

either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

#### § 955.86 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

#### § 955.87 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

#### Marketing Agreement

#### § 955.90 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

#### § 955.91 Additional parties.

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting part at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

#### § 955.92 Order with marketing agreement.

Each signatory hereby requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of Vidalia onions in the same manner as is provided for in this agreement.

Dated: August 19, 1988.

J. Patrick Boyle,  
Administrator.

[FR Doc. 88-19158 Filed 8-22-88; 8:45 am]  
BILLING CODE 3000-00-02

#### Food Safety and Inspection Service

9 CFR Parts 327 and 381

[Docket No. 86-031R]

#### Prohibition on Movement of Imported Product Prior to Reinspection; Reopening of Comment Period

AGENCY: Food Safety and Inspection Service, USDA.

**ACTION:** Proposed rule; reopening of comment period; correction.

**SUMMARY:** On May 13, 1988, the Food Safety and Inspection Service (FSIS) published a proposed rule to amend the Federal meat and poultry products inspection regulations by prohibiting the transportation of imported meat and poultry products prior to their reinspection. The proposal would require that imported products be reinspected at the port of first arrival. FSIS also proposed to eliminate the official import seal and current sealing requirements for imported products which are transported prior to reinspection. The comment period closed on July 12, 1988. FSIS has received requests to reopen the comment period so that additional information may be provided to FSIS. FSIS is granting these requests and is reopening the comment period for an additional 30 days. This document also corrects a statement in the preamble to the proposal concerning the percentage of total imports that may be affected by this proposal. It was stated that only 7 percent of total imports would be affected; the correct figure is 14.6 percent of total imports.

**DATE:** Comments must be received on or before September 22, 1988.

**ADDRESS:** Written comments to: Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, Room 3171 South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments, as provided by the Poultry Products Inspection Act, should be directed to Patricia Stolfa, Deputy Administrator, International Programs, Food Safety and Inspection Service, (202) 447-3473.

**FOR FURTHER INFORMATION CONTACT:** Patricia Stolfa, Deputy Administrator, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3473.

**SUPPLEMENTARY INFORMATION:** On May 13, 1987, FSIS published a proposed rule (53 FR 17059) to amend the Federal meat and poultry products inspection regulations by removing current provisions that permit the transportation of imported products prior to reinspection by FSIS. Instead FSIS proposed to require that imported products be reinspected at the port of first arrival. In addition, FSIS proposed to eliminate the official import seal and sealing requirements for product that is transported prior to reinspection by FSIS. This action resulted from an audit of the import inspection program

conducted by the Department's Office of the Inspector General (OIG). The OIG recommended that FSIS "require that foreign meat products entering the United States be inspected . . . only at the point of first arrival." OIG stated that this action would enable FSIS to maintain control over meat products entering the United States.

FSIS has received requests to reopen the comment period so that additional information can be gathered and submitted to FSIS. FSIS is interested in receiving additional information and is, therefore, reopening the comment period for an additional 30 days.

This document also corrects a mathematical error in the computation of the percentage of pounds of product which may be affected by this proposal as compared to total imports. In the preamble to the proposal, it was stated that only 7 percent of total imports may be affected; the correct figure is 14.6 percent of total imports. This percentage is based on the amount of product moved after unloading in one district and presented for reinspection in another district—361,473,786 pounds during calendar year 1985. This amount of product is 14.6 percent of total imports—2,478,643,236 pounds—for calendar year 1985.

Done at Washington, DC, on August 18, 1988.

Lester M. Crawford,  
Administrator, Food Safety and Inspection Service.

[FR Doc. 88-19076 Filed 8-22-88; 8:45 am]

BILLING CODE 3410-00-01

#### NUCLEAR REGULATORY COMMISSION

#### 10 CFR Part 52

#### Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission is considering adding a new Part to its regulations which would provide for issuance of early site permits, standard design certifications, and combined construction permits and conditional operating licenses for nuclear power reactors. The proposed rule sets out the review procedures and licensing requirements that would apply to applications for these new licenses and certifications. The proposed action is intended to achieve the early

resolution of licensing issues, thereby enhancing the safety and reliability of nuclear power plants, and reducing the complexity and uncertainty of the licensing process.

