create a possibility for an accident of a different type than any evaluated previously in the plant-specific DCD;

(6) Create a possibility for a malfunction of an SSC important to safety with a different result than any evaluated previously in the plant-specific DCD;

(7) Result in a design basis limit for a fission product barrier as described in the plant-specific DCD being exceeded or altered; or

(8) Result in a departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses.

c. A proposed departure from Tier 2 affecting resolution of an ex-vessel severe accident design feature identified in the plant-specific DCD, requires a license amendment if:

(1) There is a substantial increase in the probability of an ex-vessel severe accident such that a particular ex-vessel severe accident previously reviewed and determined to be not credible could become credible; or

(2) There is a substantial increase in the consequences to the public of a particular ex-vessel severe accident previously reviewed.

d. If a departure requires a license amendment under paragraph B.5.b or B.5.c of this section, it is governed by 10 CFR 50.90.

e. A departure from Tier 2 information that is made under paragraph B.5 of this section does not require an exemption from this appendix.

f. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an applicant or licensee who references this appendix has not complied with paragraph VIII.B.5 of this appendix when departing from Tier 2 information, may petition the NRC to admit into the proceeding such a contention. In addition to compliance with the general requirements of 10 CFR 2.309, the petition must demonstrate that the departure does not comply with paragraph VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an asserted noncompliance with an ITAAC acceptance criterion in the case of a 10 CFR 52.103 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of material fact regarding compliance with paragraph VIII.B.5 of this appendix.

6.a. An applicant who references this appendix may not depart from Tier 2*

information, which is designated with italicized text or brackets and an asterisk in the generic DCD, without NRC approval. The departure will not be considered a resolved issue, within the meaning of Section VI of this appendix and 10 CFR 52.63(a)(5).

b. A licensee who references this appendix may not depart from the following Tier 2* matters without prior NRC approval. A request for a departure will be treated as a request for a license amendment under 10 CFR 50.90.

(1) Maximum fuel rod average burnup.

(2) Control room human factors engineering.

c. A licensee who references this appendix may not, before the plant first achieves full power following the finding required by 10 CFR 52.103(g), depart from the following Tier 2* matters except in accordance with paragraph B.6.b of this section. After the plant first achieves full power, the following Tier 2* matters revert to Tier 2 status and are thereafter subject to the departure provisions in paragraph B.5 of this section.

(1) ASME Boiler & Pressure Vessel Code, Section III.

(2) ACI 349 and ANSI/AISC–690.

(3) Motor-operated valves.

(4) Equipment seismic qualification methods.

(5) Piping design acceptance criteria.

(6) Fuel and control rod design, except burnup limit.

(7) Instrumentation and controls setpoint methodology.

(8) Instrumentation and controls hardware and software changes.

(9) Instrumentation and controls environmental qualification.

(10) Seismic design criteria for non-seismic Category I structures.

d. Departures from Tier 2* information that are made under paragraph B.6 of this section do not require an exemption from this appendix.

C. Operational requirements.

1. Generic changes to generic technical specifications and other operational requirements that were completely reviewed and approved in the design certification rulemaking and do not require a change to a design feature in the generic DCD are governed by the requirements in 10 CFR 50.109. Generic changes that do require a change to a design feature in the generic DCD are governed by the requirements in paragraphs A or B of this section.

2. Generic changes to generic TS and other operational requirements are applicable to all applicants who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs C.3 or C.4 of this section.

3. The Commission may require plant-specific departures on generic technical specifications and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances as defined in 10 CFR.2.335 are present. The Commission may modify or supplement generic technical specifications and other operational requirements that were not completely reviewed and approved or require additional technical specifications and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

4. An applicant who references this appendix may request an exemption from the generic technical specifications or other operational requirements. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 52.7. The grant of an exemption must be subject to litigation in the same manner as other issues material to the license hearing.

5. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an operational requirement approved in the DCD or a technical specification derived from the generic technical specifications must be changed may petition to admit into the proceeding such a contention. Such a petition must comply with the general requirements of 10 CFR 2.309 and must demonstrate why special circumstances as defined in 10 CFR 2.335 are present, or for compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response thereto. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific technical specifications or other operational requirements are subject to a hearing as part of the license proceeding.

6. After issuance of a license, the generic technical specifications have no further effect on the plant-specific technical specifications and changes to the plant-specific technical specifications will be treated as license amendments under 10 CFR 50.90.

IX. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

A.1 An applicant or licensee who references this appendix shall perform and demonstrate conformance with the ITAAC before fuel load. With respect to activities subject to an ITAAC, an applicant for a license may proceed at its own risk with design and procurement activities, and a licensee may proceed at its own risk with design, procurement, construction, and preoperational activities, even though the NRC may not have found that any particular ITAAC has been met.

2. The licensee who references this appendix shall notify the NRC that the required inspections, tests, and analyses in the ITAAC have been successfully completed and that the corresponding acceptance criteria have been met.

3. In the event that an activity is subject to an ITAAC, and the applicant or licensee who references this appendix has not demonstrated that the ITAAC has been met, the applicant or licensee may either take corrective actions to successfully complete that ITAAC, request an exemption from the ITAAC in accordance with Section VIII of this appendix and 10 CFR 52.97(b), or petition for rulemaking to amend this appendix by changing the requirements of the ITAAC, under 10 CFR 2.802 and 52.97(b). Such rulemaking changes to the ITAAC must meet the requirements of Section VIII.A.1 of this appendix.

B.1 The NRC shall ensure that the required inspections, tests, and analyses in the ITAAC are performed. The NRC shall verify that the inspections, tests, and analyses referenced by the licensee have been successfully completed and, based solely thereon, find the prescribed acceptance criteria have been met. At appropriate intervals during construction, the NRC shall publish notices of the successful completion of ITAAC in the **Federal Register**.

2. In accordance with 10 CFR 52.103(g), the Commission shall find that the acceptance criteria in the ITAAC for the license are met before fuel load.

3. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not, by virtue of their inclusion within the DCD, constitute regulatory requirements either for licensees or for renewal of the license; except for specific ITAAC, which are the subject of a § 52.103(a) hearing, their expiration will occur upon final Commission action in such proceeding. However, subsequent modifications must comply with the Tier 1 and Tier 2 design descriptions in the plant-specific DCD unless the licensee has complied with the applicable requirements of 10 CFR 52.98 and Section VIII of this appendix.

X. Records and Reporting

A. Records.

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes to Tier 1, Tier 2, and the generic TS and other operational requirements. The applicant shall maintain the proprietary and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

2. An applicant or licensee who references this appendix shall maintain the plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made under Section VIII of this appendix throughout the period of application and for the term of the license (including any period of renewal).

3. An applicant or licensee who references this appendix shall prepare and maintain written evaluations which provide the bases for the determinations required by Section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any period of renewal).

B. Reporting.

1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any plant-specific departures from the DCD, including a summary of the evaluation of each. This report must be filed in accordance with the filing requirements applicable to reports in 10 CFR 52.3.

2. An applicant or licensee who references this appendix shall submit updates to its

DCD, which reflect the generic changes to and plant-specific departures from the generic DCD made under Section VIII of this appendix. These updates must be filed under the filing requirements applicable to final safety analysis report updates in 10 CFR 52.3 and 50.71(e).

3. The reports and updates required by paragraphs X.B.1 and X.B.2 must be submitted as follows:

a. On the date that an application for a license referencing this appendix is submitted, the application must include the report and any updates to the generic DCD.

b. During the interval from the date of application for a license to the date the Commission makes the finding required by 10 CFR 52.103(g), the report must be submitted semi-annually. Updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

c. After the Commission makes the finding required by 10 CFR 52.103(g), the reports and updates to the plant-specific DCD must be submitted, along with updates to the site-specific portion of the final safety analysis report for the facility, at the intervals required by 10 CFR 50.59(d)(2) and 50.71(e)(4), respectively, or at shorter intervals as specified in the license.

Appendix C to Part 52—Design Certification Rule for the AP600 Design

I. Introduction

Appendix C constitutes the standard design certification for the AP600 [1] design, in accordance with 10 CFR part 52, subpart B. The applicant for certification of the AP600 design is Westinghouse Electric Company LLC.

II. Definitions

A. Generic design control document (generic DCD) means the document containing the Tier 1 and Tier 2 information and generic technical specifications that is incorporated by reference into this appendix.

B. Generic technical specifications means the information, required by 10 CFR 50.36 and 50.36a, for the portion of the plant that is within the scope of this appendix.

C. Plant-specific DCD means the document, maintained by an applicant or licensee who references this appendix, consisting of the information in the generic DCD, as modified and supplemented by the plant-specific departures and exemptions made under Section VIII of this appendix.

D. *Tier 1* means the portion of the design-related information contained in the generic DCD that is approved and certified by this appendix (hereinafter Tier 1 information). The design descriptions, interface requirements, and site parameters are derived from Tier 2 information. Tier 1 information includes:

1. Definitions and general provisions;
2. Design descriptions;
3. Inspections, tests, analyses, and acceptance criteria (ITAAC);
4. Significant site parameters; and
5. Significant interface requirements.

[1] AP600 is a trademark of Westinghouse Electric Company LLC.

E. *Tier 2* means the portion of the design-related information contained in the generic DCD that is approved but not certified by this appendix (Tier 2 information). Compliance with Tier 2 is required, but generic changes to and plant-specific departures from Tier 2 are governed by Section VIII of this appendix. Compliance with Tier 2 provides a sufficient, but not the only acceptable, method for complying with Tier 1. Compliance methods differing from Tier 2 must satisfy the change process in Section VIII of this appendix. Regardless of these differences, an applicant or licensee must meet the requirement in Section III.B of this appendix to reference Tier 2 when referencing Tier 1. Tier 2 information includes:

1. Information required by §§ 52.47(a) and 52.47(c), with the exception of generic technical specifications and conceptual design information;
2. Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met; and
3. Combined license (COL) action items (COL license information), which identify certain matters that must be addressed in the site-specific portion of the final safety analysis report (FSAR) by an applicant who references this appendix. These items constitute information requirements but are not the only acceptable set of information in the FSAR. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items are not requirements for the licensee unless such items are restated in the FSAR.
4. The investment protection short-term availability controls in Section 16.3 of the DCD.

F. *Tier 2** means the portion of the Tier 2 information, designated as such in the generic DCD, which is subject to the change process in Section VIII.B.6 of this appendix. This designation expires for some Tier 2* information under Section VIII.B.6.

G. Departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses means:

(1) Changing any of the elements of the method described in the plant-specific DCD unless the results of the analysis are conservative or essentially the same; or

(2) Changing from a method described in the plant-specific DCD to another method unless that method has been approved by NRC for the intended application.

H. All other terms in this appendix have the meaning set out in 10 CFR 50.2 or 52.1, or Section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

III. Scope and Contents

A. Tier 1, Tier 2 (including the investment protection short-term availability controls in Section 16.3), and the generic technical specifications in the AP600 DCD (12/99 revision) are approved for incorporation by reference by the Director of the Office of the Federal Register on January 24, 2000, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the generic DCD may be obtained from Ronald P. Vijuk, Manager, Passive Plant Engineering, Westinghouse Electric Company, P.O. Box 355, Pittsburgh, Pennsylvania 15230–0355. A copy of the generic DCD is available for examination and copying at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Copies are also available for examination at the NRC Library located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20582; and the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

B. An applicant or licensee referencing this appendix, in accordance with Section IV of this appendix, shall incorporate by reference and comply with the requirements of this appendix, including Tier 1, Tier 2 (including the investment protection short-term availability controls in Section 16.3), and the generic technical specifications except as otherwise provided in this appendix. Conceptual design information in the generic DCD and the evaluation of severe accident mitigation design alternatives in Appendix 1B of the generic DCD are not part of this appendix.

C. If there is a conflict between Tier 1 and Tier 2 of the DCD, then Tier 1 controls.

D. If there is a conflict between the generic DCD and either the application for design certification of the AP600 design or NUREG–1512, "Final Safety Evaluation Report Related to Certification of the AP600 Standard Design," (FSER), then the generic DCD controls.

E. Design activities for structures, systems, and components that are wholly outside the scope of this appendix may be performed using site characteristics, provided the design activities do not affect the DCD or conflict with the interface requirements.

IV. Additional Requirements and Restrictions

A. An applicant for a combined license that wishes to reference this appendix shall, in addition to complying with the requirements of 10 CFR 52.77, 52.79, and 52.80, comply with the following requirements:

1. Incorporate by reference, as part of its application, this appendix;
2. Include, as part of its application:

a. A plant-specific DCD containing the same type of information and utilizing the same organization and numbering as the generic DCD for the AP600 design, as modified and supplemented by the applicant's exemptions and departures;

b. The reports on departures from and updates to the plant-specific DCD required by paragraph X.B of this appendix;

c. Plant-specific technical specifications, consisting of the generic and site-specific technical specifications, that are required by 10 CFR 50.36 and 50.36a;

d. Information demonstrating compliance with the site parameters and interface requirements;

e. Information that addresses the COL action items; and

f. Information required by 10 CFR 52.47 that is not within the scope of this appendix.

3. Include, in the plant-specific DCD, the proprietary information and safeguards information referenced in the AP600 DCD.

B. The Commission reserves the right to determine in what manner this appendix may be referenced by an applicant for a construction permit or operating license under 10 CFR part 50.

V. Applicable Regulations

A. Except as indicated in paragraph B of this section, the regulations that apply to the AP600 design are in 10 CFR parts 20, 50, 73, and 100, codified as of December 16, 1999, that are applicable and technically relevant, as described in the FSER (NUREG–1512) and the supplementary information for this section.

B. The AP600 design is exempt from portions of the following regulations:

1. Paragraph (a)(1) of 10 CFR 50.34—whole body dose criterion;

2. Paragraph (f)(2)(iv) of 10 CFR 50.34—Plant Safety Parameter Display Console;

3. Paragraphs (f)(2)(vii), (viii), (xxvi), and (xxviii) of 10 CFR 50.34—Accident Source Term in TID 14844;

4. Paragraph (a)(2) of 10 CFR 50.55a—ASME Boiler and Pressure Vessel Code;

5. Paragraph (c)(1) of 10 CFR 50.62—Auxiliary (or emergency) feedwater system;

6. Appendix A to 10 CFR part 50, GDC 17—Offsite Power Sources; and

7. Appendix A to 10 CFR part 50, GDC 19—whole body dose criterion.

VI. Issue Resolution

A. The Commission has determined that the structures, systems, components, and design features of the AP600 design comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in Section V of this appendix; and therefore, provide adequate protection to the health and safety of the public. A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for the AP600 design.

B. The Commission considers the following matters resolved within the meaning of 10 CFR 52.63(a)(5) in subsequent proceedings for issuance of a combined license, amendment of a combined license, or renewal of a combined license, proceedings held under 10 CFR 52.103, and enforcement proceedings involving plants referencing this appendix:

1. All nuclear safety issues, except for the generic technical specifications and other operational requirements, associated with the information in the FSER and Supplement No. 1, Tier 1, Tier 2 (including referenced information which the context indicates is intended as requirements and the investment protection short-term availability controls in Section 16.3), and the rulemaking record for certification of the AP600 design;

2. All nuclear safety and safeguards issues associated with the information in proprietary and safeguards documents, referenced and in context, are intended as requirements in the generic DCD for the AP600 design;

3. All generic changes to the DCD under and in compliance with the change processes in Sections VIII.A.1 and VIII.B.1 of this appendix;

4. All exemptions from the DCD under and in compliance with the change processes in Sections VIII.A.4 and VIII.B.4 of this appendix, but only for that plant;

5. All departures from the DCD that are approved by license amendment, but only for that plant;

6. Except as provided in paragraph VIII.B.5.f of this appendix, all departures from Tier 2 under and in compliance with the change processes in paragraph VIII.B.5 of this appendix that do not require prior NRC approval, but only for that plant;

7. All environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's environmental assessment for the AP600 design and appendix 1B of the generic DCD, for plants referencing this appendix whose site parameters are within those specified in the severe accident mitigation design alternatives evaluation.

C. The Commission does not consider operational requirements for an applicant or licensee who references this appendix to be matters resolved within the meaning of 10 CFR 52.63(a)(5). The Commission reserves the right to require operational requirements for an applicant or licensee who references this appendix by rule, regulation, order, or license condition.

D. Except in accordance with the change processes in Section VIII of this appendix, the Commission may not require an applicant or licensee who references this appendix to:

1. Modify structures, systems, components, or design features as described in the generic DCD;

2. Provide additional or alternative structures, systems, components, or design features not discussed in the generic DCD; or

3. Provide additional or alternative design criteria, testing, analyses, acceptance criteria, or justification for structures, systems, components, or design features discussed in the generic DCD.

E.1. Persons who wish to review proprietary and safeguards information or other secondary references in the AP600 DCD, in order to request or participate in the hearing required by 10 CFR 52.85 or the hearing provided under 10 CFR 52.103, or to request or participate in any other hearing relating to this appendix in which interested persons have adjudicatory hearing rights, shall first request access to such information from Westinghouse. The request must state with particularity:

a. The nature of the proprietary or other information sought;

b. The reason why the information currently available to the public at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room, is insufficient;

c. The relevance of the requested information to the hearing issue(s) which the person proposes to raise; and

d. A showing that the requesting person has the capability to understand and utilize the requested information.

2. If a person claims that the information is necessary to prepare a request for hearing, the request must be filed no later than 15 days after publication in the **Federal Register** of the notice required either by 10 CFR 52.85 or 10 CFR 52.103. If Westinghouse declines to provide the information sought, Westinghouse shall send a written response within 10 days of receiving the request to the requesting person setting forth with particularity the reasons for its refusal. The person may then request the Commission (or presiding officer, if a proceeding has been established) to order disclosure. The person shall include copies of the original request (and any subsequent clarifying information provided by the requesting party to the applicant) and the applicant's response. The Commission and presiding officer shall base their decisions solely on the person's original request (including any clarifying information provided by the requesting person to Westinghouse), and Westinghouse's response. The Commission and presiding officer may order Westinghouse to provide access to some or all of the requested information, subject to an appropriate non-disclosure agreement.

VII. Duration of This Appendix

This appendix may be referenced for a period of 15 years from January 24, 2000, except as provided for in 10 CFR 52.55(b) and 52.57(b). This appendix remains valid for an applicant or licensee who references this appendix until the application is withdrawn or the license expires, including any period of extended operation under a renewed license.

VIII. Processes for Changes and Departures

A. Tier 1 information.

1. Generic changes to Tier 1 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 1 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs A.3 or A.4 of this section.

3. Departures from Tier 1 information that are required by the Commission through plant-specific orders are governed by the requirements in 10 CFR 52.63(a)(4).

4. Exemptions from Tier 1 information are governed by the requirements in 10 CFR 52.63(b)(1) and 52.98(f). The Commission will deny a request for an exemption from Tier 1, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design.

B. Tier 2 information.

1. Generic changes to Tier 2 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 2 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs B.3, B.4, B.5, or B.6 of this section.

3. The Commission may not require new requirements on Tier 2 information by plant-specific order while this appendix is in effect under §§ 52.55 or 52.61, unless:

a. A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time this appendix was approved, as set forth in Section V of this appendix, or to assure adequate protection of the public health and safety or the common defense and security; and

b. Special circumstances as defined in 10 CFR 52.7 are present.

4. An applicant or licensee who references this appendix may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 52.7. The Commission will deny a request for an exemption from Tier 2, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design. The grant of an exemption to an applicant must be subject to litigation in the same manner as other issues material to the license hearing. The grant of an exemption to a licensee must be subject to an opportunity for a hearing in the same manner as license amendments.

5.a. An applicant or licensee who references this appendix may depart from Tier 2 information, without prior NRC approval, unless the proposed departure involves a change to or departure from Tier 1 information, Tier 2* information, or the technical specifications, or requires a license amendment under paragraphs B.5.b or B.5.c of this section. When evaluating the proposed departure, an applicant or licensee shall consider all matters described in the plant-specific DCD.

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if it would:

(1) Result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the plant-specific DCD;

(2) Result in more than a minimal increase in the likelihood of occurrence of a malfunction of a structure, system, or component (SSC) important to safety previously evaluated in the plant-specific DCD;

(3) Result in more than a minimal increase in the consequences of an accident previously evaluated in the plant-specific DCD;

(4) Result in more than a minimal increase in the consequences of a malfunction of an SSC important to safety previously evaluated in the plant-specific DCD;

(5) Create a possibility for an accident of a different type than any evaluated previously in the plant-specific DCD;

(6) Create a possibility for a malfunction of an SSC important to safety with a different result than any evaluated previously in the plant-specific DCD;

(7) Result in a design basis limit for a fission product barrier as described in the plant-specific DCD being exceeded or altered; or

(8) Result in a departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses.

c. A proposed departure from Tier 2 affecting resolution of an ex-vessel severe accident design feature identified in the plant-specific DCD, requires a license amendment if:

(1) There is a substantial increase in the probability of an ex-vessel severe accident such that a particular ex-vessel severe accident previously reviewed and determined to be not credible could become credible; or

(2) There is a substantial increase in the consequences to the public of a particular ex-vessel severe accident previously reviewed.

d. If a departure requires a license amendment under paragraphs B.5.b or B.5.c of this section, it is governed by 10 CFR 50.90.

e. A departure from Tier 2 information that is made under paragraph B.5 of this section does not require an exemption from this appendix.

f. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an applicant or licensee who references this appendix has not complied with paragraph VIII.B.5 of this appendix when departing from Tier 2 information, may petition the NRC to admit into the proceeding such a contention. In addition to compliance with the general requirements of 10 CFR 2.309, the petition must demonstrate that the departure does not comply with paragraph VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an asserted noncompliance with an ITAAC acceptance criterion in the case of a 10 CFR 52.103 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of material fact regarding compliance with paragraph VIII.B.5 of this appendix.

6a. An applicant who references this appendix may not depart from Tier 2* information, which is designated with italicized text or brackets and an asterisk in the generic DCD, without NRC approval. The departure will not be considered a resolved issue, within the meaning of Section VI of this appendix and 10 CFR 52.63(a)(5).

b. A licensee who references this appendix may not depart from the following Tier 2* matters without prior NRC approval. A request for a departure will be treated as a request for a license amendment under 10 CFR 50.90.

(1) Maximum fuel rod average burn-up.

(2) Fuel principal design requirements.

(3) Fuel criteria evaluation process.

(4) Fire areas.

(5) Human factors engineering.

c. A licensee who references this appendix may not, before the plant first achieves full power following the finding required by 10 CFR 52.103(g), depart from the following Tier 2* matters except in accordance with paragraph B.6.b of this section. After the plant first achieves full power, the following Tier 2* matters revert to Tier 2 status and are thereafter subject to the departure provisions in paragraph B.5 of this section.

(1) Nuclear Island structural dimensions.

(2) ASME Boiler and Pressure Vessel Code, Section III, and Code Case—284.

(3) Design Summary of Critical Sections.

(4) ACI 318, ACI 349, and ANSI/AISC—690.

(5) Definition of critical locations and thicknesses.

(6) Seismic qualification methods and standards.

(7) Nuclear design of fuel and reactivity control system, except burn-up limit.

(8) Motor-operated and power-operated valves.

(9) Instrumentation and control system design processes, methods, and standards.

(10) PRHR natural circulation test (first plant only).

(11) ADS and CMT verification tests (first three plants only).

d. Departures from Tier 2* information that are made under paragraph B.6 of this section do not require an exemption from this appendix.

C. Operational requirements.

1. Generic changes to generic technical specifications and other operational requirements that were completely reviewed and approved in the design certification rulemaking and do not require a change to a design feature in the generic DCD are governed by the requirements in 10 CFR 50.109. Generic changes that do require a change to a design feature in the generic DCD are governed by the requirements in paragraphs A or B of this section.

2. Generic changes to generic TS and other operational requirements are applicable to all applicants who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs C.3 or C.4 of this section.

3. The Commission may require plant-specific departures on generic technical specifications and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances as defined in 10 CFR 2.335 are present. The Commission may modify or supplement generic technical specifications and other operational requirements that were not completely reviewed and approved or require additional technical specifications and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

4. An applicant who references this appendix may request an exemption from the generic technical specifications or other operational requirements. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 52.7. The grant of an exemption must be subject to litigation in the same manner as other issues material to the license hearing.

5. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an operational requirement approved in the DCD or a technical specification derived from the generic technical specifications must be changed may petition to admit into the proceeding such a contention. Such petition must comply with the general requirements of 10 CFR 2.309 and must demonstrate why special circumstances as defined in 10 CFR 2.335 are present, or for compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response thereto. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific technical specifications or other operational requirements are subject to a hearing as part of the license proceeding.

6. After issuance of a license, the generic technical specifications have no further effect on the plant-specific technical specifications and changes to the plant-specific technical specifications will be treated as license amendments under 10 CFR 50.90.

IX. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

A.1 An applicant or licensee who references this appendix shall perform and demonstrate conformance with the ITAAC before fuel load. With respect to activities subject to an ITAAC, an applicant for a license may proceed at its own risk with design and procurement activities, and a licensee may proceed at its own risk with design, procurement, construction, and preoperational activities, even though the NRC may not have found that any particular ITAAC has been met.

2. The licensee who references this appendix shall notify the NRC that the required inspections, tests, and analyses in the ITAAC have been successfully completed and that the corresponding acceptance criteria have been met.

3. In the event that an activity is subject to an ITAAC, and the applicant or licensee who references this appendix has not demonstrated that the ITAAC has been met, the applicant or licensee may either take corrective actions to successfully complete that ITAAC, request an exemption from the ITAAC in accordance with Section VIII of this appendix and 10 CFR 52.97(b), or petition for rulemaking to amend this appendix by changing the requirements of the ITAAC, under 10 CFR 2.802 and 52.97(b). Such rulemaking changes to the ITAAC must meet the requirements of paragraph VIII.A.1 of this appendix.

B.1. The NRC shall ensure that the required inspections, tests, and analyses in the ITAAC are performed. The NRC shall verify that the inspections, tests, and analyses referenced by the licensee have been successfully completed and, based solely thereon, find the prescribed acceptance criteria have been met. At appropriate intervals during construction, the NRC shall publish notices of the successful completion of ITAAC in the **Federal Register**.

2. In accordance with 10 CFR 52.103(g), the Commission shall find that the acceptance criteria in the ITAAC for the license are met before fuel load.

3. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not, by virtue of their inclusion within the DCD, constitute regulatory requirements either for licensees or for renewal of the license; except for specific ITAAC, which are the subject of a § 52.103(a) hearing, their expiration will occur upon final Commission action in such proceeding. However, subsequent modifications must comply with the Tier 1 and Tier 2 design descriptions in the plant-specific DCD unless the licensee has complied with the applicable requirements of 10 CFR 52.98 and Section VIII of this appendix.

X. Records and Reporting

A. Records.

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes to Tier 1, Tier 2, and the generic TS and other operational requirements. The applicant shall maintain the proprietary and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

2. An applicant or licensee who references this appendix shall maintain the plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made under Section VIII of this appendix throughout the period of application and for the term of the license (including any period of renewal).

3. An applicant or licensee who references this appendix shall prepare and maintain written evaluations which provide the bases for the determinations required by Section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any period of renewal).

B. Reporting.

1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any plant-specific departures from the DCD, including a summary of the evaluation of each. This report must be filed in accordance with the filing requirements applicable to reports in 10 CFR 52.3.

2. An applicant or licensee who references this appendix shall submit updates to its DCD, which reflect the generic changes to and plant-specific departures from the generic DCD made under Section VIII of this appendix. These updates must be filed under the filing requirements applicable to final safety analysis report updates in 10 CFR 52.3 and 50.71(e).

3. The reports and updates required by paragraphs X.B.1 and X.B.2 must be submitted as follows:

a. On the date that an application for a license referencing this appendix is submitted, the application must include the report and any updates to the generic DCD.

b. During the interval from the date of application for a license to the date the Commission makes the finding required by 10 CFR 52.103(g), the report must be submitted semi-annually. Updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

c. After the Commission makes the finding required by 10 CFR 52.103(g), the reports and updates to the plant-specific DCD must be submitted, along with updates to the site-specific portion of the final safety analysis report for the facility, at the intervals required by 10 CFR 50.59(d)(2) and 50.71(e), respectively, or at shorter intervals as specified in the license.

Appendix D to Part 52—Design Certification Rule for the AP1000 Design

I. Introduction

Appendix D constitutes the standard design certification for the AP1000 [1] design, in accordance with 10 CFR part 52, subpart B. The applicant for certification of the AP1000 design is Westinghouse Electric Company LLC.

II. Definitions

A. *Generic design control document (generic DCD)* means the document containing the Tier 1 and Tier 2 information and generic technical specifications that is incorporated by reference into this appendix.

B. *Generic technical specifications* means the information required by 10 CFR 50.36 and 50.36a for the portion of the plant that is within the scope of this appendix.

C. *Plant-specific DCD* means the document maintained by an applicant or licensee who references this appendix consisting of the information in the generic DCD as modified and supplemented by the plant-specific departures and exemptions made under Section VIII of this appendix.

D. *Tier 1* means the portion of the design-related information contained in the generic DCD that is approved and certified by this appendix (Tier 1 information). The design descriptions, interface requirements, and site parameters are derived from Tier 2 information. Tier 1 information includes:

1. Definitions and general provisions;

2. Design descriptions;

3. Inspections, tests, analyses, and acceptance criteria (ITAAC);

4. Significant site parameters; and

5. Significant interface requirements.

E. *Tier 2* means the portion of the design-related information contained in the generic DCD that is approved but not certified by this appendix (Tier 2 information). Compliance with Tier 2 is required, but generic changes to and plant-specific departures from Tier 2 are governed by Section VIII of this appendix. Compliance with Tier 2 provides a sufficient, but not the only acceptable, method for complying with Tier 1. Compliance methods differing from Tier 2 must satisfy the change process in Section VIII of this appendix. Regardless of these differences, an applicant or licensee must

[1] AP1000 is a trademark of Westinghouse Electric Company LLC.

meet the requirement in Section III.B of this appendix to reference Tier 2 when referencing Tier 1. Tier 2 information includes:

1. Information required by §§ 52.47(a) and 52.47(c), with the exception of generic technical specifications and conceptual design information;

2. Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met; and

3. Combined license (COL) action items (COL license information), which identify certain matters that must be addressed in the site-specific portion of the final safety analysis report (FSAR) by an applicant who references this appendix. These items constitute information requirements but are not the only acceptable set of information in the FSAR. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items are not requirements for the licensee unless such items are restated in the FSAR.

4. The investment protection short-term availability controls in Section 16.3 of the DCD.

F. *Tier 2** means the portion of the Tier 2 information, designated as such in the generic DCD, which is subject to the change process in Section VIII.B.6 of this appendix. This designation expires for some Tier 2* information under paragraph VIII.B.6.

G. *Departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses* means:

1. Changing any of the elements of the method described in the plant-specific DCD unless the results of the analysis are conservative or essentially the same; or

2. Changing from a method described in the plant-specific DCD to another method unless that method has been approved by the NRC for the intended application.

H. All other terms in this appendix have the meaning set out in 10 CFR 50.2, or 52.1, or Section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

III. Scope and Contents

A. Tier 1, Tier 2 (including the investment protection short-term availability controls in Section 16.3), and the generic TS in the AP1000 DCD (Revision 15, dated December 8, 2005) are approved for incorporation by reference by the Director of the Office of the Federal Register on February 27, 2006, under 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the generic DCD may be obtained from Ronald P. Vijuk, Manager, Passive Plant Engineering, Westinghouse Electric Company, P.O. Box 355, Pittsburgh, Pennsylvania 15230–0355. A copy of the generic DCD is also available for examination and copying at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Copies are available for examination at the NRC Library, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, telephone (301) 415–5610, e-mail *LIBRARY@NRC.GOV* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

B. An applicant or licensee referencing this appendix, in accordance with Section IV of this appendix, shall incorporate by reference and comply with the requirements of this appendix, including Tier 1, Tier 2 (including the investment protection short-term availability controls in Section 16.3 of the DCD), and the generic TS except as otherwise provided in this appendix. Conceptual design information in the generic DCD and the evaluation of severe accident mitigation design alternatives in appendix 1B of the generic DCD are not part of this appendix.

C. If there is a conflict between Tier 1 and Tier 2 of the DCD, then Tier 1 controls.

D. If there is a conflict between the generic DCD and either the application for design certification of the AP1000 design or NUREG–1793, "Final Safety Evaluation Report Related to Certification of the AP1000 Standard Design," (FSER) and Supplement No. 1, then the generic DCD controls.

E. Design activities for structures, systems, and components that are wholly outside the scope of this appendix may be performed using site characteristics, provided the design activities do not affect the DCD or conflict with the interface requirements.

IV. Additional Requirements and Restrictions

A. An applicant for a combined license that wishes to reference this appendix shall, in addition to complying with the requirements of 10 CFR 52.77, 52.79, and 52.80, comply with the following requirements:

1. Incorporate by reference, as part of its application, this appendix.

2. Include, as part of its application:

a. A plant-specific DCD containing the same type of information and using the same organization and numbering as the generic DCD for the AP1000 design, as modified and supplemented by the applicant's exemptions and departures;

b. The reports on departures from and updates to the plant-specific DCD required by paragraph X.B of this appendix;

c. Plant-specific TS, consisting of the generic and site-specific TS that are required by 10 CFR 50.36 and 50.36a;

d. Information demonstrating compliance with the site parameters and interface requirements;

e. Information that addresses the COL action items; and

f. Information required by 10 CFR 52.47(a) that is not within the scope of this appendix.

3. Include, in the plant-specific DCD, the proprietary information and safeguards information referenced in the AP1000 DCD.

B. The Commission reserves the right to determine in what manner this appendix may be referenced by an applicant for a construction permit or operating license under 10 CFR part 50.

V. Applicable Regulations

A. Except as indicated in paragraph B of this section, the regulations that apply to the AP1000 design are in 10 CFR parts 20, 50, 73, and 100, codified as of January 23, 2006, that are applicable and technically relevant, as described in the FSER (NUREG–1793) and Supplement No. 1.

B. The AP1000 design is exempt from portions of the following regulations:

1. Paragraph (f)(2)(iv) of 10 CFR 50.34—Plant Safety Parameter Display Console;

2. Paragraph (c)(1) of 10 CFR 50.62—Auxiliary (or emergency) feedwater system; and

3. Appendix A to 10 CFR part 50, GDC 17—Second offsite power supply circuit.

VI. Issue Resolution

A. The Commission has determined that the structures, systems, components, and design features of the AP1000 design comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in Section V of this appendix; and therefore, provide adequate protection to the health and safety of the public. A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for the AP1000 design.

B. The Commission considers the following matters resolved within the meaning of 10 CFR 52.63(a)(5) in subsequent proceedings for issuance of a COL, amendment of a COL, or renewal of a COL, proceedings held under 10 CFR 52.103, and enforcement proceedings involving plants referencing this appendix:

1. All nuclear safety issues, except for the generic TS and other operational requirements, associated with the information in the FSER and Supplement No. 1, Tier 1, Tier 2 (including referenced information, which the context indicates is intended as requirements, and the investment protection short-term availability controls in Section 16.3 of the DCD), and the rulemaking record for certification of the AP1000 design;

2. All nuclear safety and safeguards issues associated with the information in proprietary and safeguards documents, referenced and in context, are intended as requirements in the generic DCD for the AP1000 design;

3. All generic changes to the DCD under and in compliance with the change processes in Sections VIII.A.1 and VIII.B.1 of this appendix;

4. All exemptions from the DCD under and in compliance with the change processes in Sections VIII.A.4 and VIII.B.4 of this appendix, but only for that plant;

5. All departures from the DCD that are approved by license amendment, but only for that plant;

6. Except as provided in paragraph VIII.B.5.f of this appendix, all departures from Tier 2 under and in compliance with the change processes in paragraph VIII.B.5 of this appendix that do not require prior NRC approval, but only for that plant;

7. All environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's EA for the AP1000 design and Appendix 1B

of the generic DCD, for plants referencing this appendix whose site parameters are within those specified in the severe accident mitigation design alternatives evaluation.

C. The Commission does not consider operational requirements for an applicant or licensee who references this appendix to be matters resolved within the meaning of 10 CFR 52.63(a)(5). The Commission reserves the right to require operational requirements for an applicant or licensee who references this appendix by rule, regulation, order, or license condition.

D. Except under the change processes in Section VIII of this appendix, the Commission may not require an applicant or licensee who references this appendix to:

1. Modify structures, systems, components, or design features as described in the generic DCD;

2. Provide additional or alternative structures, systems, components, or design features not discussed in the generic DCD; or

3. Provide additional or alternative design criteria, testing, analyses, acceptance criteria, or justification for structures, systems, components, or design features discussed in the generic DCD.

E.1. Persons who wish to review proprietary and safeguards information or other secondary references in the AP1000 DCD, in order to request or participate in the hearing required by 10 CFR 52.85 or the hearing provided under 10 CFR 52.103, or to request or participate in any other hearing relating to this appendix in which interested persons have adjudicatory hearing rights, shall first request access to such information from Westinghouse. The request must state with particularity:

a. The nature of the proprietary or other information sought;

b. The reason why the information currently available to the public in the NRC's public document room is insufficient;

c. The relevance of the requested information to the hearing issue(s) which the person proposes to raise; and

d. A showing that the requesting person has the capability to understand and utilize the requested information.

2. If a person claims that the information is necessary to prepare a request for hearing, the request must be filed no later than 15 days after publication in the Federal Register of the notice required either by 10 CFR 52.85 or 10 CFR 52.103. If Westinghouse declines to provide the information sought, Westinghouse shall send a written response within 10 days of receiving the request to the requesting person setting forth with particularity the reasons for its refusal. The person may then request the Commission (or presiding officer, if a proceeding has been established) to order disclosure. The person shall include copies of the original request (and any subsequent clarifying information provided by the requesting party to the applicant) and the applicant's response. The Commission and presiding officer shall base their decisions solely on the person's original request (including any clarifying information provided by the requesting person to Westinghouse), and Westinghouse's response. The Commission and presiding officer may order Westinghouse to provide access to some or all of the requested information, subject to an appropriate non-disclosure agreement.

VII. Duration of This Appendix

This appendix may be referenced for a period of 15 years from February 27, 2006, except as provided for in 10 CFR 52.55(b) and 52.57(b). This appendix remains valid for an applicant or licensee who references this appendix until the application is withdrawn or the license expires, including any period of extended operation under a renewed license.

VIII. Processes for Changes and Departures

A. Tier 1 information.

1. Generic changes to Tier 1 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 1 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs A.3 or A.4 of this section.

3. Departures from Tier 1 information that are required by the Commission through plant-specific orders are governed by the requirements in 10 CFR 52.63(a)(4).

4. Exemptions from Tier 1 information are governed by the requirements in 10 CFR 52.63(b)(1) and 52.98(f). The Commission will deny a request for an exemption from Tier 1, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design.

B. Tier 2 information.

1. Generic changes to Tier 2 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 2 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs B.3, B.4, B.5, or B.6 of this section.

3. The Commission may not require new requirements on Tier 2 information by plant-specific order while this appendix is in effect under 10 CFR 52.55 or 52.61, unless:

a. A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time this appendix was approved, as set forth in Section V of this appendix, or to ensure adequate protection of the public health and safety or the common defense and security; and

b. Special circumstances as defined in 10 CFR 50.12(a) are present.

4. An applicant or licensee who references this appendix may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The Commission will deny a request for an exemption from Tier 2, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design. The grant of an exemption to an applicant must be subject to litigation in the same manner as other issues material to the license hearing. The grant of an exemption to a licensee must be subject to an opportunity for a hearing in the same manner as license amendments.

5.a. An applicant or licensee who references this appendix may depart from Tier 2 information, without prior NRC approval, unless the proposed departure involves a change to or departure from Tier 1 information, Tier 2* information, or the TS, or requires a license amendment under paragraphs B.5.b or B.5.c of this section. When evaluating the proposed departure, an applicant or licensee shall consider all matters described in the plant-specific DCD.

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if it would:

(1) Result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the plant-specific DCD;

(2) Result in more than a minimal increase in the likelihood of occurrence of a malfunction of a structure, system, or component (SSC) important to safety and previously evaluated in the plant-specific DCD;

(3) Result in more than a minimal increase in the consequences of an accident previously evaluated in the plant-specific DCD;

(4) Result in more than a minimal increase in the consequences of a malfunction of an SSC important to safety previously evaluated in the plant-specific DCD;

(5) Create a possibility for an accident of a different type than any evaluated previously in the plant-specific DCD;

(6) Create a possibility for a malfunction of an SSC important to safety with a different result than any evaluated previously in the plant-specific DCD;

(7) Result in a design basis limit for a fission product barrier as described in the plant-specific DCD being exceeded or altered; or

(8) Result in a departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses.

c. A proposed departure from Tier 2 affecting resolution of an ex-vessel severe accident design feature identified in the plant-specific DCD, requires a license amendment if:

(1) There is a substantial increase in the probability of an ex-vessel severe accident such that a particular ex-vessel severe accident previousiy reviewed and determined to be not credible could become credible; or

(2) There is a substantial increase in the consequences to the public of a particular ex-vessel severe accident previously reviewed.

d. If a departure requires a license amendment under paragraph B.5.b or B.5.c of this section, it is governed by 10 CFR 50.90.

e. A departure from Tier 2 information that is made under paragraph B.5 of this section does not require an exemption from this appendix.

f. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR

52.103(a), who believes that an applicant or licensee who references this appendix has not complied with paragraph VIII.B.5 of this appendix when departing from Tier 2 information, may petition to admit into the proceeding such a contention. In addition to compliance with the general requirements of 10 CFR 2.309, the petition must demonstrate that the departure does not comply with paragraph VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an asserted noncompliance with an ITAAC acceptance criterion in the case of a 10 CFR 52.103 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of material fact regarding compliance with paragraph VIII.B.5 of this appendix.

6.a. An applicant who references this appendix may not depart from Tier 2* information, which is designated with italicized text or brackets and an asterisk in the generic DCD, without NRC approval. The departure will not be considered a resolved issue, within the meaning of Section VI of this appendix and 10 CFR 52.63(a)(5).

b. A licensee who references this appendix may not depart from the following Tier 2* matters without prior NRC approval. A request for a departure will be treated as a request for a license amendment under 10 CFR 50.90.

(1) Maximum fuel rod average burn-up.
(2) Fuel principal design requirements.
(3) Fuel criteria evaluation process.
(4) Fire areas.
(5) Human factors engineering.
(6) Small-break loss-of-coolant accident (LOCA) analysis methodology.

c. A licensee who references this appendix may not, before the plant first achieves full power following the finding required by 10 CFR 52.103(g), depart from the following Tier 2* matters except under paragraph B.6.b of this section. After the plant first achieves full power, the following Tier 2* matters revert to Tier 2 status and are subject to the departure provisions in paragraph B.5 of this section.

(1) Nuclear Island structural dimensions.
(2) American Society of Mechanical Engineers Boiler & Pressure Vessel Code (ASME Code), Section III, and Code Case–284.
(3) Design Summary of Critical Sections.
(4) American Concrete Institute (ACI) 318, ACI 349, American National Standards Institute/American Institute of Steel Construction (ANSI/AISC)–690, and American Iron and Steel Institute (AISI), "Specification for the Design of Cold Formed Steel Structural Members, Part 1 and 2." 1996 Edition and 2000 Supplement.
(5) Definition of critical locations and thicknesses.
(6) Seismic qualification methods and standards.
(7) Nuclear design of fuel and reactivity control system, except burn-up limit.
(8) Motor-operated and power-operated valves.
(9) Instrumentation and control system design processes, methods, and standards.
(10) Passive residual heat removal (PRHR) natural circulation test (first plant only).
(11) Automatic depressurization system (ADS) and core make-up tank (CMT) verification tests (first three plants only).
(12) Polar crane parked orientation.
(13) Piping design acceptance criteria.
(14) Containment vessel design parameters.

d. Departures from Tier 2* information that are made under paragraph B.6 of this section do not require an exemption from this appendix.

C. Operational requirements.

1. Generic changes to generic TS and other operational requirements that were completely reviewed and approved in the design certification rulemaking and do not require a change to a design feature in the generic DCD are governed by the requirements in 10 CFR 50.109. Generic changes that require a change to a design feature in the generic DCD are governed by the requirements in paragraphs A or B of this section.

2. Generic changes to generic TS and other operational requirements are applicable to all applicants who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs C.3 or C.4 of this section.

3. The Commission may require plant-specific departures on generic TS and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances as defined in 10 CFR 2.335 are present. The Commission may modify or supplement generic TS and other operational requirements that were not completely reviewed and approved or require additional TS and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

4. An applicant who references this appendix may request an exemption from the generic technical specifications or other operational requirements. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 52.7. The grant of an exemption must be subject to litigation in the same manner as other issues material to the license hearing.

5. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license, or for operation under 10 CFR 52.103(a), who believes that an operational requirement approved in the DCD or a TS derived from the generic TS must be changed may petition to admit such a contention into the proceeding. The petition must comply with the general requirements of 10 CFR 2.309 and must demonstrate why special circumstances as defined in 10 CFR 2.335 are present, or demonstrate compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response to the petition. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific TS or other operational requirements are subject to a hearing as part of the license proceeding.

6. After issuance of a license, the generic TS have no further effect on the plant-specific TS. Changes to the plant-specific TS will be treated as license amendments under 10 CFR 50.90.

IX. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

A.1. An applicant or licensee who references this appendix shall perform and demonstrate conformance with the ITAAC before fuel load. With respect to activities subject to an ITAAC, an applicant for a license may proceed at its own risk with design and procurement activities. A licensee may also proceed at its own risk with design, procurement, construction, and preoperational activities, even though the NRC may not have found that any particular ITAAC has been met.

2. The licensee who references this appendix shall notify the NRC that the required inspections, tests, and analyses in the ITAAC have been successfully completed and that the corresponding acceptance criteria have been met.

3. If an activity is subject to an ITAAC and the applicant or licensee who references this appendix has not demonstrated that the ITAAC has been met, the applicant or licensee may either take corrective actions to successfully complete that ITAAC, request an exemption from the ITAAC under Section VIII of this appendix and 10 CFR 52.97(b), or petition for rulemaking to amend this appendix by changing the requirements of the ITAAC, under 10 CFR 2.802 and 52.97(b). Such rulemaking changes to the ITAAC must meet the requirements of paragraph VIII.A.1 of this appendix.

B.1. The NRC shall ensure that the required inspections, tests, and analyses in the ITAAC are performed. The NRC shall verify that the inspections, tests, and analyses referenced by the licensee have been successfully completed and, based solely thereon, find that the prescribed acceptance criteria have been met. At appropriate intervals during construction, the NRC shall publish notices of the successful completion of ITAAC in the **Federal Register**.

2. In accordance with 10 CFR 52.103(g), the Commission shall find that the acceptance criteria in the ITAAC for the license are met before fuel load.

3. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not, by virtue of their inclusion within the DCD, constitute regulatory requirements either for licensees or for renewal of the license; except for specific ITAAC, which are the subject of a § 52.103(a) hearing, their expiration will occur upon final Commission action in such a

proceeding. However, subsequent modifications must comply with the Tier 1 and Tier 2 design descriptions in the plant-specific DCD unless the licensee has complied with the applicable requirements of 10 CFR 52.98 and Section VIII of this appendix.

X. Records and Reporting

A. Records

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes to Tier 1, Tier 2, and the generic TS and other operational requirements. The applicant shall maintain the proprietary and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

2. An applicant or licensee who references this appendix shall maintain the plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made under Section VIII of this appendix throughout the period of application and for the term of the license (including any period of renewal).

3. An applicant or licensee who references this appendix shall prepare and maintain written evaluations which provide the bases for the determinations required by Section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any period of renewal).

B. Reporting

1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any plant-specific departures from the DCD, including a summary of the evaluation of each. This report must be filed in accordance with the filing requirements applicable to reports in 10 CFR 52.3.

2. An applicant or licensee who references this appendix shall submit updates to its DCD, which reflect the generic changes to and plant-specific departures from the generic DCD made under Section VIII of this appendix. These updates must be filed under the filing requirements applicable to final safety analysis report updates in 10 CFR 52.3 and 50.71(e).

3. The reports and updates required by paragraphs X.B.1 and X.B.2 must be submitted as follows:

a. On the date that an application for a license referencing this appendix is submitted, the application must include the report and any updates to the generic DCD.

b. During the interval from the date of application for a license to the date the Commission makes its findings required by 10 CFR 52.103(g), the report must be submitted semi-annually. Updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

c. After the Commission makes the finding required by 10 CFR 52.103(g), the reports and updates to the plant-specific DCD must be submitted, along with updates to the site-specific portion of the final safety analysis report for the facility, at the intervals required by 10 CFR 50.59(d)(2) and 50.71(e)(4), respectively, or at shorter intervals as specified in the license.

Appendices E Through M to Part 52 [Reserved]

Appendix N to Part 52—Standardization of Nuclear Power Plant Designs: Combined Licenses To Construct and Operate Nuclear Power Reactors of Identical Design at Multiple Sites

The Commission's regulations in part 2 of this chapter specifically provide for the holding of hearings on particular issues separately from other issues involved in hearings in licensing proceedings, and for the consolidation of adjudicatory proceedings and of the presentations of parties in adjudicatory proceedings such as licensing proceedings (§§ 2.316 and 2.317 of this chapter).

This appendix sets out the particular requirements and provisions applicable to situations in which applications for combined licenses under subpart C of this part are filed by one or more applicants for licenses to construct and operate nuclear power reactors of identical design ("common design") to be located at multiple sites.[1]

1. Except as otherwise specified in this appendix or as the context otherwise indicates, the provisions of subpart C of this part and subpart D of part 2 of this chapter apply to combined license applications subject to this appendix.

2. Each combined license application submitted pursuant to this appendix must be submitted as specified in § 52.75 and 10 CFR 2.101. Each application must state that the applicant wishes to have the application considered under 10 CFR part 52, appendix N, and must list each of the applications to be treated together under this appendix.

3. Each application must include the information required by §§ 52.77, 52.79, and 52.80(a), *provided however*, that the application must identify the common design, and, if applicable, reference a standard design certification under subpart B of this part, or the use of a reactor manufactured under subpart F of this part. The final safety analysis report for each application must either incorporate by reference or include the final safety analysis of the common design, including, if applicable, the final safety analysis report for the referenced design certification or the manufactured reactor.[2]

4. Each combined license application submitted pursuant to this appendix must contain an environmental report as required by § 52.80(b), and which complies with the applicable provisions of 10 CFR part 51, *provided, however*, that the application may incorporate by reference a single environmental report on the environmental impacts of the common design.

5. Upon a determination that each application is acceptable for docketing under 10 CFR 2.101, each application will be docketed and a notice of docketing for each application will be published in the **Federal Register**, in accordance with 10 CFR 2.104, *provided, however*, that the notice must state that the application will be processed under the provisions of 10 CFR part 52, appendix N, and subpart D of part 2 of this chapter. As the discretion of the Commission, a single notice of docketing for multiple applications may be published in the **Federal Register**.

6. The NRC staff shall prepare draft and final environmental impact statements for each of the applications under part 51 of this chapter. Scoping under 10 CFR 51.28 and 51.29 for each of the combined license applications may be conducted simultaneously and joint scoping may be conducted with respect to the environmental issues relevant to the common design.

If the applications reference a standard design certification, then the environmental impact statement for each of the applications must incorporate by reference the design certification environmental assessment. If the applications do not reference a standard design certification, then the NRC staff shall prepare draft and final supplemental environmental impact statements which address severe accident mitigation design alternatives for the common design, which must be incorporated by reference into the environmental impact statement prepared for each application. Scoping under 10 CFR 51.28 and 51.29 for the supplemental environmental impact statement may be conducted simultaneously, and may be part of the scoping for each of the combined license applications.

7. The ACRS shall report on each of the applications as required by § 52.87. Each report must be limited to those safety matters for each application which are not relevant to the common design. In addition, the ACRS shall separately report on the safety of the common design, *provided, however*, that the report need not address the safety of a referenced standard design certification or reactor manufactured under subpart F of this part.

8. The Commission shall designate a presiding officer to conduct the proceeding with respect to the health and safety, common defense and security, and environmental matters relating to the common design. The hearing will be governed by the applicable provisions of subparts A, C, G, L, N, and O of part 2 of this chapter relating to applications for combined licenses. The presiding officer shall issue a partial initial decision on the common design.

[1] If the design for the power reactor(s) proposed in a particular application is not identical to the others, that application may not be processed under this appendix and subpart D of part 2 of this chapter.

[2] As used in this appendix, the design of a nuclear power reactor included in a single referenced safety analysis report means the design of those structures, systems, and components important to radiological health and safety and the common defense and security.

PART 54—REQUIREMENTS FOR RENEWAL OF OPERATING LICENSES FOR NUCLEAR POWER PLANTS

■ 151. The authority citation for part 54 continues to read as follows:

Authority: Secs. 102, 103, 104, 161, 181, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133,

2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs 201, 202, 206, 88 Stat. 1242, 1244 as amended (42 U.S.C. 5841, 5842).

Section 54.17 also issued under E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR, 1995 Comp., p. 391.

■ 152. Section 54.1 is revised to read as follows:

§ 54.1 Purpose.

This part governs the issuance of renewed operating licenses and renewed combined licenses for nuclear power plants licensed pursuant to Sections 103 or 104b of the Atomic Energy Act of 1954, as amended, and Title II of the Energy Reorganization Act of 1974 (88 Stat. 1242)

■ 153. In § 54.3, paragraph (a), the definition for *Current licensing basis* is revised, and the definition for *Renewed combined license* is added to read as follows:

§ 54.3 Definitions.

(a) * * *

Current licensing basis (CLB) is the set of NRC requirements applicable to a specific plant and a licensee's written commitments for ensuring compliance with and operation within applicable NRC requirements and the plant-specific design basis (including all modifications and additions to such commitments over the life of the license) that are docketed and in effect. The CLB includes the NRC regulations contained in 10 CFR parts 2, 19, 20, 21, 26, 30, 40, 50, 51, 52, 54, 55, 70, 72, 73, 100 and appendices thereto; orders; license conditions; exemptions; and technical specifications. It also includes the plant-specific design-basis information defined in 10 CFR 50.2 as documented in the most recent final safety analysis report (FSAR) as required by 10 CFR 50.71 and the licensee's commitments remaining in effect that were made in docketed licensing correspondence such as licensee responses to NRC bulletins, generic letters, and enforcement actions, as well as licensee commitments documented in NRC safety evaluations or licensee event reports.

* * * * *

Renewed combined license means a combined license originally issued under part 52 of this chapter for which an application for renewal is filed in accordance with 10 CFR 52.107 and issued under this part.

* * * * *

■ 154. In § 54.17, paragraph (c) is revised to read as follows:

§ 54.17 Filing of application.

* * * * *

(c) An application for a renewed license may not be submitted to the Commission earlier than 20 years before the expiration of the operating license or combined license currently in effect.

* * * * *

■ 155. Section 54.27 is revised to read as follows:

§ 54.27 Hearings.

A notice of an opportunity for a hearing will be published in the **Federal Register** in accordance with 10 CFR 2.105. In the absence of a request for a hearing filed within 30 days by a person whose interest may be affected, the Commission may issue a renewed operating license or renewed combined license without a hearing upon 30-day notice and publication in the **Federal Register** of its intent to do so.

■ 156. In Section 54.31, paragraphs (a), (b), and (c) are revised to read as follows:

§ 54.31 Issuance of a renewed license.

(a) A renewed license will be of the class for which the operating license or combined license currently in effect was issued.

(b) A renewed license will be issued for a fixed period of time, which is the sum of the additional amount of time beyond the expiration of the operating license or combined license (not to exceed 20 years) that is requested in a renewal application plus the remaining number of years on the operating license or combined license currently in effect. The term of any renewed license may not exceed 40 years.

(c) A renewed license will become effective immediately upon its issuance, thereby superseding the operating license or combined license previously in effect. If a renewed license is subsequently set aside upon further administrative or judicial appeal, the operating license or combined license previously in effect will be reinstated unless its term has expired and the renewal application was not filed in a timely manner.

* * * * *

■ 157. Section 54.35 is revised to read as follows:

§ 54.35 Requirements during term of renewed license.

During the term of a renewed license, licensees shall be subject to and shall continue to comply with all Commission regulations contained in 10 CFR parts 2, 19, 20, 21, 26, 30, 40, 50, 51, 52, 54, 55, 70, 72, 73, and 100, and the appendices to these parts that are applicable to holders of operating licenses or combined licenses, respectively.

■ 158. In § 54.37, paragraph (a) is revised to read as follows:

§ 54.37 Additional records and recordkeeping requirements.

(a) The licensee shall retain in an auditable and retrievable form for the term of the renewed operating license or renewed combined license all information and documentation required by, or otherwise necessary to document compliance with, the provisions of this part.

* * * * *

PART 55—OPERATORS' LICENSES

■ 159. The authority citation for part 55 continues to read as follows:

Authority: Secs. 107, 161, 182, 68 Stat. 939, 948, 953, as amended. sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97–425, 96 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

■ 160. In § 55.1, paragraph (a) is revised to read as follows:

§ 55.1 Purpose.

* * * * *

(a) Establish procedures and criteria for the issuance of licenses to operators and senior operators of utilization facilities licensed under the Atomic Energy Act of 1954, as amended, or Section 202 of the Energy Reorganization Act of 1974, as amended, and part 50, part 52, or part 54 of this chapter,

* * * * *

■ 161. In § 55.2, paragraph (a) is revised to read as follows:

§ 55.2 Scope.

* * * * *

(a) Any individual who manipulates the controls of any utilization facility licensed under parts 50, 52, or 54 of this chapter,

* * * * *

■ 162. In § 55.5, paragraph (b)(1) and the introductory text of paragraph (b)(2) are revised to read as follows:

§ 55.5 Communications.

* * * * *

(b)(1) Except for test and research reactor facilities, the Director of New Reactors or the Director of Nuclear Reactor Regulation, as appropriate, has delegated to the Regional Administrators of Regions I, II, III, and IV authority and responsibility under the regulations in this part for the

issuance and renewal of licenses for operators and senior operators of nuclear power reactors licensed under 10 CFR part 50 or part 52 and located in these regions.

(2) Any application for a license or license renewal filed under the regulations in this part involving a nuclear power reactor licensed under 10 CFR part 50 or part 52 and any related inquiry, communication, information, or report must be submitted to the Regional Administrator by an appropriate method listed in paragraph (a) of this section. The Regional Administrator or the Administrator's designee will transmit to the Director of New Reactors or the Director of Nuclear Reactor Regulation, as appropriate, any matter that is not within the scope of the Regional Administrator's delegated authority.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR RELATED GREATER THAN CLASS C WASTE

■ 163. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 164. Section 72.210 is revised to read as follows:

§ 72.210 General license issued.

A general license is hereby issued for the storage of spent fuel in an independent spent fuel storage installation at power reactor sites to persons authorized to possess or operate nuclear power reactors under 10 CFR part 50 or 10 CFR part 52.

■ 165. In § 72.218, paragraph (b) is revised to read as follows:

§ 72.218 Termination of licenses.

* * * * *

(b) An application for termination of a reactor operating license issued under 10 CFR part 50 and submitted under § 50.82 of this chapter, or a combined license issued under 10 CFR part 52 and submitted under § 52.110 of this chapter, must contain a description of how the spent fuel stored under this general license will be removed from the reactor site.

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

■ 166. The authority citation for part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

■ 167. In § 73.1, paragraph (b)(1)(i) is revised to read as follows:

§ 73.1 Purpose and scope.

* * * * *

(b) * * *

(1) * * *

(i) The physical protection of production and utilization facilities licensed under parts 50 or 52 of this chapter,

* * * * *

■ 168. In § 73.2, the introductory text of paragraph (a) is revised to read as follows:

§ 73.2 Definitions.

* * * * *

(a) Terms defined in parts 50, 52, and 70 of this chapter have the same meaning when used in this part.

* * * * *

■ 169. In § 73.50, the introductory text is revised to read as follows:

§ 73.50 Requirements for physical protection of licensed activities.

Each licensee who is not subject to § 73.51, but who possesses, uses, or stores formula quantities of strategic special nuclear material that are not readily separable from other radioactive material and which have total external radiation dose rates in excess of 100 rems per hour at a distance of 3 feet from any accessible surfaces without intervening shielding other than at nuclear reactor facility licensed under parts 50 or 52 of this chapter, shall comply with the following:

* * * * *

■ 170. In § 73.56, paragraph (a)(3) is revised to read as follows:

§ 73.56 Personnel access authorization requirements for nuclear power plants.

(a) * * *

(3) Each applicant for a license to operate a nuclear power reactor under §§ 50.21(b) or 50.22 of this chapter, including an applicant for a combined license under part 52 of this chapter, whose application is submitted after April 25, 1991, shall include the required access authorization program as part of its Physical Security Plan. The applicant, upon receipt of an operating license or upon notice of the Commission's finding under § 52.103(g) of this chapter, shall implement the required access authorization program as part of its site Physical Security Plan.

* * * * *

■ 171. In § 73.57, paragraphs (a)(1), (a)(2), and (a)(3) are revised to read as follows:

§ 73.57 Requirements for criminal history checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information by power reactor licensees.

(a) * * *

(1) Each licensee who is authorized to operate a nuclear power reactor under part 50 of this chapter, or each holder of a combined license under part 52 of this chapter upon receipt of notice of the Commission's finding under § 52.103(g), shall comply with the requirements of this section.

(2) Each applicant for a license to operate a nuclear power reactor under part 50 of this chapter and each applicant for a combined license under part 52 of this chapter shall submit fingerprints for those individuals who have or will have access to Safeguards Information.

(3) Before receiving its operating license under part 50 of this chapter or before the Commission makes its finding under § 52.103(g) of this chapter, each applicant for a license to

operate a nuclear power reactor (including an applicant for a combined license) may submit fingerprints for those individuals who will require unescorted access to the nuclear power facility.

* * * * *

■ 172. In Appendix C to Part 73, the Introduction is revised to read as follows:

Appendix C to Part 73—Licensee Safeguards Contingency Plans

Introduction

A licensee safeguards contingency plan is a documented plan to give guidance to licensee personnel in order to accomplish specific defined objectives in the event of threats, thefts, or radiological sabotage relating to special nuclear material or nuclear facilities licensed under the Atomic Energy Act of 1954, as amended. An acceptable safeguards contingency plan must contain:

(1) A predetermined set of decisions and actions to satisfy stated objectives;

(2) An identification of the data, criteria, procedures, and mechanisms necessary to efficiently implement the decisions; and

(3) A stipulation of the individual, group, or organizational entity responsible for each decision and action.

The goals of licensee safeguards contingency plans for responding to threats, thefts, and radiological sabotage are:

(1) To organize the response effort at the licensee level;

(2) To provide predetermined, structured responses by licensees to safeguards contingencies;

(3) To ensure the integration of the licensee response with the responses by other entities; and

(4) To achieve a measurable performance in response capability.

Licensee safeguards contingency planning should result in organizing the licensee's resources in such a way that the participants will be identified, their several responsibilities specified, and the responses coordinated. The responses should be timely.

It is important to note that a licensee's safeguards contingency plan is intended to be complementary to any emergency plans developed under appendix E to part 50 of this chapter, § 52.17 or § 52.79, or to § 70.22(i) of this chapter.

* * * * *

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

■ 173. The authority citation for part 75 continues to read as follows

Authority: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 75.4 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

■ 174. In § 75.6, paragraph (b) is revised to read as follows:

§ 75.6 Maintenance of records and delivery of information, reports, and other communications.

* * * * *

(b) If an installation is a nuclear power plant or a non-power reactor for which a construction permit, operating license or a combined license has been issued, whether or not a license to receive and possess nuclear material at the installation has been issued, the cognizant Director is either the Director, Office of New Reactors, or the Director, Office of Nuclear Reactor Regulation. For all other installations, the cognizant Director is the Director, Office of Nuclear Material Safety and Safeguards.

* * * * *

PART 95—FACILITY SECURITY CLEARANCE AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

■ 175. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 145, 161, 193, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333, as amended by E.O. 13292, 3 CFR, 2004 Comp., p. 196; E.O. 12968, 3 CFR, 1995 Comp., p. 391.

■ 176. In § 95.5, the definition of license is revised to read as follows:

§ 95.5 Definitions.

* * * * *

License means a license issued under 10 CFR parts 50, 52, 54, 60, 63, 70, or 72.

* * * * *

■ 177. In § 95.13, paragraph (b) is revised to read as follows:

§ 95.13 Maintenance of records.

* * * * *

(b) Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, or specifications must include all pertinent information such as stamps, initials, and signatures. The licensee, certificate holder, or other person shall maintain adequate safeguards against tampering with and loss of records.

■ 178. In § 95.19, the introductory text of paragraph (b) is revised to read as follows:

§ 95.19 Changes to security practices and procedures.

* * * * *

(b) A licensee, certificate holder, or other person may effect a minor, non-substantive change to an approved Standard Practice Procedures Plan for the safeguarding of classified information without receiving prior CSA approval. These minor changes that do not affect the security of the facility may be submitted to the addressees noted in paragraph (a) of this section within 30 days of the change. Page changes rather than a complete rewrite of the plan may be submitted. Some examples of minor, non-substantive changes to the Standard Practice Procedures Plan include—

* * * * *

■ 179. Section 95.20 is revised to read as follows:

§ 95.20 Grant, denial or termination of facility clearance.

The Division of Nuclear Security shall provide notification in writing (or orally with written confirmation) to the licensee, certificate holder, or other person of the Commission's grant, acceptance of another agency's facility clearance, denial, or termination of facility clearance. This information must also be furnished to representatives of the NRC, NRC contractors, licensees, certificate holders, or other person, or other Federal agencies having a need to transmit classified information to the licensees or other person.

■ 180. In § 95.23, paragraph (b) is revised to read as follows:

§ 95.23 Termination of facility clearance.

* * * * *

(b) When facility clearance is terminated, the licensee, certificate holder, or other person will be notified in writing of the determination and the procedures outlined in § 95.53 apply.

■ 181. Section 95.31 is revised to read as follows:

§ 95.31 Protective personnel.

Whenever protective personnel are used to protect classified information they shall:

(a) Possess an "L" access authorization (or CSA equivalent) if the licensee, certificate holder, or other person possesses information classified Confidential National Security Information, Confidential Restricted Data or Secret National Security Information.

(b) Possess a "Q" access authorization (or CSA equivalent) if the licensee, certificate holder, or other person possesses Secret Restricted Data related to nuclear weapons design, manufacturing and vulnerability information; and certain particularly sensitive Naval Nuclear Propulsion Program information (e.g., fuel manufacturing technology) and the protective personnel require access as part of their regular duties.

■ 182. In § 95.33, paragraph (c) is revised to read as follows:

§ 95.33 Security education.

* * * * *

(c) Temporary Help Suppliers. A temporary help supplier, or other contractor who employs cleared individuals solely for dispatch elsewhere, is responsible for ensuring that required briefings are provided to their cleared personnel. The temporary help supplier or the using licensee's, certificate holder's, or other person's facility may conduct these briefings.

* * * * *

■ 183. Section 95.34 is revised to read as follows:

§ 95.34 Control of visitors.

(a) *Uncleared visitors.* Licensees, certificate holders, or other persons subject to this part shall take measures to preclude access to classified information by uncleared visitors.

(b) *Foreign visitors.* Licensees, certificate holders, or other persons subject to this part shall take measures as may be necessary to preclude access to classified information by foreign visitors. The licensee, certificate holder, or other person shall retain records of visits for 5 years beyond the date of the visit.

■ 184. In § 95.35, the introductory text of paragraph (a), and paragraph (a)(3) are revised to read as follows:

§ 95.35 Access to matter classified as National Security Information and Restricted Data.

(a) Except as the Commission may authorize, no licensee, certificate holder or other person subject to the regulations in this part may receive or may permit any other licensee, certificate holder, or other person to have access to matter revealing Secret or Confidential National Security Information or Restricted Data unless the individual has:

* * * * *

(3) NRC-approved storage facilities if classified documents or material are to be transmitted to the licensee, certificate holder, or other person.

* * * * *

■ 185. In § 95.36, paragraphs (c), (d), and (e) are revised to read as follows:

§ 95.36 Access by representatives of the International Atomic Energy Agency or by participants in other international agreements.

* * * * *

(c) In accordance with the specific disclosure authorization provided by the Division of Nuclear Security, licensees, certificate holders, or other persons subject to this part are authorized to release (i.e., transfer possession of) copies of documents that contain classified National Security Information directly to IAEA inspectors and other representatives officially designated to request and receive classified National Security Information documents. These documents must be marked specifically for release to IAEA or other international organizations in accordance with instructions contained in the NRC's disclosure authorization letter. Licensees, certificate holders, and other persons subject to this part may also forward these documents through the NRC to the international organization's headquarters in accordance with the NRC disclosure authorization. Licensees, certificate holders, and other persons may not reproduce documents containing classified National Security Information except as provided in § 95.43.

(d) Records regarding these visits and inspections must be maintained for 5 years beyond the date of the visit or inspection. These records must specifically identify each document released to an authorized representative and indicate the date of the release. These records must also identify (in such detail as the Division of Nuclear Security, by letter, may require) the categories of documents that the authorized representative has had access and the date of this access. A licensee, certificate holder, or other person subject to this part shall also retain Division of Nuclear Security disclosure authorizations for 5 years beyond the date of any visit or inspection when access to classified information was permitted.

(e) Licensees, certificate holders, or other persons subject to this part shall take such measures as may be necessary to preclude access to classified matter by participants of other international agreements unless specifically provided for under the terms of a specific agreement.

■ 186. In § 95.37, paragraphs (a), (b), and (h) are revised to read as follows:

§ 95.37 Classification and preparation of documents.

(a) *Classification.* Classified information generated or possessed by a licensee, certificate holder, or other person must be appropriately marked. Classified material which is not conducive to markings (e.g., equipment) may be exempt from this requirement. These exemptions are subject to the approval of the CSA on a case-by-case basis. If a person or facility generates or possesses information that is believed to be classified based on guidance provided by the NRC or by derivation from classified documents, but which no authorized classifier has determined to be classified, the information must be protected and marked with the appropriate classification markings pending review and signature of an NRC authorized classifier. This information shall be protected as classified information pending final determination.

(b) *Classification consistent with content.* Each document containing classified information shall be classified Secret or Confidential according to its content. NRC licensees, certificate holders, or other persons subject to the requirements of 10 CFR part 95 may not make original classification decisions.

* * * * *

(h) *Classification challenges.* Licensees, certificate holders, or other persons in authorized possession of classified National Security Information who in good faith believe that the information's classification status (i.e., that the document), is classified at either too high a level for its content (overclassification) or too low for its content (underclassification) are expected to challenge its classification status. Licensees, certificate holders, or other persons who wish to challenge a classification status shall—

(1) Refer the document or information to the originator or to an authorized NRC classifier for review. The authorized classifier shall review the document and render a written classification decision to the holder of the information.

(2) In the event of a question regarding classification review, the

holder of the information or the authorized classifier shall consult the NRC Division of Facilities and Security, Information Security Branch, for assistance.

(3) Licensees, certificate holders, or other persons who challenge classification decisions have the right to appeal the classification decision to the Interagency Security Classification Appeals Panel.

(4) Licensees, certificate holders, or other persons seeking to challenge the classification of information will not be the subject of retribution.

* * * * *

■ 187. In § 95.39, paragraph (a) is revised to read as follows:

§ 95.39 External transmission of documents and material.

(a) *Restrictions.* Documents and material containing classified information received or originated in connection with an NRC license, certificate, or standard design approval or standard design certification under part 52 of this chapter must be transmitted only to CSA approved security facilities.

* * * * *

■ 188. In § 95.43, paragraph (a) is revised to read as follows:

§ 95.43 Authority to reproduce.

(a) Each licensee, certificate holder, or other person possessing classified information shall establish a reproduction control system to ensure that reproduction of classified material is held to the minimum consistent with operational requirements. Classified reproduction must be accomplished by authorized employees knowledgeable of the procedures for classified reproduction. The use of technology that prevents, discourages, or detects the unauthorized reproduction of classified documents is encouraged.

* * * * *

■ 189. In § 95.45, paragraph (d) is revised to read as follows:

§ 95.45 Changes in classification.

* * * * *

(d) Any licensee, certificate holder, or other person making a change in classification or receiving notice of such a change shall forward notice of the change in classification to holders of all copies as shown on their records.

■ 190. Section 95.49 is revised to read as follows:

§ 95.49 Security of automatic data processing (ADP) systems.

Classified data or information may not be processed or produced on an ADP system unless the system and procedures to protect the classified data or information have been approved by the CSA. Approval of the ADP system and procedures is based on a satisfactory ADP security proposal submitted as part of the licensee's, certificate holder's, or other person's request for facility clearance outlined in § 95.15 or submitted as an amendment to its existing Standard Practice Procedures Plan for the protection of classified information.

■ 191. Section 95.51 is revised to read as follows:

§ 95.51 Retrieval of classified matter following suspension or revocation of access authorization.

In any case where the access authorization of an individual is suspended or revoked in accordance with the procedures set forth in part 25 of this chapter, or other relevant CSA procedures, the licensee, certificate holder, or other person shall, upon due notice from the Commission of such suspension or revocation, retrieve all classified information possessed by the individual and take the action necessary to preclude that individual having further access to the information.

■ 192. Section 95.53 is revised to read as follows:

§ 95.53 Termination of facility clearance.

(a) If the need to use, process, store, reproduce, transmit, transport, or handle classified matter no longer exists, the facility clearance will be terminated. The licensee, certificate holder, or other person for the facility may deliver all documents and matter containing classified information to the Commission, or to a person authorized to receive them, or must destroy all classified documents and matter. In either case, the licensee, certificate holder, or other person for the facility shall submit a certification of nonpossession of classified information to the NRC Division of Nuclear Security within 30 days of the termination of the facility clearance.

(b) In any instance where a facility clearance has been terminated based on a determination of the CSA that further possession of classified matter by the facility would not be in the interest of the national security, the licensee, certificate holder, or other person for the facility shall, upon notice from the CSA, dispose of classified documents in a manner specified by the CSA.

■ 193. In § 95.57, the introductory paragraph is revised to read as follows:

§ 95.57 Reports.

Each licensee, certificate holder, or other person having a facility clearance shall report to the CSA and the Regional Administrator of the appropriate NRC Regional Office listed in 10 CFR part 73, appendix A:

* * * * *

■ 194. Section 95.59 is revised to read as follows:

§ 95.59 Inspections.

The Commission shall make inspections and reviews of the premises, activities, records and procedures of any licensee, certificate holder, or other person subject to the regulations in this part as the Commission and CSA deem necessary to effect the purposes of the Act, E.O. 12958 and/or NRC rules.

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

■ 195. The authority citation for part 140 continues to read as follows:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 841, 5842); Sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 196. In § 140.2, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 140.2 Scope.

(a) * * *

(1) To each person who is an applicant for or holder of a license issued under 10 CFR parts 50, 52, or 54 to operate a nuclear reactor, and

(2) With respect to an extraordinary nuclear occurrence, to each person who is an applicant for or holder of a license to operate a production facility or a utilization facility (including an operating license issued under part 50 of this chapter and a combined license under part 52 of this chapter), and to other persons indemnified with respect to the involved facilities.

* * * * *

■ 197. Section 140.10 is revised to read as follows:

§ 140.10 Scope.

This subpart applies to each person who is an applicant for or holder of a license issued under 10 CFR parts 50 or 54 to operate a nuclear reactor, or is the applicant for or holder of a combined license issued under parts 52 or 54 of this chapter, except licenses held by persons found by the Commission to be Federal agencies or nonprofit educational institutions licensed to conduct educational activities. This subpart also applies to persons licensed

to possess and use plutonium in a plutonium processing and fuel fabrication plant.

■ 198. In § 140.11, paragraph (b) is revised to read as follows:

§ 140.11 Amounts of financial protection for certain reactors.

* * * * *

(b) In any case where a person is authorized under parts 50, 52, or 54 of this chapter to operate two or more nuclear reactors at the same location, the total primary financial protection required of the licensee for all such reactors is the highest amount which would otherwise be required for any one of those reactors; provided, that such primary financial protection covers all reactors at the location.

■ 199. In § 140.12, paragraph (c) is revised to read as follows:

§ 140.12 Amount of financial protection required for other reactors.

* * * * *

(c) In any case where a person is authorized under parts 50, 52, or 54 of this chapter to operate two or more nuclear reactors at the same location, the total financial protection required of the licensee for all such reactors is the highest amount which would otherwise be required for any one of those reactors; provided, that such financial protection covers all reactors at the location.

* * * * *

■ 200. Section 140.13 is revised to read as follows:

§ 140.13 Amount of financial protection required of certain holders of construction permits and combined licenses under 10 CFR part 52.

Each holder of a part 50 construction permit, or a holder of a combined license under part 52 of this chapter before the date that the Commission had made the finding under 10 CFR 52.103(g), who also holds a license under part 70 of this chapter authorizing ownership, possession and storage only of special nuclear material at the site of the nuclear reactor for use as fuel in operation of the nuclear reactor after issuance of either an operating license under 10 CFR part 50 or combined license under 10 CFR part 52, shall, during the period before issuance of a license authorizing operation under 10 CFR part 50, or the period before the Commission makes the finding under § 52.103(g) of this chapter, as applicable, have and maintain financial protection in the amount of $1,000,000. Proof of financial protection shall be filed with the Commission in the manner specified in § 140.15 of this chapter before issuance of the license under part 70 of this chapter.

■ 201. In § 140.20, paragraph (a)(1)(ii) is revised, and paragraph (a)(1)(iii) is added to read as follows:

§ 140.20 Indemnity agreements and liens.

(a) * * *

(1) * * *

(ii) The date that the Commission makes the finding under § 52.103(g) of this chapter; or

(iii) The effective date of the license (issued under part 70 of this chapter) authorizing the licensee to possess and store special nuclear material at the site of the nuclear reactor for use as fuel in operation of the nuclear reactor after issuance of an operating license for the reactor, whichever is earlier. No such agreement, however, shall be effective prior to September 26, 1957; or

* * * * *

■ 202. In § 140.81, paragraph (a) is revised to read as follows:

§ 140.81 Scope and purpose.

(a) *Scope.* This subpart applies to applicants for and holders of licenses authorizing operation of production facilities and utilization facilities, including combined licenses under part 52 of this chapter, and to other persons indemnified with respect to such facilities.

* * * * *

■ 203. In § 140.93 Appendix C, Article VIII, paragraph 4 is revised to read as follows:

§ 140.93 Appendix C—Form of indemnity agreement with licensees furnishing proof of financial protection in the form of licensee's resources.

* * * * *

Article VIII

* * * * *

4. If the Commission determines that the licensee is financially able to reimburse the Commission for a deferred premium payment made in its behalf, and the licensee, after notice of such determination by the Commission fails to make such reimbursement within 120 days, the Commission will take appropriate steps to suspend the license for 30 days. The Commission may take any further action as necessary if reimbursement is not made within the 30-day suspension period including, but not limited to, termination of the operating license or combined license.

* * * * *

■ 204. Section 140.96 is revised to read as follows:

§ 140.96 Appendix F—Indemnity locations.

(a) *Geographical boundaries of indemnity locations.*

(1) In every indemnity agreement between the Commission and a licensee which affords indemnity protection for the preoperational storage of fuel at the site of a nuclear power reactor under construction, the geographical boundaries of the indemnity location will include the entire construction area of the nuclear power reactor, as determined by the Commission. Such area will not necessarily be coextensive with the indemnity location which will be established at the time an operating license or combined license under 10 CFR part 52 is issued for such additional nuclear power reactors.

(2) In every indemnity agreement between the Commission and a licensee which affords indemnity protection for an existing nuclear power reactor, the geographical boundaries of the indemnity location shall include the entire construction area of any additional nuclear power reactor as determined by the Commission, built as part of the same power station by the same licensee. Such area will not necessarily be coextensive with the indemnity location which will be established at the time an operating license or combined license is issued for such additional nuclear power reactors.

(3) This section is effective May 1, 1973, as to construction permits issued before March 2, 1973, and, as to construction permits and combined licenses issued on or after March 2, 1973, the provisions of this section will apply no later than such time as a construction permit or combined license is issued authorizing construction of any additional nuclear power reactor.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

■ 205. The authority citation for part 170 continues to read as follows:

Authority: Sec. 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 206. In § 170.2, paragraph (j) is removed and reserved, and paragraphs (g) and (k) are revised to read as follows:

§ 170.2 Scope.

* * * * *

(g) An applicant for or holder of a production or utilization facility construction permit or operating license issued under 10 CFR part 50, or an early site permit, standard design

certification, standard design approval, manufacturing license, or combined license issued under 10 CFR part 52;

* * * * *

(j) [Reserved]

(k) Applying for or already has applied for review, under appendix Q to 10 CFR part 50 of a facility site before the submission of an application for a construction permit;

* * * * *

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

■ 207. The authority citation for part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330 as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 208. In § 171.15, paragraph (a) is revised to read as follows:

§ 171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses.

(a) Each person holding an operating license for a power, test, or research reactor; each person holding a combined license under part 52 of this chapter after the Commission has made the finding under § 52.103(g); each person holding a part 50 or part 52 power reactor license that is in decommissioning or possession only status, except those that have no spent fuel onsite; and each person holding a part 72 license who does not hold a part 50 or part 52 license shall pay the annual fee for each license held at any time during the Federal fiscal year in which the fee is due. This paragraph does not apply to test and research reactors exempted under § 171.11(a).

* * * * *

Dated at Rockville, Maryland, this 1st day of August 2007.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 07–3861 Filed 8–20–07; 8:45 am]

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Part III

Nuclear Regulatory Commission

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations; Notice

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 2, 2007, to August 15, 2007. The last biweekly notice was published on August 14, 2007 (72 FR 45454).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the basis for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or

fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, PA

Date of amendment request: June 29, 2007.

Description of amendment request: The proposed license amendment would revise the TMI–1 Technical Specifications 3.3.1.3, 3.3.2.1 and 4.1, to reflect a change to the Reactor Building spray system buffering agent from sodium hydroxide to trisodium phosphate dodecahydrate. This proposed change is designed to minimize the potential for exacerbating sump screen blockage under post loss of coolant event conditions by limiting potential adverse chemical interactions between the buffering agent and certain insulation materials used in the TMI–1 containment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

For the proposed change, trisodium phosphate dodecahydrate (TSP) will be used as a buffer for post-accident pH control and will replace the existing buffer. The buffer material and means of storage and delivery are not initiators for previously analyzed accidents. The accident mitigation function of the replacement buffer is the same as the existing buffer. The pH of the water in the emergency sump following a loss of coolant accident (LOCA) will be adjusted with TSP rather than sodium hydroxide (NaOH) to be within a range that will reduce the potential for elemental iodine re-evolution and long term stress corrosion during the recirculation mode of emergency core cooling system (ECCS) operation. In addition, the replacement buffer will reduce the formation of precipitates resulting from chemical reactions between the recirculating spray solution and insulating materials in the Reactor Building (RB), thus reducing the potential for ECCS emergency sump intake screen blockage. The proposed sump pH range will not result in an increase in post-LOCA hydrogen generation. The proposed isolation of the sodium hydroxide tank, and the installation of TSP in baskets has been evaluated for impacts on accident effects and the safety functions of required systems, structures, and components (SSCs). The RB emergency sump solution pH profile resulting from the proposed change has been evaluated for impacts on environmental qualification of SSCs. The accident mitigation functions of required SSCs will not be affected by the proposed change.

As a part of the proposed change, the radiological consequences of a postulated LOCA have been reanalyzed using Standard Review Plan (SRP) 6.5.2, "Containment Spray as a Fission Product Cleanup System," and the Alternate Source Term (AST) guidance in Regulatory Guide 1.183. The analysis considered the use of a plain borated water spray during the post-LOCA injection phase and a spray mixture with a minimum pH of 7.3 during the recirculation phase. The results of the reanalysis show that the consequences of the accident are not increased. The calculated doses at the Exclusion Area Boundary, Low Population Zone boundary, and in the Control Room remain within 10 CFR 50.67 AST dose limits.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will replace the existing spray additive design using sodium hydroxide solution stored in a tank with TSP contained in baskets located on the floor of the RB. The TSP storage and delivery method is passive. The baskets are constructed of stainless steel to resist corrosion and are seismically qualified. The existing sodium hydroxide tank, associated piping, and valves will no longer be used and will be permanently isolated, but their structural integrity will be maintained. The RB spray system will perform the same function and operate in the same manner for the proposed change; however, the sodium hydroxide tank isolation valves will no longer be required to open on an engineered safeguards actuation

signal. The accident mitigation function of TSP will be the same as the existing buffer, sodium hydroxide. The TSP will act as a buffering agent to raise the pH of the water in the containment emergency sump to greater than 7.3 for long-term post-LOCA RB spray recirculation. The SSCs required for post-LOCA accident mitigation have been evaluated for the proposed change including the effects of the modified emergency sump solution pH profile. No new accident scenarios, failure mechanisms, or single failures are introduced as a result of the proposed change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change from sodium hydroxide to TSP will not reduce the effectiveness of the post-LOCA pH control buffer. The TSP will buffer the sump water sufficiently to assure that the resulting mixture pH is > 7.3 and < 8.0. This pH level will be effective in reducing the potential for iodine re-evolution during the recirculation phase of a LOCA, preventing long-term stress corrosion cracking of austenitic stainless steel, and minimizing post-LOCA hydrogen generation. In addition, the use of TSP will reduce the formation of precipitates resulting from chemical reactions between the recirculating spray solution and insulating materials in the RB, thus reducing the potential for ECCS emergency sump intake screen blockage. The proposed use of SRP 6.5.2 guidance, which is an NRC-approved methodology, for post-LOCA dose calculations does not result in a reduction in a margin of safety. The proposed change does not adversely affect the performance of SSCs required for post-LOCA mitigation, and does not affect an operating parameter or setpoint used in the accident analyses to establish a margin of safety. Also, the proposed change does not affect a margin of safety associated with containment functional performance.

Therefore, the proposed change does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Bradley Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold K. Chernoff.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, SC

Date of amendment request: July 17, 2007.

Description of amendment request: A change is proposed to the standard technical specifications (STS) (NUREGs 1430 through 1434) and plant specific technical specifications (TS), to strengthen TS requirements regarding control room envelope (CRE) habitability by changing the action and surveillance requirements associated with the limiting condition for operation operability requirements for the CRE emergency ventilation system, and by adding a new TS administrative controls program on CRE habitability. Accompanying the proposed TS change are appropriate conforming technical changes to the TS Bases. The proposed revision to the Bases also includes editorial and administrative changes to reflect applicable changes to the corresponding STS Bases, which were made to improve clarity, conform with the latest information and references, correct factual errors, and achieve more consistency among the STS NUREGs. The proposed revision to the TS and associated Bases is consistent with STS as revised by TSTF–448, Revision 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significont Increose in the Probability or Consequences of on Accident Previously Evaluoted

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Chonge Does Not Creote the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significont Reduction in the Margin of Safety

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief: Thomas H. Boyce.

Dominion Energy Kewaunee, Inc. Docket No. 50–305, Kewaunee Power Station, Kewaunee County, WI

Date of amendment request: June 12, 2007.

Description of amendment request: The proposed amendment would revise the nuclear instrumentation system permissive setpoints in Technical Specification (TS) Table 3.5–2, "Instrument Operation Conditions for Reactor Trip," revise the Table format, and revise TS 2.3, "Instrumentation System," to make consistent with other proposed changes to the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment does not change the probability or consequences of any previously evaluated accidents in the KPS [Kewaunee Power Station] updated safety analysis report (USAR). The proposed amendment would modify the TS setpoint values for the P–7 and P–10 permissives. The actual plant settings will continue to be approximately 10% of rated reactor power. The reactor protection system (RPS) is designed to monitor various plant parameters and initiate a reactor trip in the event these parameters are outside predetermined limits. The RPS is not an accident initiator and therefore, changing the setpoints for these permissives will not increase the probability of an accident previously evaluated.

The proposed amendment would add a setpoint band to the current TS required settings for permissive P–7 and P–10 to accommodate proper setting of the permissives. The only previously evaluated accident that is potentially affected by the proposed changes is the Uncontrolled Rod Cluster Assembly Rod Withdrawal At-Power (RWAP) accident analysis. The effects of these setpoint changes have been evaluated and determined not to have a significant effect on the consequences of the RWAP accident analysis results. The acceptance criteria for the RWAP accident analysis continue to be met. Therefore the proposed changes would not increase the consequences of an accident previously evaluated.

Therefore the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment modifies the TS setpoint values for permissives P–7 and P–10. The actual plant settings will continue to be approximately 10% power. The proposed changes affect the power level at which RPS trip functions are enabled or blocked to ensure proper operation of the RPS. The changes do not add any new systems, structures or components (SSCs) or physically modify any existing SSCs with the possibility of creating a new accident.

The proposed amendment does not functionally affect the operation of any SSC important to safety or its ability to perform its design function. Additionally, the proposed amendment does not create the possibility of a new or different kind of accident due to credible new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment would add a setpoint band to the current TS required settings for permissivies P–7 and P–10 to accommodate proper setting of the permissives. The safety function of the nuclear instrumentation system and the affected permissives are not affected by this proposed change.

The only safety analysis in the KPS USAR potentially affected by these proposed changes is the Uncontrolled Rod Cluster Assembly Rod Withdrawal At-Power (RWAP) event analysis. Evaluation of the RWAP event analysis results demonstrated that the RWAP would not have a significant effect on a margin of safety.

The effects of the proposed change have been evaluated and all safety analysis acceptance criteria will continue to be met.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Acting Branch Chief: Travis L. Tate.

Dominion Energy Kewaunee, Inc. Docket No. 50–305, Kewaunee Power Station (KPS), Kewaunee County, Wisconsin

Date of amendment request: July 2, 2007.

Description of amendment request: The proposed amendment would delete operating license (OL) condition 2.C (5), "Fuel Burnup," which restricts maximum rod average burnup to 60 giga-watt days per metric ton uranium (GWD/MTU). Deletion of the OL condition will provide the opportunity to increase maximum rod average burnup to as high as 62 GWD/MTU and allow fuel management flexibility.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Deletion of KPS OL condition 2.C (5) does not add, delete, or modify any KPS systems, structures, or components (SSCs). The proposed amendment would effectively allow future increases in the KPS maximum rod average burnup limit using currently existing fuel management methods and models that have been reviewed and approved by the NRC [Nuclear Regulatory Commission].

Maximum average rod burnup limits will continue to be maintained within safe and acceptable limits using these fuel management methods and models. Nuclear fuel is the only plant component potentially affected by increasing the maximum rod average burnup limit. Increasing the KPS maximum rod average burnup limit does not affect the thermal hydraulic response or the radiological consequences of any previously evaluated accident. The fuel rod design criteria will continue to be met at the maximum burnup limits allowed under the current fuel management and evaluation processes. An increase to the maximum rod average burnup limit will not increase the likelihood of a malfunction of nuclear fuel since the fuel currently used at KPS has been designed to support a maximum rod average burnup well in excess of 62 GWD/MTU.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment would delete a KPS OL condition that limits maximum rod average burnup. The proposed amendment would effectively allow future increases in the KPS maximum rod average burnup limit using currently existing fuel management methods and models that have been reviewed and approved by the NRC. Nuclear fuel is the only component potentially affected by changes to the maximum rod average burnup limit. The proposed amendment does not change the design function of the nuclear fuel or create any credible new failure mechanisms or malfunctions for nuclear fuel. Fuel rod design criteria will continue to be met at the maximum burnup limits allowed under the fuel management methods and models that have been previously reviewed and approved by the NRC. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment deletes a KPS OL condition that limits maximum rod average burnup. The proposed amendment would effectively allow future increases in the KPS maximum rod average burnup limit using currently existing methods and models that have been reviewed and approved by the NRC. The proposed amendment does not result in altering or exceeding a design basis or safety limit for the plant. All current fuel design criteria will continue to be satisfied, and the safety analysis of record, including evaluations of the radiological consequences of design basis accidents, will remain applicable.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Acting Branch Chief: Travis L. Tate.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, WA

Date of amendment request: July 26, 2007, as superseded by letter dated August 8, 2007.

Description of amendment request: The proposed changes revise the requirements of Technical Specification (TS) 3.3.5.2, "Reactor Core Isolation Cooling (RCIC) System Instrumentation," and TS 3.5.2, "ECCS [Emergency Core Cooling System]—Shutdown," to increase the Condensate Storage Tank (CST) level.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The operation of Columbia in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. Neither of these changes affects the probability of any accident previously evaluated as they do not involve or impact accident initiators.

The proposed change to TS 3.3.5.2 would ensure that the consequences would remain the same as that previously evaluated for during any event in which the RCIC pump was utilized. Adequate volume would be maintained in the CST whenever the RCIC pump was aligned to it to ensure that it did not experience loss of suction due to vortexing.

The proposed changes to TS 3.5.2.2 would ensure that the previously assumed volume of water in the CST would still be available to inject into the reactor vessel during Modes 4 and 5 should the suppression pool not meet minimum volume requirements. Therefore, operation of Columbia in accordance with the proposed amendment will not involve.a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The operation of Columbia in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change will not create a new or different kind of accident since it only affects the amount of water held in reserve to support reactor vessel inventory loss. The proposed change does not introduce any credible mechanisms for unacceptable radiation release nor does it require physical modification to the plant. The plant has operated well within the existing allowable values. The increased margin provided by the increased level will assure no new or different kinds of accidents result from the proposed change. Therefore, the operation of Columbia in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The operation of Columbia in accordance with the proposed amendment will not involve a significant reduction in the margin of safety. The proposed amendment provides assurance that the RCIC pump suction will be transferred without loss of suction and that 135,000 gallons of CST inventory will continue to be available for injection into the RPV [reactor pressure vessel] under worst case conditions. Therefore, operation of Columbia in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William A. Horin, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: Thomas G. Hiltz.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, WA

Date of amendment request: July 30, 2007.

Description of amendment request: The proposed changes revise Technical Specifications (TSs) 1.4, "Frequency," 3.1.5, "Control Rod Scram Accumulators," 3.4.1, "Recirculation Loops Operating," 3.5.1, "ECCS [Emergency Core Cooling System]—Operating," 3.5.2, "ECCS—Shutdown," 3.7.1, "Standby Service Water (SW) System and Ultimate Heat Sink (UHS)," 3.8.1, "AC [Alternating Current] Sources—Operating," 3.8.2, "AC Sources—Shutdown," and 5.5.6, "Inservice Testing Program." The proposed changes include updates to adopt approved TS Task Force (TSTF) Travelers 284, Revision 3, "Add 'Met' vs. 'Perform' to Specification 1.4, Frequency," TSTF–479, Revision 0, "Changes to Reflect Revision of 10 CFR 50.55a," and TSTF–485, Revision 0, "Correct Example 1.4–1."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment is administrative in nature and does not affect analysis inputs or mitigation of analyzed accidents and transients. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. The proposed change does not introduce any new modes of plant operation or make any changes to system setpoints. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed amendment is administrative in nature and does not involve physical changes to plant SSCs [structures, systems, or components], or the manner in which these SSCs are operated, maintained, modified, tested, or inspected. The proposed amendment does not involve a change to any

safety limit, limiting safety system setting, limiting condition for operation, or design parameters for any SSC. The only minor alteration to the plant design basis is relative to the application of TS 3.4.1. However, as discussed in Section 4 [of the licensee's submittal], this alteration biases the operation of the plant in the direction of safety. The proposed amendment does not impact any safety analysis assumptions and does not involve a change in initial conditions, system response times, or other parameters affecting any accident analysis. For these reasons, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William A. Horin, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: Thomas G. Hiltz.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, WA

Date of amendment request: July 30, 2007.

Description of amendment request: The proposed amendment would modify the Technical Specifications (TSs) to establish more effective and appropriate action, surveillance, and administrative TS requirements related to ensuring the habitability of the control room envelope (CRE) in accordance with Nuclear Regulatory Commission (NRC)-approved TS Task Force (TSTF) Standard Technical Specification change traveler TSTF–448, Revision 3, "Control Room Habitability." Specifically, the proposed amendment would modify TS 3.7.3, "Control Room Emergency Filtration (CREF) System," and add new TS 5.5.14, "Control Room Envelope Habitability Program," to Section 5.5, "Programs and Manuals."

The NRC staff issued a "Notice of Availability of Technical Specification Improvement to Modify Requirements Regarding Control Room Envelope Habitability Using the Consolidated Line Item Improvement Process" associated with TSTF–448, Revision 3, in the **Federal Register** on January 17, 2007 (72 FR 2022). The notice included a model safety evaluation, a model no significant hazards consideration (NSHC) determination, and a model license amendment request. In its application dated July 30, 2007, the licensee affirmed the applicability of the model NSHC determination which is presented below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC adopted by the licensee is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE [control room envelope] emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation.

The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis adopted by the licensee and, based upon this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendment involves NSHC.

Attorney for licensee: William A. Horin, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: Thomas G. Hiltz.

Energy Northwest, Docket No.50–397, Columbia Generating Station, Benton County, WA

Date of amendment request: July 30, 2007.

Description of amendment request: The proposed changes revise Technical Specifications (TSs) 3.3.3.1, "Post Accident Monitoring (PAM) Instrumentation," 3.3.6.1, "Primary Containment Isolation Instrumentation," 3.6.1.3, "Primary Containment Isolation Valves (PCIVs)," and 3.6.4.2, "Secondary Containment Isolation Valves (SCIVs)." The proposed changes adopt the following TS Task Force (TSTF) Travelers that have been previously approved by the Nuclear Regulatory Commission (NRC): TSTF–45–A, Revision 2, "Exempt Verification of CIVs [containment isolation valves] that are Not Locked, Sealed or Otherwise Secured," TSTF–46–A, Revision 1, "Clarify the CIV Surveillance to Apply Only to Automatic Isolation Valves," TSTF–207–A, Revision 5, "Completion Time for Restoration of Various Excessive Leakage Rates," TSTF–269–A, Revision 2, "Allow Administrative Means of Position Verification for Locked or Sealed Valves," TSTF–295–A, Revision 0, "Modify Note 2 to Actions of PAM Table to Allow Separate Condition Entry for Each Penetration," TSTF–306–A, Revision 2, "Add Action to LCO

[limiting condition for operation] 3.3.6.1 to Give Option to Isolate the Penetration," and TSTF–323–A, Revision 0, "EFCV [excess flow check valve] Completion Time to 72 Hours."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below. The licensee addressed each proposed TSTF separately in its analysis:

TSTF–45–A, Revision 2

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would exempt manual isolation valves and blind flanges located inside and outside the primary containment and in the secondary containment that are locked, sealed, or otherwise secured in position from the periodic verification of valve position required by SRs [surveillance requirements] 3.6.1.3.2 and 3.6.1.3.3, and SR 3.6.4.2.1. The exempted valves are verified to be in the correct position upon being locked, sealed, or secured. Because the valves are in the condition assumed in the accident analysis, the proposed change will not affect the initiators or mitigation of any accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration to the plant (i.e., no new or different type of equipment will be installed) or a change to the methods governing normal plant operation. The changes do not alter the assumptions made in the safety analysis. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change replaces the periodic verification of valve position with verification of valve position followed by locking, sealing, or otherwise securing the valve in position. Periodic verification is also effective in detecting valve mispositioning. However, verification followed by securing the valve in position is effective in preventing valve mispositioning.

TSTF–46–A, Revision 1

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would revise the verification of PCIV and SCIV closure time to clarify that only power operated, automatic valves are required to be tested. PCIVs and SCIVs are not an initiator of any accident previously evaluated; rather, they serve to mitigate the consequences of evaluated accidents. The proposed change does not change the requirement to verify that power operated, automatic PCIVs and SCIVs close within the time assumed in the accident analysis, but rather, clarifies that non-automatic valves, which the accident analysis does not assume close within a specified time, are not required to be tested to verify the closure time. As a result, the mitigating action of the PCIVs and SCIVs is not affected by this change.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration to the plant (i.e., no new or different type of equipment will be installed) or a change to the methods governing normal plant operation. The changes do not alter the assumptions made in the safety analysis. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change would revise the verification of PCIV and SCIV closure time to clarify that only power operated, automatic valves are required to be tested, and not all power operated valves. There is no closure time assumed in the accident analysis for power operated PCIVs and SCIVs that are not automatic.

TSTF–207–A, Revision 5

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises the Actions of TS 3.6.1.3 to make the presentation consistent with similar Conditions in the ISTS [Improved Standard TSs]. Part of this change would extend the CT [completion time] for hydrostatically tested lines on a closed system to 72 hours for

Condition D. Most of the proposed changes do not affect the requirements in the TS and have no effect on the initiation or mitigation of any accident previously evaluated. Leakage of hydrostatically tested lines on a closed system is not an initiator of any accident previously evaluated. The consequences of a previously evaluated accident during the extended CT are the same as the consequences during the existing CT.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration to the plant (i.e., no new or different type of equipment will be installed) or a change to the methods governing normal plant operation. The changes do not alter the assumptions made in the safety analysis. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed changes are editorial in nature and do not affect the requirements of the TS. Extension of the CT for hydrostatically tested lines on a closed system to 72 hours does not represent a significant reduction in safety given the reliability of closed systems. Nonetheless, leakage can be isolated restored by isolating the penetration with a valve not exceeding the leakage limits.

TSTF–269–A, Revision 2

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change modifies TS 3.6.1.3 and TS 3.6.4.2. Both TS 3.6.1.3 and TS 3.6.4.2 require penetrations with an inoperable isolation valve to be isolated and periodically verified to be isolated. A Note is added to TS 3.6.1.3, Actions A and C, and TS 3.6.4.2, Action A, to allow isolation devices that are locked, sealed, or otherwise secured to be verified by use of administrative means. The proposed change does not affect any plant equipment, test methods, or plant operation, and are not initiators of any analyzed accident sequence. The inoperable containment penetrations will continue to be isolated, and hence perform their isolation function. Operation in accordance with the proposed TS will ensure that all analyzed accidents will continue to be mitigated as previously analyzed.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration to the plant (i.e., no new or different type of equipment will be installed) or a change to the methods governing normal plant operation. The changes do not alter the assumptions made in the safety analysis. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change will not affect the operation of plant equipment or the function of any equipment assumed in the accident analysis. The PCIVs and SCIVs will continue to be operable or will be isolated as required by the existing specifications.

TSTF–295–A, Revision 0

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change clarifies the separate condition entry Note in TS 3.3.3.1 for Function 7, "PCIV Position." The proposed change does not affect any plant equipment, test methods, or plant operation, and are not initiators of any analyzed accident sequence. The actions taken for inoperable PAM channels are not changed. Operation in accordance with the proposed TS will ensure that all analyzed accidents will continue to be mitigated as previously analyzed.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration to the plant (i.e., no new or different type of equipment will be installed) or a change to the methods governing normal plant operation. The changes do not alter the assumptions made in the safety analysis. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change will not affect the operation of plant equipment or the function of any equipment assumed in the accident analysis. The PAM channels will continue to be operable or the existing, appropriate actions will be followed.

TSTF–306–A, Revision 2

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises TS 3.3.6.1 by adding an Actions Note that would allow penetration flow paths to be unisolated intermittently under administrative controls. Furthermore, the TIP [traversing incore probe] isolation system is segregated into a separate Function, allowing 24 hours to isolate the penetration. The proposed change does not affect any plant equipment, test methods, or plant operation, and are not initiators of any analyzed accident sequence. The allowance to unisolate a penetration flow path will not have a significant effect on the mitigation of any accident previously evaluated because the penetration flow path can be isolated, if needed, by a dedicated operator. The option to isolate a TIP penetration will ensure the penetration will perform as assumed in the accident analysis. Operation in accordance with the proposed TS will ensure that all analyzed accidents will continue to be mitigated as previously analyzed.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration to the plant (i.e., no new or different type of equipment will be installed) or a change to the methods governing normal plant operation. The changes do not alter the assumptions made in the safety analysis. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change will not affect the operation of plant equipment or the function of any equipment assumed in the accident analysis. The allowance to unisolate a penetration flow path will not have a significant effect on a margin of safety because the penetration flow path can be isolated manually, if needed. The option to isolate a TIP penetration will ensure the penetration will perform as assumed in the accident analysis.

TSTF–323–A, Revision 0

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would revise Action C of TS 3.6.1.3 to provide a 72-hour CT instead of a 12 hour CT to isolate an inoperable EFCV. PCIVs are not an initiator of any accident previously evaluated. The consequences of a previously evaluated accident during the extended CT are the same as the consequences during the existing CT.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration to the plant (i.e., no new or different type of equipment will be installed) or a change to the methods governing normal plant operation. The changes do not alter the assumptions made in the safety analysis. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The PCIVs serve to mitigate the potential for radioactive release from the primary containment following an accident. The design and response of the PCIVs to an accident are not affected by this change. The revised CT is appropriate given the EFCVs are on penetrations that have been found to have acceptable barrier(s) in the event that the single isolation valve failed.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William A. Horin, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: Thomas G. Hiltz.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, MI

Date of amendment request: May 22, 2007.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 5.5.7, "Inservice Testing Program" to: (1) Delete reference to American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (B&PV Code), Section XI and incorporate reference to the ASME Code for Operation and Maintenance of Nuclear Power Plants (ASME OM Code), and (2) address the applicability of Surveillance Requirement (SR) 3.0.2 to other normal and accelerated frequencies specified as two years or less in the inservice testing (IST) program.

The proposed amendment incorporates changes based on U.S. Nuclear Regulatory Commission (NRC)—approved Technical Specification Task Force (TSTF) TSTF–479–A, "Changes to Reflect Revision of 10 CFR 50.55a," Revision 0, as modified by NRC-approved TSTF–497, "Limit Inservice Testing Program SR 3.0.2 Application to Frequencies of Two Years or Less," Revision 0. The proposed changes include two deviations from the NRC-approved TSTFs that are administrative in nature: (1) Addition of "ASME" to TS 5.5.7 to make references to "ASME OM Code" and (2) use of the term "intervals" instead of "frequencies." Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes do not have any impact on the integrity of any plant system, structure, or component that initiates an analyzed event. The proposed changes would not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident. Thus, the probability of any accident previously evaluated is not significantly increased.

The proposed changes do not affect the ability to mitigate previously evaluated accidents, and do not affect radiological assumptions used in the evaluations. The proposed changes do not change or alter the design criteria for the systems or components used to mitigate the consequences of any design basis accident. The proposed amendment does not involve operation of the required structures, systems, or components (SSCs) in a manner or configuration different from those previously recognized or evaluated. Thus, the radiological consequences of any accident previously evaluated are not increased.

Therefore, operation of the facility in accordance with the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment does not involve a physical alteration of any SSC or a change in the way any SSC is operated. The proposed amendment does not involve operation of any required SSCs in a manner or configuration different from those previously recognized or evaluated. No new failure mechanisms would be introduced by the changes being requested.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The amendment does not involve a significant reduction in a margin of safety. The proposed amendment does not affect the acceptance criteria for any safety analysis analyzed accidents or anticipated operational occurrences. The proposed amendment does not alter the limiting values and acceptance criteria used to judge the continued acceptability of components tested by the IST Program. The safety function of the affected pumps and valves will be maintained.

Therefore, the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Ave., White Plains, NY 10601.

NRC Acting Branch Chief: Travis L. Tate.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, AR

Date of amendment request: July 31, 2007.

Description of amendment request: The proposed amendment will revise Arkansas Nuclear One, Unit 2 (ANO–2) Technical Specification (TS) 6.6.5, Core Operating Limits. The proposed change will add new analytical methods to support the implementation of Next Generation Fuel (NGF).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the COLR [Core Operating Limits Report] TS are administrative in nature and have no impact on any plant configuration or system performance relied upon to mitigate the consequences of an accident. Changes to the calculated core operating limits may only be made using NRC-approved methodologies, must be consistent with all applicable safety analysis limits, and are controlled by the 10 CFR 50.59 process.

The proposed change will add the following topical reports to the list of referenced core operating analytical methods.

WCAP–16500–P and Final Safety Evaluation (SE)

Westinghouse topical report WCAP–16500–P describes the methods and models that will be used to evaluate the acceptability of CE [Combustion Engineering] 16 x 16 NGF at CE plants. Entergy has demonstrated that the Limitations and Conditions associated with the NRC SE will be met. Prior to implementation of NGF, the new core design will be analyzed with applicable NRC staff-approved codes and methods.

WCAP–12610–P–A and CENPD–404–P–A Addendum 1–A

The proposed change allows the use of methods required for the implementation of Optimized ZIRLO™ clad fuel rods. Entergy has demonstrated that the Limitations and Conditions associated with the NRC SE will be met.

WCAP–16523–P and Final Safety Evaluation

This topical report describes the departure from nucleate boiling [DNB] correlations that will be used to account for the impact of the CE 16 x 16 NGF fuel assembly design. Entergy has demonstrated that the Limitations and Conditions associated with the NRC SE will be met. Prior to implementation of NGF, the new core design will be analyzed with applicable NRC staff-approved codes and methods.

CENPD–387–P–A

The proposed addition of this topical report provides the [DNB] correlation that will be used to evaluate the DNB impact of non-mixing vane grid spans for CE 16 x 16 standard and NGF assemblies. Entergy has demonstrated that the Limitations and Conditions associated with the NRC SE will be met.

CENPD–132, Supplement 4–P–A, Addendum 1–P and Final Safety Evaluation

The addendum provides an optional steam cooling model that can be used for Emergency Core Cooling System (ECCS) Performance analyses to support the implementation of the CE 16 x 16 NGF fuel assembly design. The optional steam cooling model is not being used to support implementation of CE 16 x 16 NGF assemblies in ANO–2 at this time. However, Entergy has demonstrated that the Limitations and Conditions associated with the NRC SE will be met.

Assumptions used for accident initiators and/or safety analysis acceptance criteria are not altered by the addition of these topical reports.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change identifies changes in the codes used to confirm the values of selected cycle-specific reactor physics parameter limits. The proposed change allows the use of methods required for the implementation of CE 16 x 16 NGF. The proposed addition of the referenced topical reports has no impact on any plant configurations or on system performance that is relied upon to mitigate the consequences of an accident. These changes are administrative in nature and do not result in a change to the physical plant or to the modes of operation defined in the facility license.

WCAP–16500–P and Final Safety Evaluation

The proposed change adds Westinghouse topical report WCAP–16500–P, which describes the methods and models that will be used to evaluate the acceptability of CE 16 x 16 NGF at CE plants. Entergy has demonstrated that the Limitations and Conditions associated with the NRC SE will be met. Prior to implementation of NGF, the new core design will be analyzed with applicable NRC staff-approved codes and methods.

WCAP–12610–P–A and CENPD–404–P–A Addendum 1–A

The proposed change allows the use of methods required for the implementation of Optimized ZIRLO™ clad fuel rods. Entergy has demonstrated that the Limitations and Conditions associated with the NRC SE will be met.

WCAP–16523–P and Final Safety Evaluation

This topical report describes the [DNB] correlations that will be used to account for the impact of the CE 16 x 16 NGF fuel assembly design. Entergy has demonstrated that the Limitations and Conditions associated with the SE will be met.

CENPD–387–P–A

The proposed addition of this topical report provides the [DNB] correlation that will be used to evaluate the DNB impact of non-mixing vane grid spans for CE 16 x 16 standard and NGF assemblies. Entergy has demonstrated that the Limitations and Conditions associated with the NRC SE will be met.

CENPD–132, Supplement 4–P–A, Addendum 1–P and Final Safety Evaluation

The addendum provides an optional steam cooling model that can be used for ECCS Performance analyses to support the implementation of the CE 16 x 16 NGF fuel assembly design. The optional steam cooling model is not being used to support implementation of CE 16 x 16 NGF

assemblies in ANO–2 at this time. However, Entergy has demonstrated that the Limitations and Conditions associated with the NRC SE will be met.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not amend the cycle-specific parameter limits located in the COLR from the values presently required by the TS. The individual specifications continue to require operation of the plant within the bounds of the limits specified in COLR.

The addition of the following topical reports to the list of analytical methods referenced in the COLR is administrative in nature:

☐ WCAP–16500–P and Final Safety Evaluation for Westinghouse Electric Company (Westinghouse) Topical Report (TR) WCAP–16500–P, Revision 0, "CE [Combustion Engineering] 16 x 16 Next Generation Fuel [(NGF)] Core Reference Report"

☐ WCAP–12610–P–A and CENPD–404–P–A Addendum 1–A

☐ WCAP–16523–P and Final Safety Evaluation for Westinghouse Electric Company (Westinghouse) Topical Report (TR), WCAP–16523–P, "Westinghouse Correlations WSSV and WSSV–T for Predicting Critical Heat Flux in Rod Bundles with Side-Supported Mixing Vanes"

☐ CENPD–387–P–A

☐ CENPD–132, Supplement 4–P–A, Addendum 1–P and Final Safety Evaluation for Westinghouse Electric Company (Westinghouse) Topical Report (TR) CENPD–132 Supplement 4–P–A, Addendum 1–P, "Calculative Methods for the CE [Combustion Engineering] Nuclear Power Large Break LOCA Evaluation Model—Improvement to 1999 Large Break LOCA EM Steam Cooling Model for Less Than 1 in/sec Core Reflood"

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Council—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Thomas G. Hiltz.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3,York and Lancaster Counties, PA

Date of application for amendments: November 17, 2006.

Description of amendment request: The proposed amendment would revise Technical Specification Surveillance Requirement 3.3.1.1.8 to increase the frequency interval between Local Power Range Monitor (LPRM) calibrations from 1000 megawatt days per ton (MWD/T) average core exposure to 2000 MWD/T average core exposure. The LPRM system provides signals to associated nuclear instrumentation systems that serve to detect conditions in the core that have the potential to threaten the overall integrity of the fuel barrier. The LPRM system also incorporates features designed to diagnose and display various system trip and inoperative conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed amendment revises the surveillance interval for the LPRM calibration from 1000 MWD/T average core exposure to 2000 MWD/T average core exposure. Increasing the frequency interval between required LPRM calibrations is acceptable due to improvements in core monitoring processes and nuclear instrumentation and therefore, the revised surveillance interval continues to ensure that the LPRM detector signal is adequately calibrated.

This change will not alter the operation of process variables, structures, systems, or components as described in the PBAPS Updated Final Safety Analysis Report (UFSAR). The proposed change does not alter the initiation conditions or operational parameters for the LPRM system and there is no new equipment introduced by the extension of the LPRM calibration interval. The performance of the APRM, OPRM and RBM systems is not significantly affected by the proposed surveillance interval increase. As such, the probability of occurrence of a previously evaluated accident is not increased.

The radiological consequences of an accident can be affected by the thermal limits existing at the time of the postulated accident; however, LPRM chamber exposure has no significant effect on the calculated thermal limits since LPRM accuracy does not significantly deviate with exposure. For the LPRM extended calibration interval, the total nodal power uncertainty remains less than the uncertainty assumed in the thermal analysis basis safety limit, maintaining the accuracy of the thermal limit calculation. Therefore, the thermal limit calculation is not significantly affected by LPRM calibration frequency, and thus the radiological consequences of any accident previously evaluated are not increased.

Therefore, based on the above information, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The performance of the APRM, OPRM and RBM systems is not significantly affected by the proposed LPRM surveillance interval increase. The proposed change does not affect the control parameters governing unit operation or the response of plant equipment to transient conditions. The proposed change does not change or introduce any new equipment, modes of system operation or failure mechanisms.

Therefore, based on the above information, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No

The proposed change has no impact on equipment design or fundamental operation, and there are no changes being made to safety limits or safety system allowable values that would adversely affect plant safety as a result of the proposed LPRM surveillance interval increase. The performance of the APRM, OPRM and RBM systems is not significantly affected by the proposed change. The margin of safety can be affected by the thermal limits existing at the time of the postulated accident; however, uncertainties associated with LPRM chamber exposure have no significant effect on the calculated thermal limits. The thermal limit calculation is not significantly affected since LPRM sensitivity with exposure is well defined. LPRM accuracy remains within the total nodal power uncertainty assumed in the thermal analysis basis; thereby maintaining thermal limits and the safety margin. The proposed change does not affect safety analysis assumptions or initial conditions and

therefore, the margin of safety in the original safety analyses are maintained.

Therefore, based on the above information, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Mr. J. Bradley Fewell, Associate General Counsel, Exelon Generation Company LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold K. Chernoff.

Florida Power and Light Company (FPL), Docket Nos. 50–335 and 50–389, St. Lucie Plant, Units 1 and 2, St. Lucie County, FL

Date of amendment request: July 16, 2007.

Description of amendment request: The proposed amendment would modify the technical specification (TS) requirements related to control room envelope (CRE) habitability in accordance with Technical Specification Task Force (TSTF) Traveler TSTF–448, Revision 3, "Control Room Habitability," published in the **Federal Register** on January 17, 2007 (Volume 72, Number 10), as part of the consolidated line item improvement process. Specifically by modifying Unit 1 TS 3.7.7.1, "Control Room Emergency Ventilation System (CREVS)," and Unit 2 TS 3.7.7," Control Room Emergency Air Cleanup System (CREACS)," and adding a new Unit 1 and Unit 2 TS Section 6.8.4.m.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Thomas H. Boyce.

Florida Power and Light Company (FPL), Docket Nos. 50–335, St. Lucie Plant, Unit 1, St. Lucie County, FL

Date of amendment request: July 16, 2007.

Description of amendment request: The proposed amendment would modify the facilities operating licensing bases to adopt the alternative source term (AST) as allowed in 10 CFR 50.67 and described in Regulatory Guide (RG) 1.183. The licensee proposes to revise the plant licensing basis through reanalysis of the following radiological consequences of the Updated Final Safety Analysis Report (UFSAR) Chapter 15 accidents: Loss-of-Coolant Accident, Fuel Handling Accident, Main Steam Line Break, Steam Generator Tube Rupture, Reactor Coolant Pump Shaft Seizure, Control Element Assembly Ejection, and Inadvertent Opening of a Main Steam Safety Valve.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. Alternative source term calculations have been performed for St. Lucie Unit No. 1 which demonstrate that the dose consequences remain below limits specified in NRC Regulatory Guide 1.183 and 10 CFR 50.67. The proposed changes do not modify the design or operation of the plant. The use of the AST only changes the regulatory assumptions regarding the analytical treatment of the design basis accidents and has no direct effect on the probability of any accident. The AST has been utilized in the analysis of the limiting design basis accidents listed above. The results of the analyses, which include the proposed changes to the Technical Specifications [TSs], demonstrate that the dose consequences of these limiting events are all within the regulatory limits.

With the exception of the deletion of SRs 4.6.6.1.c.[3].b and 4.7.8.1.c.[3].b, the proposed Technical Specification changes are consistent with, or more restrictive than, the current TS requirements. The proposed filter testing requirements continue to ensure

that the associated filtration systems function as described in the UFSAR and as assumed in the accident analyses. None of the affected systems, components or programs are related to accident initiators.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect any plant structures, systems, or components. The operation of plant systems and equipment will not be affected by this proposed change. Neither implementation of the alternative source term methodology, establishing more restrictive TS requirements, nor deleting SRs 4.6.6.1.c.[3].b and 4.7.8.1.c.[3].b have the capability to introduce any new failure mechanisms or cause any analyzed accident to progress in a different manner.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed implementation of the alternative source term methodology is consistent with NRC Regulatory Guide 1.183. With the exception of the deletion of SRs 4.6.6.1.c.[3].b and 4.7.8.1.c.[3].b, the proposed Technical Specification changes are consistent with, or more restrictive than, the current TS requirements. The proposed TS requirements support the AST revisions to the limiting design basis accidents. The proposed filter testing requirements continue to ensure that the associated filtration systems function as described in the UFSAR and as assumed in the accident analyses. As such, the current plant margin of safety is preserved. Conservative methodologies, per the guidance of RG 1.183, have been used in performing the accident analyses. The radiological consequences of these accidents are all within the regulatory acceptance criteria associated with use of the alternative source term methodology.

The proposed changes continue to ensure that the doses at the exclusion area and low population zone boundaries and in the Control Room are within the corresponding regulatory limits of RG 1.183 and 10 CFR 50.67. The margin of safety for the radiological consequences of these accidents is considered to be that provided by meeting the applicable regulatory limits, which are set at or below the 10 CFR 50.67 limits. An acceptable margin of safety is inherent in these limits.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Thomas H. Boyce.

Florida Power and Light Company (FPL), Docket No. 50–389, St. Lucie Plant, Unit 2, St. Lucie County, FL

Date of amendment request: July 16, 2007.

Description of amendment request: The proposed amendment would modify the facilities operating licensing bases to adopt the alternative source term (AST) as allowed in 10 CFR 50.67 and described in Regulatory Guide (RG) 1.183. The licensee proposes to revise the plant licensing basis through reanalysis of the following radiological consequences of the Updated Final Safety Analysis Report Chapter 15 accidents: Loss-of-Coolant Accident, Fuel Handling Accident, Main Steam Line Break, Steam Generator Tube Rupture, Reactor Coolant Pump Shaft Seizure, Control Element Assembly Ejection, Letdown Line Break, and Feedwater Line Break.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Alternative source term calculations have been performed for St. Lucie Unit No. 2 which demonstrate that the dose consequences remain below limits specified in NRC Regulatory Guide 1.183 and 10 CFR 50.67. The proposed changes do not modify the design or operation of the plant. The use of the AST only changes the regulatory assumptions regarding the analytical treatment of the design basis accidents and has no direct effect on the probability of any accident. The AST has been utilized in the analysis of the limiting design basis accidents listed above. The results of the analyses, which include the proposed changes to the Technical Specifications [TSs], demonstrate that the dose consequences of these limiting events are all within the regulatory limits.

The proposed Technical Specification Changes are consistent with, or more restrictive than, the current TS requirements. None of the affected systems, components or programs are related to accident initiators.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect any plant structures, systems, or components. The operation of plant systems and equipment will not be affected by this proposed change. Neither implementation of the alternative source term methodology nor establishing more restrictive TS requirements have the capability to introduce any new failure mechanisms or cause any analyzed accident to progress in a different manner.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed implementation of the alternative source term methodology is consistent with NRC Regulatory Guide 1.183. The proposed Technical Specification changes are consistent with, or more restrictive than, the current TS requirements. These TS requirements support the AST revisions to the limiting design basis accidents. As such, the current plant margin of safety is preserved. Conservative methodologies, per the guidance of RG 1.183, have been used in performing the accident analyses. The radiological consequences of these accidents are all within the regulatory acceptance criteria associated with use of the alternative source term methodology.

The proposed changes continue to ensure that the doses at the exclusion area and low population zone boundaries and in the Control Room are within the corresponding regulatory limits of RG 1.183 and 10 CFR 50.67. The margin of safety for the radiological consequences of these accidents is considered to be that provided by meeting the applicable regulatory limits, which are set at or below the 10 CFR 50.67 limits. An acceptable margin of safety is inherent in these limits.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Based on the above discussion, FP&L has determined that the proposed change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Thomas H. Boyce.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, MN

Date of amendment request: July 3, 2007.

Description of amendment request: The proposed amendments would revise the Technical Specifications

(TSs) for the Prairie Island Nuclear Generating Plant (PINGP), Units 1 and 2 to:

1. Revise TS 1.4, "Frequency" to modify the second paragraph of Example 1.4–1 to be consistent with the requirements of Surveillance Requirement (SR) 3.0.4 and incorporate the changes in Technical Specification Task Force (TSTF) industry traveler TSTF–485, "Correct Example 1.4–1."

2. Revise TS 5.5.7.a, to modify references to Section XI of the American Society of Mechanical Engineers (ASME) Code with references to the ASME Code for Operation and Maintenance of Nuclear Power Plants (ASME OM Code), to be consistent with TSTF–479, "Changes to Reflect Revision of 10 CFR [Code of Federal Regulations] 50.55a.

3. Revise TS 5.5.7.b, to restrict extension of Frequencies to those Frequencies specified as 2 years or less, and take exception to the limitation in SR 3.0.2 which does not apply the 1.25 times extension to Frequencies of 24 months, to be consistent with TSTF–479 and TSTF–497, "Limit Inservice Testing Program SR 3.0.2 Application to Frequencies of 2 Years or Less."

4. Revise TS 5.5.7.d, to modify the referenced ASME Code to be consistent with TSTF–479.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TSTF–479

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the Improved Standard Technical Specification (ISTS) Inservice Testing Program for consistency with the requirements of 10 CFR 50.55a(f)(4) for pumps and valves which are classified as American Society of Mechanical Engineers (ASME) Code Class 1, Class 2 and Class 3. The proposed change incorporates revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves.

The proposed change does not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. They do not involve the addition or removal of any equipment, or any design changes to the facility. Therefore, this proposed change does not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the improved Standard Technical Specification (ISTS) Inservice Testing Program for consistency with the requirements of 10 CFR 50.55a(f)(4) for pumps and valves which are classified as American Society of Mechanical Engineers (ASME) Code Class 1, Class 2 and Class 3. The proposed change incorporates revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves.

The proposed change does not involve a modification to the physical configuration of the plant (i.e., no new equipment will be installed) or change in the methods governing normal plant operation. The proposed change will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. Additionally, there is no change in the types or increases in the amounts of any effluent that may be released off-site and there is no increase in individual or cumulative occupational exposure. Therefore, this proposed change does not create the possibility of an accident of a different kind than previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the improved Standard Technical Specification (ISTS) Inservice Testing Program for consistency with the requirements of 10 CFR 50.55a(f)(4) for pumps and valves which are classified as American Society of Mechanical Engineers (ASME) Code Class 1, Class 2 and Class 3. The proposed change incorporates revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves. The safety function of the affected pumps and valves will be maintained. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

TSTF–485

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises Section 1.4, Frequency, Example 1.4–1, to be consistent with Surveillance Requirement (SR) 3.0.4 and Limiting Condition for Operation (LCO) 3.0.4. This change is considered administrative in that it modifies the example to demonstrate the proper application of SR 3.0.4 and LCO 3.0.4. The requirements of SR 3.0.4 and LCO 3.0.4 are clear and are clearly explained in the associated Bases. As a result, modifying the example will not result in a change in usage of the Technical Specifications (TS). The proposed change does not adversely affect accident initiators or precursors, the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Therefore, this change is considered administrative and will have no effect on the probability or consequences of any accident previously evaluated. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed change. The change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the change does not impose any new or different requirements or eliminate any existing requirements. The change does not alter assumptions made in the safety analysis. The proposed change is consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change is administrative and will have no effect on the application of the Technical Specification requirements. Therefore, the margin of safety provided by the Technical Specification requirements is unchanged. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

TSTF–497

This Traveler is considered an administrative change to the ISTS NUREGs. Therefore, a regulatory analysis is not provided.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Acting Branch Chief: Travis L. Tate.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Rivers, Manitowoc County, WI

Date of amendment request: July 12, 2007.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.6.3, "Containment Isolation Valves." The revision would delete Surveillance

Requirement (SR) 3.6.3.1, which is no longer required due to the containment purge supply and exhaust valve isolation function being replaced with blind flanges. The proposed amendment would also support a change to the Final Safety Analysis Report (FSAR) to revise the requirement to leak check the purge supply and exhaust valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the containment purge supply penetration and the containment exhaust penetration presents no change in the probability or the consequence of an accident. The penetrations continue to conform to the TS requirements for containment and will be appropriately tested as required by 10 CFR 50 Appendix J. The blind flanges are passive devices not susceptible to an active failure or malfunction that could result in a loss of isolation or leakage that exceeds the limits assumed in the safety analyses. The blind flanges are leak rate tested in accordance with the containment leakage rate testing program. Containment isolation is not lessened by this change.

The change to the containment purge system does not affect the design basis limit for any fission product barrier.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the containment purge supply penetration and the containment exhaust penetration does not change the function of the system and does not alter containment isolation. The penetrations continue to conform to the TS requirements for containment isolation and will be appropriately tested as required by 10 CFR 50 Appendix J. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The proposed change will not alter any assumptions, initial conditions or results specified in any accident analysis. The containment purge supply and exhaust penetrations will continue to conform to the TS requirements for containment and will be appropriately tested as required by 10 CFR 50 Appendix J. The blind flanges are passive devices not susceptible to an active failure or malfunction that could result in a loss of isolation or leakage that exceeds limits assumed in the safety analysis. The blind flanges are leak rate tested in accordance with the containment leakage rate testing program. Containment isolation is not lessened by this change. Therefore, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Acting Branch Chief: Travis L. Tate.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, NE

Date of amendment request: July 30, 2007.

Description of amendment request: The proposed amendment by Omaha Public Power District requests changes to the Fort Calhoun Station Unit No.1 Operating License No. DPR–40 to modify the containment spray system actuation logic to preclude automatic start of the containment spray pumps for a loss-of-coolant accident.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The containment spray (CS) system and the containment air cooling and filtering system (CACFS) are not initiators of any accident previously evaluated at the Fort Calhoun Station (FCS). Both systems are accident mitigation systems. Their licensing basis functions are to limit the containment pressure rise and reduce the leakage of airborne radioactivity from the containment by providing a means for cooling the containment following a loss-of-coolant accident (LOCA) or main steam line break (MSLB) inside containment. The proposed modification to the CS system logic shifts the function of containment pressure and temperature control during a LOCA from the [CS] system to the equally capable and reliable containment air coolers. The change in the CS actuation logic does not impact the containment response to the MSLB analysis of record (AOR). The CACFS provides the design heat removal capabilities for the containment during the postulated LOCA. The system is operated to remove atmospheric heat loads from the containment during normal plant operation. Since system components are only lightly loaded during normal operation, system availability and reliability are enhanced. In the unlikely event that normal power sources are lost and one emergency diesel generator fails to operate, one containment air cooling and filtering unit and one containment air cooling unit will operate.

The component cooling water (CCW) system, on which the CACFS is dependent, has sufficient capacity for all normal and shutdown operating modes. In addition, the system is capable of satisfying the design criteria under post design-basis accident (DBA) conditions with the single failure of an active component and a loss of instrument air. Analyses demonstrate that CCW flowrates to essential equipment would be adequate for removing post accident design-basis heat loads.

Following implementation of the proposed change, at least one train of containment air coolers will be available to mitigate a LOCA. Analyses show that one train of coolers can maintain the containment pressure and temperature below the design values; therefore, the proposed change will have no adverse effect on the containment pressure analysis following a LOCA.

Analyses have also shown that one train of containment high-efficiency particulate air (HEPA) filters maintains the radiological consequences doses within regulatory limits; therefore, the proposed change will have no adverse effect on the radiological consequences following a LOCA.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The CACFS was designed to remove heat released to containment atmosphere during the [DBA] to the extent necessary to maintain the structure below the design pressure. The proposed modification to the CS system logic shifts the function of containment pressure and temperature control from the [CS] system to the equally capable and reliable containment air coolers. The use of CACFS, as a means of containment pressure control, has been evaluated for the LOCA event and found to result in an acceptable peak containment pressure (peak pressure less than 60 psig [pounds per square inch gauge]). Radiological consequences were evaluated for the use of CACFS in this application using the guidance provided in Regulatory Guide (RG) 1.183. This radiological analysis demonstrates that the dose consequences are in compliance with applicable regulatory requirements. The estimated dose consequences at the exclusion area boundary (EAB), low population zone (LPZ), and control room (CR) remain within the acceptance criteria of 10 CFR 50.67 as supplemented by RG 1.183 and the standard review plan (SRP) 15.0.1. The assessment also demonstrates that the dose consequences in the technical support center (TSC) remain compliant with regulatory guidance provided in Supplement 1 of NUREG–0737.

No credible new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing basis have been created and none of the initial condition assumptions of any accident evaluated in the safety analysis are impacted.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The containment building and associated penetrations are designed to withstand an internal pressure of 60 psig at 305 °F [degrees Fahrenheit], including all thermal loads resulting from the temperature associated with this pressure, with a leakage rate of 0.1 percent by weight or less of the contained volume per 24 hours. The containment air coolers are credited for maintaining containment pressure and temperatures within design limitations, and assure that the release of fission products to the environment following a [DBA] will not exceed regulatory guidelines for a large break (LB) LOCA.

The [CS] system and containment air coolers continue to be credited for limiting peak containment pressure for an MSLB.

Adequate NPSH [net positive suction head] margin is maintained for the HPSI [high-pressure safety injection] pumps during the recirculation phase of a[n] LBLOCA due to the reduction in ECCS [emergency core cooling system] sump strainer pressure drop.

The CACFS operates independently of the CS system to remove heat from the containment atmosphere. The CACFS consists of two redundant trains, each train with one air cooling and filtering unit and one air cooling unit, for a total of four cooling units. Operation of the CACFS, in accordance with analyses completed for the 2006 steam generator replacement, is and will continue to be credited in the MSLB containment pressure analysis. The operation and maintenance of the CACFS are not impacted by this proposed change. Therefore, the containment heat removal licensing basis is not adversely affected by the proposed change. The ability to maintain containment peak pressure and temperature, as well as long-term containment pressure and temperature, is maintained.

The LBLOCA 10 CFR 50.46 analysis assumes that there will be three CS pumps operating when evaluating the effects of containment pressure on ECCS performance. This assumption minimizes containment pressure, to conservatively evaluate ECCS performance in response to a LOCA. Eliminating operation of the CS pumps improves ECCS performance and thus increases margin to 10 CFR 50.46 limits on peak clad temperature, therefore, the existing analysis remains bounding as is.

In summary, following implementation of the proposed change:

☐ Peak containment pressure for analyzed DBAs remains within design limits;

☐ Radiological releases remain within the limits of 10 CFR 50.67; and

☐ The currently calculated peak clad temperature following a LOCA remains bounding.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: Thomas G. Hiltz.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, NE

Date of amendment request: July 31, 2007.

Description of amendment request: The proposed amendment will modify Technical Specification (TS) requirements to support a planned inverter modification to be installed during the 2008 refueling outage. The inverter modification will require revisions to TS 2.7(1), 2.7(2), and 3.7(5), and the associated Bases sections to allow for the addition of two safety-related swing inverters.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The addition of two safety-related swing inverters to the 120 V a-c [Volts alternating current] vital instrument buses is not an initiator of any previously evaluated accidents. The swing inverters will not prevent safety systems from performing any of the accident mitigation functions assumed in the safety analysis. The revisions proposed for the Technical Specifications (TS) take advantage of the operational flexibility provided by the swing inverters yet maintain current TS requirements that four inverters be operable.

Similarly, the change maintains the current TS allowance for one of the required inverters to be inoperable for up to twenty-four hours provided all current TS requirements for operability are met.

Although continued operation for up to twenty-four hours with one of the required inverters inoperable is allowed, the addition of the two safety-related swing inverters is expected to decrease the amount of time that the station must operate with less than four inverters. This is because the design allows the inoperable inverter to be replaced by its associated swing (or non-swing) inverter. Reducing the need to shut the station down due to an inoperable inverter also reduces the risk associated with mode transition to shutdown.

The correction of two typographical errors and correcting spacing inconsistencies in the text are administrative changes that do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The design function of the safety-related inverters is unchanged. The addition of the safety-related swing inverters and their bypass sources to the 120 volt a-c vital instrument distribution system allows preventative maintenance, repair and for testing to be performed online. If a safety-related inverter becomes inoperable or is otherwise out-of-service, its instrument bus is manually transferred to the associated swing inverter. If a required inverter should fail, the time that the station will operate with less than the four inverters required by TS 2.7(1)j should, in most cases, be less due to the ability to place an associated inverter online. Reducing the need to shut the station down due to an inoperable inverter also reduces the risk associated with mode transition to shutdown.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No

The design function of the safety-related inverters is unchanged. The addition of the safety-related swing inverters to the 120 volt a-c vital instrument distribution system allows preventative maintenance or repair of a safety-related inverter to be performed online since its instrument bus can be manually transferred to the associated swing inverter. Installation of the safety-related swing inverters does not require changes to accident analyses or results. The revisions proposed for the TS

maintain current TS requirements that four inverters be operable. Should a required inverter fail, the time that the station will operate with less than the four inverters required by TS 2.7(1)j should, in most cases, be less due to the ability to place an associated inverter online. Reducing the need to shut the station down due to an inoperable inverter also reduces the risk associated with mode transition to shutdown. In addition, administrative controls are in place to ensure the current station battery capacity is not degraded and to ensure battery margin is adequately maintained as a result of the inverter modification.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: Thomas G. Hiltz.

Tennessee Valley Authority, Docket No. 50–328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, TN

Date of amendment request: July 26, 2007.

Description of amendment request: The proposed amendment would add a new reference to Technical Specification 6.9.1.14.a, which lists documents that have been approved by the U.S. Nuclear Regulatory Commission for use in determining the core operating limits. The new reference is the Areva NP, Inc. topical report EMF–2103P–A, "Realistic Large Break LOCA Methodology for Pressurized Water Reactors."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change adds an approved analytical method for evaluating large break loss of coolant accidents (LOCAs). The proposed change will not affect previously evaluated accidents because they continue to be analyzed by NRC approved methodologies to ensure required safety limits are maintained. The acceptance criteria of the SQN Final Safety Analysis Report analyzed accidents and anticipated operational occurrences are not affected by the proposed addition of the realistic large break LOCA methodology. As the evaluations for accidents and operation occurrences are not adversely affected, the proposed change will not increase the consequences of a postulated event. The proposed change does not result in any modification of the plant equipment or operating practices and therefore, does not alter plant conditions or plant response prior to or after postulated events. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

As previously noted. the proposed change does not result in any modification of the plant equipment or operating practices and therefore, does not alter plant conditions or plant response prior to or after postulated events. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not alter plant equipment including the automatic accident mitigation setpoints designed to mitigate the affects of a postulated accident. The accident analyses and plant safety limits continue to be acceptable as evaluated by NRC approved methodologies. The proposed application of the realistic large break LOCA methodology ensures acceptable margins and limits for fuel core designs. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: Thomas H. Boyce.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, NJ

Date of application for amendment: November 27, 2006.

Brief description of amendment: The amendment revised the required submittal date for the Annual Radioactive Effluent Release Report. Specifically, the required submittal date is revised from "within 60 days after January 1, each year," to "prior to May 1 of each year."

Date of Issuance: August 8, 2007.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No: 264.

Facility Operating License No. DPR–16: The amendment revised the license and the Technical Specifications.

Date of initial notice in **Federal Register:** May 8, 2007 (72 FR 26174).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 8, 2007.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi, Unit 2, Monroe County, MI

Date of application for amendment: July 12, 2006, as supplemented by letters dated April 25, May 23, June 15, June 20, and June 29, 2007.

Brief description of amendment: The amendment modifies Conditions, Required Actions and Completion Times in Technical Specification (Ts) 3.8.1, "AC Sources-Operating," associated with the Required Actions when emergency diesel generators are declared inoperable.

Date of issuance: August 1, 2007.

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

Amendment No: 175.

Facility Operating License No. NPF–43: Amendment revised the TSs and License.

Date of initial notice in **Federal Register**: August 29, 2006 (71 FR 51225). The April 25, May 23, June 15, June 20, and June 29, 2007, supplements, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 1, 2007.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, MI

Date of application for amendment: January 26, 2007.

Brief description of amendment: The amendment adds a Limiting Condition for Operation (LCO) 3.0.9 to the Technical Specifications (TS), allowing a delay time for entering a supported system TS, when the inoperability is due solely to an unavailable barrier, if risk is assessed and managed. Additionally, the amendment makes editorial changes to LCO 3.0.8 to be consistent with terminology of LCO 3.0.9.

Date of issuance: August 1, 2007.

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

Amendment No.: 176.

Facility Operating License No. NPF–43: Amendment revised the TS and License.

Date of initial notice in **Federal Register:** April 10, 2007 (72 FR 17945).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 1, 2007.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, OH

Date of application for amendment: May 30, 2006, as supplemented by letters dated April 24, 2007, and June 27, 2007.

Brief description of amendment: This amendment revises the existing SG tube surveillance program to be consistent with the Nuclear Regulatory Commission's approved TS Task Force (TSTF) Standard TS Change Traveler, TSTF–449, "Steam Generator Tube Integrity." A notice of availability for this TS improvement using the consolidated line item improvement process was published in the **Federal Register** on May 6, 2005 (70 FR 24126). The amendment is also the modification of the SG portion of the TSs requested in NRC Generic Letter (GL) 2006–01, "Steam Generator Tube Integrity and Associated Technical Specification."

Date of issuance: July 31, 2007.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 276.

Facility Operating License No. NPF–3: The amendment revised the Technical Specifications and License.

Date of initial notice in **Federal Register**: October 10, 2006 (71 FR 59531). The April 24, 2007, and June 27, 2007 supplements, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 31, 2007.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit No. 2, Oswego County, NY

Date of application for amendment: March 8, 2007.

Brief description of amendment: The amendment revises the Technical Specification requirements for inoperable snubbers by adding Limiting Condition for Operation 3.0.8 using the Consolidated Line Item Improvement Process.

Date of issuance: July 30, 2007.

Effective date: As of the date of issuance to be implemented within 180 days.

Amendment No.: 118.

Renewed Facility Operating License No. NPF–69: Amendment revises the License and Technical Specifications.

Date of initial notice in **Federal Register**: April 24, 2007 (72 FR 20384).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 30, 2007.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–259 Browns Ferry Nuclear Plant, Unit 1, Limestone County, AL

Date of application for amendment: June 25, 2007, as supplemented by letters dated July 3 and 26, 2007 (TS–461).

Brief description of amendment: The amendment deletes License Condition 2.G.(2) as the result of completion of power uprate large transient testing.

Date of issuance: August 14, 2007.

Effective date: The date of issuance, to be implemented within 30 days.

Amendment No.: 272.

Renewed Facility Operating License No. DPR–33: Amendment revised the renewed operating license.

Date of initial notice in **Federal Register**: July 13, 2007 (72 FR 38627). The July 3 and 26, 2007, supplemental letters provided clarifying information that did not expand the scope of the application or change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 14, 2007.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the

Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397 4209, (301) 415–4737 or by email to *pdr@nrc.gov*.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1]

[1] To the extent that the applications contain attachments and supporting documents that are not

Continued

Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by email to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer or the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, IL

Date of amendment request: June 29, 2007, as supplemented by letters dated August 1, 2007 and August 2, 2007.

Description of amendment request: The amendments revised the maximum allowed Technical Specification (TS) temperature limit, contained in TS Surveillance Requirement 3.7.3.1, of the cooling water supplied to the plant from the Core Standby Cooling System (CSCS) pond (i.e., the Ultimate Heat Sink) from 100 °F to 101.25 °F.

Date of issuance: August 2, 2007.

Effective date: August 2, 2007.

Amendment Nos.: 183 and 170.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications and License.

Public comments requested as to proposed no significant hazards consideration (NSHC): No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated August 2, 2007.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Russell Gibbs.

Dated at Rockville, Maryland, this 20th day of August 2007.

For The Nuclear Regulatory Commission.

John W. Lubinski,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–16766 Filed 8–27–07; 8:45 am]

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Federal Register

Tuesday,
August 28, 2007

Part IV

Department of Transportation

Federal Aviation Administration

Proposed Advisory Circular No. 120–53A, Crew Qualification and Pilot Type Rating Requirements; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket Number FAA–2007–28498]

Proposed Advisory Circular No. 120–53A, Crew Qualification and Pilot Type Rating Requirements for Transport Category Aircraft Operated Under 14 CFR Part 121

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of a proposed advisory circular and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed revision to Advisory Circular (AC) No. 120–53, Crew Qualification and Pilot Type Rating Requirements for Transport Category Aircraft Operated under 14 CFR part 121. That AC provides the Federal Aviation Administration (FAA) guidance for the evaluation and approval of flight crew qualification programs and the issuance of pilot type ratings for flight crews operating under 14 CFR part 121. The proposed AC streamlines the process described in AC 120–53 for determining the level of differences between aircraft and the credits the FAA assigns between those aircraft for the purposes of training, checking, and recency of experience requirements. The applicability of the proposed AC would be limited to operations conducted under 14 CFR part 121.

DATES: Comments must be received on or before October 29, 2007.

ADDRESSES: Send all comments on the proposed AC to Docket Number FAA–2007–28498, using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- Fax: Fax comments to the Docket Management Facility at 202–493–2251.
- Hand Delivery: Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Greg Kirkland, Air Transportation Division (AFS–220), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8166, e-mail *Greg.Kirkland@faa.gov*.

SUPPLEMENTARY INFORMATION:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44703.

Comments Invited

The proposed AC is published at the end of this notice. You may also receive an electronic copy of the proposed AC by accessing the FAA's web page at *http://www.faa.gov/regulations_policies/rulemaking/recently_published*. Interested parties are invited to submit comments on the proposed AC to Docket No. FAA–2007–28498. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC.

Advisory Circular (AC) NO. 120–53, "Crew Qualification and Pilot Type Rating Requirements For Transport Category Aircraft Operated under 14 CFR part 121."

On May 13, 1991, the FAA issued AC 120–53 to provide guidance on the process the FAA uses when determining the level of flight crew training required to operate an aircraft under 14 CFR part 121. The regulations establish requirements for training, checking, and recency of experience for flight crews operating an aircraft under part 121.

Further, the AC provides guidance for determining the level of differences between comparative aircraft when a pair of aircraft have similar handling or flight characteristics. An applicant may submit documentation requesting the FAA consider the commonality in that pair of aircraft be sufficient to allow credits for that commonality, which may then reduce the amount of duplicative training and checking requirements and may also reduce, for some aircraft, the recency of experience required by 14 CFR 121.439 (a). After completion of the comparative process, if the FAA is convinced that the two aircraft types share sufficient common characteristics, then the FAA authorizes qualified flight crews to receive training, checking, and in some cases, recency of experience credits for that commonality.

Advisory Circular 120–53 standardizes the application process for applicants and explains the training and checking credits available when the system differences between related aircraft models are from Level A through D. For example, a difference that amounts to no more than a knowledge-based difference that can be addressed in pilot training by using a computer-based course of instruction (*e.g.*, the B–757–200 and the B–767–200 hydraulic systems), would be a Level B difference. On the other hand, a difference that involves full pilot task training (*e.g.*, visual display and switch position requirements between the B–767–200 and the B–767–400) would be a Level D difference necessitating pilot training in a full task training device.

The AC also explains the process for allowing full or partial credit for recency of experience that may be permitted when aircraft handling qualities are similar. For example, handling qualities for the Airbus A–320, A–330, and A–340 aircraft were found to be similar, therefore credit for recency of experience was allowed.

If an additional series of related aircraft models having similar handling qualities and commonality of systems is type certificated, the FAA uses the guidance in AC 120–53 when deciding to allow credit for training, checking, and recency of experience. When difference levels between the aircraft models do not exceed Level D, credit is usually allowed. For example, evaluation of the differences in the flight deck configuration (*e.g.*, visual displays and switch positions) of the B–767–400 determined that Level D differences existed between the B–767–400 and the B–767–200 and B–767–300 series. Therefore, the FAA allows credit for training and checking for Level A through D differences between the B–767–200/300 and the B–767–400.

These credits have been provided also within families of aircraft (same make but different models sharing commonality) with similar handling qualities and no greater than Level D system differences. Examples of programs that have taken advantage of these credits are: "Common Pilot Type Rating" used by Boeing and "Cross Crew Qualification" (CCQ) used by Airbus.

Proposed Revisions to AC No. 120–53A

In view of the success of the common pilot type rating and CCQ programs under AC 120–53, proposed AC 120–53A describes the same process as AC 120–53 for evaluating the differences between comparative aircraft and determining the training, checking, and recency of experience requirements based on a commonality determination. Proposed AC 120–53A restates certain processes to make them more easily understood and applied by the FAA and industry in view of innovations and

advancements in technology and aircraft design that were not envisioned when AC 120–53 was written.

This proposed AC:

- Updates the guidance to reflect the increasing commonality evolving in contemporary transport category aircraft design.
- Streamlines the process, with clearly defined tests, that permit an applicant to apply for, and the FAA to allow credit for demonstrating sufficient commonality between aircraft. The process is updated by incorporating elements of the T2 and T4 tests into the new T6 test.
- Shifts the emphasis from documenting the commonalities to documenting the differences between aircraft types.
- Makes definitional changes. "Common type rating" is replaced by "Common pilot type rating." The term "variant" has been eliminated and its meaning has been consolidated into one term, "related aircraft." It also separates the terms "Currency" and "Recent experience."
- Introduces the term "Common Takeoff and Landing Credit" applicable to receiving credit for recency of experience.

Updates the guidance to reflect the increasing commonality evolving in contemporary transport category aircraft design.

Aircraft manufacturers are now designing more aircraft that share similar handling and flight characteristics. The use of common flight deck designs has also become prevalent. These commonalities improve the safety of aircraft operations and provide an opportunity in the proposed AC for the FAA to recognize this improvement in safety by reducing the need for some duplicative training.

Streamlines the process, with clearly defined tests, that permit an applicant to apply for, and the FAA to allow credit for demonstrating sufficient commonality between aircraft.

This proposed AC provides a systematic means with clearly defined tests that permit an applicant to apply for, and the FAA to allow credit for successfully demonstrating commonality between aircraft. For example, the T6 test criteria are clearly defined to give applicants more standardized, specific test criteria than the current T2 and T4 tests. The T6 test requires the applicant to show a commonality within a specific weight range, center of gravity range and maximum demonstrated crosswind for takeoff and landing.

Shifts the emphasis from documenting the commonalities to documenting the differences between aircraft types.

The proposed AC shifts the emphasis from documenting the commonalities to documenting the differences between aircraft types. The applicant would continue to show commonalities and the similarities in handling and flight characteristics by demonstrating the absence of differences. Where differences do exist, those differences would be addressed by the appropriate training, checking, and recency of experience requirements. In the proposed AC the FAA would continue to allow credit for aircraft shown to have commonality as in AC 120–53.

Makes definitional changes.

"Common type rating" is replaced by "Common pilot type rating" to show a clearer difference between a pilot type rating and a type certificated aircraft.

The terms "variant" and "related aircraft" were used interchangeably in AC 120–53 causing some confusion. The term "variant" has been eliminated and its meaning has been consolidated into one term, "related aircraft." For example, related aircraft would be two or more aircraft of the same make (Airbus), but not necessarily under the same type certificate (A–320, A–330 and A–340).

The AC 120–53 definitions of "currency" and "recent experience" were considered synonymous and used interchangeably. This interchangeable use ofterms has led to confusion. The proposed revision separates the terms to eliminate any further confusion.

Introduces the defined term Common Takeoff and Landing Credit applicable to receiving credit for recency of experience.

A Common Takeoff and Landing Credit (CTLC) allows recency of experience credit between related aircraft of the same make with different type certificates that can be demonstrated to have similar handling and flying characteristics. This credit is applied toward meeting the requirements of 14 CFR 121.439.

Conclusion

The concept of commonality and the use of credits can reduce unnecessary training costs while providing an acceptable method of compliance with the existing regulations. Only the FAA can make a determination of commonality; and while an applicant may ask the FAA for a finding of commonality, the FAA will only make such a finding after the FAA is satisfied that sufficient commonality exists to permit crediting.

The history of safe operation of the B–757 and B–767 with a common pilot type rating, and the successful use of similar programs (CCQ) with other aircraft models by European manufacturers demonstrates that the FAA can continue to safely allow credit for training, checking, and recency of experience between aircraft that have demonstrated commonality. The entire proposed AC is published with this Notice for the convenience of the reader as Attachment 1.

Issued in Washington, DC, on August 14, 2007.

James J. Ballough,

Director, Flight Standards Service.

Attachment 1—Advisory Circular (AC) No. 120–53, Crew Qualification and Pilot Type Rating Requirements for Transport Category Aircraft Operated Under 14 CFR Part 121

Advisory Circular

Subject: Crew Qualification and Pilot Type Rating Requirements for Transport Category Aircraft Operated Under Part 121.

Date: MM/DD/YY.

Initiated by: AFS–200.

[AC No: 120–53A]

This advisory circular (AC) provides an acceptable means, but not the only means, of compliance with the Code of Federal Aviation Regulations (CFRs) regarding qualification and type rating of flight crewmembers operating under Part 121 of the CFRs. Included are criteria for the determination and approval of training, checking, and currency necessary for the operation of aircraft. This AC also describes the process by which the Federal Aviation Administration (FAA) determines the qualification of the pilot-in-command (PIC) or second-in-command (SIC) of new or modified aircraft. Details of the systems, processes, and tests necessary to apply this AC are explained in the appendices. Provisions of this AC are intended to enhance safety by:

- Providing a common method of assessing applicant programs.
- Directly relating pilot training and qualification requirements to fleet characteristics, operating concepts, and pilot assignments.
- Permitting better planning and management of fleets, pilot assignments, and training resources by outlining what FAA requirements apply, what training resources or devices are needed, and what alternatives are possible.
- Permitting timely and consistent decisions about fleet acquisition, integration, modification, or phaseout associated with pilot qualification or pilot assignments.

- Permitting manufacturers to design aircraft that take advantage of new technology or their similarity with existing related aircraft, as appropriate to a particular operator's fleet.
- Encouraging cockpit standardization by crediting commonality and identifying necessary constraints when differences exist.
- Providing a framework for application of suitable credits or constraints to better address new technology and future safety enhancements.

1. Focus. This AC addresses aircraft manufacturers or modifiers who design, test, and certificate aircraft as well as approved 14 CFR part 142 training centers. In addition, it applies to operators whose pilots operate several related aircraft of the same manufacturer in a mixed fleet and operators seeking credit for prior pilot experience with related aircraft of the same manufacturer.

2. Cancellation. AC 120–53, Crew Qualification and Pilot Type Rating Requirements for Transport Category Aircraft Operated Under CFR Part 121, Dated May 13, 1991, Is Canceled.

3. Discussion.

a. A System for Pilot Qualification. The FAA specifies qualification criteria (minimum training, checking, and currency) for particular aircraft through Flight Standardization Board (FSB) evaluations and findings. FSB findings are described in reports for specific aircraft. The reports provide guidance to certificate-holding district offices (CHDO) for use by principal operations inspectors (POI) and other inspectors. FSB report provisions serve as a basis for the FAA to approve operators' programs and for pilot certification.

b. Changing Needs. Necessary support for the FSB process is provided by the industry. In the past, procedures varied by manufacturer, individual project, operator, and other factors including:

(1) Introduction of new and related aircraft and increases in the significance of modifications to existing aircraft, particularly with regard to engines or avionics.

(2) Integration of related fleets of aircraft following airline acquisitions or mergers.

(3) Increased dependence on leased aircraft, many of which are configured differently than an operator's basic fleet.

(4) A wider variety of equipment options available in new or retrofit aircraft.

(5) Introduction of new technology in cockpit enhancements.

4. Summary of Revisions. This AC describes necessary revisions and enhancements to the FSB process to address uniform, systematic, timely, and comprehensive application of pertinent 14 CFR parts in a changing and increasingly complex operational environment. This AC revision deletes master common requirements due to a lack of practical application. This AC recognizes the concept of reduced differences between related aircraft and defines the training, checking, currency, and recency of experience requirements.

a. This AC revision clarifies and introduces new terms and concepts. These include:

(1) Clarification of the terms "aircraft type certificate" and "related aircraft".

(2) The difference between currency and recency of experience is defined.

(3) A definition of "common pilot type rating" now including levels A through D for any aircraft of the same make but of different aircraft type certificates (TC).

(4) Modified checking requirements to embrace the concept of checking only at the difference levels between related aircraft.

(5) A new term, "common takeoff and landing credit" (CTLC).

(6) An introduction of the T6 test to provide for CTLC (recency of experience) in mixed fleet flying between separate type-certificated aircraft with common takeoff and landing characteristics. The intent of the T6 test is to provide a comparison of aircraft that have not previously been evaluated for CTLC using the T2 test.

(7) A means to identify and evaluate new technologies that may not be associated with an aircraft evaluation.

(8) A distinction between supervised line flying (SLF) and operating experience (OE).

b. Additional concepts are introduced to uniformly apply the 14 CFR parts applicable to pilot qualification and the differences. The AC's main concepts are summarized as follows.

(1) *Master Difference Requirement (MDR).* Master requirements are expressed in the form of MDRs. MDRs are requirements applicable to pilot qualification that pertain to differences between related aircraft. MDRs are specified by the FSB in terms of difference levels.

(2) *Difference Levels.* Difference levels are formally designated levels of training methods or devices, checking methods, or currency methods that satisfy difference requirements between related aircraft. Difference levels specify FAA requirements proportionate to and corresponding with increasing differences between related aircraft. A range of five difference levels in order of increasing requirements, identified as A through E, are each specified for training, checking, and currency.

(3) *Operator Difference Requirement (ODR).* Operators show compliance with the FAA MDRs through an operator's specific ODR, which lists each operator's fleet differences and compliance methods. ODRs specify requirements uniquely applicable to a particular fleet and mixed flying situation and are based on the MDRs. ODRs are those operator-specific requirements necessary to address differences between a base aircraft and one or more related aircraft, when operating in mixed fleet flying or seeking credit in transition programs. ODRs include both a description of differences and a corresponding list of minimum training, checking, and currency compliance methods that address pertinent FSB requirements.

Note: These and other concepts are more fully described in the appendices.

5. Setting FAA Requirements. The FSB process is made up of proposal development, testing, draft requirement formulation, FSB final determinations and FAA approval.

a. Applicants' Proposals. Aircraft manufacturers or modifiers usually initiate proposals for formulation or amendment of FSB requirements. This is done in conjunction with application for aircraft type certification or supplemental type certification of an aircraft or system. The FAA, operators, and, in certain instances, other organizations or individuals, may initiate proposals or amendments.

b. Standardized Tests. A main element of the requirements formulation process is the use of standardized testing to determine pilot qualification requirements. One or more of six tests are applied depending on the proposal's degree of differences between related aircraft, difference levels sought, and the outcome of any previous tests. Only the necessary tests are used. Tests may be waived or difference levels may be assigned based on operational experience.

c. FAA Formulation and Implementation of Requirements. Following testing and formulation of draft requirements, FSB requirement determinations are then made specifying MDRs and any necessary supporting information. Supporting information may pertain to operator certification, airmen certification, approval of devices and simulators, and other items necessary for proper application of MDRs. FSB reports will be used in the evaluation, certification, and approval of operators' programs.

d. Revision of Requirements. FSB reports are periodically updated when new or modified aircraft are introduced, when requested by an applicant based on OE, or when the FAA determines it is necessary for safety reasons.

e. Pilot Type Ratings. A new pilot type rating is typically assigned when level E training differences are determined between the candidate aircraft and the base aircraft. The pilot type rating determination and any training, checking, and currency specifications established under the testing process of this AC are determined by evaluating the handling qualities and core pilot skills related to the candidate aircraft. Systems such as heads-up display (HUD), Enhanced Vision Systems (EVS), or Synthetic Visions Systems (SVS) may require Level E training without requiring a new pilot type rating. The FSB, with the concurrence of the Air Transportation Division, AFS–200, will make this determination.

f. Common Pilot Type Rating. A common pilot type rating is assigned when no greater than level D training differences are determined between aircraft of the same type with different aircraft TCs.

g. Same Pilot Type Rating. A same pilot type rating is assigned when no greater than level D training differences are determined between aircraft with the same aircraft TCs (series).

6. Operator Compliance with FAA Requirements.

a. Obtaining FSB Information. Operators are advised of pertinent FSB information through FAA CHDOs and POIs. Operators may also obtain FSB information from aircraft manufacturers or modifiers, other operators, or other aviation organizations that maintain awareness of FAA policies, and the Web site *http://www.opspecs.com.*

b. Certificated Operator Compliance with Mixed Fleet Flying. When aircraft are flown in mixed fleets, certificated operators will comply with MDRs and other FSB difference provisions. Certificated operators accomplish this by identifying a base aircraft, describing differences that exist between their base aircraft and the candidate aircraft, and by specifying particular means of compliance to satisfy MDRs. Sample FSB ODRs provide guidance for the approval of an operator's mixed fleet flying program and specify necessary constraints or permissible credits. The description of specific differences and compliance methods are identified in the operator's ODRs. Constraints or credits may relate to knowledge, skills, devices, simulators, maneuvers, checks, currency, or any other factors necessary for safe operations. Constraints or credits may be applied generally or only to specific aircraft or pilot positions. Once approved, the operator's program must be conducted in accordance with (IAW) these approved ODRs. ODR proposals are provided to the FAA CHDO in a standard tabular format and are approved by POIs only if they meet MDRs and other pertinent FSB requirements. The operator must apply to amend the ODRs when changes occur in the base aircraft, comparison aircraft, and/or training devices that affect the approval basis of the ODRs.

c. Credit between Programs. In addition to mixed fleet flying, ODRs may be used to permit credit between related aircraft in differences or transition training and checking programs, consistent with FSB provisions.

7. FAA Approval of Operator Programs.

a. POI Approval. FAA POIs approve operator programs when those programs comply with FSB provisions. If less restrictive programs are proposed, POIs advise the applicant that:

(1) A request for change of the MDRs must be initiated;

(2) The differences between related aircraft must be reduced or eliminated; or

(3) An alternate approval must be sought.

Note: An example of such a request is an exemption to the applicable requirement of the training section of the operational rule under which the operation is conducted.

b. Limitations of POI Authority. When applicable, POIs may approve programs within provisions of the FSB report and this AC. AC provisions apply because other general constraints are identified such as a limitation on the number of different related aircraft that can be used in mixed fleet flying. POIs shall not approve programs outside the bounds of FSB or AC provisions without the authorization of AFS–200. Deviation from FSB or AC provisions will be approved by AFS–200, only when an equivalent level of safety can be demonstrated.

8. Application of FSB Requirements to Airmen Certification. The evaluation items that FSB reports specify include the following:

- Knowledge;
- Skills;
- Abilities;
- Maneuvers;
- Performance criteria; and
- Other relevant items for proficiency checking or other checks/tests may be identified. This is appropriate to address any aircraft-specific factors affecting the safe operation of that aircraft operated under 14 CFR.

9. Training Device and Simulator Approvals.

a. Standard Devices or Simulators. Standardized training methods, devices, or simulators are associated with each of the training difference levels. Devices or simulators are approved for particular operators by their POIs, consistent with National Simulator Program (NSP) qualification and FSB master requirements.

b. Special Criteria. In some instances, standard device or simulator criteria may not be appropriate for new technology. The FSB may specify additional criteria in FSB reports in these instances.

10. Review and Approval. This is a process for review of FSB evaluations and approval of FSB reports.

11. Appeal of FAA Decisions. The Director, Flight Standards Service, AFS–1, assigns responsibility to resolve appeals of the FSB findings.

James Ballough,

Director, Flight Standards Service.

APPENDIX 1.—DEFINITIONS AND REFERENCES

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Appendix 1.—Definitions and References

1. Definitions.

Note: Definitions provided in Appendix 1 apply exclusively to this advisory circular (AC).

Aircraft Evaluation Group (AEG). FAA organization that sets training, checking, currency, pilot type rating, Master Minimum Equipment List (MMEL), and maintenance standards Maintenance Review Board (MRB) for assigned certificated aircraft types. AEGs also address operational aspects of aircraft type certification and resolution of service difficulties.

Applicant. For the purposes of this AC, an applicant may be a manufacturer, modifier, or operator.

Base Aircraft. An aircraft designated by the applicant used as a reference to compare differences with another aircraft.

Candidate Aircraft. The aircraft that will be subjected to the FSB evaluation process outlined in this AC for comparison purposes.

Common Pilot Type Rating. A pilot license endorsement between separate type-certificated aircraft for the purposes of pilot type rating that passes the testing criteria of the T1 (equivalence) or the T2 (handling characteristics) and T3 (core pilot skills with no greater than level D differences). A common pilot type rating endorsement is issued after a pilot has received differences training and checking, where required, on the type-certificated aircraft for which there is a common pilot type rating designation. The pilot who is receiving the additional endorsement must be current and qualified in the base aircraft; since, the check is not a "full" proficiency check as defined by Title 14 of the Code of Federal Regulations (14 CFR), but an abbreviated differences check

on the differences from the base to the candidate aircraft. The differences check, unless it includes the requirements for a recurrent check, cannot reset the "recurrent clock" (a pilot's base month for checking purposes).

Common Takeoff and Landing Credit (CTLC). CTLC is a program/process that allows recency of experience credit between related aircraft (same make) with different type certificate data sheets (TCDS) that can be demonstrated to have the same handling and flying characteristics during the following:

- Takeoff and initial climb; and
- Approach and landing, including the establishment of final landing configuration.

Note: The T6 test is used for aircraft that were not tested (T2) during the initial aircraft evaluation for pilot type rating designation.

Configuration. Aircraft physical features, which are distinguishable by pilots, with respect to differences in systems, cockpit geometry, visual cutoff angles, controls, displays, aircraft geometry, and/or number of required pilots.

Currency. Currency is the recent experience necessary for the safe operation of aircraft, equipment, and systems as designated by the Flight Standardization Board (FSB).

Difference Levels. Difference levels are formally designated levels of training methods or devices, checking methods, or currency methods that satisfy differences requirements between related aircraft. A range of five difference levels in order of increasing requirements, identified as A through E, are specified for training, checking, and currency purposes.

Differences Training. Training required before any person may serve as a required crewmember on an aircraft of a type for which differences training is included in the certificate holder's approved training program.

Differences Check. A partial proficiency check of the qualification of a pilot at the difference levels between related aircraft. A differences check can be between series of the same aircraft type certificate (TC) or between aircraft of separate aircraft TCs of the same manufacturer.

Flight Characteristics. Flight characteristics are handling characteristics or performance characteristics perceivable by a pilot. Flight characteristics relate to the natural aerodynamic response of an aircraft, particularly as affected by changes in configuration and/or flight path parameters (e.g., flight control use, flap extension/retraction, airspeed change, etc.).

Flight Operations Evaluation Board (FOEB). The FOEB is responsible for preparation and revision of MMELs. The board members are drawn from the FAA.

Flight Standardization Board (FSB). The FSB is responsible for specification of minimum training, checking, currency, and pilot type rating requirements, if necessary, for U.S. certificated civil aircraft. The board members are drawn from the FAA (AEG, Headquarters, Flight Standards field offices operations personnel).

Handling Characteristics. The manner in which the aircraft responds with respect to rate and magnitude of pilot initiated control inputs to the primary flight control surfaces (e.g., ailerons, elevator, rudder, spoilers, cyclic, collective, etc.).

Line Oriented Simulation (LOS). Use of a simulator in place of the aircraft to reinforce the understanding of differences between related aircraft. LOS should not be confused with operating experience (OE), which is required by 14 CFR.

Line Operational Flying (LOF). The LOF phase of the test is used at the discretion of the FSB during the T3 test to validate the proposed training and checking. The LOF fully assesses particular difference areas, examines implications of mixed fleet flying, assesses special circumstances such as minimum equipment list (MEL) effects, and evaluates the effects of pilot errors potentially associated with the differences.

Master Difference Requirements (MDR). MDRs are those requirements applicable to pilot qualifications that pertains to differences between related aircraft. MDRs are specified by the FSB in terms of the minimum difference levels. MDRs form the basis for an operator to develop their operator differences requirements (ODR).

Mixed Fleet Flying. Mixed fleet flying is the operation of a base aircraft and one or more related aircraft for which credit may be taken for training and/or checking events. The FSB process defines minimum training and checking difference levels between related aircraft.

Operational Characteristics. As used with respect to aircraft, means those features that are distinguishable by limitations, flight characteristics, normal procedures, nonnormal procedures, alternate or supplementary procedures, or maneuvers.

Operator Difference Requirements (ODR). If differences exist within an operator's fleet that affect pilot knowledge, skills, or abilities pertinent to systems or procedures, ODR tables provide a uniform means for operators to comprehensively manage difference programs and provide a basis for FAA approval of mixed fleet flying.

Pilot Type Rating. A pilot type rating is a "one time", permanent endorsement on a pilot certificate indicating that the holder of the certificate has completed the appropriate training and testing required for its issuance as determined by regulation and by the applicable FSB report. It is recorded by the FAA on the pilot's certificate indicating the make, model, and series of aircraft, if applicable. Title 14 CFR requires a pilot type rating to serve as pilot-in-command (PIC) and in some cases as second-in-command (SIC) of U.S. civil large or turbojet aircraft.

Recency of Experience. With respect to flight experience as required by 14 CFR, means a pilot's completion of the required number of takeoffs and landings as sole manipulator of the controls within the preceding 90 days.

Related Aircraft. Related aircraft are any two or more aircraft of the same make that have been demonstrated and determined to have commonality to the extent that credit between those aircraft may be applied for training, checking, or currency, as documented through MDR and approved by the FSB.

Same Pilot Type Rating. A pilot type rating assigned when no greater than a level D training difference is determined between aircraft with the same aircraft TCs (series).

Series. Aircraft sharing the same aircraft type certification with specific variations that are usually defined by the manufacturer and usually result in an amended aircraft TC.

Supplementary Procedures. Those procedures that are identified in the Flight Crew Operation Manual (FCOM) under the section "Supplementary Procedures" describing procedures not described under the "Normal Procedures" or "Nonnormal Procedures" sections.

Supervised Line Flying (SLF). Supervised experience associated with the introduction of equipment or procedures requiring post qualification skill enhancement during which a pilot occupies a specific pilot position and performs particular assigned duties for that pilot position under the supervision of a qualified company instructor or check airman.

Training Footprint. A training footprint is a summary description of a training program, usually in short tabular form, showing training subjects, modules, procedures, maneuvers or other program elements, which are planned for completion during each day or phase of training.

2. References (Current Editions)

- Title 14 CFR parts 1, 61, 91, 135, and 121.
- Order 8400.10, Air Transport Operations Inspector's Handbook.
- AC 61–89, Pilot Certificates, Aircraft Type Ratings.
- AC 120–35, Line Operational Simulations: Line Oriented Flight Training, Special Purpose Operational Training, Line Operational Evaluation.
- AC 120–40, Airplane Simulator Qualification.
- AC 120–45, Airplane Flight Training Device Qualification.
- AC 120–51, Crew Resource Management Training.
- FAA–S–8081–5, Aircraft Type Rating Practical Test Standards for Airplane.

APPENDIX 2.—PILOT QUALIFICATION AND PILOT RATING REQUIREMENTS

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APPENDIX 2.—PILOT QUALIFICATION AND PILOT RATING REQUIREMENTS

1. Purpose

This appendix provides a comprehensive description of the system for pilot qualifications outlined in this advisory circular (AC). It includes definitions, criteria, processes, tests, methods, and procedures necessary for uniform application of the system.

2. Focus

The appendix applies to and is used by:

a. Aircraft manufacturers or modifiers who design, test, and certificate Title 14 of the Code of Federal Regulations (14 CFR) parts 23, 25, 27, and 29 aircraft.

b. Operators who operate under 14 CFR.

c. Operator, manufacturer, or other training centers having programs approved for use under 14 CFR.

d. Federal Aviation Administration (FAA) offices and inspectors administering programs under 14 CFR.

3. Introduction

a. A Comprehensive System for Pilot Qualification. This AC and its appendices provide a systematic means to address requirements for training, checking, and currency within applicable 14 CFR parts. Definitions, criteria, processes, procedures, tests, and methods are consistent with and clarify application of current rules in particular situations for specific aircraft. This AC provides a comprehensive system for the FAA and industry to describe, evaluate, and approve use of particular aircraft and operator programs. The respective roles of training, checking, currency and airmen certification are clarified. This includes defining the role and criteria for designation of pilot type ratings for existing, new, or modified aircraft. The system is particularly suited to addressing transition, differences programs, and mixed fleet flying. The system aids in assuring that pilots attain and maintain the knowledge, skills, and abilities needed to operate assigned aircraft safely.

b. Master Differences Requirements (MDRs) Set by FAA. The FAA's Flight Standardization Board (FSB) sets MDRs to address differences between related aircraft.

c. Specification of Constraints or Credits. The system permits the specification of constraints or permissible credits. Constraints or credits may relate to knowledge, skills, abilities, devices, simulators, maneuvers, checks, currency, or any other such factors necessary for safe operations. Constraints or credits may apply generally to aircraft, particular pilot positions, or other situations or conditions.

d. Recognition of Unique Operator Characteristics. The system recognizes the unique characteristics of individual operators while achieving uniformity in application of FAA safety standards. FAA MDRs determine uniform bounds to tailor individual operator's unique requirements to a particular fleet and situation. Principal operations inspectors (POI) approve each operator's unique requirements within FAA MDRs. Operator unique requirements accommodate particular combinations of related aircraft flown, pilot assignment policies, training methods and devices, and other factors that relate to the application of the FAA MDRs. Accordingly, the system preserves operator flexibility while standardizing the FAA's role in review, approval, and monitoring of training, checking, and currency programs within 14 CFR.

e. Basis for Requirements. The determination of pilot type rating, minimum differences training, checking and currency requirements focus on basic operation of aircraft in the National Airspace System (NAS) under both instrument flight rules (IFRs) and visual flight rules (VFR). Included are all flight phases from preflight to shutdown under both normal and nonnormal conditions.

f. Relationship to Other FAA Policies. Although this AC, and the FSB requirements in some instances, address particular types of operations or specific aircraft systems (e.g., use of flight guidance control systems for Category II/III instrument approaches, long-range navigation, etc.), other ACs address these issues more thoroughly. This AC and FSB requirements address such issues only to the extent necessary to assure that pilots are qualified to operate pertinent systems or equipment as part of initial or continuing qualification.

4. Concepts

a. An Integrated System for Pilot Qualification.

(1) *System Elements.* An integrated FAA/applicant system and process established to determine appropriate requirements, applies the requirements, and meets those requirements on a continuing basis, for uniform pilot qualification.

(2) *System Overview.* The system uniformly applies FAA master requirements in a way that tailors a particular aircraft to any operator's unique situation or fleet. The FAA approves unique operator and fleet requirements for each operator based on FAA master requirements. The system develops FAA master requirements based on objective criteria and tests, with applicants' support for analysis and testing. FSB reports for related aircraft describe FAA master requirements. MDRs express FAA master requirements. Minimum acceptable difference levels between related aircraft articulate MDRs. An operator's training program, checklist, operations manuals, pilot certification, CTLC programs, and other such approvals are by-products of compliance with MDRs. Operators comply with MDRs using unique ODRs, tailored to that operator's programs and approved by the FAA. ODRs, based on and in compliance with the MDRs, specify requirements uniquely applicable to a particular operator's mixed fleet flying situation. An operator's specific document

describes ODRs by identifying a base aircraft, differences between related aircraft, and that operator's compliance methods for each related aircraft. Paragraph 4j describes ODRs. Paragraph 6 describes ODR preparation and use. Paragraph 7 describes FAA approval of ODRs.

b. MDRs.

(1) *MDR Applicability.* MDRs are those requirements applicable to pilot qualification that pertain to differences between related aircraft. MDRs specify the minimum acceptable difference levels between related aircraft that may be approved for operators. One related aircraft is selected by the applicant as a reference for comparison purposes and is considered a base aircraft. This is typically the first aircraft on which pilots are qualified, or is the aircraft of which an operator has the largest number. Difference levels between the base aircraft and other related aircraft then specify the minimum difference requirements to be met for pilot qualification. Major differences in a particular fleet are defined between groups of related aircraft rather than specifying differences between each possible configuration and combination of configurations between related aircraft. MDRs are specified in terms of training difference levels described in paragraph 4d and are shown on an MDR table.

(2) *MDR Content.* MDRs specify the minimum training, checking, and currency acceptable to the FAA for pilot qualification regarding differences.

(3) *MDR Formulation, Description, and Revision.* MDRs are formulated by the FAA FSB for each related aircraft. MDRs are originally specified when an aircraft is first type certificated. MDRs are formulated using standardized tests and evaluations in conjunction with the type certification or supplemental type certification process. MDRs are based on an applicant's (usually an aircraft manufacturer) proposal, FAA evaluation of that proposal, OE, and test results when tests are necessary. FSB determinations also consider operator recommendations, safety history, and other relevant information. MDRs are described in provisions of an FSB report and may be revised if necessary. MDRs are revised when aircraft are developed or modified, tests or OE shows a need for revision, a revision is requested by an applicant and evidence indicates the need for revision, or rules or FAA policies change. MDRs are revised by a process similar to that used for initial formulation of requirements.

(4) *MDR Use.* MDRs are applied to specific operators through formally described ODRs that are developed by and tailored to each operator. FAA field offices use the MDRs as the basis for approval of individual operator's differences programs for approval of initial or transition programs where credit for previous training or experience with other related aircraft is sought.

(5) *The MDR Table.* An example of typical MDRs for the B–737–200, –300, –400, –500, –600, –700, –800, and –900 is shown in Figure 1. MDR table requirements are shown for each pair of aircraft by notations in each element of corresponding columns and rows of the table. Each element of the table identifies the minimum differences training, checking, and currency requirements applicable to mixed fleet flying. The MDR table identifies a pertinent base aircraft and particular aircraft for which requirements are sought. Note the minimum difference levels that correspond to the pertinent column and row, and special requirements in footnotes, if applicable.

(6) *Use of Higher or Lower Difference Levels.* Operators must satisfy difference requirements by using the methods acceptable for the specified level or a higher level. Lower level methods may be used in addition to the required levels but may not substitute for the required level or be used exclusively instead of the required level.

PILOT TYPE RATING: B-737		FROM AIRCRAFT				
		B-737 BASIC B-737-100, 200 (SP77)	B-737-200 ADV	B-737-300, 400, 500 (NON-EFIS)	B-737-300, 400, 500 (EFIS)	B-737-600, 700, 800, 900
TO AIRCRAFT	B-737 BASIC B-737-100, 200 (SP77)	A/A/A (2) NAV-B/B/C (6) PMS-C/B/C	B/A/B (2) NAV-B/B/C (6) PMS-C/B/C	C*/C*/D	C*/C*/D	D/D/D
	B-737-200 ADV	B/A/B (1) PDCS-C/B/C (2) NAV-B/B/C (4) AFCS-C/B/C (6) PMS-C/B/C	A/A/A (1) PDCS-C/B/C (2) NAV-B/B/C (4) AFCS-C/B/C (6) PMS-C/B/C	C*/C*/D (1) PDCS-B/B/C (2) NAV-B/B/C (5) LIMITED FMS-C/B/C	C*/C*/D (1) PDCS-B/B/C (2) NAV-B/B/C	D/D/D (1) PDCS-B/B/C (2) NAV-B/B/C
	B-737-300, 400, 500 (NON-EFIS)	C*/C*/D (5) LIMITED FMS-C/B/C	C*/C*/D (5) LIMITED FMS-C/B/C	A/A/A (7) CROSS MODEL-A/A/B	C/B/B	(8) C/B/B
	B-737-300, 400, 500 (EFIS)	(3) C*/C*/D (5) LIMITED FMS-C/B/C	(3) C*/C*/D (5) LIMITED FMS-C/B/C	(3) C/B/B	A/A/A (7) CROSS MODEL-A/A/B	(8) C/B/B (9) PFD/ND-D/C/C
	B-737-600, 700, 800, 900	D/D/D	D/D/D	(8) C/B/B (9) PFD/ND-D/C/C	(8) C/B/B (9) PFD/ND-D/C/C	A/A/A (9) PFD/ND-D/C/C (11) EDFCS-C/C/C

MASTER DIFFERENCE REQUIREMENTS (MDR) TABLE EXAMPLE

Figure 1

(7) *Differences Within a Series.* Differences may exist even within series shown on an MDR table, such as within the A–318/319/320/321 series. MDR elements may show requirements from one series to another identified in the footnotes. Such requirements, however, apply only if pertinent differences exist between those aircraft.

(8) *More Than Two Related Aircraft.* When pilot assignments apply to more than two related aircraft, such as the A–320, A–330, and A–340, each pertinent requirement of the MDR table applies. Applications of multiple requirements for flying two or more related aircraft and certain limits to flying large numbers of related aircraft are described in paragraph 7k.

(9) *Special Requirements.*

(10) *MDR Footnotes.* Footnotes can be used to credit, constrain, or set alternate levels when special situations apply. Use of footnotes permits accommodation of variations in installed equipment, options, pilot knowledge or experience on other aircraft, training methods or devices, or other factors that are not addressed by basic levels between aircraft. For example, a footnote may allow credit or apply constraints to the use of a particular flight guidance control system (FGCS), flight management system (FMS), or electronic flight instrument system (EFIS), which is installed on aircraft. Footnotes are an appropriate means to address requirements that relate to specific systems (e.g., flight director and FMS) rather than a particular aircraft. In such instances, generic knowledge or experience with the particular system may be readily transferable between related aircraft. Footnotes may also be used to set different requirements for initial training or checking rather than for recurrent training or checking. When necessary, footnotes are fully described in the body of the FSB report.

(a) Other Limitations. Other limitations may occasionally be identified within a difference level (e.g., C*/C*/C). The asterisk following the difference level in such instances identifies a special requirement or limitation pertaining to a particular training method or device. Such notes typically relate to acceptable training device characteristics when the simulator evaluation and approval process or standard criteria of this AC are not available to address a particular situation appropriately.

(11) *MDRs for Aircraft With the Same or Common Pilot Type Ratings.* A single FSB report and MDR table may apply to aircraft that are assigned the same pilot type rating (same aircraft TC). For example, a single MDR table may cover the A–318/319/320/321 that have a same pilot type rating. A single FSB report and MDR table may also apply to aircraft that are assigned a common pilot type rating. For example, a single MDR table may cover both the B–767 and B–757 that have a common pilot type rating. When level E training is required for an aircraft with the same aircraft TC and an additional pilot type rating is assigned, such as the B–747 and B–

747–400, a single MDR table for all series of a type-certificated aircraft still applies.

(12) Minimum acceptable difference levels are assigned based on standard tests described in Appendix 3.

c. Difference Levels.

(1) *General Description.* Difference levels are formally designated levels of training methods or devices, checking methods, or means of maintaining currency that satisfy minimum difference requirements or pilot type rating requirements. Difference levels specify FAA requirements proportionate to and corresponding with increasing differences between related aircraft. A range of five difference levels in order of increasing requirements, identified as A through E, are each specified for training, checking, and currency. MDRs are specified in terms of difference levels. Difference levels are used to credit knowledge, skills, and abilities applicable to an aircraft for which a pilot is already qualified and current, during initial, transition or upgrade training for other related aircraft. Operators, who conduct mixed fleet flying where credit is sought, should apply difference levels and address all mixed fleet flying requirements to ensure compliance with FAA requirements necessary to assure safe operations.

(2) *Basis for Levels.* Difference levels apply when a difference with potential to affect fight safety exists between related aircraft. Differences may also affect knowledge, skills, or abilities required of a pilot. If no differences exist or if differences exist but do not affect knowledge, skills, abilities or flight safety, then difference levels are not assigned or applicable to pilot qualification. When difference levels A through E apply, each difference level is based on a scale of differences in design features, systems, or maneuvers. In assessing the effects of differences, both flight characteristics and procedures are considered, since flight characteristics address handling qualities and performance, while procedures include normal and abnormal/nonnormal/emergency items.

(3) *Relationship Between Training, Checking, and Currency Levels.* While particular aircraft are often assigned the same level (e.g., C/C/C) for training, checking, and currency, such assignment is not necessary. Levels may be assigned independently. For example, an aircraft may be assigned level C for training, level D for checking, and level C for currency (e.g., C/D/C).

(4) *Designation of a Pilot Type Rating.* Candidate aircraft having the same TC are assigned the same pilot type rating if training differences are not greater than level D. Candidate aircraft having different TCs that have training differences no greater than level D may be assigned a common pilot type rating. A candidate aircraft is assigned a different pilot type rating when difference training level E is required. When different pilot type ratings are assigned because of one or more candidates requiring level E training. pilot type ratings may be assigned to related aircraft consistent with a logical grouping of the most similarly related aircraft.

d. Training Difference Levels.

(1) *Level A Training.* Level A difference training is that differences training between related aircraft that can adequately be addressed through self-instruction. Level A training represents a knowledge requirement that, once appropriate information is provided, understanding and compliance can be assumed. Level A compliance is achieved by such methods as issuance of operating manual page revisions, dissemination of operating bulletins, or differences handouts to describe minor differences in aircraft. Level A training is limited to the following situations:

(a) A change that introduces a different version of a system/component for which the pilot has already shown the ability to understand and use (e.g., an updated version of an engine).

(b) A change that results in minor or no procedural changes and does not adversely affect safety if the information is not reviewed or forgotten (e.g., a different vibration damping engine mount is installed, expect more vibration in descent; logo lights are installed, use is optional).

(c) Information that highlights a difference, which is evident to the pilot, inherently obvious, and easily accommodated (e.g., different location of a communication radio panel, a different exhaust gas temperature limit that is placarded, or changes to nonnormal "read and do" procedures).

(2) *Level B Training.* Level B difference training is applicable to aircraft with system or procedure differences that can adequately be addressed through aided instruction. At level B, aided instruction is appropriate to ensure pilot understanding, emphasize issues, provide a standardized method of presenting material, or aid retention of material following training. Level B aided instruction can utilize slide/tape presentations, computer based tutorial instruction, stand-up lectures or video tapes. Situations not covered under the provisions of level A training may require level B (or higher levels) if certain tests described in later paragraphs fail.

(3) *Level C Training.* Level C differences training can only be accomplished through use of devices that are capable of systems training. Level C differences training is applicable to related aircraft having part task differences that affect skills or abilities and knowledge. Training objectives focus on mastering individual systems, procedures, or tasks, as opposed to performing highly integrated flight operations and maneuvers in "real time." Level C may require self-instruction or aided instruction, but cannot be adequately addressed by a knowledge requirement alone. Training devices are required to supplement instruction, ensure attainment or retention of pilot skills and abilities, and accomplish the more complex tasks, usually related to operation of particular aircraft systems. While level C systems knowledge or skills relate to specific rather than fully integrated tasks, performance of steps to accomplish normal, nonnormal, alternate, recall procedures, or maneuvers related to particular systems (e.g., flight guidance control systems/flight management systems) may be necessary. Typically, the minimum acceptable training media for level C training would be interactive computer-based training, cockpit systems simulators, cockpit procedure trainers or part task trainers (e.g., FMS or traffic collision avoidance system (TCAS)).

(4) *Level D Training.* Level D training can only be accomplished with devices capable of performing flight maneuvers and addressing full task differences of knowledge, skills, and/or abilities. Devices capable of flight maneuvers address full task performance in a dynamic real time environment. The devices enable integration of knowledge, skills, and abilities in a simulated flight environment, involving combinations of operationally oriented tasks and realistic task loading for each relevant phase of flight. Level D training, knowledge, and skills to complete necessary normal, nonnormal, alternate, or recall procedures are fully addressed for each related aircraft. Level D differences training requires mastery of interrelated skills that cannot be adequately addressed by separate acquisition of a series of knowledge areas or skills that are interrelated. The differences are not so significant that a full transition training course is required. If demonstrating interrelationships between the systems is important, use of a series of separate devices for systems training will not suffice. Training for level D differences requires a training device that has accurate, high fidelity integration of systems and controls, and realistic instrument indications. Level D training may also require maneuvers, visual cues, motion cues, dynamics, control loading or specific environmental conditions. Weather phenomenon such as low visibility, CAT III, or windshear may or may not be incorporated. Where simplified or generic characteristics of an aircraft type are used in devices to satisfy difference level D training, significant negative training must not occur as a result of the simplification. Typically, the minimum acceptable training media for level D training would be flight training device level 6.

(5) *Level E Training.* Level E training is applicable to candidate aircraft having such significant full task differences that require a "high fidelity" environment to attain or maintain knowledge, skills, or abilities. Training at level E can only be satisfied by the use of a simulator qualified at level C or D consistent with FAA criteria. Level E training, if done in an aircraft, should be modified for safety reasons where maneuvers can result in a high degree of risk (i.e., an engine set at idle thrust to simulate an engine failure). As with other levels, when level E training is assigned, suitable credit or constraints may be applied for knowledge, skills, and/or abilities related to other pertinent related aircraft. Credits or constraints are specified for the subjects, procedures, or maneuvers shown in FSB reports and are applied through the ODR table.

Note: Training differences levels specified by the FSB represent minimum requirements. Operators may use a device associated with a higher difference level to satisfy a training differences requirement. For example, if level C differences are assessed due to installation of a different FMS, operators may train pilots using the FMS installed in a full flight simulator (FFS) as a system trainer if a

dedicated part task FMS training device is not available.

e. Checking Difference Levels.

(1) *Initial and Recurrent Checking.* Difference checking addresses any pertinent pilot testing or certification that includes pilot type rating checks, proficiency checks, Advanced Qualification Program (AQP) evaluations, and any other checks specified by FSB reports. Initial and recurrent checking levels are the same unless otherwise specified by the FSB. In certain instances, it may be possible to satisfactorily accomplish recurrent checking objectives in devices that do not meet initial checking requirements. In such instances, the FSB may recommend certain devices that do not meet initial check requirements for use to administer recurring checks. The POI/Training Center Program Manager, in coordination with the FSB, may require checking in the initial level device when doubt exists regarding pilot competency or program adequacy.

(2) *Level A Checking.* Level A checking indicates that no check related to differences is required at the time of differences training. A pilot is responsible for knowledge of each related aircraft flown. Differences items should be included as an integral part of subsequent recurring proficiency checks.

(3) *Level B Checking.* Level B checking indicates that a "task" or "systems" check is required following transition and recurring differences training. Level B checking typically applies to particular tasks or systems such as FMS, TCAS, or other individual systems or related groups of systems.

(4) *Level C Checking.* Level C checking requires a partial proficiency check using a device suitable for meeting level C (or higher) differences training requirements following transition and recurrent differences training. The partial check is conducted relative to particular maneuvers or systems designated by the FSB. Example of a level C check: Evaluation of a sequence of maneuvers demonstrating a pilot's ability to use a FGCS or FMS. An acceptable scenario would include each relevant phase of flight that uses the FGCS or FMS.

(5) *Level D Checking.* Level D checking requires a partial proficiency check for one or more related aircraft following both transition and recurrent training. The partial proficiency check covers the particular maneuvers, systems, or devices designated by the FSB. Level D checks are performed using scenarios representing a "real time" flight environment and devices permitted for level D differences training. A full proficiency check is typically conducted on the base aircraft, and a partial proficiency check on the related aircraft, covering all pertinent differences.

(6) *Level E Checking.* Unless specified, level E checking requires that a full proficiency check be conducted in a level C or D FFS. As with other levels, when level E checking is assigned, suitable credit or constraints may be applied for knowledge, skills, and/or abilities related to other pertinent related aircraft. Credits or constraints are specified for the subjects, procedures, or maneuvers shown in FSB reports and are applied through the ODR table.

Note: Assignment of level E checking requirements alone does not result in assignment of a separate pilot type rating. Only the assignment of level E training requirements may result in assignment of a separate pilot type rating.

f. Currency Difference Levels. The term "currency" as used in this AC addresses recent experience necessary for safe operation of aircraft as designated by the FSB. Currency issues not specified by the FSB are covered by regulation.

(1) *Level A Currency.* Level A currency is considered common to each related aircraft. Thus, assessment or tracking of currency for separate related aircraft is not necessary or applicable. Maintenance of currency in any one related aircraft or a combination of related aircraft will suffice for any other related aircraft.

(2) *Level B Currency.* Level B currency is "knowledge related" currency, typically achieved through self-review by individual pilots for a particular aircraft. Self-review is usually accomplished by review of material provided by the operator to pilot. Such currency may be undertaken at an individual pilot's initiative; however, the operator must identify the material and the frequency or other situations in which the material should be reviewed. Self-review may be based on manual information, bulletins, aircraft placards, memos, class handouts, videotapes, or other memory aids that describe the differences, procedures, maneuvers, or limits for the pertinent aircraft that pilots are flying. Examples of acceptable compliance with level B currency are:

(a) The issuance of a bulletin that directs pilots to review specific operating manual information before flying a related aircraft. Level B currency may be regained by review of pertinent information to include bulletins, if that related aircraft has not been flown within a specified period (e.g., fly that related aircraft or have completed a review of the differences in limitations and procedures within a specified number of days).

(b) Pilot certification on a dispatch release that they have reviewed pertinent information for a particular related aircraft to be flown on that trip. Level B currency cannot, however, be achieved solely by review of class notes taken by and at the initiative of an individual pilot unless the adequacy of those notes is verified by the operator.

(3) *Level C Currency.* Level C currency is applicable to one or more designated systems or procedures, and relates to both skill and knowledge requirements. An example would be establishment of FMS currency, flight guidance control system currency, or other particular currency that is necessary for safe operation of a related aircraft. Establishment of level C for a related aircraft with an FMS would typically require a pilot to fly that related aircraft within the specified period of time or re-establish currency. Currency constraints for level C are established by the FSB. When level C currency applies, pertinent level B currency must also be addressed. Examples of methods acceptable for addressing level C currency are:

(a) Pilot scheduling practices resulting in a pilot being scheduled to fly a related aircraft with the pertinent system/procedure within the specified period of time;

(b) Tracking of an individual pilot's flying of related aircraft to ensure that the particular system/procedure has been flown within the specified period of time;

(c) Use of a higher level method (level D or E currency); or

(d) Other methods as designated or found acceptable by the FSB.

(4) *Re-establishing Level C Currency.* When currency is lost, currency may be re-established by completing required items using a device equal to or higher than that specified for level C differences training and checking. Other means to re-establish currency include flights with an appropriately qualified check airman/instructor, completion of proficiency training, or a proficiency check. In some instances, a formal refamiliarization period in the actual aircraft with the applicable system operating while on the ground may be acceptable if permitted by the FSB. Such refamiliarization periods are completed using an operator-established procedure under the supervision of a pilot designated by the operator. In the case of a noncurrent SIC, a designated pilot-in-command (PIC) may be authorized to accompany a pilot to re-establish currency.

(5) *Level D Currency.* Level D currency is related to designated maneuvers, and addresses knowledge and skills required for performing aircraft control tasks in real time, with integrated use of associated systems and procedures. Level D currency may also address certain differences in flight characteristics including performance of any required maneuvers and related normal/abnormal/emergency procedures for a particular related aircraft. A typical application of level D currency is to specify selected maneuvers, such as takeoff, departure, arrival, approach, or landing, which are to be performed using a particular FGCS and instrument display system. Either a pilot must fly a related aircraft equipped with the FGCS and particular display system sufficiently often to retain familiarity and competence within the specified currency period, or currency must be re-established. Currency constraints for level D are established by the FSB. When level D currency applies, pertinent level B and level C currency must also be addressed. Examples of methods acceptable for addressing level D currency are:

(a) Tracking of flights by a particular pilot in a particular related aircraft to assure experience within the specified currency period.

(b) Tracking the completion of specific maneuvers based on logbook entries, Aircraft Communication Addressing and Reporting System (ACARS) data, or other reliable records to assure experience within the specified currency period.

(c) Scheduling of aircraft or pilots to permit currency requirements to be met with verification that each pilot has actually accomplished the assigned or an equivalent schedule.

(d) Completion of pilot certification, proficiency check, proficiency training, AQP evaluations, or other pertinent events in

which designated maneuvers are performed in a device or simulator acceptable for level D currency.

(e) Use of a higher level method (level E currency).

(f) Other methods as designated or found acceptable by the FSB.

(6) *Re-establishing Level D Currency.* When currency is lost, currency may be re-established by completing pertinent maneuvers using a device equal to or higher than that specified for level D differences training and checking. Other means to re-establish currency include flight with an appropriately qualified check airman during training or in line operations, completion of proficiency training, a proficiency check, or AQP proficiency evaluation.

(7) *Level E Currency.* Level E currency may specify system, procedure, or maneuver currency item(s) necessary for safe operations, as identified by the FSB, to be accomplished in a Level C/D simulator for that related aircraft. FSB provisions related to takeoff and landing are applied in a way that addresses needed system or maneuver experience. For example, if FGCS, FMS, EFIS, navigation, or other system or maneuver experience is the basis for a currency requirement, approval of an operator's program at level E includes the use of those systems in conjunction with satisfying takeoff and landing requirements. In this instance, making three simulator takeoffs and landings in VFR closed traffic without using the FGCS, EFIS, or FMS may not be sufficient to meet level E currency requirements.

Note: Assignment of level E currency requirements does not result in assignment of a separate pilot type rating. Only the assignment of level E training requirements may result in assignment of a separate pilot type rating.

(8) *Re-establishing Level E Currency.* When currency is lost, currency may be re-established by completing pertinent maneuvers using a device specified for level E differences training and checking. Other means to re-establish currency include flight with an appropriately qualified check airman during training or in line operations, completion of proficiency training, a proficiency check, or AQP evaluation.

(9) *Competency Regarding Abnormal/Nonnormal/Emergency Procedures.* Competency for nonnormal maneuvers or procedures is generally addressed by checking requirements; however, in particular abnormal/nonnormal/emergency maneuvers or procedures may not be mandatory for checking or training. In this situation, it may be necessary to periodically practice or demonstrate those maneuvers or procedures even though it is not necessary to complete them during each check. In such instances, the FSB may specify a currency requirement for training or checking applicable to abnormal/nonnormal/emergency maneuvers or procedures that are to be performed. This is to assure that extended periods of time do not elapse in a series of repeated training and checking events in which significant maneuvers or procedures may never be accomplished. When an abnormal/nonnormal/emergency maneuver or procedure is not mandatory and is not accomplished during each proficiency training or proficiency check, but is still important to occasionally practice or demonstrate, the FSB may establish a currency requirement. When designated by the FSB, these currency requirements identify each abnormal/nonnormal/emergency maneuver or procedure, the currency level applicable, and an applicable time period or any other necessary/appropriate constraints.

(10) *Difference Level Summary.* Difference levels are summarized in Figure 2 below for training, checking, and currency. Complete descriptions of difference levels for training, checking and currency are given above.

FIGURE 2.—DIFFERENCE LEVEL TABLE

Difference level	Training	Checking	Currency
A	Self instruction	Not applicable (or integrated with next proficiency check).	Not applicable.
B	Aided instruction	Task or system check	Self review.
C	Systems devices	Partial check using device	Designated system.
D	Maneuver devices *	Partial proficiency check using device *.	Designed maneuver(s).
E	Simulator c/d or aircraft #	Proficiency check using simulator c/d or aircraft *.	Designed maneuver(s) except takeoff and landings.

= New pilot type rating is normally assigned.
* = FFS or aircraft may be used to accomplish specific maneuvers.

g. Operating Experience (OE) for Aircraft.

(1) *Application of OE.* Requirements for OE are consistent with provisions for OE specified under 14 CFR.

(2) *Credits or Constraints.* OE must meet the applicable requirements of the CFR part under which operations are conducted, except that credit for applicable OE in other related aircraft may be permitted. When approved by the FAA, OE associated with differences may be accomplished as part of or in conjunction with line oriented simulation (LOS).

h. Supervised Line Flying (SLF). Experience associated with the introduction of equipment or procedures requiring post qualification skill enhancement during which a pilot occupies a specific pilot position and performs particular assigned duties for that pilot position under the supervision of a pilot instructor or check airman qualified for the operator. One or more of the reasons described below may apply:

(1) Introduction of new systems (e.g., Local Area Augmentation System (LAAS), Automatic Dependent Surveillance Broadcast (ADS–B), runway area advisory system (RAAS), etc).

(2) Introduction of new operations (e.g., oceanic operations, Extended-Range Operations with Two-Engine Airplanes (ETOPS)).

(3) Experience for a particular pilot position (e.g., PIC, SIC).

(4) Special characteristics (e.g., effects of unique airports, mountainous areas, unusual weather, special air traffic control procedures, or nonstandard runway surfaces) on this aircraft.

i. Recency of Experience. Credit towards the recency of experience requirements of 14 CFR may be permitted for takeoffs and landings performed in related aircraft as provided by CTLC. CTLC must be validated through the FSB process and must be carried out in accordance with (IAW) the operator's CTLC approved program.

j. Operator Difference Requirements (ODR).

(1) *ODR Purpose.* If differences exist within an operator's fleet, which affect pilot knowledge, skills, or abilities pertinent to systems or procedures, ODR tables provide a uniform means for operators to comprehensively manage difference programs and provide a basis for FAA approval of mixed fleet flying.

(2) *ODR Content.* ODRs identify a base aircraft, describe differences between aircraft, and show an operator's methods of compliance with FAA requirements. The FAA approves an operator's initial ODR and each subsequent revision for the following:

(a) Base Aircraft. ODRs identify an aircraft or group of aircraft (aircraft of the same series with minor configuration differences) within an operator's fleet as a base aircraft. The base aircraft serves as a reference for comparison with candidate aircraft. Selection criteria and characteristics of base aircraft are described in paragraphs 6c and 7c.

(b) Candidate/Related Aircraft. ODRs identify particular aircraft flown by an operator within each fleet. ODRs consider only those aircraft and combinations of aircraft actually flown by that operator. ODRs describe differences within an operator's fleet between the base aircraft and other related aircraft.

(c) Significance of Differences. Differences are described in summary form and are

categorized by differences in design features, systems, and maneuvers. Differences are evaluated relative to their effect on either flight characteristics, pilot skills, and/or procedures. Procedures consider normal, nonnormal, alternate, and recall items. Limitations are considered in conjunction with normal procedures.

(d) Compliance Methods. ODRs show how each operator's program addresses differences, through description of training, checking, or currency methods for each fleet. ODRs describe the specific or unique constraints or credits applicable, and any precautions necessary to address differences between aircraft. ODRs must comply with and be just as or more restrictive than FAA MDRs and other FSB provisions. Constraints or credits may be applied to all aircraft in a fleet or only to certain aircraft. Constraints or credits may address training devices, simulators, checking and currency methods, knowledge, skills, procedure maneuvers, or any other factors that apply to or are necessary for safe operations. Training, checking, and currency compliance methods are proposed and revised by each operator consistent with ODR examples from a variety of sources that are acceptable to the FAA. ODR examples are found in FSB reports.

(3) *Standard ODR Format.* ODRs are depicted in tables in summarized form. If necessary, any explanation of details about differences, constraints and credits, precautions or compliance methods are included in attachments or appendices to ODR tables or are cross referenced to other operator documents. Figure 3 shows the general format for ODR tables, including examples of design, systems, and maneuver differences. The far-left column lists design, system, or maneuver differences that are pertinent. The "Remarks" column summarizes specific areas or items of difference. The "Flight Characteristics" and "Procedural Change" columns identify what (if any) difference effects are noted. The "Compliance Methods" section of the table notes the particular operator's approved means of compliance with FAA MDR provisions. The following abbreviations apply:

ACFT—Aircraft.
AFDS—Auto Flight Display System.
AVT—Audio Visual Tapes.
CBT—Computer Based Training.
EFIS—Electronic Flight Instrument System.
EICAS—Engine Indicating and Crew Alerting System.
FBS—Fixed Base Simulator.
FFS—Full Flight Simulator.
FLT CHAR—Flight Characteristics.
FMC—Flight Management Computer.
FMS—Flight Management System.
PROC CHNG—Procedural Changes.
SU—Stand Up Instruction.

BILLING CODE 4910–13–P

Design Operator Difference Requirements Table Example

DESIGN OPERATOR DIFFERENCE REQUIREMENTS TABLE

DIFFERENCE AIRCRAFT: 737-300
BASE AIRCRAFT: 737-200 ADVANCED

APPROVED BY (POI): _____

DESIGN FEATURE	REMARKS	FLT CHAR	PROC CHNG	COMPLIANCE METHOD								
				TRAINING						CHKG/CURR		
				LVL A	LVL B	LVL C	LVL D	LVL E	FLT CHK	CORR		
AIRPLANE CONFIGURA-TION	- BODY EXTENSION 104" - WING TIP EXTENSION 14" - DORSAL FIN - w/STC ST01219SE, BLENDED WINGLET	MINOR	NO		AVT/ SU/ CBT					B		
PANEL LAYOUT	- ADDITION OF FMC/AFDS/AT/IRS ETC.	NO	NO		AVT/ SU/ CBT							
WEIGHTS	- GROWTH RELATED CHANGES	NO	NO		AVT/ SU/ CBT							

Figure 3-1

Systems Operator Difference Requirements Table Example

SYSTEMS OPERATOR DIFFERENCE REQUIREMENTS TABLE										
DIFFERENCE AIRCRAFT: 737-300 BASE AIRCRAFT: 737-200 ADVANCED APPROVED BY (POI): _____				COMPLIANCE METHOD						
				TRAINING					CHKG/CURR	
SYSTEM	REMARKS	FLT CHAR	PROC CHNG	LVL A	LVL B	LVL C	LVL D	LVL E	FLT CHK	CORR
21 AIR COND. & PRESSURIZA-TION	- RECIRC FAN REPLACES GASPER FAN - 3 POSITION PACK SWITCH - FWD OUTFLOW VALVE LIGHT DELETED - EQUIPMENT COOLING FAN LIGHT - ADDITIONAL FAN INSTALLED (EFIS ONLY) - DISTRIBUTION: MINOR CHANGES	NO	YES		AVT/ SU					
22 AUTO-FLIGHT	- SP-300 AFDS REPLACES SP-77/SP-177 - AUTOTHROTTLE ADDED* - AUTOLAND CAPABILITY ADDED* (*ONLY WHEN COMPARED TO SP-77 AIRPLANES) - LNAV/VNAV - TO/GA MODE	NO	YES		AVT	CBT/ FMS/ AT			C*+OE	D 90 DAYS + 3 FLT SEG.
24 ELECTRICAL	- MINOR CHANGES IN POWER DISTRIBUTION	NO	NO		AVT/ SU					
25 EMERGENCY EQUIPMENT	- CANNISTER OPTION ONLY* - NEW CREW MASKS* (*OPTION ON SOME -200 AIRPLANES)	NO	YES		AVT/ SU					
26 FIRE PROTECTION	- DUAL-LOOP DETECTION SYSTEM - MINOR EXTING. EQUIP. CONFIG CHANGE - TWO SQUIBS PER BOTTLE	NO	YES		AVT/ SU					

Figure 3-2

Systems Operator Difference Requirements Table Example

SYSTEMS OPERATOR DIFFERENCE REQUIREMENTS TABLE

DIFFERENCE AIRCRAFT: 737-300
BASE AIRCRAFT: 737-200 ADVANCED

APPROVED BY (POI): _____

SYSTEM	REMARKS	FLT CHAR	PROC CHNG	COMPLIANCE METHOD						CHKG/CURR	
				TRAINING							
				LVL A	LVL B	LVL C	LVL D	LVL E	FLT CHK	CORR	
27 FLIGHT CONTROLS	- ADD'L SPOILERS ADDED - ELECTRIC AIL TRIM - DUAL CHANNEL MACH TRIM; TEST BUTTON DELETED - SPEED TRIM ADDED - STAB TRIM BRAKE DELETED - TWO SPEED STAB TRIM - DIFFERENT STAB TRIM RANGE - ELECTRIC STAB TRIM OVERRIDE - ELECTRIC RUDDER TRIM - AUTOSLAT SYS. ADDED - TE FLAP PLACARD SPEEDS - CERTIFIED T/O FLAP SETTINGS - RUDDER SYSTEM ENHANCEMENT - (OPTION: BLENDED WINGLET W/ SPEED BRAKE LOAD ALLEVIATION)	MINOR	YES (YES MIN-OR)		AVT/ SU (CBT/ AVT/ SU)						
28 FUEL	- CONTINUOUS FUEL HEAT SWITCHES DELETED - FILTER BYPASS LIGHT REPLACES ICING LIGHT - FUEL CAPACITY INCREASED - GND XFER OF FUEL - AUX TANK (OPTIONAL)	NO	YES		AVT/ SU						

Figure 3-2
(continued)

Systems Operator Difference Requirements Table Example

SYSTEMS OPERATOR DIFFERENCE REQUIREMENTS TABLE

DIFFERENCE AIRCRAFT: 737-300
BASE AIRCRAFT: 737-200 ADVANCED

APPROVED BY (POI): _____

SYSTEM	REMARKS	FLT CHAR	PROC CHNG	COMPLIANCE METHOD							
				TRAINING					CHKG/CURR		
				LVL A	LVL B	LVL C	LVL D	LVL E	FLT CHK	CORR
29 HYDRAULIC	- LANDING GEAR XFER UNIT - SYS A & B SOURCES AND COMPONENTS CHANGED; A & B INDEPENDENT - GROUND INTERCONNECT DELETED - AUTOSLAT PTU - THRUST REVERSER - ONE ON EACH SYSTEM - B QUANTITY GUAGE ADDED - STBY RUDDER ON LIGHT	NO	YES		AVT/ SU					
30 ICE & RAIN PROTECTION	- ENG INLET ANTI-ICE DELETED - WING ANTI-ICE OPERATION ON GROUND PERMITTED* (*OPTION ON SOME -200 AIRPLANES)	NO	YES		AVT/ SU					
31 FLIGHT INSTRUMENTS	- EFIS (AS INSTALLED) - ADI/HIS (AS INSTALLED) - NAV SWITCH (AS INSTALLED)	NO	YES		AVT/ SU					
32 LANDING GEAR	- NORM/ALT REPLACES A & B SYS BRAKES - PAIRED WHEEL ANTI-SKID PROTECTION ON ALT BRAKES - TIRE SCREEN DELETED* - NO TOUCHDOWN OR LOCKED WHEEL PROTECTION ON ALT BRAKES - SINGLE ANTI-SKID SWITCH (*OPTION ON SOME -200 AIRPLANES)	NO	NO		AVT/ SU					

Figure 3-2
(continued)

Systems Operator Difference Requirements Table Example

Figure 3-2
(continued)

SYSTEMS OPERATOR DIFFERENCE REQUIREMENTS TABLE

DIFFERENCE AIRCRAFT: 737-300
BASE AIRCRAFT: 737-200 ADVANCED

APPROVED BY (POI): _____

				COMPLIANCE METHOD						
				TRAINING					CHKG/CURR	
SYSTEM	REMARKS	FLT CHAR	PROC CHNG	LVL A	LVL B	LVL C	LVL D	LVL E	FLT CHK	CORR
33 WARNING	- ADDITIONAL SYS ANNUNCIATOR LIGHTS ADDED - GPWS MODE 6 WINDSHEAR OPTION* (* OPTION ON SOME -200 AIRPLANES)	NO	YES		AVT/ SU					
34 NAVIGATION	- FMCS ADDED - IRS ADDED - ANCDU	NO	YES		AVT	CBT/ FMS/ AT			C* + OE	D 90 DAYS + 3 FLT SEG.
36 PNEUMATICS	- DISTRIBUTION MINOR CHANGE	NO	NO		AVT/ SU					
73, 74, 77, 80 POWER PLANT	- CFM-56 ENGINES - NEW INDICATORS - CASCADING VANES TYPE REVERSER WITH AUTO RESTOW - PMC ADDED - IGN SELECT SWITCH	NO	YES		AVT/ SU					B
WINDSHEAR EQUIPMENT	- AUTOMATIC RECOVERY AVAILABLE IF IN DUAL CHANNEL - FLIGHT DIRECTOR GUIDANCE AVAILABLE (OPTIONAL)	NO	YES		AVT/ SU	FMS/ AT			C*	
PERFORMANCE	- CHANGED	MINOR	NO		AVT/ SU					
LIMITATIONS	- GROWTH RELATED CHANGES	NO	NO		AVT/ SU					

Maneuver Operator Difference Requirements Table Example

MANEUVER OPERATOR DIFFERENCE REQUIREMENTS TABLE

DIFFERENCE AIRCRAFT: 737-300
BASE AIRCRAFT: 737-200 ADVANCED

APPROVED BY (POI): _____

MANEUVER	REMARKS	FLT CHAR	PROC CHNG	COMPLIANCE METHOD								
				TRAINING						CHKG/CURR		
				LVL A	LVL B	LVL C	LVL D	LVL E	FLT CHK	CORR		
NORMAL TAKEOFF, CLIMB, CRUISE, DESCENT, INSTRUMENT APPROACHES, LANDING	- OPTIONAL USE OF AFDS, AND A/T (ALSO AN OPTION FOR -200 AFCS AIRPLANES) - OPTIONAL USE OF FMCS	NO	SEE APP		AVT/ SU	FMS/ AT			C* + OE	D 90 DAYS + 3 FLT SEG.		
NON-NORMAL MANEUVERS	- OPTIONAL USE OF AFDS, AND A/T (ALSO AN OPTION FOR -200 AFCS AIRPLANES) - OPTIONAL USE OF FMCS	NO	SEE APP		AVT/ SU	FME/ AT			C*			

Figure 3-3

(4) *ODR Approval, Distribution, and Availability.* ODRs are approved for each fleet by an operator's FAA POI in accordance with FSB report provisions. ODRs must be prepared, reviewed, approved and then used to govern training before start of operations. The operator retains approved ODRs with a duplicate copy as part of FAA certificate-holding district office (CHDO) records.

(5) *ODR Revision.* ODR tables are revised by operators and re-approved by the FAA when fleet characteristics change or when compliance methods change. Fleet characteristic changes include redesignation of base aircraft, modification of aircraft, addition of aircraft, change of aircraft, or phaseout of aircraft. Changes in compliance methods refer to introduction of new or different training methods, contracting for use of different devices or simulators, revision of checking or currency methods, or other such changes. Revisions to ODRs are also prepared, reviewed, and approved before operating.

Note: Paragraph 6 describes the development, approval, and application of ODR tables to individual operators' programs. Paragraph 7 describes FAA review and approval of programs by POIs.

5. Formulation of FSB Reports, MDRS, and Designation of Pilot Type Ratings

a. Requirements Formulation Process Overview. The process for FAA formulation and revision of training, checking, currency, and pilot type rating requirements is shown in Figure 4.

(1) The process determines which information is required for an aircraft; it includes a proposal for requirements, tests, and evaluations of the proposed requirements; it then finalizes, applies, and implements the FSB requirements. Applicants propose MDRs, examples of ODRs, and any other FSB provisions that are necessary. Proposals for requirements are based on design objectives, analysis, evaluation of OE, other programs that have been proved acceptable to the FAA, or other methods. Setting of requirements is based on an objective set of tests and standards, analysis of results, and FAA judgments considering OE. The applicant and the FAA prepare and conduct standardized tests. The applicant provides test support, and the FSB conducts the evaluation. The FSB, in conjunction with the applicant, evaluates the results, and the FAA formulates proposed minimum requirements. The FSB sets final requirements by specifying MDRs and other FSB provisions. An FSB report that describes findings is disseminated to FAA field offices and posted on the operations specifications (OpSpecs) Web site for application to specific operators' programs. The formulation and application process of FSB requirements starts at the time a new aircraft is proposed to the FAA and continues throughout the fleet life of that aircraft. For aircraft already in service the process may be initiated when significant modifications are proposed, a new piece of equipment (e.g., a HUD) requiring operational evaluation is introduced and requested by operators, or when mixed fleet flying takes place. The FAA addresses periodic revisions of requirements when necessary, and revisions are initiated by the FAA and applicants as needed.

b. Proposals for MDRs, Example ODRs, and Special Requirements.

(1) *When Proposals Are Necessary.* The FAA usually determines when proposals are necessary and advises the applicant what information is needed, in conjunction with aircraft type certification or supplemental certification programs. Necessary information may include MDRs for related aircraft or other elements of the FSB reports. The applicant considers existing MDRs and existing or proposed ODRs.

(2) *Proposal Formulation.* The formulation of a proposal typically starts when a manufacturer proposes a new design or design modification. The applicant will then do the following:

(a) Formulate necessary information for training, checking, and currency for the aircraft in proposals for MDRs and example ODRs.

(b) Prepare example ODR tables for candidate aircraft to support development of a proposed MDR. These examples represent proposals for programs for those specific aircraft and configurations that the FAA could approve.

(c) Identify related aircraft for the proposed MDR table.

(d) Formulate any necessary tests to assess difference levels and associated training, checking, and currency requirements for incorporation in the MDR table.

(e) Identify interpretations of possible test results. The FAA and the applicant will then reach an agreement on specific tests, devices, and schedules to be used for the test program.

(f) The applicant submits proposals for the following items to the FAA, as necessary:

- MDRs
- Example ODRs
- Tests and criteria to be used
- Other supporting information associated with training, checking, or currency programs

c. Difference Level Tests. A sequence of five standard tests, described in Appendix 3, is used to set MDRs, minimum acceptable training programs, other FSB provisions, and define pilot type rating requirements. One or more of these tests are applied depending on the difference level sought, and the success of any previous tests used in identifying MDRs. Only those tests needed are used to establish minimum requirements. The outcome of these tests, and any resulting difference levels that apply, establish minimum requirements for training, checking, currency, and pilot type ratings. The FAA will establish an additional pilot type rating if it is determined during this testing that the assignment of a level E differences training is required.

Note: One additional test, the T6 test, can be used to establish CTLC between related aircraft, when not previously demonstrated in a T2 test.

(1) *Steps in the Testing Process.* The typical steps of the testing process are as follows:

(a) The applicant develops representative training programs, difference programs, and necessary supporting information, as needed.

(b) The applicant identifies proposed MDRs and example ODRs.

(c) The applicant proposes and the FAA determines which tests and criteria apply.

(d) The applicant proposes and the FAA determines which aircraft, simulation devices, or analyses are needed to support testing.

(e) The applicant makes a proposal to the FAA, and agreement is reached on test procedures, schedules, and specific interpretation of possible results.

(f) Tests are conducted and results evaluated.

(g) The FSB draft minimum requirements are formulated.

Note: If the candidate aircraft is anticipated to have no greater than level A or B differences with the base aircraft and a same or common pilot type rating is the proposed assignment, then the FSB may elect to directly apply a T1 test for equivalency.

(2) *Test Purpose and Application.* A summary of the purpose and application of each of the six difference tests is shown in Figure 5.

(3) *Test Relationships and Applications.* The test process relationships, the sequence of conducting tests when more than one test is needed, and application of test outcomes are shown in Figure 6. The start of the process is shown at the top of Figure 6. Resulting difference levels are at the bottom. New aircraft, for which a new aircraft TC is sought, follow the testing path at the right of the diagram for a T5 test. At the end of the process the aircraft is assigned a new pilot type rating. For candidate aircraft seeking a same or common pilot type rating the test process follows a path at the left of Figure 6. A series of decisions or tests leads to assignment of one or more levels A through D and in some instances may lead to level E. If level E is assigned as a result of this path, then a separate pilot type rating is assigned. This process is followed whenever a new aircraft is proposed, when significant changes are proposed, or when revisions to existing requirements are needed as a result of requests for change or OE.

(4) *Test Failures and Retesting.* Generally, failures do not have paths back to lower levels. T3 test failure at level C can lead to subsequent passage at C (after modification of the system, operational procedures, or training and retesting) or D. Similarly, failure at level D can subsequently lead to either D (after modification of the system, operational procedures, or training and retesting) or E, but not C. Failure at level E can only lead to retesting with increased programs, improved programs, or improved devices since there is no higher level. T5 failure paths do not lead back to level C or level D. However, subsequent new programs do not preclude making a proposal at a lower differences level if technology changes, aircraft redesign takes place, training methods significantly change, or device characteristics and effectiveness change.

(5) *Same and Common Pilot Type Rating Tests.* Aircraft seeking same or common pilot type rating will follow the path in Figure 6 from the top left of Figure 6 through T1 or T2 and T3 tests resulting in the assignment of level A, B, C, or D differences.

(6) *"Currency" Tests.* Currency tests T4 are not shown in Figure 6 because they are necessary only when the applicant seeks relief from system, procedural, and maneuver currency requirements set by the FSB.

(7) *Detailed Test Specifications.* A detailed specification for the evaluation process and tests to establish difference levels are described in Appendix 3.

d. FSB Assessments and Proposal Formulation. The FSB assesses the applicant's proposals, test results, analysis, and any other relevant factors to formulate a draft FSB report, which includes MDRs and other pertinent training, checking, currency requirements. The FSB either validates the applicant's proposed MDRs, training programs, and other information, or generates alternate requirements, which may include more stringent requirements, additional training, additional testing, etc.

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MASTER REQUIREMENTS FORMULATION

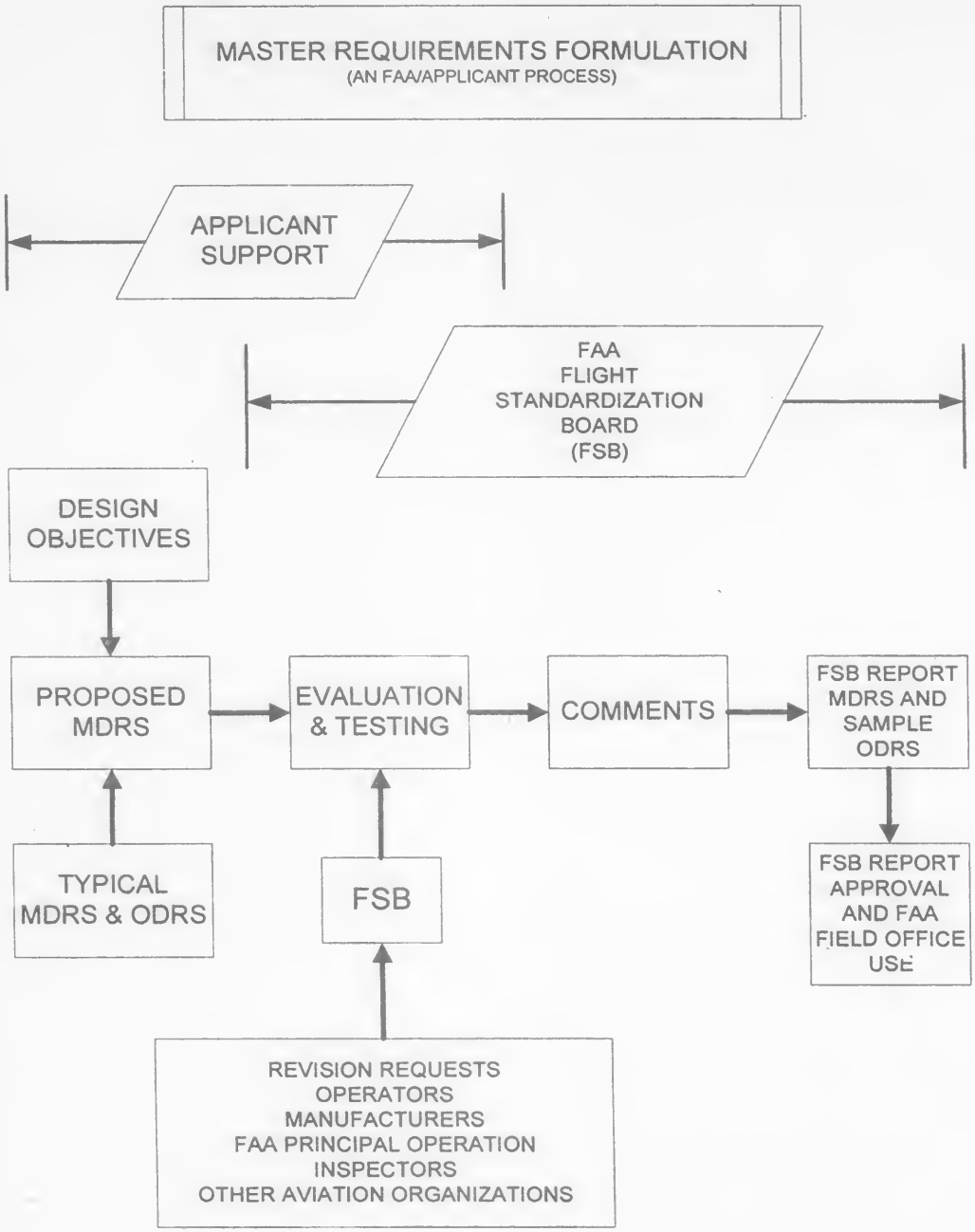

Figure 4

FIGURE 5.—TEST DEFINITIONS

	Test purpose	Application
T1	Establishes functional equivalence	Sets levels A/B.
T2	Handling qualities comparison	Pass permits T3, and A/B/C/D; failure sets level E and requires T5.
T3	Evaluate differences and sets training/checking requirements.	Pass sets levels A/B/C/D; failure sets level E and requires T5.
T4	Revises currency requirements	Used to adjust FSB requirements if needed.
T5	Sets training/checking for new or "E" ACFT	Sets level E.
T6	Evaluation for CTLC	Sets recency of experience requirements.

Note: Expanded descriptions are contained in Appendix 3.

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"T" Tests 1 thru 5

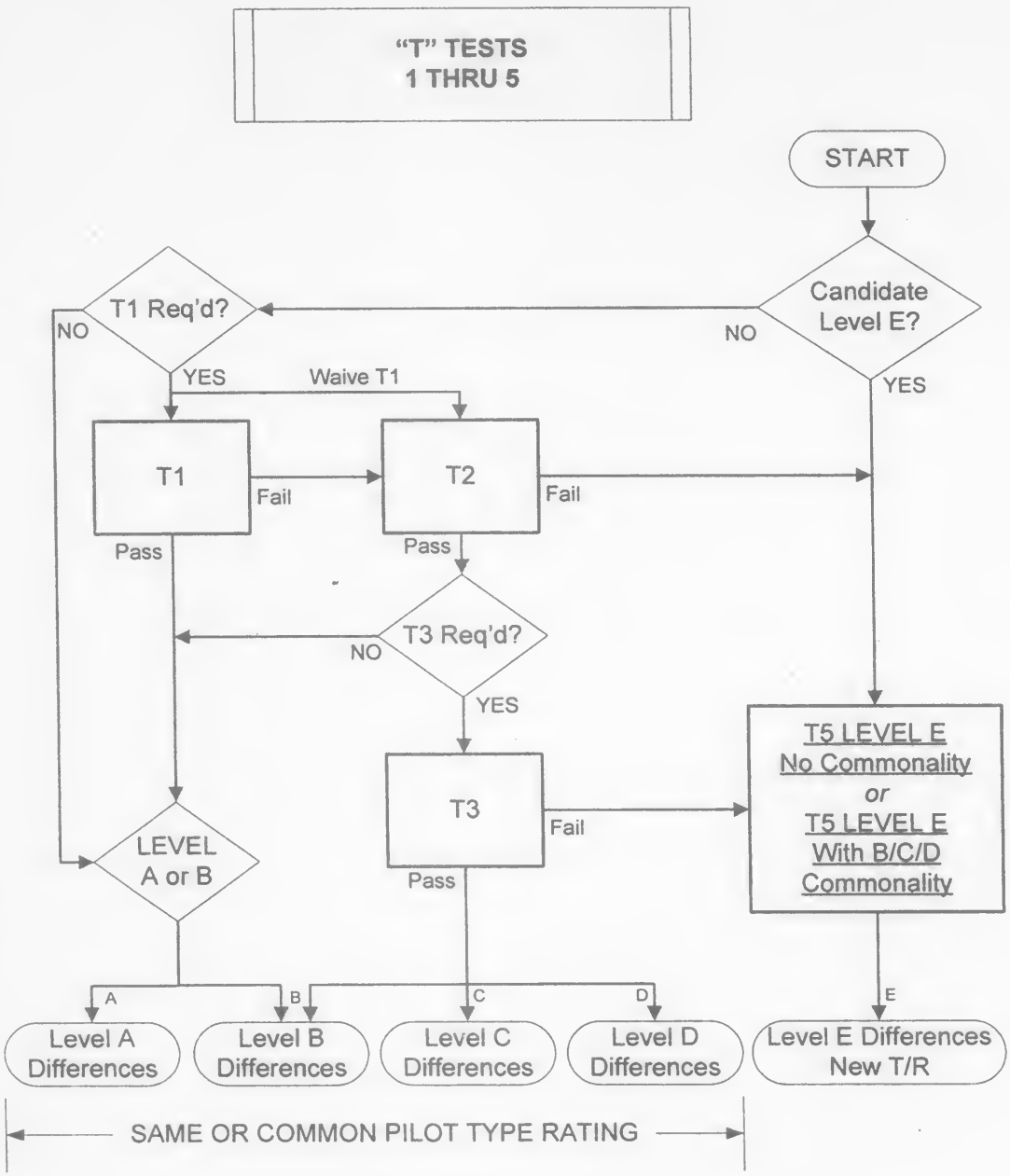

Figure 6

e. Comments Solicited. The FSB proposal is circulated with interested parties representing the manufacturer, operators, and other pertinent FAA organizations such as engineering, flight test, pilots' associations, and other aviation representatives for comment, relevant information, and recommendations.

f. FSB Final Determinations and Findings.

(1) *FSB Determinations.* Any comments submitted to the FAA are reconciled, and final FSB determinations are made. Specification of MDRs, example ODRs, acceptable training programs, and other FSB provisions are completed. Any necessary pilot testing or currency provisions are identified. Assignment of any necessary pilot type rating(s) is made.

(2) *Basis for FSB Judgments.* FSB judgments are based on review of the applicant's supporting documentation, proposed ODR tables, test results, and any other pertinent information, such as FAA policies, OE, and results of other similar FSB evaluations. Specifically, FSB report provisions are based on the following:

(a) Appropriate Data, Evaluation, or Tests. Testing may include aircraft demonstration, simulation tests, device testing, or analysis.

(b) Direct Experience. The industry may have substantial experience with successful operational programs, which can be useful in the assignment of minimum difference level requirements. This experience may include particular training devices, training/checking/currency requirements, and mixed fleet flying.

(c) Indirect Experience. Applicable experience with foreign operators, military programs, or other programs that can establish the suitability of training, checking, or currency standards may be permitted as a means for FSBs to set MDR or ODR levels.

(d) Applicant and Industry. FSB requirements are set following solicitation and review of comments.

(3) *Device or Simulator Characteristics.* Minimum characteristics for devices or simulators for training, checking, or currency are noted using standard training device or simulator definitions. When standard criteria for methods, devices, or simulators are not appropriate for an aircraft, the FSB identifies suitable criteria to be applied and coordinates with the FAA National Simulator Evaluation Team (NSET). Standard devices and simulators applicable to each difference level are shown in Figure 7.

FIGURE 7.—STANDARD METHOD, DEVICES, AND SIMULATORS

Difference level	Difference level definition	Methods	Devices or simulators [1]
A	Self instruction	Bulletins, Manual revisions, Handout material.	
B	Aided instruction	Slides/video tapes, Standup instruction, Computer-based training (CBT).	
C	System devices		Training devices level 2/3/4/5 full task computer based instruction (CBI).[2]
D	Maneuver devices		Training devices level 6/7.[3]
E	Simulator C/D or aircraft		Simulator C/D or aircraft.

(1) Training level and simulator definitions are as specified by applicable ACs.
(2) Training device levels 3/4/5 typically include cockpit procedure trainers, cockpit system simulators, and similar devices.
(3) Training device 6/7 or simulator A/B typically includes fixed-base simulators or visual simulators.

g. FSB Report Preparation Distribution and FAA Application.

(1) *Report Preparation and Approval.* After MDRs are finalized, the FSB report is prepared and approved. Sufficient background or explanatory material is provided in the report to permit FAA personnel to properly administer FSB provisions.

(2) *FSB Report Distribution.* The FSB report is posted on the OpSpecs Web site for implementation in approval of particular operators' programs. The FAA technical requirements described in FSB reports are primarily intended for the operators use to develop programs that will be approved by the FAA.

(3) *FSB Report Implementation.* FSB requirements, recommendations, and guidance are provided to FAA field offices through FSB reports for each aircraft. These reports are directives to FAA offices to identify acceptable methods of applying pertinent 14 CFR parts to each specific operator. FSB provisions set acceptable standards by which FAA inspectors approve, review, correct, or limit individual operator's programs. The FSB report is the basis for approval of training, checking, and currency programs approved by each FAA office. The report is also the basis for pilot certification by FAA or operators and the surveillance of operators' programs. POIs may approve individual operator's programs that meet or exceed master requirements, but they cannot approve programs that are less than master requirements. Aviation safety inspectors (ASI), aircrew program managers (APM), aircrew program designees (APD), and designated pilot examiners (DPE) use the report as the basis for administration of oral examinations, simulator checks, flight checks, proficiency checks, and OE. Preparation and application of ODRs by operators is described in paragraph 6. Review and approval of ODRs by FAA POIs is covered in paragraph 7.

h. FSB Report Revision.

(1) *General FSB Revision Process.* A general revision process is established to update determinations and findings contained in FSB reports. Revisions may be needed annually for active fleets with numerous change requests. Revisions may be needed infrequently for aircraft not undergoing significant change.

(2) *Revisions for New Aircraft.* When an applicant proposes to develop or add a series of a type-certificated aircraft, MDRs and other FSB provisions must be revised to address that series. If an applicant initiates this action, the procedures noted in paragraph 5 regarding initial determination of minimum training, checking, currency, and pilot type rating requirements are followed. If an operator proposes to add an aircraft that is not covered within an existing FSB report (e.g., a foreign manufactured aircraft) POIs should consult with the pertinent Aircraft Evaluation Group (AEG). An FSB will determine the best method of addressing the development of the necessary FSB report. This is particularly important for older aircraft fleets in which differences may be significant, but manufacturer support is no longer available and aircraft imported into the United States that have been used only by foreign operators.

(3) *Revision for Aircraft Modified by Operators.* When an aircraft is to be modified by an operator, the POI must determine if the change affects MDRs, example ODRs, or other FSB report provisions. The criteria for this assessment includes whether or not the difference affects pilot knowledge, skills, or abilities pertinent to flight safety. If a change meets the criteria, the operator should supply the POI with a difference description and analysis of the effects of the difference. The POI makes a preliminary estimate of the difference levels then advises the applicable AEG/FSB. The AEG/FSB may concur with the POI's assessment or require other action. If FSB action is required, the AEG will initiate that action through the FSB chairman. The FSB may require that additional information or analysis be provided or that the entire test process or parts thereof be applied. The AEG may authorize the POI to approve assignment of the difference level. Changes to the MDRs will be made through the normal FSB revision process.

6. Operator's Application of FSB Provisions, Preparation, Use, and Revision of ODRS

a. General.

(1) *Process Overview.* FSB reports contain MDRs and other provisions that are applied by FAA offices in approving operators' programs. MDRs are applied through a particular method that identifies specific ODRs and compliance methods. Application of MDRs and other FSB provisions are one means to ensure pilot qualification for safe operations. This is necessary so that regardless of which aircraft is flown, uniform training, checking, and currency standards are met within the constraints of 14 CFR. Paragraph 6 describes operator application of MDRs and other FSB provisions for training, checking, and currency. This is done through operator preparation and FAA approval of ODRs for each operator. When aircraft are used in mixed fleet flying, this AC's provisions and FSB provisions comprehensively address differences in training, checking, and currency requirements for each aircraft. In some instances, the FAA may limit the number of different aircraft permitted in mixed flying. ODRs are used to identify credits or

constraints between aircraft. These credits may also be applied to a related aircraft when transitioning to another related aircraft when those aircraft are intended for use in mixed or nonmixed fleet operation. The overall process for operator application of MDRs and development, approval, use, and revision of ODRs is shown in Figure 8.

(2) *Availability and Use of FSB Information.* FSB requirements are made available to operators through FAA CHDOs, applicant, industry trade associations, posted on the OpSpecs Web site, or other sources. When preparing initial or difference programs for specific fleets, individual operators apply the requirements of the applicable FSB report.

b. Application of MDRs and Preparation and Use of ODRs.

(1) *Need for ODRs.* When operating a mixed fleet, operators prepare the necessary ODR table proposals to describe their particular fleet and show compliance methods. This is done to assess effects of differences, plan compliance methods, and obtain POI approval for that operator's specific program. ODR tables must be prepared and approved by the FAA for each fleet in which FSB requirements are established IAW FSB provisions.

(2) *Operator Responsibilities.* The operator's responsibilities include:

(a) Specification of a base aircraft.

(b) Identification of differences between the aircraft within a mixed fleet.

(c) Preparation of proposed ODR tables.

(d) Assessment and description of the effects of the differences on training, checking, and currency.

(e) Proposal of training, checking, and currency methods consistent with MDRs and FSB provisions.

(f) Presentation of proposed ODR tables with necessary supporting information to the FAA POI for approval.

(g) Revision of ODR tables when aircraft are introduced, modified, phased out, devices change, or MDRs change.

(3) *Use of Standard ODR Format.* A common format for ODR tables is used to facilitate preparation, review, use, comparison with MDRs, and ensure consistency of application and approval by POIs. The common format is used in all cases where ODR tables are required except when only a few minor differences exist and level A applies. In this event, letters between an operator and FAA containing the necessary information and approval may suffice if acceptable to the POI.

(4) *Minimum Threshold for ODR Preparation.* Within the mixed fleet, a minimum threshold for preparation of ODR tables occurs when there are differences that potentially affect knowledge, skills, or abilities necessary for flight safety. Differences not related to this criterion need not be addressed in ODR tables.

(5) *ODR Description and Examples.* ODRs are described in paragraph 4. Examples of acceptable ODR tables for a particular type-certificated aircraft are shown in each FSB report.

(a) Systems Shown on the ODR Table of Figure 3. An example of several pages from an ODR table is shown in Figure 3. Figure 3 shows the application of ODRs to address systems differences and compliance methods. In Figure 3 differences are grouped in the order associated with a typical operations manual. Air Transport Association (ATA) code numbers are shown for cross-reference. The "Remarks" column depicts differences and the "Flight Characteristics" and "Procedural Change" columns address effects of differences.

(b) Maneuvers Shown on the ODR Table of Figure 3. The "Remarks" column depicts differences. The "Flight Characteristics" and "Procedural Change" columns address effects of differences. The reference "SEE APP" refers you to an appendix to the table, which the operator prepares to more fully list and explain the particular procedural changes that pertain to the maneuver in the "Procedural Change" column.

(6) *Other Use of ODRs.* The ODR process may be used for other applications such as flight attendant or dispatcher qualification tracking, but such use is not required as part of this AC's provisions.

c. Selecting Base Aircraft. An operator chooses a base aircraft from one of the aircraft operated. Base aircraft are defined in Appendix 1. Additional information regarding base aircraft selection is in paragraph 7.

d. Identification of Differences and the Analysis of Effects of Those Differences. Differences must be described between base aircraft and other related aircraft. This may be done from base to each other related aircraft. Differences may also be described from any related aircraft to each other related aircraft. All MDR requirements must be satisfied relative to the base aircraft so the pairing of aircraft not authorized to be flown in a mixed fleet environment by the FSB reports is avoided. As long as a complete and clear relationship can be drawn from the base aircraft to each other related aircraft and all MDR requirements are met from the base aircraft, to each other related aircraft, there is no need to describe each possible combination of aircraft. This permits a comprehensive identification of differences that exist in the fleet, determines the effects of those differences, and shows compliance methods. Differences are generally organized to follow an operations manual or flight manual to facilitate use and review, and should be categorized by design, systems, and maneuvers. Effects of differences are stated in terms of effects on flight characteristics and procedures. Procedures include normal, nonnormal, alternate, and recall procedures, as applicable. Since complete descriptions may be too lengthy for direct incorporation in ODR tables, appendices, or references to other operators' documents may be used to describe differences or effects. Some differences or effects may be repeated in the analysis. For example, an FMS difference may be noted in both a navigation system section and maneuver section associated with preflight setup. The objective is to assure each difference that pertains to pilot training, checking, or currency is identified and addressed, so it is not necessary to limit difference descriptions to prevent overlap.

e. Identification of Compliance Methods. Once differences and difference effects are described, methods of comprehensively addressing each difference (compliance methods) are shown. With the difference descriptions, redundancy may occur. The same training or checking compliance item shown for one item may also be associated with and credited for other items. The objective for description of compliance methods is to show that each difference is addressed in some appropriate way, to show that the method and level chosen is consistent with the FSB MDRs, and example ODRs at a level at least equal to that required by the MDRs.

f. When Proposed ODR Compliance Methods Do Not Meet MDRs. If proposed ODR compliance methods do not satisfy MDRs or other FSB report constraints, the following alternatives exist:

(1) Differences may be reduced or eliminated by modification of aircraft, systems, or procedures.

(2) Other training methods or devices that fully comply with MDRs and other FSB provisions may be acquired, leased, or otherwise applied.

(3) Pilot assignments may be separated for a fleet so that mixed flying of related aircraft does not occur.

(4) MDR change proposals may be requested through FAA POIs to the FSB. If FSB authorized changes to the MDRs are made, the operator may then apply the revised criteria.

g. Maximum Number of Related Aircraft. Comparative differences between related aircraft may comply with FSB provisions; other limitations may also constrain mixed fleet flying. To prevent cumulative effects of differences for multiple related aircraft from adversely affecting pilot performance, the FAA sets guidelines for the maximum number of related aircraft to be flown. At difference level A, the number of related aircraft is greater since differences are fewer and less significant, whereas at level D or level E the number of related aircraft that can be flown is fewer because the differences are greater. To accommodate an increase in the differences level, increasing limitations are placed on the number of related aircraft that may be flown at the higher levels. Paragraph 7k contains specific guidance to POIs for approval of multiple related aircraft.

h. Application, Review and Approval. Paragraph 7 describes the FAA review and approval process. The process is summarized here to facilitate ODR table preparation. An operator submits the proposed ODR tables and necessary supporting information to the POI to apply for differences program approval. The supporting information may include any appendices to the ODR tables necessary for evaluation of the proposal, a transition plan if needed, and a proposed schedule for implementation. POIs may also require review of such pertinent and additional information as copies of bulletins, manuals, or other training materials, before they approve proposed ODRs. If devices are proposed that are not approved by the POI, or evaluated by the NSET, a review and approval of those training devices may be necessary before ODR approval. Sufficient lead-time must be provided to the FAA for review. Lead-time depends on such factors as

the complexity of program, proposed difference levels, number of related aircraft, other operator precedents already set, and FAA experience with the proposed aircraft, training devices, and methods. Many noncontroversial level A changes can be reviewed and approved in a few days. Complex programs with many related aircraft can require months for review and approval. It is the operator's responsibility to consult with the POI to ensure that sufficient lead-time is provided to review initial submissions or changes. At least 60 days notice is acceptable for most programs. After the operator submits the program proposal, POIs compare the proposed ODR with the FSB report provisions including the MDRs. POIs consult pertinent FAA policy directives (Handbook, notices, Safety Alerts for Operators (SAFO), etc.) for interpretations or guidance in accomplishing the review. In certain instances the POI must consult with the FSB before ODR approval. If ODRs are consistent with FAA policies and within the constraints of the MDRs and example ODRs, the POI will approve the operator's ODR tables and its proposed differences program. When approved by the FAA, ODRs establish the basis for training, checking, and currency programs for a given fleet for that operator.

i. Implementation Provisions Transition Period. In certain instances, a transitional period, agreed upon by the POI with FSB concurrence, may be necessary to permit operators to continue operations under previously approved programs until they are able to comply with FSB requirements. This is necessary when FSB provisions are initially set or revised and provisions require lead-time for program preparation, device acquisition, or to revise previously approved programs. Paragraph 7m and the individual FSB reports for each type-certificated aircraft discuss FAA approval of transition provisions.

j. ODR Revision. ODR revisions are initiated when changes occur in an operator's fleet relating to differences, difference effects, or compliance methods. ODR revisions are appropriate when such changes affect pilot knowledge, skills, or abilities relevant to flight safety. Examples of program changes or factors that may require ODR revision include:

(1) Addition or deletion of aircraft in a fleet;

(2) Modification of base aircraft or comparison aircraft in a fleet;

(3) Change of base aircraft;

(4) Discontinuation of use, addition of new or modification of training devices referenced by ODRs;

(5) Revision of training methods with a resulting change in compliance levels;

(6) Changes in effects of differences such as revised procedures, performance, or flight characteristics;

(7) FAA revision of MDRs or other FSB provisions;

(8) Adverse OE or training and checking experience that dictates inadequacy of ODRs, MDRs, or other FSB provisions;

(9) FAA surveillance results, enforcement actions, or failure of an operator to comply with provisions of their approved ODRs; and

(10) Other factors as determined by the POI.

Note: Revisions to ODRs are approved using the same procedures as for initial ODR's approval.

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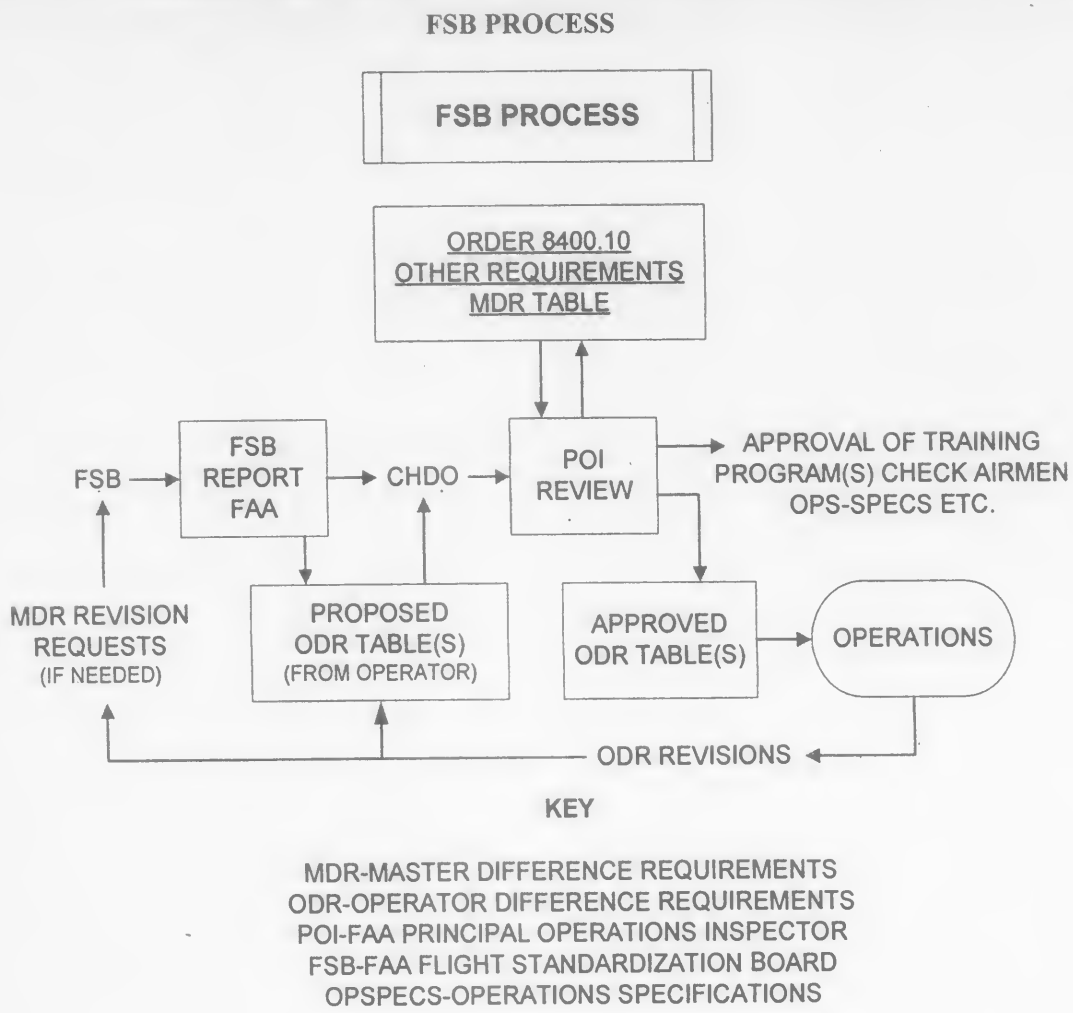

Figure 8

7. FAA Review and Approval of Operator Programs

a. General.

(1) *FAA Responsibilities.* FAA has the responsibility for review, approval, and continuing surveillance of individual operator programs consistent with this AC and FSB provisions. Within a CHDO, POIs have the responsibility for program review and approval. In addition to review, approval, and continuing surveillance of operator programs, CHDO and other district offices manage pilot certification consistent with the criteria of this AC and FSB provisions.

(2) *Approval Basis.* FAA approvals are based on FSB report findings and policy guidance included in FAA directives (*e.g.*, Order 8400.10, Air Transportation Operations Inspector Handbook, notices, SAFOs, etc.). Except as provided for in transition plans, all preparations must be complete and provisions approved before conducting training, checking, or establishing currency under this AC and an FSB report.

b. Operator Application of ODRs.

(1) *Operators Using Related Aircraft in Mixed fleet Flying.* If FSB requirements are published, operators operating aircraft in mixed fleet flying must apply provisions of this AC and the FSB report. AC criteria and FSB MDRs must be applied anytime pilots operate mixed fleets between training and checking events.

(2) *Threshold Requiring ODR Preparation.* Even though an operator has different configurations of aircraft used in mixed fleet flying, there is some threshold below which ODR tables and POI approval is not required. The threshold requiring AC and ODR application occurs when differences in related aircraft affect pilot knowledge, skills, and/or abilities pertinent to flight safety. If systems, controls, indications, procedures, or maneuvers are different and these differences have an effect that significantly relates to what the pilots needs to know or do for safe mixed fleet flight operation, then an operator must prepare ODR tables and seek FAA approval. Conversely, ODR tables would not need to be prepared in situations that do not affect flight safety. In such instances ODR tables are not needed even though pilots routinely operate several related aircraft. A minimum threshold is set to preclude unnecessary administrative assessment of mixed fleet flying, which has no safety implications. If changes to the fleet do not affect pilot knowledge, skills, or abilities affecting flight safety, then such changes need not be considered in addressing FSB or this AC provision.

(3) *FAA Review of ODR Proposals.* After preparation the carrier submits proposed ODR tables and supporting information to the CHDO and POI for review and approval. POIs evaluate the following:

(a) The operator has made an appropriate identification of a base aircraft.

(b) Operators have comprehensively identified differences in the particular fleet. This includes appropriate ODR table comparisons between the base aircraft and each related aircraft.

(c) The operator's assessment of the affects of differences on flight characteristics and procedures for the base aircraft and each related aircraft are suitable and valid.

(d) The compliance methods listed are consistent with the requirements of the MDR tables, footnotes, other pertinent FSB report provisions, FAA Order 8400.10, and associated advisory materials.

(e) ODR provisions adequately address any "subtle differences" between related aircraft that have a possibility of inducing potentially serious pilot errors.

(f) Training materials, methods, devices, and simulators proposed are acceptable, approved by the NSET if necessary, or if FSB provisions apply, the ODR tables meet FSB constraints.

(g) ASIs, APMs, and APDs are prepared to apply FSB report checking standards.

(h) Implementation plans are adequate and consistent with FSB provisions and other FAA policy.

(i) Other factors determined necessary by the POI are considered and any requirements met.

(4) The POI uses the example ODR tables and the MDRs provided in the FSB report as a basis for evaluating the suitability of a particular operator's proposed ODR table. The MDR always remains the primary basis for comparison. The AEG should be consulted in the absence of conclusive guidance in making such judgments. Guidance for evaluation of specific system or maneuver items may be found by comparison of the proposal with the example ODR table shown in the FSB report and other approved ODR tables. The operator may use devices, techniques, or methods of an equal or higher difference level. Critical methods must be at least at the level specified by the FSB on the MDRs and shown in the example ODR table. Actual ODR tables proposed by the operator may show a variety of compliance methods to satisfy a particular item, ranging from level A through the level required by the MDRs. For example, if the MDR requirement is a minimum of level C, the operator may propose to use a combination of level A bulletins, level B slide tape presentations, and level C training devices to satisfy pertinent items. However, at least level C must be shown for critical items. The operator may choose to satisfy a level C MDR provision with level D or level E methods.

(5) *ODR Review Example.* The following is an example of the process for review of a specific item on a proposed ODR table. For each proposed ODR item both the FSB example ODR table and MDRs are consulted and compared with the operator's proposal. If the MDRs specify that level C devices are needed for training, checking, and currency between the base aircraft and a related aircraft and the example ODR table shows applicable level C systems differences or maneuvers, then the POI should ensure that the proposed ODR table submitted also shows at least level C for those pertinent systems or maneuvers.

c. Base and Other Aircraft Identification.

(1) *Selecting the Base Aircraft.* Base aircraft are defined in Appendix 1. In general, base aircraft are used as reference for comparison of differences that affect, or could affect, pilot knowledge, skills, or abilities pertinent to flight safety. A base aircraft should typically be the aircraft that the operator trains to first, the aircraft that the operator has the largest number of, the aircraft most pilots fly frequently, or the aircraft that represents a configuration that the operator eventually will have as a standard. Another aircraft may be selected as a base aircraft when the previous base aircraft is being phased out, converted to a new configuration, or other such factors. A base aircraft may be redesignated at the discretion of the operator with FAA concurrence. A base aircraft is identified by make, type-certificated aircraft, model, and series or other distinguishing classifications. Classification should distinguish pertinent differences in configuration, handling characteristics, performance, procedures, limitations, controls, instruments, indicators, systems, installed equipment, options, or modifications.

(2) *Identifying Related Aircraft.* A related aircraft is an aircraft or a group of aircraft with the same characteristics that have pertinent differences from a base aircraft. Pertinent differences are those that require different or additional pilot knowledge, skills, and/or abilities that affect flight safety. Differences considered pertinent are those relating to configuration, handling characteristics, performance, procedures, limitations, controls, instruments, indicators, systems, installed equipment, options, or modifications. Related aircraft can exist between different models, series or within a model/series. When designated in FSB reports, any aircraft included in a MDR table is considered a related aircraft. Like base aircraft, operators designate related aircraft by one of the following:

(a) Model/series.

(b) FAA registration "N number".

(c) Operator tail number.

(d) Any other classification that can uniquely distinguish pertinent differences between each related aircraft group and a base aircraft.

(3) *Accounting for Each Related Aircraft.* The important factor in base and related aircraft identification and ODR table preparation is that regardless of the combination used, there should be direct and complete traceability of both differences and compliance methods. There must be a clear description showing the adequacy of compliance methods to assure proper training, checking, and currency to safely operate each aircraft assigned.

d. Approval of ODRs.

(1) *Approval Method.* Following review and determination that an operator's program meets pertinent FSB requirements, the POI approves that particular program by signing ODRs. ODR tables are approved for each applicable related aircraft. Signature of ODRs or revisions, together with other relevant documents such as training programs and OpSpecs, constitute approval by the POI of that operator's differences training, checking, and currency program requirements. ODR tables are used for most programs. In instances where aircraft have only a few minor differences at level A, approval may take the form of a letter including necessary information in lieu of using tables.

(2) *POI Authority at level A and B.* POIs have authority at A and B level to make determinations without AEG coordination if compliance methods are within the MDRs. This is important to provide timely response to minor differences requests. The results of these determinations are forwarded to the pertinent FSB for permanent retention, comparison, and future FSB evaluation.

(3) *POI Coordination Required at Level C and Above.* At C, D, and E level the POIs may approve operator programs only if the programs are clearly within the requirements of the MDRs. If there is doubt whether or not an operator's program meets the MDRs, the POI consults with the FSB well before the operator's program approval date, to allow time for review and resolution of open issues. If the operator request is unclear or less strict than the MDRs requirements, the POI may not approve that program.

(4) *Initial and Final Approval.* Like other training programs, POIs may authorize "initial" approval for an assessment period to review program effectiveness. Final approval should be made after suitable experience is obtained (generally within 6 months) IAW criteria in FAA Order 8400.10. In situations where initial approval is completed but final approval is delayed because of continuous revision or that results are uncertain should be avoided. When operators propose to add aircraft, modify existing aircraft, change base aircraft, phase aircraft out, or take other actions, which make the applicability of ODRs unclear, then the ODR tables for that operator must be updated. For some operators a continuous series of ODR table modifications will occur as its fleet changes. Nevertheless, the ODR tables must be current at all times. ODR tables are used as a primary means for establishing regulatory compliance and managing surveillance of training, checking, and currency programs.

e. POI Uncertainty Regarding Program Compliance. The POI must resolve any questions before approval if it is not clear that the operator's proposal complies with the MDR table and other FSB provisions. When issues cannot be resolved to clearly establish compliance with MDRs or other FSB report provisions, the AEG/FSB should be consulted. Early in program development, POIs may need more consultation with FSB members. In mature programs, better examples will be available in FSB reports, other operator ODR, and the manufacturer's larger databases for operators.

f. Proposals that do not Comply with FSB Provisions. If the operator proposes a program less restrictive than the requirements of the MDRs or other FSB

provisions, then options of paragraph 6h. apply. If an operator wishes to pursue a proposal less restrictive than the FSB report or MDRs, details of the proposal and supporting documentation should be presented to the POI for forwarding to the AEG/FSB. The POI will evaluate the carrier's proposal and, if justified, forward the proposal with recommendations for revision of MDRs.

g. FSB Revision of MDRs or Other FSB Provisions. When requested by a POI, the FSB reviews an operator's proposals and if necessary modifies MDRs and other FSB provisions. If master requirements have been amended and the proposal meets the revised requirement, the POI may approve the proposal. Other operators can also apply for similar approval or reductions based on the revised FSB report. Major changes in the MDR table may require review by the full FSB. The FSB may consider minor changes or interpretations on an ad hoc basis between FSB meetings for that aircraft. For some requests changes can be made based on existing or the supplied information. Complex cases may require testing to be conducted by the applicant before the MDR table is changed. Should the MDRs be updated to accommodate a change request, the proposed ODR can be approved within the new MDRs. Proposals for revisions to levels C, D, or E must be forwarded to the FSB for resolution through the formal FSB process. Allow at least 60 days for FAA evaluation of such proposals.

h. Proving Tests. When a related aircraft with difference levels C or greater is introduced by an applicant, proving runs may be needed. Proving runs are usually needed for levels D and E. At level E, regulatory provisions for proving runs must be met. Training flights, test flights, delivery flights, and demonstration flights may be credited toward levels C and D proving requirements if necessary operational experiences are demonstrated and the flights are IAW an FAA-approved plan. FAA Order 8400.10 describes policies for FAA approval of proving tests.

i. Line-Oriented Flight Training (LOFT), LOS, or SLF. When operators have LOFT/LOS/SLF programs and additional related aircraft are approved, the POI must review those LOFT/LOS/SLF programs to assure applicability to each related aircraft. SLF in the aircraft, or in some instances simulator (as determined by the FSB), may be necessary IAW provisions of the FSB report and with the approval of the POI.

j. OE. As described in this AC and FSB reports, OE is consistent with definitions and requirements of 14 CFR. OE credit, as provided by the FSB for experience with related aircraft, may be permitted with the approval of the POI.

k. Limitations on the Total Number of Related Aircraft.

(1) *Mixed Flying of Multiple Related Aircraft.* When mixed fleet flying involves pilots operating more than a base aircraft and a single additional related aircraft, additional constraints limiting the total number of aircraft may apply. Operation of multiple related aircraft requires a review by the POI to ensure that pilots can retain and properly apply necessary differences information or skills for each related aircraft without confusion. When more than two related aircraft are flown, POIs must specifically ensure that subtle or compounded differences between the various related aircraft do not result in confusion of procedures, maneuvers, or limitations. ODRs proposed for the overall combination of aircraft to be flown must be examined to ensure the following:

(a) That multiple differences do not result in confusion of requirements or an excessive level of complexity for pilots to adjust to or retain important differences information;

(b) That subtle variations in differences information are not mistakenly applied and lead to unsafe conditions; and

(c) That the amount of differences information is not excessive, not applied to the wrong aircraft, or not forgotten.

l. Compliance Checklist for CHDOs. FSB reports provide a CFR compliance checklist. The checklist identifies those 14 CFR parts, ACs, or other FAA requirements that are in compliance. Pertinent 14 CFR items not shown on the checklist or items shown but not reviewed by the AEG/FSB for compliance must be reviewed by the CHDO before POI approval of OpSpecs permitting those aircraft to be used under 14 CFR. Items found not compliant by the AEG/FSB must be reconciled and compliance established before operation. The compliance checklist is an aid to CHDOs used to show the status of those 14 CFR items evaluated by the AEG/FSB, but does not comprehensively address all possible 14 CFR items and ACs that an operator may need to demonstrate compliance. OpSpecs, exemptions, deviations, or other factors, which the AEG/FSB may not be aware of, may also apply and may modify compliance status or methods shown in the checklist.

m. Implementation of FSB Provisions. These provisions are addressed in each type-certificated aircraft FSB report and must comply with any criteria shown in that report. POIs approve implementation provisions at the same time ODR tables or revisions are approved. Operators that do not elect to apply this AC or implement FSB provisions specified by the FSB report require approval by the Director, Flight Standards Service, AFS–1.

n. Aircraft That Do Not Have an FSB Report. When an FSB report is not prepared for a given type-certificated aircraft, or when MDRs or other provisions are not shown, programs are approved IAW the 14 CFR, Order 8400.10, and other pertinent inspector guidance material.

8. Application of Requirements to Airmen Certification

a. General. In addition to master requirements, the FSB report contains specifications for administration of pilot type rating or proficiency checks by FAA inspectors or operator check airmen. FAA pilot certification inspectors, APMs, operator check airmen, APDs, and DPEs should be familiar with FSB provisions regarding the proper administration of any necessary checks or evaluations for type-certificated aircraft or their series covered by the FSB report.

b. Checking Specifications. FAA pilot certification inspectors and APMs should assure proper application and administration of checks required by FSB reports as constrained by the MDR and specific ODR tables. FSB reports describe difference levels which constrain the various maneuvers, procedures, or unique factors to be considered by inspectors or check airmen when administering checks or observing OE. For example, certain nonnormal procedures may be required and others may be waived (for example no flap landings). Other unique procedures or maneuvers particular to an type-certificated aircraft may be necessary. Any unique configurations or failure conditions that should be observed while administering checks are described.

c. Checks Regarding Complex Systems.

(1) Partial proficiency checking is required for differences associated with systems that are determined to be at or greater than level C.

(2) Complex systems checks include hands-on operation and ensure demonstrated procedural proficiency in each applicable mode or function. Specific items and flight phases to be checked are specified (e.g., initialization, takeoff, departure, cruise, arrival, approach, and pertinent nonnormals). The FSB may require additional training beyond that which is otherwise required by 14 CFR to qualify in each type-certificated aircraft. This training may be in the form of LOFT, LOS, or SLF.

9. Training Device and Simulator Approval

a. Training Device and Simulator Characteristics.

(1) *Minimum Device and Simulator Characteristics.* AC 120–40 and AC 120–45 describe minimum acceptable characteristics and standards for flight training devices and simulators. The FSB directly applies these standards in difference level specifications. When applicable, the FSB specifies other device characteristics as the minimum acceptable for differences training, checking, or currency between certain related aircraft. The FSB reports identifies these characteristics.

(2) *Coordination with the FAA National Simulator Program (NSP).* When the FSB specifies device characteristics, the FSB coordinates with the NSET to ensure simulator criteria compatibility and approval process definition. If device or simulator characteristics have not been previously recognized by the FAA as meeting the provisions of this AC, FSB, or the simulator evaluation and approval process, they must be evaluated by the NSET in consultation with the FSB before use in an approved program.

b. Aircraft/Simulator/Device Compatibility.

(1) *Devices and Simulators to Match Aircraft.* When pilots fly related aircraft in a mixed fleet, the combination of simulators and training devices used must satisfy MDR and ODR provisions specific to the aircraft flown by that operator. The POI, FSB, and the NSP must address the acceptability of differences between training devices, simulators, and aircraft operated as appropriate. The FSB, POI, and when necessary, the Air Transportation Division,

AFS–200, or the General Aviation and Commercial Division, AFS–800, as applicable, identify acceptable credit for simulators and training devices.

(2) *Differences Between Devices, Simulators, and Aircraft.* When differences exist between related aircraft and the proposed training devices, or simulators to be used, then MDRs and ODRs may be used as guidance for acceptance and approval as is done between aircraft. The FSB, the NSP, and AFS–200 or AFS–800, as applicable, should be consulted when uncertainty exists regarding the use of MDRs and ODRs for acceptance or approval of these devices. The FSB will not recommend use or approval of devices that differ significantly from the actual operated aircraft.

c. Simulator and Device Approvals.

(1) *NSP Representation to the FSB.* An NSP member may serve as an advisor to the FSB or a member of the FSB, to address designation of and approval processes for devices and simulators at C, D, and E difference levels.

(2) *Coordination of NSP Criteria with the FSB.* National simulator team development of criteria for training devices and approval test guides for new aircraft are coordinated with the FSB. This ensures compatibility of FSB/NSP requirements and effective use of resources for development of approval test guides and determination of FSB requirements.

10. Review and Approval

FSB reports are approved as designated by AFS–1. In the event that revision of an FSB report is necessary, the FSB is provided with necessary policy guidance to implement applicable changes.

11. Appeal of FAA Decisions

When there is disagreement with provisions of an FSB report, that disagreement may be expressed to the FSB chairman for the pertinent type-certificated aircraft. If an issue cannot be resolved, the issue may then be addressed to AFS–200. Additional information, data, or analysis may be provided to support differing views regarding the FSB provisions in question.

APPENDIX 3.—RATINGS AND LEVEL TESTS—PLANNING AND APPLICATIONS

1. Preparation
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3. Function Equivalence-Level A or B Test 1 (T1)
   a. Test Purpose
   b. Test Subjects
   c. Test Process
   d. Safety Pilot
   e. Successful Test
   f. Failure of Test
4. Handling Qualities Comparison Between Aircraft-Test 2 (T2)
   a. Test Purpose
   b. Test Subjects
   c. Test Process
   d. Safety Pilot
   e. Successful Test
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5. System Differences Test and Validation of Training and Checking-Test 3 (T3)
   a. Test Purpose
   b. Test Subjects
   c. Test Process
   d. Successful Test
   e. Failure of Test
6. Currency Validation-Test 4 (T4)
   a. Test Purpose
   b. Test Subjects
   c. Test Process
   d. Successful Test
   e. Failure of Test
7. Initial or Transition Training/Checking Program Validation-Test 5 (T5).
   a. Test Purpose
   b. Test Subjects
   c. Test Process
   d. Successful Test
   e. Failure of Test
8. Common Takeoff and Landing Credit (CTLC)-Test 6 (T6)
   a. Test Purpose
   b. Test Subjects
   c. Test Process
   d. Successful Test
   e. Failure of Test

APPENDIX 3.—RATING AND LEVEL TESTS—PLANNING AND APPLICATION

1. Preparation

a. The pilot type rating, difference level definition, and test process are initiated when an applicant presents an aircraft for type certification. If the applicant presents a candidate aircraft to the Flight Standardization Board (FSB) as a new aircraft type certification with no anticipated application for pilot type rating credit for similarities with aircraft previously type certificated, then the FSB analyzes the training program requirements using test T5. The results of T5 will determine a separate pilot type rating and the minimum required training, checking, and currency standards as applicable to that type-certificated aircraft. If the applicant presents an aircraft seeking pilot training, checking, or currency credit, based on similarities with an aircraft previously type certificated, a series of possible tests (T1/T2/T3) are developed and used to determine its level of difference with the base aircraft of comparison. The results of these tests will determine whether the aircraft pilot type rating is a common pilot type rating between separate type-certificated aircraft; or the same pilot type rating of same type-certificated aircraft. The level of differences will determine the minimum required training, checking, and currency standards as applicable to the candidate aircraft. T6 comparisons may permit Common Takeoff and Landing Credit (CTLC) between different type-certificated aircraft. In Appendix 2 the details of these situations provide further amplification.

b. To begin the evaluation process, the applicant identifies candidate aircraft. The aircraft are then assigned to logical aircraft groups to be described in Master Difference Requirements (MDR) tables and the FSB report.

c. The applicant identifies major differences pertinent to the aircraft and makes comparisons with the proposed candidate aircraft. A differences document (i.e., an appropriate sample Operator Difference Requirement (ODR) table) summarizes the identified differences. Since combinations of related aircraft may be numerous and only typical differences are needed at this stage for test definition, the applicant may select representative ODRs for preparation.

d. Based on the above analysis (including preliminary flight test results or flight simulation estimates, if available), the applicant proposes difference levels to be specified in each cell of the MDR table for the various aircraft combinations.

e. The applicant proposes applicable elements of the test process (T1 through T5 and T6 for CTLC) and a plan for validation of the intended difference levels. Specific aircraft, times, devices, etc. are identified to conduct the required tests for the candidate aircraft. Included in the proposal are any necessary interpretations of expected results using established standards. Any special, unique, or additional definitions of successful outcomes are also identified.

f. The scope of T1 through T6 is keyed to basic visual flight rules (VFR) and instrument flight rules (IFR) operations in the National Airspace System (NAS).

g. FAA/applicant agreement is reached on the grouping of aircraft, proposed tests, test plans, schedules, subjects, and interpretation of possible outcomes.

h. Subject qualifications are addressed at the time of test specification when test agreement is reached with the applicant. Test subjects for all tests except T6 are drawn from the FAA. Subject selection considers the factors such as the following:

(1) Needed background skills of candidates (previously qualified aircraft);

(2) General flight experience and currency;

(3) Test requirements such as location, short notice access, and skills needed for subjects;

(4) Technical areas, qualifications, or experience that subjects should not have to avoid test prejudice;

(5) Eventual FAA geographic or operator related distribution requirements for ASI, APM, and POI personnel; and

(6) Other special experience as needed for a particular program.

i. During preparation for testing and evaluation of results, appropriate Aircraft Certification Flight Test Branch coordination is accomplished so that flight characteristic issues and, in particular, special flight characteristics can be suitably identified and addressed.

Note: Tests T1 and T2 must be conducted in the candidate aircraft for the determination of training, checking, and currency requirements. However, the FSB chairman may elect to use a simulator before its qualification by the National Simulator Evaluation Team (NSET). This may be done for selected FSB T-tests that involve partial-task evaluation of systems or components, which do not directly relate to aircraft handling qualities or core pilot skills. These types of tests would normally require only a training device with no visual or motion capabilities.

2. Pilot Type Rating Determination Through Analysis-Level A or B Training Only

a. Typically, with the introduction of a new aircraft, or when training credit is sought in a comparison of a base and candidate aircraft, the T1 through T5 testing process determines pilot type rating. Not all changes or modifications to an aircraft or on occasion, the certification of a related aircraft may require flight-testing to assess their impact upon pilot type rating. Pilot type rating determination through analysis may be considered if the changes do not influence aircraft handling, introduce no significant change to systems operation or pilot procedures, and can be addressed at level A or B training.

b. The analysis process can be used if the aircraft handling has not changed significantly. In most cases, it should be obvious that the change will not affect aircraft handling but if additional data is needed to make the determination, the information can be obtained from the assigned FAA Aircraft Certification Service (AIR) or through the applicant's flight test data. Following is a list of typical changes evaluated through the analysis process:

(1) Maximum operating weights (revised aircraft type certificate data sheet (TCDS)).

(2) An engine type or thrust change that does not require significant design changes to aircraft flight controls.

(3) Maximum passenger capacity (revised aircraft TCDS).

(4) Avionic upgrades (Supplemental Type Certificate (STC) or manufacturer production line upgrade).

(5) Proven electronic flight bag installation, (STC or manufacturer production line upgrade).

(6) Passenger to cargo conversions.

c. When the analysis process is completed, it is recorded as a revision to the training courseware and to the existing FSB report for the base and/or candidate aircraft.

3. Functional Equivalence-Level A or B Test 1 (T1)

a. Test Purpose. The T1 test is conducted to determine if training level A or B is appropriate between the base and candidate aircraft.

Note: If the applicant communicates that the training, checking and currency requirements for the candidate aircraft may exceed level B, the T1 test can be waived and the evaluation process then moves directly to the T2 test. By waiving the T1, the applicant acknowledges that differences exist between the base and candidate aircraft, and may demand that training, checking, and/or currency requirements up to but not exceeding level D are applied.

b. Test Subjects. Test subjects are designated FAA FSB members, trained, experienced, and current on the base aircraft with no differences training for the candidate aircraft. The applicant may provide proficiency training to the designated FSB members before testing begins.

c. Test Process. The applicant initiates the test process when they propose that the minimum training, checking, and currency requirements for the base and candidate aircraft are no greater than level B differences. At the discretion of the FSB chairman, the T1 test may be accomplished in a training device/simulator or airplane as appropriate. T1 is typically conducted using one group of test subjects. Subjects will initially be given a "no jeopardy" flight check for their base aircraft to calibrate performance before taking the pertinent flight check in the candidate aircraft being evaluated. The flight check undertaken in the candidate aircraft will address the differences between the base aircraft and candidate aircraft. The test may be administered or observed by more than one FSB member to ensure consistency and uniformity of test procedures and common understanding of subject performance and outcomes.

d. Safety Pilot. A "safety pilot," serving as PIC in the aircraft and functioning as pilot monitoring in either seat, will intervene to prevent damage to the aircraft or to limit maneuvers that endanger safety of flight.

e. Successful Test. FSB members decide the outcome of the T1 test consistent with previously agreed upon criteria. The FSB determines the areas of differences training required and specifies necessary devices or training limitations. If the T1 test is passed, the pertinent aircraft pairs are assigned to level A or level B training differences. Successful completion of T1 results in awarding of the same or a common pilot type rating.

f. Failure of Test. If the T1 test is failed and retesting is not considered, level A or B cannot be assigned. This generally requires completion of T2 and T3. If requesting training credit, the applicant may ask for and receive credit for those items passed in T1. T1 retesting may be considered at the discretion of the FSB.

4. Handling Qualities Comparison Between Aircraft-Test 2 (T2)

a. Test Purpose. The T2 test compares handling qualities between the base and candidate aircraft to determine whether training level B, C, or D is appropriate. At the discretion of the FSB chairman the T2 test may be completed through analysis, without requiring an aircraft flight. Determining if the analysis process can be used requires verification that the aircraft handling has not changed significantly as described in the "test process". In most cases, it should be obvious that the change will not affect aircraft handling but if the determination requires additional data, the information is obtained from the assigned FAA Aircraft Certification Office or through the applicant's flight test data. With FAA agreement, elements of T2 may be incorporated within the T3 test to verify that an advanced simulator or aircraft training is not needed to address handling qualities.

Note: If T2 is conducted on an aircraft that is expected to require a separate pilot type rating with CTLC, credit will be validated by using the T6 process.

b. Test Subjects. Test subjects are designated FAA FSB members, who are trained, experienced and current on the base aircraft with no differences training for the candidate aircraft. Training to proficiency may be provided to the designated FSB members by the applicant before the start of testing.

c. Test Process. The applicant initiates the test process when they analyze available flight or simulation test data, and aircraft design or system differences, and determine that handling similarities exist between the base and candidate aircraft. From this determination the applicant makes their T2 proposal. Before the test, representatives of the FSB review the T2 test profile to ensure that critical handling quality aspects of the candidate aircraft are examined. The flight evaluation consists of relevant parts of a proficiency check as determined by the FSB chairman. T2 consists of a comparison between selected pilot certification flight check maneuvers (normal and nonnormal) administered first in the base aircraft (using either the actual aircraft or a level C or D simulator) then in the candidate aircraft. Although T2 testing should always be accomplished in the candidate aircraft, some portions that significantly affect aircraft safety, such as flight control failures, may be conducted in a simulator suitable for the test. Subject pilots are evaluated on performance of required maneuvers consistent with standards set by 14 CFR and an assessment of the degree of difficulty in performing maneuvers in the candidate aircraft compared to the base aircraft. The test may be administered or observed by more than one FSB member to ensure consistency and uniformity of test procedures and common understanding of subject performance and outcomes.

d. Safety Pilot. The safety pilot serving as PIC in the aircraft and functioning as pilot monitoring in either seat, will intervene to prevent damage to the aircraft or to limit maneuvers which endanger safety of flight. The safety pilot can only assist the subject pilot in areas unrelated to the handling qualities determination. For example, the safety pilot can remove impediments to progression of the test but cannot fly, coach, or train the subject on any aspect of the test related to handling, vision cues, or motion cues. The safety pilot may not actuate primary flight controls during the evaluation, or instruct, lead, or coach test subjects in any manner. The safety pilot may:

(1) Perform all routine pilot monitoring duties.

(2) Set up or adjust systems, including those normally operated by the pilot flying in accordance with pretest agreements.

(3) Address or resolve procedural impediments.

(4) Manage and satisfy checklists.

(5) Make normal call outs.

e. Successful Test. The FSB members decide T2 test outcome consistent with previously agreed upon criteria. Acceptable pilot performance in completion of designated maneuvers, without differences training, establishes that the candidate and base aircraft are sufficiently alike in handling characteristics to permit assignment of level B, C, or D. The test process can then advance to differences training and the T3 test.

f. Failure of Test. Failure of T2 means that major handling differences exist during critical phases of flight or that numerous less critical differences were identified that warrant training in a full flight simulator or aircraft. Accordingly, level E differences will

be assigned and the FAA will issue a separate pilot type rating. With a T2 failure, the next step in the testing process is T5, to validate level E requirements and the proposed training course. Failure of the T2 does not necessarily mean that the base and candidate aircraft do not share a high degree of system and/or handling commonality. The applicant may elect to use the data collected during the T2 process to justify approval of a shortened pilot type rating course for pilots that are trained on the base aircraft and are transitioning to the candidate.

5. System Differences Test and Validation of Training and Checking—Test 3 (T3)

a. Test Purpose. Test 3 is used to evaluate the proposed differences training, checking, and training devices at levels B, C, or D.

b. Test Subjects. Test subjects are designated FAA FSB members, trained, experienced, and current on the base aircraft with no differences training for the candidate aircraft. Training to proficiency may be provided to the designated FSB members by the applicant before the start of testing.

c. Test Process. T3 is a system differences test and a validation of training and checking. It is used when the equivalent handling test (T2) is successfully completed or when T2 is being incorporated as part of T3. T3 is administered in two phases following differences training of a pilot in the candidate aircraft.

(1) *First Phase.* The successful completion of a pilot certification flight check to assess pilot knowledge, skills, and abilities pertinent to operation of the aircraft being tested. If a full check is proposed, the tests are similar to those used for T1 as described in paragraph 2 above. If a partial check is used, the process is similar, but the FSB determines the test items based on the applicant's proposals. The first phase will include either a proficiency check as defined by 14 CFR, partial proficiency check, or individual aircraft system operation check administered to pilots in the simulator or candidate aircraft. The check is administered assuming currency in the base aircraft and completion of the proposed training in the candidate aircraft.

(2) *Second Phase.* Line oriented flying (LOF) following completion of the flight check. The LOF phase of the test is used to validate the training and checking being proposed, fully assess particular difference areas, examine implications of mixed fleet flying, assess special circumstances such as minimum equipment list (MEL) effects, and identify the effects of pilot errors potentially related to the differences. The test is done in a real line flight environment that includes typical weather, routes, airports, air traffic control (ATC), and other factors that are characteristic of those in which that aircraft will be operated. LOF tests may be conducted in test aircraft, simulators, or with a combination of these in conjunction with function and reliability certification tests. The LOF portion of the test may be used to evaluate complex issues or issues that cannot be fully detailed in a brief flight check since a check only samples pilot knowledge and skills in a limited and highly structured environment. LOF is an integral part of T3 and must be successfully completed before "initial" assignment of difference levels. In developing and selecting scenarios for evaluation consider the following:

(a) Likelihood of occurrence;

(b) Possible consequences; and

(c) The timeliness of pilot discovery and correction.

d. *Successful Test.* The FSB members decide the outcome of the T3 consistent with previously agreed upon criteria and completion of LOF with appropriate pilot performance. Passing T3 leads to setting respective difference levels and validates differences training and checking at level B, C, or D between related aircraft.

e. Failure of Test. Failure of T3 occurs with either failure of the check, agreed criteria, or unsatisfactory performance during the LOF portion of the test. In certain failure cases, T3 can lead to assignment of level E and a separate pilot type rating. The following are examples that may lead to the assignment of level E differences:

(1) T3 experience or difficulties that show the need for assignment of training levels approaching typical initial/transition levels.

(2) T3 pilot performance that indicates that devices or methods associated with level D are not adequate to achieve training or checking objectives.

(3) Repeated failures of attempts to pass T3 test at level D training differences. In the case of retesting, new subjects may be required at the discretion of the FSB Chairman.

Note: Repeated failure of test at level D differences by one or more subject's (pilot) inadequate performance, that is not an individual subject's failure due to sub-par or atypical personal performance as determined by the FSB, may lead to assignment of level E differences.

6. Currency Validation—Test 4 (T4)

a. Test Purpose. The T4 test is a currency test that can be used when an applicant seeks relief from existing FSB currency requirements. In the context of this AC, currency addresses system procedural and maneuver differences between related aircraft. T4 does not include takeoff and landing recency of experience.

b. Test Subjects. Designated FAA FSB members.

c. Test Process. If an applicant desires a change in the currency requirements, a T4 test may be conducted. This test may be done before or after the aircraft enters into service. In the event the test cannot be done before entry into service, the FSB established limits apply. Criteria that may be used by the FSB to set level B, C, D differences for currency for initial FSB determinations include the following examples:

(1) Complex flight critical systems affecting control or navigation.

(2) Critical nonnormal maneuvers differing between related aircraft (e.g., V1 engine failure, emergency descent, etc.), requiring one acceptable demonstration/training or checking event (typically 6 months but demonstration period may also vary by pilot position).

(3) Secondary systems (e.g., Oxygen or auxiliary power unit (APU)).

d. Successful Test. The FSB members decide the outcome of T4 consistent with previously agreed upon criteria. A successful test validates that the proposed less restrictive currency provisions are accepted as a means of compliance with applicable rules, provisions of this AC, and/or currency provisions and provide an equivalent level of safety.

e. Failure of Test. Failure indicates that the proposed less restrictive currency requirements do not provide an equivalent level of safety. At the discretion of the FSB, retesting may be appropriate.

7. Initial or Transition Training/Checking Program Validation—Test 5 (T5)

a. Test Purpose. T5 test validates the applicant's training course(s) at level E (new pilot type rating). It is appropriate when:

(1) A full initial or transition training/checking program requires validation;

(2) An applicant seeks training credits between two aircraft with different pilot type ratings (a typical goal under shortened training programs); or

(3) T2 or T3 are failed.

b. Test Subjects. Designated FAA FSB members.

c. Test Process. There are two methods to accomplish the T5 test process:

(1) *Full Initial or Transition Training/Checking Program Validation.* This method is used when an applicant has developed an aircraft and seeks a new pilot type rating without any credit for commonality with any related aircraft. The applicant develops a training program to qualify and check pilots in the candidate aircraft at level E differences. Subjects are trained, given flight proficiency checks and complete LOF in a process similar to that described in paragraph 5.

(2) *Shortened Transition Training/Checking Program Validation.* This method is used when an applicant has developed an aircraft and seeks a new pilot type rating and credit for commonality with related aircraft. The applicant conducts a handling-qualities evaluation based on the applicant's proposed ODR tables (similar to T2), followed by training and checking program validation (similar to T3). Subjects are trained, given flight proficiency checks and complete LOF in a process similar to that described in paragraph 5.

Note: When an aircraft is assigned level E differences because of a failure of T3 test at level D differences, credit for successfully passing individual elements of the T3 test may be used as justification for not duplicating those elements in the T5 test.

d. Successful Test. The FSB members decide the T5 outcome consistent with previously agreed upon criteria. A successful outcome of T5 validates the proposed training and checking programs.

e. Failure of Test. Failing T5 indicates the proposed training or checking programs require modification. A retest by mutual agreement between the FSB and applicant would normally be required.

8. Common Takeoff and Landing Credit (CTLC)—Test 6 (T6)

a. Test Purpose. The applicant uses T6 when they seek credit between related aircraft toward the takeoff and landing

recency of experience requirements of the applicable 14 CFR parts.

b. Test Subjects. The test should consist of a sufficient number of pilots not trained or qualified in the candidate aircraft. These subjects will be drawn from the manufacturer, industry and the FAA that the FSB determines will represent a statistically relevant cross-section of operational pilots. The participants' experience levels, pilot type ratings and airplane currency should reflect the proficiency difference levels needed to validate testing assumptions.

c. Test Process. Test subjects are first provided refresher training in the base aircraft to establish a baseline of proficiency, then placed in the candidate aircraft, without any training in it, and perform a minimum of three takeoffs and landings without use of the autopilot. It may not be practical to conduct some tests in an aircraft. A simulator may be used to conduct these tests. Test subjects should be evaluated on their ability to fly the aircraft manually through takeoff, initial climb, and approach and landing (including the establishment of final landing configuration). The applicant should consider the effects on the takeoff and landing maneuvers for the following factors when designing the T6 test:

(1) Aircraft weights.

(2) Aircraft center of gravity.

(3) Takeoff and landing crosswinds.

d. Successful Test. The FSB members decide the outcome of T6 consistent the FAA Practical Test Standards (PTS) demonstrating that an equivalent level of safety can be maintained when full or partial credit for takeoffs and landings is given between the related aircraft.

e. Failure of Test. The test subjects' performance relative to the FAA PTS demonstrates an equivalent level of safety cannot be maintained when either full or partial credit for takeoffs and landings is given between the related aircraft.

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Federal Register

Tuesday,
August 28, 2007

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AV12

Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final early-season frameworks from which the States, Puerto Rico, and the Virgin Islands may select season dates, limits, and other options for the 2007–08 migratory bird hunting seasons. Early seasons are those that generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. The effect of this final rule is to facilitate the selection of hunting seasons by the States and Territories to further the annual establishment of the early-season migratory bird hunting regulations.

DATES: This rule takes effect on August 28, 2007.

ADDRESSES: States and Territories should send their season selections to: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, ms MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240. You may inspect comments during normal business hours at the Service's office in room 4107, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert Blohm, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2006

On April 11, 2007, we published in the **Federal Register** (72 FR 18328) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, proposed regulatory alternatives for the 2007–08 duck hunting season, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2007–08 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the April 11 proposed rule. Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings. As an aid to the reader, we reiterate those headings here:

1. Ducks
   - A. General Harvest Strategy
   - B. Regulatory Alternatives
   - C. Zones and Split Seasons
   - D. Special Seasons/Species Management
     - i. September Teal Seasons
     - ii. September Teal/Wood Duck Seasons
     - iii. Black ducks
     - iv. Canvasbacks
     - v. Pintails
     - vi. Scaup
     - vii. Mottled ducks
     - viii. Youth Hunt
2. Sea Ducks
3. Mergansers
4. Canada Geese
   - A. Special Seasons
   - B. Regular Seasons
   - C. Special Late Seasons
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Subsequent documents will refer only to numbered items requiring attention. Therefore, it is important to note that we will omit those items requiring no attention, and remaining numbered items will be discontinuous and appear incomplete.

On June 8, 2007, we published in the **Federal Register** (72 FR 31789) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations and the regulatory alternatives for the 2007–08 duck hunting season. The June 8 supplement also provided detailed information on the 2007–08 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings. On June 20 and 21, 2007, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2007–08 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea-duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2007–08 regular waterfowl seasons. On July 23, 2007, we published in the **Federal Register** (72 FR 40194) a third document specifically dealing with the proposed frameworks for early-season regulations. We will publish the proposed frameworks for late-season regulations (primarily hunting seasons that start after October 1 and most waterfowl seasons not already established) in a late August **Federal Register**.

This document is the fourth in a series of proposed, supplemental, and final rulemaking documents. It establishes final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 2007–08 season. These selections will be published in the **Federal Register** as amendments to §§ 20.101 through 20.107, and § 20.109 of title 50 CFR part 20.

Review of Public Comments

The preliminary proposed rulemaking, which appeared in the April 11 **Federal Register**, opened the public comment period for migratory game bird hunting regulations. We have considered all pertinent comments received. Comments are summarized below and numbered in the order used in the April 11 **Federal Register**. We have included only the numbered items pertaining to early-season issues for which we received comments. Consequently, the issues do not follow in successive numerical or alphabetical order. We received recommendations from all Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the Councils' annual review of the frameworks, we assume Council support for continuation of last year's frameworks for items for which we received no recommendation. Council recommendations for changes are summarized below.

General

Written Comments: An individual commenter protested the entire

migratory bird hunting regulations process, the killing of all migratory birds, and the Flyway Council process.

Service Response: Our long-term objectives continue to include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Having taken into account the zones of temperature and the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory birds, we believe that the hunting seasons provided herein are compatible with the current status of migratory bird populations and long-term population goals. Additionally, we are obligated to, and do, give serious consideration to all information received as public comment. While there are problems inherent with any type of representative management of public-trust resources, we believe that the Flyway-Council system of migratory bird management has been a longstanding example of State-Federal cooperative management since its establishment in 1952. However, as always, we continue to seek new ways to streamline and improve the process.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy; (B) Regulatory Alternatives, including specification of framework dates, season lengths, and bag limits; (C) Zones and Split Seasons; and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussions, and only those containing substantial recommendations are discussed below.

D. Special Seasons/Species Management

i. September Teal Seasons

Utilizing the criteria developed for the teal season harvest strategy, this year's estimate of 6.7 million blue-winged teal from the Traditional Survey Area indicates that a 16-day September teal season is appropriate for the Central and Mississippi Flyways and a 9-day September season for the Atlantic Flyway.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council made several recommendations dealing with early Canada goose seasons. First, the Council recommended allowing the experimental seasons in portions of Florida, Georgia, New York, North Carolina, South Carolina, and Vermont to become operational in 2007. Lastly, the Council recommended that the Service allow the use of special regulations (electronic calls, unplugged guns, extended hunting hours) later than September 15 during existing September Canada goose hunting seasons in Atlantic Flyway States. Use of these special regulations would be limited to the geographic areas of States that were open to hunting and under existing September season ending dates as approved by the Service for the 2007 regulation cycle.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the closing dates for Canada goose hunting during the September goose season in the Northwest Goose Zone of Minnesota be extended through September 22 to coincide with the remainder of the State with a waiver of the experimental season requirements of collecting Canada goose parts.

Written Comments: The Minnesota Department of Natural Resources (Minnesota) provided an evaluation plan for the extension of the framework closing date in the Northwest Goose Zone.

Service Response: We support the Atlantic Flyway Council's request to make the experimental seasons in portions of Florida, Georgia, New York, North Carolina, South Carolina, and Vermont operational in 2007. Data and analysis submitted by the Council shows a minimal impact of these seasons on migrant stocks of Canada geese and demonstrates that they meet the criteria for establishment of special early Canada goose hunting seasons.

We also support the Atlantic Flyway Council's desire to increase opportunities to harvest resident Canada geese during special early Canada goose hunting seasons. In many areas of the Flyway, resident Canada geese remain overabundant. Recent spring population surveys continue to estimate that approximately 1 million geese reside in the States of the Atlantic Flyway—a number far in excess of the Flyway's established goal of 650,000 resident geese. Allowing the use of these special expanded hunting methods would be consistent with our August 10, 2006, final rule on resident Canada goose management (71 FR 45964) and November 2005 Final Environmental Impact Statement on resident Canada goose management, would have a minimal impact on migrant Canada goose populations, would contribute to maximizing the harvest of resident Canada geese in the Flyway, would allow greater flexibility to affected States, would be consistent with the Atlantic Flyway Resident Canada Goose Management Plan, and would provide a simplified, consistent set of regulations throughout the September goose seasons.

In the July 23 proposed rule, we stated that we did not support the Mississippi Flyway Council's request to extend the framework closing date for the September goose season in Minnesota's Northwest Goose Zone to September 22. Our lack of support was based solely on their request to wave the experimental season evaluation requirements (60 FR 45022, August 29, 1995).

Special September Canada goose seasons were implemented for the purpose of controlling local breeding populations or nuisance geese that nest primarily in the conterminous United States (60 FR 45021, August 29, 1995). Prior to 1995, in order to implement a special season, each State was required to conduct a 3-year evaluation to determine whether the take of non-target Canada goose populations (migrants) exceeded 10 percent of the harvest. This evaluation requirement was removed in 1995 for special seasons held September 1–15, but remained in effect for all such seasons, or extensions of seasons, after September 15.

In 1999, Minnesota received approval to initiate a 3-year experimental extension of the September goose season from September 15–22. Minnesota's experiment did not include the Northwest Goose Zone, due to concerns (at that time) about the status and potential impacts to migrant Canada geese. While parts collection, harvest, and banding data obtained in the evaluation of Minnesota's experiment indicated that migrant geese in areas adjacent to the Northwest Goose Zone comprised less than 5 percent of the harvest, we stated in the July 23 proposed rule that granting an extension of the framework closing date without conducting an experiment would be contrary to established criteria for such seasons and would likely invite requests for similar waivers. While we recognize that collection of sufficient parts and harvest data in the Northwest Zone is problematic, Minnesota has now provided us with an evaluation plan to collect parts during the experimental framework extension. As such, we are satisfied with the general approach of the evaluation plan and we approve the Council's request. However, further refinements in the plan may be needed

pending first year data collection results.

B. Regular Seasons

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the framework opening date for all species of geese for the regular goose seasons in Michigan and Wisconsin be September 16, 2007.

Service Response: We concur. As we stated last year (71 FR 51406, August 29, 2006), we agree with the objective to increase harvest pressure on resident Canada geese in the Mississippi Flyway and will continue to consider the opening dates in both States as exceptions to the general Flyway opening date, to be reconsidered annually.

9. Sandhill Cranes

Council Recommendations: The Central and Pacific Flyway Councils recommended using the 2006 Rocky Mountain Population sandhill crane harvest allocation of 1,321 birds, as proposed in the allocation formula, using the 2003–2005 3-year running average.

The Pacific Flyway Council recommended initiating a limited hunt for Lower Colorado River sandhill cranes in Arizona, with the goal being a limited harvest of 5 cranes in January. To limit harvest, Arizona would issue permits to hunters and require mandatory check of all harvested cranes. To limit disturbance of wintering cranes, Arizona would restrict the hunt to one 3-day period. Arizona would also coordinate with the National Wildlife Refuges where cranes occur.

Service Response: Greater and lesser sandhill cranes are presently hunted in parts of their range and have been divided into management populations based on their geographic distribution during fall and winter. The current Flyway Management Plan for the Lower Colorado River Valley Population (LCRVP) of sandhill cranes allows for hunting of this population when the wintering population exceeds 2,500 cranes, a population level now exceeded. In 2005, the Pacific Flyway Council proposed a limited open season on this population. In response to proposal, we stated in the August 29, 2006, **Federal Register** (71 FR 51406) that while we were in general support of allowing a very limited, carefully controlled harvest of sandhill cranes from this population, we did not believe that this limited harvest was of immediate concern, and recommended that prior to initiating such a season, a more detailed harvest strategy be developed by the Flyway Council. We stated that this harvest strategy should be included as an appendix to the management plan prior to any hunting season being initiated. The Pacific Flyway has modified the management plan as recommended.

We prepared a draft environmental assessment (DEA) considering the action to begin a limited harvest of sandhill cranes from the LCRVP by reviewing current management strategies and population objectives, and examining alternatives to current management programs. The preferred alternative in the DEA was to institute the limited season. We made this DEA available for public comment and received only two responses. We have addressed these comments and prepared a final environmental assessment (FEA).

Based on our FEA, we will authorize a limited experimental season for this population of sandhill cranes as requested by the Pacific Flyway Council. All of the described requirements in the management plan and the FEA will apply to this 3-year experiment. Further, we will work with the participating Pacific Flyway States to meet the monitoring and assessment requirements described in the management plan for the evaluation of this experimental season. In addition, we encourage the participating States to work with us to improve our understanding and management of this important group of sandhill cranes. The FEA can be obtained by writing Robert Trost, Pacific Flyway Representative, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 911 NE. 11th Avenue, Portland, Oregon 97232–4181, or it may be viewed via the Service's home page at *http://fws.gov/migratorybirds/reports/reports.html.*

14. Woodcock

Council Recommendations: The Atlantic Flyway Council recommended allowing compensatory days for woodcock hunting in States where Sunday hunting is prohibited by State law.

Service Response: In 1995, the Atlantic Flyway Council asked us to reconsider our longstanding policy of denying compensatory days to those States that forego hunting opportunity due to State laws that prohibit Sunday hunting. We agreed to work with the Flyway Council to "frame" or better clarify this issue with regard to aspects such as Federal authority, number of States involved, migratory birds affected, harvest impacts, framework adjustments, etc. In 1997, the Council again requested that we grant compensatory days for States in their Flyway that were closed to waterfowl hunting statewide on Sunday by State law. The Council's requested compensatory days applied to waterfowl seasons only and not to other migratory game birds (62 FR 44234, August 20, 1997). We granted this request and stipulated that all Sundays would be closed to all take of migratory waterfowl and that other migratory game species were not eligible for compensatory days. Furthermore, only States in the Atlantic Flyway that prohibited Sunday hunting statewide by State law prior to 1997 were eligible for compensatory days for waterfowl.

We are sensitive to the Atlantic Flyway's desire to provide additional woodcock hunting opportunity, and acknowledge the longstanding difficulties some States have in reversing statutes that prevent hunting on Sundays. However, granting a request for compensatory days for hunting American woodcock would be contrary to the agreement reached between the Service and the Flyway Council that limited granting of compensatory days to waterfowl hunting. We also note that the ability to hunt on Sundays may provide more opportunities for hunter recruitment than the allowance of compensatory days. Further, we do not view this as a good time to liberalize woodcock regulations. Although we cannot attribute a cause-and-effect relationship between 1997 woodcock harvest restrictions and improved woodcock population status, the stabilization of woodcock trends in both the Eastern and Central Region is encouraging.

16. Mourning Doves

Council Recommendations: The Atlantic Flyway Council and the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that, based on criteria set forth in the current version of the Mourning Dove Harvest Management Strategy for the Eastern Management Unit (EMU), no changes in bag limit and season length components of the mourning dove harvest framework are warranted. They both further recommended that EMU States should be offered the choice of either a 12-bird daily bag limit and 70-day season or a 15-bird daily bag limit and 60-day season for the 2007–08 mourning dove hunting season, with a standardized 15-bird daily bag limit and 70-day season beginning with the 2008–09 mourning dove hunting season. The standardized bag limit and season length will then be used as the "moderate" harvest option for revising

the Initial Mourning Dove Harvest Management Strategy.

Service Response: We concur with the recommendation to maintain the current bag limit and season length options of 70 days with a 12-bird daily bag limit or 60 days with a 15-bird daily bag for the 2007–08 season. However, we recommend that the proposal to standardize this framework as a 70-day season length with a 15-bird daily bag limit, beginning with the 2008–09 season, be included in ongoing discussions on the interim harvest strategy for the Eastern Management Unit, rather than considered at this time. While it is our understanding that this framework represents the "moderate" harvest option for the Eastern Unit's harvest strategy, we anticipate that these interim strategies, representing each of the three management units, will be introduced at the January 2008 SRC meeting, and formally proposed and finalized prior to the early-season SRC meeting next June.

18. Alaska

Council Recommendations: The Pacific Flyway Council recommended maintaining status quo in the Alaska early-season framework, except for increasing the dark goose daily bag limit in selected units to provide more harvest opportunity for white-fronted geese.

Service Response: We concur. Pacific white-fronted geese are nearly 70 percent above current management objectives at 509,000 birds. The Council's proposed liberalization of white-fronted geese limits to as many as 6 per day within most of the range is consistent with liberalizations in Pacific Flyway coastal states. Further, the Council's recommendation is crafted to avoid additional harvest in units where Tule white-fronts occur (Units 1–16), and retains the restrictions on cackling geese on the primary breeding and staging areas (Unit 9E and 18) because the population is below objective.

NEPA Consideration

NEPA considerations are covered by the programmatic document "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published a notice of availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). Annual NEPA considerations are covered under a separate Environmental Assessment (EA), "Duck Hunting Regulations for 2007–08," and an August 2007, Finding of No Significant Impact (FONSI). Copies of the EA and FONSI are available upon request from the address indicated under **ADDRESSES.**

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). A scoping report summarizing the scoping comments and scoping meetings is available either at the address indicated under **ADDRESSES** or on our Web site at *http://www.fws.gov/migratorybirds.*

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *." Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to adversely affect any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES.**

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96 and updated in 1998 and 2004. It is further discussed under the heading **Regulatory Flexibility Act.** Results from the 2004 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $734 to $1,064 million, with a mid-point estimate of $899 million. This year, due to limited data availability, we partially updated the 2004 analysis, but restricted our analysis to duck hunting. Results indicate that the total consumer surplus of the annual duck hunting frameworks is on the order of $222 to $360 million, with a mid-point estimate of $291 million. We plan to perform a full update of the analysis in 2008. Copies of the cost/benefit analysis and the updated analysis are available from the address indicated under **ADDRESSES** or from our Web site at *http://www.fws.gov/migratorybirds/reports/SpecialTopics/EconomicAnalysis-Final-2004.pdf* and *http://www.fws.gov/migratorybirds/reports/SpecialTopics/EconomicAnalysis-2007Update.pdf.*

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under **Executive Order 12866.** This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2004 Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $481 million and $1.2 billion at small businesses in 2004. This year, due to limited data availability, we partially updated the 2004 analysis, but restricted our analysis to duck hunting. Results indicate that the duck hunters would spend between $291 million and $473.5 million at small businesses in 2007. We plan to perform a full update of the analysis in 2008 when the full results from the 2006 National Hunting and Fishing Survey is available. Copies of the cost/benefit analysis and the updated analysis are available from the address indicated under **ADDRESSES** or from our Web site at *http://www.fws.gov/migratorybirds/reports/*

SpecialTopics/EconomicAnalysis-Final-2004.pdf and *http://www.fws.gov/migratorybirds/reports/SpecialTopics/EconomicAnalysis-2007Update.pdf.*

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because it establishes hunting seasons, we do not plan to defer the effective date required by 5 U.S.C. 801 under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the surveys associated with the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 2/29/2008). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Survey and assigned clearance number 1018–0023 (expires 11/30/2007). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of the harvest, and the portion it constitutes of the total population. A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

In promulgating this rule, we have determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, in accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the April 11 proposed rule we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2007–08 migratory bird hunting season. The resulting proposals will be contained in a separate proposed rule. By virtue of these actions, we have consulted with all the Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or tribe may be more restrictive than the Federal frameworks. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We therefore find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication. Therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703–711), we prescribe final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State

conservation agency officials will select hunting season dates and other options. Upon receipt of season selections from these officials, we will publish a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 2007–08 season.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2007–08 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: August 13, 2007.

Todd Willens,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 2007–08 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following frameworks, which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select hunting seasons for certain migratory game birds between September 1, 2007, and March 10, 2008.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

Mourning Dove Management Units

Eastern Management Unit—All States east of the Mississippi River, and Louisiana.

Central Management Unit—Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit—Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Woodcock Management Regions

Eastern Management Region—Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

Other geographic descriptions are contained in a later portion of this document.

Definitions

Dark geese: Canada geese, white-fronted geese, brant (except in Alaska, California, Oregon, Washington, and the Atlantic Flyway), and all other goose species except light geese.

Light geese: snow (including blue) geese and Ross's geese.

Waterfowl Seasons in the Atlantic Flyway

In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by the following States in areas delineated by State regulations:

Atlantic Flyway—Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, and Virginia.

Mississippi Flyway—Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Ohio, and Tennessee.

Central Flyway—Colorado (part), Kansas, Nebraska (part), New Mexico (part), Oklahoma, and Texas.

Hunting Seasons and Daily Bag Limits: Not to exceed 9 consecutive days in the Atlantic Flyway and 16 consecutive days in the Mississippi and Central Flyways. The daily bag limit is 4 teal.

Shooting Hours

Atlantic Flyway—One-half hour before sunrise to sunset except in Maryland, where the hours are from sunrise to sunset.

Mississippi and Central Flyways—One-half hour before sunrise to sunset, except in the States of Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida, Kentucky and Tennessee: In lieu of a special September teal season, a 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks that are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 22). The daily bag and possession limits will be the same as those in effect last year, but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

Special Youth Waterfowl Hunting Days

Outside Dates: States may select two consecutive days (hunting days in Atlantic Flyway States with compensatory days) per duck-hunting zone, designated as "Youth Waterfowl Hunting Days," in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-

season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, mergansers, coots, moorhens, and gallinules and would be the same as those allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not duck hunt but may participate in other seasons that are open on the special youth day.

Scoter, Eider, and Long-Tailed Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 31.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate, of the listed sea-duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected for the Eastern Unit of Maryland and Delaware. Seasons not to exceed 25 days during September 1–25 may be selected for the Montezuma Region of New York and the Lake Champlain Region of New York and Vermont. Seasons not to exceed 30 days during September 1–30 may be selected for Connecticut, Florida, Georgia, New Jersey, New York (Long Island Zone), North Carolina, Rhode Island, and South Carolina. Seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 15 Canada geese.

Mississippi Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10, and in Minnesota (except in the Northwest Goose Zone), where a season of up to 22 days during September 1–22 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

A Canada goose season of up to 10 consecutive days during September 1–10 may be selected by Michigan for Huron, Saginaw, and Tuscola Counties, except that the Shiawassee National Wildlife Refuge, Shiawassee River State Game Area Refuge, and the Fish Point Wildlife Area Refuge will remain closed. The daily bag limit may not exceed 5 Canada geese.

General Seasons

Experimental Seasons. Canada goose seasons of up to 7 days during September 16–22 may be selected in the Northwest Goose Zone in Minnesota. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Central Flyway

General Seasons

In Kansas, Nebraska, Oklahoma, South Dakota, and Texas, Canada goose seasons of up to 30 days during September 1–30 may be selected. In Colorado, New Mexico, North Dakota, Montana, and Wyoming, Canada goose seasons of up to 15 days during September 1–15 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Pacific Flyway

General Seasons

California may select a 9-day season in Humboldt County during the period September 1–15. The daily bag limit is 2.

Colorado may select a 9-day season during the period of September 1–15. The daily bag limit is 3.

Oregon may select a special Canada goose season of up to 15 days during the period September 1–15. In addition, in the NW goose management zone in Oregon, a 15-day season may be selected during the period September 1–20. Daily bag limits may not exceed 5 Canada geese.

Idaho may select a 7-day season during the period September 1–15. The daily bag limit is 2 and the possession limit is 4.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits may not exceed 5 Canada geese.

Wyoming may select an 8-day season on Canada geese between September 1–15. This season is subject to the following conditions:

1. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.

2. A daily bag limit of 2, with season and possession limits of 4, will apply to the special season.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Regular goose seasons may open as early as September 16 in Wisconsin and Michigan. Season lengths, bag and possession limits, and other provisions will be established during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 37 consecutive days may be selected in designated portions of North

Dakota (Area 2) and Texas (Area 2). Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes, except 2 sandhill cranes in designated portions of North Dakota (Area 2) and Texas (Area 2).

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit and/or, in those States where a Federal sandhill crane permit is not issued, a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting in their possession while hunting.

Special Seasons in the Central and Pacific Flyways: Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (RMP) subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag Limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other Provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils, with the following exceptions:

1. In Utah, the requirement for monitoring the racial composition of the harvest in the experimental season is waived, and 100 percent of the harvest will be assigned to the RMP quota;

2. In Arizona, monitoring the racial composition of the harvest must be conducted at 3-year intervals;

3. In Idaho, seasons are experimental, and the requirement for monitoring the racial composition of the harvest is waived; 100 percent of the harvest will be assigned to the RMP quota; and

4. In New Mexico, the season in the Estancia Valley is experimental, with a requirement to monitor the level and racial composition of the harvest; greater sandhill cranes in the harvest will be assigned to the RMP quota.

Special Seasons in the Pacific Flyway: Arizona may select a season for hunting sandhill cranes within the range of the Lower Colorado River Population (LCR) of sandhill cranes, subject to the following conditions:

Outside Dates: Between January 1 and January 31.

Hunting Seasons: The season may not exceed 3 days.

Bag Limits: Not to exceed 1 daily and 1 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: The season is experimental. Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Pacific Flyway Council.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and the last Sunday in January (January 27) in the Atlantic, Mississippi and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks, and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Zoning: Seasons may be selected by zones established for duck hunting.

Rails

Outside Dates: States included herein may select seasons between September 1 and the last Sunday in January (January 27) on clapper, king, sora, and Virginia rails.

Hunting Seasons: The season may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits

Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the 2 species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

Zoning: Seasons may be selected by zones established for duck hunting.

American Woodcock

Outside Dates: States in the Eastern Management Region may select hunting seasons between October 1 and January 31. States in the Central Management Region may select hunting seasons between the Saturday nearest September 22 (September 22) and January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 30 days in the Eastern Region and 45 days in the Central Region. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 24 days.

Band-Tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with a daily bag limit of 2 band-tailed pigeons.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 3.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise

provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12 mourning and white-winged doves in the aggregate, or not more than 60 days with a bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12 mourning and white-winged doves in the aggregate, or not more than 60 days with a bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods.

Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Daily bag limits are aggregate bag limits with mourning, white-winged, and white-tipped doves (see white-winged dove frameworks for specific daily bag limit restrictions).

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit

Hunting Seasons and Daily Bag Limits: Idaho, Oregon, and Washington—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves.

Utah—Not more than 30 consecutive days with a daily bag limit that may not exceed 10 mourning doves and white-winged doves in the aggregate.

Nevada—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves, except in Clark and Nye Counties, where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

Arizona and California—Not more than 60 days, which may be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season, the daily bag limit is 10 mourning doves. In California, the daily bag limit is 10 mourning doves, except in Imperial, Riverside, and San Bernardino Counties, where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-Winged and White-Tipped Doves

Hunting Seasons and Daily Bag Limits: Except as shown below, seasons must be concurrent with mourning dove seasons.

Eastern Management Unit: The daily bag limit may not exceed 12 (15 under the alternative) mourning and white-winged doves in the aggregate.

Central Management Unit: In Texas, the daily bag limit may not exceed 12 mourning, white-winged, and white-tipped doves (15 under the alternative) in the aggregate, of which no more than 2 may be white-tipped doves. In addition, Texas also may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 12 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 4 may be mourning doves and 2 may be white-tipped doves.

In the remainder of the Central Management Unit, the daily bag limit may not exceed 12 (15 under the alternative) mourning and white-winged doves in the aggregate.

Western Management Unit: Arizona may select a hunting season of not more than 30 consecutive days, running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Utah, the Nevada Counties of Clark and Nye, and in the California Counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In the remainder of the Western Management Unit, the season is closed.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of 5 zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The hunting season is closed on emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone, they are 8 and 24. The basic limits may include no more than 1 canvasback daily and 3 in possession and may not include sea ducks.

In addition to the basic duck limits, Alaska may select sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers.

Light Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark-goose seasons are subject to the following exceptions:

1. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16.

2. On Middleton Island in Unit 6, a special, permit-only Canada goose season may be offered. No more than 10 permits can be issued. A mandatory goose identification class is required. Hunters must check in and check out. The bag limit is 1 daily and 1 in possession. The season will close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

3. In Units 9, 10, 17 and 18, dark goose limits are 6 per day, 12 in possession; however, no more than 2 may be Canada geese in Units 9(E) and 18; and no more than 4 may be Canada geese in Units 9(A–C), 10 (Unimak Island portion), and 17.

Brant—A daily bag limit of 2.

Common snipe—A daily bag limit of 8.

Sandhill cranes—Bag and possession limits of 2 and 4, respectively, in the

Southeast, Gulf Coast, Kodiak, and Aleutian Zones, and Unit 17 in the Northern Zone. In the remainder of the Northern Zone (outside Unit 17), bag and possession limits of 3 and 6, respectively.

Tundra Swans—Open seasons for tundra swans may be selected subject to the following conditions:

1. All seasons are by registration permit only.

2. All season framework dates are September 1–October 31.

3. In Game Management Unit (GMU) 17, no more than 200 permits may be issued during this operational season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season.

4. In Game Management Unit (GMU) 18, no more than 500 permits may be issued during the operational season. Up to 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

5. In GMU 22, no more than 300 permits may be issued during the operational season. Each permittee may be authorized to take up to 3 tundra swans per permit. No more than 1 permit may be issued per hunter per season.

6. In GMU 23, no more than 300 permits may be issued during the operational season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 65 days (75 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 15 Zenaida, mourning, and white-winged doves in the aggregate, of which not more than 3 may be mourning doves. Not to exceed 5 scaly-naped pigeons.

Closed Seasons: The season is closed on the white-crowned pigeon and the plain pigeon, which are protected by the Commonwealth of Puerto Rico.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits:

Ducks—Not to exceed 6.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons must not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds must not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Mourning and White-winged Doves

Alabama

South Zone—Baldwin, Barbour, Coffee, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone—Remainder of the State.

California

White-winged Dove Open Areas—Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone—The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone—Remainder of State.

Louisiana

North Zone—That portion of the State north of a line extending east from the Texas border along State Highway 12 to

U.S. Highway 190, east along U.S. 190 to Interstate Highway 12, east along Interstate 12 to Interstate Highway 10, then east along Interstate 10 to the Mississippi border.

South Zone—The remainder of the State.

Mississippi

North Zone—That portion of the State north and west of a line extending west from the Alabama State line along U.S. Highway 84 to its junction with State Highway 35, then south along State Highway 35 to the Louisiana State line.

South Zone—The remainder of Mississippi.

Nevada

White-winged Dove Open Areas—Clark and Nye Counties.

Oklahoma

North Zone—That portion of the State north of a line extending east from the Texas border along U.S. Highway 62 to Interstate 44, east along Oklahoma State Highway 7 to U.S. Highway 81, then south along U.S. Highway 81 to the Texas border at the Red River.

Southwest Zone—The remainder of Oklahoma.

Texas

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas–Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio; then south, east, and north along Loop 1604 to Interstate Highway 10 east of San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio, southeast on State Loop 1604 to Interstate Highway 35, southwest on Interstate Highway 35 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to TX 285 at Hebbronville; east along TX 285 to FM 1017; southwest along FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions—Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone—That portion of the State lying between the North and South Zones.

Band-Tailed Pigeons

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—Remainder of the State.

Washington

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone—That portion of the State north of NJ 70.

South Zone—The remainder of the State.

Special September Canada Goose Seasons

Atlantic Flyway

Connecticut

North Zone—That portion of the State north of I–95.

South Zone—Remainder of the State.

Maryland

Eastern Unit—Calvert, Caroline, Cecil, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties; and that part of Anne Arundel County east of Interstate 895, Interstate 97 and Route 3; that part of Prince George's County east of Route 3 and Route 301; and that part of Charles County east of Route 301 to the Virginia State line.

Western Unit—Allegany, Baltimore, Carroll, Frederick, Garrett, Howard, Montgomery, and Washington Counties and that part of Anne Arundel County west of Interstate 895, Interstate 97 and Route 3; that part of Prince George's County west of Route 3 and Route 301; and that part of Charles County west of Route 301 to the Virginia State line.

Massachusetts

Western Zone—That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone—That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.–Elm St. bridge will be in the Coastal Zone.

Coastal Zone—That portion of Massachusetts east and south of the Central Zone.

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone—That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border, except for the Montezuma Zone.

Montezuma Zone—Those portions of Cayuga, Seneca, Ontario, Wayne, and Oswego Counties north of U.S. Route 20, east of NYS Route 14, south of NYS Route 104, and west of NYS Route 34.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

North Carolina

Northeast Hunt Unit—Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington Counties; that portion of Bertie County north and east of a line formed by NC 45 at the Washington County line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor to the Hertford County line; and that portion of Northampton County that is north of U.S. 158 and east of NC 35.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending from the Massachusetts border at Interstate 91; north along Interstate 91 to U.S. 2; east along U.S. 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

Mississippi Flyway

Arkansas

Early Canada Goose Area: Baxter, Benton, Boone, Carroll, Clark, Conway, Crawford, Faulkner, Franklin, Garland, Hempstead, Hot Springs, Howard, Johnson, Lafayette, Little River, Logan, Madison, Marion, Miller, Montgomery, Newton, Perry, Pike, Polk, Pope, Pulaski, Saline, Searcy, Sebastian, Sevier, Scott, Van Buren, Washington, and Yell Counties.

Illinois

Northeast Canada Goose Zone—Cook, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

North Zone: That portion of the State outside the Northeast Canada Goose Zone and north of a line extending west from the Indiana border along Peotone-Beecher Road to Illinois Route 50, south along Illinois Route 50 to Wilmington-Peotone Road, west along Wilmington-Peotone Road to Illinois Route 53, north along Illinois Route 53 to New River Road, northwest along New River Road to Interstate Highway 55, south along I–55 to Pine Bluff-Lorenzo Road, west along Pine Bluff—Lorenzo Road to Illinois Route 47, north along Illinois Route 47 to I–80, west along I–80 to I–39, south along I–39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central Zone: That portion of the State outside the Northeast Canada Goose Zone and south of the North Zone to a line extending west from the Indiana border along Interstate Highway 70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 156, west along Illinois Route 156 to A Road, north and west on A Road to Levee Road, north on Levee Road to the south shore of New Fountain Creek, west along the south shore of New Fountain Creek to the Mississippi River, and due west across the Mississippi River to the Missouri border.

South Zone: The remainder of Illinois.

Iowa

North Zone: That portion of the State north of U.S. Highway 20.

South Zone: The remainder of Iowa.

Cedar Rapids/Iowa City Goose Zone. Includes portions of Linn and Johnson Counties bounded as follows: Beginning at the intersection of the west border of Linn County and Linn County Road E2W; thence south and east along County Road E2W to Highway 920; thence north along Highway 920 to County Road E16; thence east along County Road E16 to County Road W58; thence south along County Road W58 to County Road E34; thence east along County Road E34 to Highway 13; thence south along Highway 13 to Highway 30; thence east along Highway 30 to Highway 1; thence south along Highway 1 to Morse Road in Johnson County; thence east along Morse Road to Wapsi Avenue; thence south along Wapsi Avenue to Lower West Branch Road; thence west along Lower West Branch Road to Taft Avenue; thence south along Taft Avenue to County Road F62; thence west along County Road F62 to Kansas Avenue; thence north along Kansas Avenue to Black Diamond Road; thence west on Black Diamond Road to Jasper Avenue; thence north along Jasper Avenue to Rohert Road; thence west along Rohert Road to Ivy Avenue; thence north along Ivy Avenue to 340th Street; thence west along 340th Street to Half Moon Avenue; thence north along Half Moon Avenue to Highway 6; thence west along Highway 6 to Echo Avenue; thence north along Echo Avenue to 250th Street; thence east on 250th Street to Green Castle Avenue; thence north along Green Castle Avenue to County Road F12; thence west along County Road F12 to County Road W30; thence north along County Road W30 to Highway 151; thence north along the Linn-Benton County line to the point of beginning.

Des Moines Goose Zone. Includes those portions of Polk, Warren, Madison and Dallas Counties bounded as follows: Beginning at the intersection of Northwest 158th Avenue and County Road R38 in Polk County; thence south along R38 to Northwest 142nd Avenue; thence east along Northwest 142nd Avenue to Northeast 126th Avenue; thence east along Northeast 126th Avenue to Northeast 46th Street; thence south along Northeast 46th Street to Highway 931; thence east along Highway 931 to Northeast 80th Street; thence south along Northeast 80th Street to Southeast 6th Avenue; thence west along Southeast 6th Avenue to Highway 65; thence south and west along Highway 65 to Highway 69 in Warren County; thence south along Highway 69 to County Road G24; thence west along County Road G24 to Highway 28; thence southwest along Highway 28 to 43rd Avenue; thence north along 43rd Avenue to Ford Street; thence west along Ford Street to Filmore Street; thence west along Filmore Street to 10th Avenue; thence south along 10th Avenue to 155th Street in Madison County; thence west along 155th Street to Cumming Road; thence north along Cumming Road to Badger Creek Avenue; thence north along Badger Creek Avenue to County Road F90 in Dallas County; thence east along County Road F90 to County Road R22; thence north along County Road R22 to Highway 44; thence east along Highway 44 to County Road R30; thence north along County Road R30 to County Road F31; thence east along County Road F31 to Highway 17; thence north along Highway 17 to Highway 415 in Polk County; thence east along Highway 415 to Northwest 158th Avenue; thence east along Northwest 158th Avenue to the point of beginning.

Minnesota

Twin Cities Metropolitan Canada Goose Zone—

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion

lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; thence west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; thence north along the east boundary of Dahlgren Township to U.S. Highway 212; thence west along U.S. Highway 212 to State Trunk Highway (STH) 284; thence north on STH 284 to County State Aid Highway (CSAH) 10; thence north and west on CSAH 10 to CSAH 30; thence north and west on CSAH 30 to STH 25; thence east and north on STH 25 to CSAH 10; thence north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities of Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid Highway (CSAH) 2 on the west boundary of the county; thence east on CSAH 2 to U.S. Highway 61; thence south on U.S. Highway 61 to State Trunk Highway (STH) 97; thence east on STH 97 to the intersection of STH 97 and STH 95; thence due east to the east boundary of the State.

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Southeast Goose Zone—That part of the State within the following described boundaries: beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U.S. Highway 52 to State Trunk Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson; thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along CSAH 13 to STH 30; thence along STH 30 to U.S. Highway 63; thence along U.S. Highway 63 to the south boundary of the State; thence along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

Five Goose Zone—That portion of the State not included in the Twin Cities Metropolitan Canada Goose Zone, the Northwest Goose Zone, or the Southeast Goose Zone.

West Zone—That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota border.

Tennessee

Middle Tennessee Zone—Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

East Tennessee Zone—Anderson, Bledsoe, Bradley, Blount, Campbell, Carter, Claiborne, Clay, Cocke, Cumberland, DeKalb, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White Counties.

Wisconsin

Early-Season Subzone A—That portion of the State encompassed by a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Early-Season Subzone B—The remainder of the State.

Central Flyway

Nebraska

September Canada Goose Unit—That part of Nebraska bounded by a line from the Nebraska-Iowa State line west on U.S. Highway 30 to U.S. Highway 81, then south on U.S. Highway 81 to NE Highway 64, then east on NE Highway 64 to NE Highway 15, then south on NE Highway 15 to NE Highway 41, then east on NE Highway 41 to NE Highway 50, then north on NE Highway 50 to NE Highway 2, then east on NE Highway 2 to the Nebraska-Iowa State line.

South Dakota

Special Early Canada Goose Unit: Entire state of South Dakota *except* the counties of Bennett, Bon Home, Brule, Buffalo, Charles Mix, Custer east of SD HW 79 and south of French Creek, Dewey south of 212, Fall River east of SD HW 71 and U.S. HW 385, Gregory, Hughes, Hyde south of U.S. HW 14, Lyman, Potter west of U.S. HW 83, Stanley, and Sully.

Pacific Flyway

Idaho

East Zone—Bonneville, Caribou, Fremont, and Teton Counties.

Oregon

Northwest Zone—Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone—Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone—Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, and Wasco Counties.

Washington

Area 1—Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone)—Clark County, except portions south of the Washougal River; Cowlitz County; and Wahkiakum County.

Area 2B (SW Quota Zone)—Pacific County.

Area 3—All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4—Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5—All areas east of the Pacific Crest Trail and east of the Big White

Salmon River that are not included in Area 4.

Ducks

Atlantic Flyway

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Maryland

Special Teal Season Area: Calvert, Caroline, Dorchester, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties and those parts of Cecil, Harford, and Baltimore Counties east of Interstate 95; that part of Anne Arundel County east of Interstate 895, Interstate 97, and Route 3; that part of Prince Georges County east of Route 3 and route 301; and that part of Charles County east of Route 301 to the Virginia State Line.

Mississippi Flyway

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State Highway 37, southeast along State Highway 37 to State Highway 183, northeast along State Highway 183 to State Highway 141, east along State Highway 141 to U.S. Highway 30, then east along U.S. Highway 30 to the Illinois border.

South Zone: The remainder of Iowa.

Central Flyway

Colorado

Special Teal Season Area: Lake and Chaffee Counties and that portion of the State east of Interstate Highway 25.

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That area of Kansas east of U.S. 283, and generally west of a line beginning at the Junction of the Nebraska State line and KS 28; south on KS 28 to U.S. 36; east on U.S. 36 to KS 199; south on KS 199 to Republic Co. Road 563; south on Republic Co. Road 563 to KS 148; east on KS 148 to Republic Co. Road 138; south on Republic Co. Road 138 to Cloud Co. Road 765; south on Cloud Co. Road 765 to KS 9; west on KS 9 to U.S. 24; west on U.S. 24 to U.S. 281; north on U.S. 281 to U.S. 36; west on U.S. 36 to U.S. 183; south on U.S. 183 to U.S. 24; west on U.S. 24 to KS 18; southeast on KS 18 to U.S. 183; south on U.S. 183 to KS 4; east on KS 4 to I–135; south on I–135 to KS 61; southwest on KS 61 to KS 96; northwest on KS 96 to U.S. 56; west on U.S. 56 to U.S. 281; south on U.S. 281 to U.S. 54; west on U.S. 54 to U.S. 183; north on U.S. 183 to U.S. 56; and southwest on U.S. 56 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Nebraska

Special Teal Season Area: That portion of the State south of a line beginning at the Wyoming State line; east along U.S. 26 to Nebraska Highway L62A east to U.S. 385; south to U.S. 26; east to NE 92; east along NE 92 to NE 61; south along NE 61 to U.S. 30; east along U.S. 30 to the Iowa border.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

Pacific Flyway

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California-Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA

166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Canada Geese

Michigan

MVP—Upper Peninsula Zone: The MVP—Upper Peninsula Zone consists of the entire Upper Peninsula of Michigan.

MVP—Lower Peninsula Zone: The MVP—Lower Peninsula Zone consists of the area within the Lower Peninsula of Michigan that is north and west of the point beginning at the southwest corner of Branch County, north continuing along the western border of Branch and Calhoun Counties to the northwest corner of Calhoun County, then east to the southwest corner of Eaton County, then north to the southern border of Ionia County, then east to the southwest corner of Clinton County, then north along the western border of Clinton County continuing north along the county border of Gratiot and Montcalm Counties to the southern border of Isabella county, then east to the southwest corner of Midland County, then north along the west Midland County border to Highway M–20, then easterly to U.S. Highway 10, then easterly to U.S. Interstate 75/U.S. Highway 23, then northerly along I–75/U.S. 23 and easterly on U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

SJBP Zone is the rest of the State, that area south and east of the boundary described above.

Sandhill Cranes

Central Flyway

Colorado—The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande, and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas—That portion of the State west of a line beginning at the Oklahoma border, north on I–35 to Wichita, north on I–135 to Salina, and north on U.S. 81 to the Nebraska border.

Montana—The Central Flyway portion of the State except for that area south and west of Interstate 90, which is closed to sandhill crane hunting.

New Mexico—

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Estancia Valley Area—Those portions of Santa Fe, Torrance and Bernalillo Counties within an area bounded on the west by New Mexico Highway 55 beginning at Mountainair north to NM 337, north to NM 14, north to I–25; on the north by I–25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to NM 55 in Mountainair.

Southwest Zone—Sierra, Luna, Dona Ana Counties, and those portions of Grant and Hidalgo Counties south of I–10.

North Dakota—

Area 1—That portion of the State west of U.S. 281.

Area 2—That portion of the State east of U.S. 281.

Oklahoma—That portion of the State west of I–35.

South Dakota—That portion of the State west of U.S. 281.

Texas—

Zone A—That portion of Texas lying west of a line beginning at the international toll bridge at Laredo, thence northeast along U.S. Highway 81 to its junction with Interstate Highway 35 in Laredo, thence north along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, thence northwest along Interstate Highway 10 to its junction with U.S. Highway 83 in Junction, thence north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, thence east along U.S. Highway 62 to the Texas-Oklahoma State line.

Zone B—That portion of Texas lying within boundaries beginning at the junction of U.S. Highway 81 and the Texas-Oklahoma State line, thence southeast along U.S. Highway 81 to its junction with U.S. Highway 287 in Montague County, thence southeast along U.S. Highway 287 to its junction with Interstate Highway 35W in Fort Worth, thence southwest along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, thence northwest along Interstate Highway 10 to its junction with U.S. Highway 83 in Junction, thence north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, thence east along U.S. Highway 62 to the Texas-Oklahoma State line, thence south along the Texas-Oklahoma state line to the south bank of the Red River, thence eastward along the vegetation line on the south bank of the Red River to U.S. Highway 81.

Zone C—The remainder of the State, except for the closed areas.

Closed areas—(A) That portion of the State lying east and north of a line beginning at the junction of U.S. Highway 81 and the Texas-Oklahoma State line, thence southeast along U.S. Highway 81 to its junction with U.S. Highway 287 in Montague County, thence southeast along U.S. Highway 287 to its junction with Interstate Highway 35W in Fort Worth, thence southwest along Interstate Highway 35 to its junction with U.S. Highway 290 East in Austin, thence east along U.S. Highway 290 to its junction with Interstate Loop 610 in Harris County, thence south and east along Interstate Loop 610 to its junction with Interstate Highway 45 in Houston, thence south on Interstate Highway 45 to State Highway 342, thence to the shore of the Gulf of Mexico, and thence north and east along the shore of the Gulf of Mexico to the Texas-Louisiana State line.

(B) That portion of the State lying within the boundaries of a line beginning at the Kleberg-Nueces County line and the shore of the Gulf of Mexico, thence west along the County line to Park Road 22 in Nueces County, thence north and west along Park Road 22 to its junction with State Highway 358 in Corpus Christi, thence west and north along State Highway 358 to its junction with State Highway 286, thence north along State Highway 286 to its junction with Interstate Highway 37, thence east along Interstate Highway 37 to its junction with U.S. Highway 181, thence north and west along U.S. Highway 181 to its junction with U.S. Highway 77 in Sinton, thence north and east along U.S. Highway 77 to its junction with U.S. Highway 87 in Victoria, thence south and east along U.S. Highway 87 to its junction with State Highway 35 at Port Lavaca, thence north and east along State Highway 35 to the south end of the Lavaca Bay Causeway, thence south and east along the shore of Lavaca Bay to its junction with the Port Lavaca Ship

Channel, thence south and east along the Lavaca Bay Ship Channel to the Gulf of Mexico, and thence south and west along the shore of the Gulf of Mexico to the Kleberg-Nueces County line.

Wyoming—

Regular-Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit—Portions of Fremont County.

Park and Big Horn County Unit—Portions of Park and Big Horn Counties.

Pacific Flyway

Arizona

Special-Season Area—Game Management Units 30A, 30B, 31, and 32.

Montana

Special-Season Area—See State regulations.

Utah

Special-Season Area—Rich, Cache, and Unitah Counties and that portion of Box Elder County beginning on the Utah-Idaho State line at the Box Elder-Cache County line; west on the State line to the Pocatello Valley County Road; south on the Pocatello Valley County Road to I–15; southeast on I–15 to SR–83; south on SR–83 to Lamp Junction; west and south on the Promontory Point County Road to the tip of Promontory Point; south from Promontory Point to the Box Elder-Weber County line; east on the Box Elder-Weber County line to the Box Elder-Cache County line; north on the Box Elder-Cache County line to the Utah-Idaho State line.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Eden Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

All Migratory Game Birds in Alaska

North Zone—State Game Management Units 11–13 and 17–26.

Gulf Coast Zone—State Game Management Units 5–7, 9, 14–16, and 10 (Unimak Island only).

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10 (except Unimak Island).

Kodiak Zone—State Game Management Unit 8.

All Migratory Game Birds in the Virgin Islands

Ruth Cay Closure Area—The island of Ruth Cay, just south of St. Croix.

All Migratory Game Birds in Puerto Rico

Municipality of Culebra Closure Area—All of the municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for 1 kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas—All of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: Beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of the beginning.

[FR Doc. E7–17028 Filed 8–27–07; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html.* Some laws may not yet be available.

H.R. 2863/P.L. 110–75

To authorize the Coquille Indian Tribe of the State of Oregon to convey land and interests in land owned by the Tribe. (Aug. 13, 2007; 121 Stat. 724)

H.R. 2952/P.L. 110–76

To authorize the Saginaw Chippewa Tribe of Indians of the State of Michigan to convey land and interests in lands owned by the Tribe. (Aug. 13, 2007; 121 Stat. 725)

H.R. 3006/P.L. 110–77

To improve the use of a grant of a parcel of land to the State of Idaho for use as an agricultural college, and for other purposes. (Aug. 13, 2007; 121 Stat. 726)

S. 375/P.L. 110–78

To waive application of the Indian Self-Determination and Education Assistance Act to a specific parcel of real property transferred by the United States to 2 Indian tribes in the State of Oregon, and for other purposes. (Aug. 13, 2007; 121 Stat. 727)

S. 975/P.L. 110–79

Granting the consent and approval of the Congress to an interstate forest fire protection compact. (Aug. 13, 2007; 121 Stat. 730)

S. 1716/P.L. 110–80

To amend the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, to strike a requirement relating to forage producers. (Aug. 13, 2007; 121 Stat. 734)

Last List August 13, 2007

CORRECTION

In the last **List of Public Laws** printed in the *Federal Register* on August 13, 2007, H.R. 2025, Public Law 110-65, and H.R. 2078, Public Law 110-67, were printed incorrectly. They should read as follows:

H.R. 2025/P.L. 110–65

To designate the facility of the United States Postal Service located at 11033 South State Street in Chicago, Illinois, as the "Willye B. White Post Office Building". (Aug. 9, 2007; 121 Stat. 568)

H.R. 2078/P.L. 110–67

To designate the facility of the United States Postal Service located at 14536 State Route 136 in Cherry Fork, Ohio, as the "Staff Sergeant Omer T. 'O.T.' Hawkins Post Office". (Aug. 9, 2007; 121 Stat. 570)

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110th Congress

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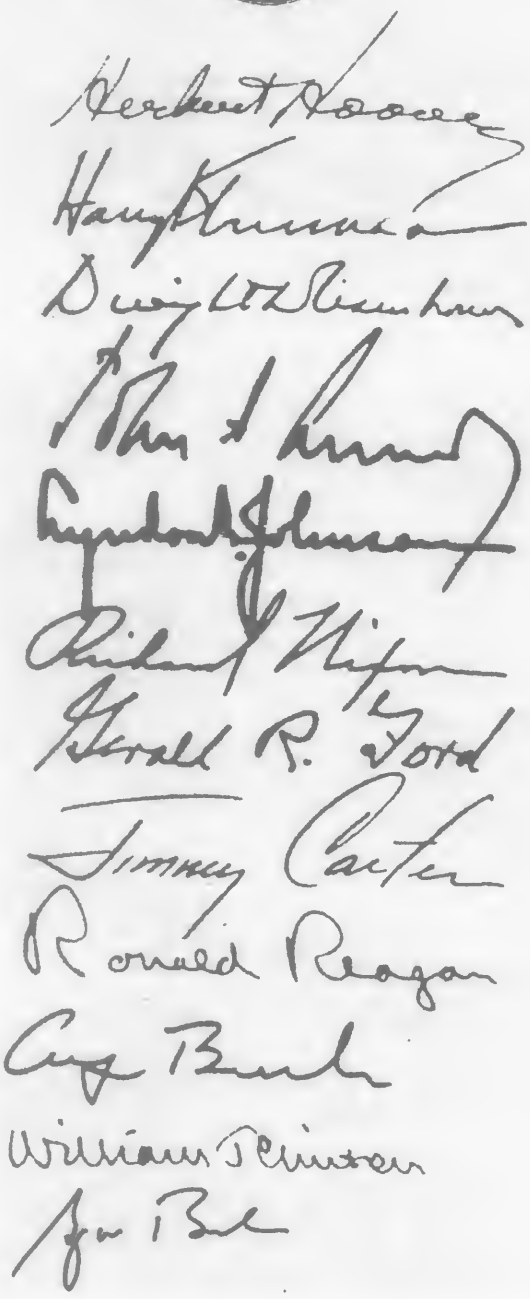

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