**DATES:** The comment period expires October 24, 1988. Comments received after this date will be considered if practical to do so, but only those comments received on or before this date can be assured of consideration.

**ADDRESSES:** Comments may be sent to the Secretary of the Commission, Attention: Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be hand-delivered to One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:30 am and 4:15 pm weekdays. Copies of comments received may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, DC, between the hours of 7:45 am and 4:15 pm weekdays.

**FOR FURTHER INFORMATION CONTACT:** Steven Crockett, Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492-1600.

**SUPPLEMENTARY INFORMATION:**

**Public Meeting**

The NRC staff will conduct a public meeting to answer questions on the meaning and intent of any of the provisions of this proposed rule, and to hear and, if appropriate, respond to preliminary views on any of the provisions of this proposed rule. It is hoped that such a meeting would be helpful to persons who intend to submit written comments on the proposed rule. The meetings will begin at 9:00 am, on September 16, 1988, in the Conference Theater of the Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, Maryland 20852, telephone (301) 468-1100.

**I. Background**

The Nuclear Regulatory Commission has long believed that standardized nuclear power plant designs and other means of achieving early resolution of licensing issues could significantly enhance the safety and reliability of nuclear plants, and could likewise enhance public participation in the licensing process while reducing the complexity and uncertainty of that process. The considerable variation in the design, construction, operation and maintenance of nuclear plants has led to an operating reactor population of great variability and diversity, even among reactors from the same vendor. While giving freedom to innovation during the

early years of the industry, when innovation was most needed, the "one-of-a-kind" approach may also have hindered the growth of significant economies of scale of benefit to safety and to the efficiency and predictability of regulation. Standardization of reactor designs should result in greater accumulation of construction and operating experience with a given design, easier transfer of that experience from one reactor to another, and more easily maintained qualified vendor support, all of which should advance safe and reliable operation. Moreover, by permitting early identification and resolution of safety issues, standardization and other means of achieving early resolution of licensing issues should afford public participants in the licensing process an earlier entry into that process, greatly reduce the number and importance of safety issues which are decided late in the process, and permit a speedy, yet thorough, NRC staff review whenever an application incorporates a certified standardized design. Thus, early resolution of issues should lead to a simpler and more predictable licensing process.

Through such devices as early site reviews, final design approvals, and reviews of duplicate and replicate plants, the NRC has for some time offered applicants the means to achieve a degree of standardization and to reach early resolution of issues. The NRC will continue to offer these means.<sup>1</sup> However, it is the opinion of the Commission that the nuclear power industry is now sufficiently advanced in technology and organization to enable applicants to submit essentially complete designs or major portions thereof for certification by rulemaking before construction and thus secure the benefits of a greater degree of standardization and early resolution of issues. Moreover, the NRC now has under review several designs which are amenable to standardization, and the industry is showing increasing interest in these designs. For the past several years, the Commission has pursued Congressional affirmation of the goals of standardization in the form of a Nuclear Power Plant Standardization and Licensing Act. However, much of what this proposed legislation would provide can be put into effect now, under the Commission's existing statutory authority. The Commission therefore

<sup>1</sup> The NRC's current policy on replication appears in this Federal Register notice after this Supplementary Information. The Commission welcomes comment on this policy, in particular on whether the NRC should continue to offer the option of replication.

proposes to add to its regulations a new Part, which is described in Sections II-V below.

The Commission announced its intention to pursue rulemaking on standardization in its recent Policy Statement on Nuclear Power Plant Standardization (52 FR 34864, September 15, 1987). The Policy Statement now superseded by this proposed rule and preamble, described the Commission's experience with standardization, set out the Commission's reasons for pursuing a greater degree of standardization, and outlined some of the crucial elements the Commission would seek to embody in a rule. The Policy Statement provided for a sixty-day comment period and gave notice that a public workshop would be held during the comment period so that the NRC and interested parties could have a more thorough discussion of the Policy Statement and the pending rulemaking than written comments alone would permit. The workshop was held in Bethesda on October 20, 1987, with representatives of the NRC staff, the Department of Energy, and the industry participating. During the Workshop, the NRC outlined the proposed rule and answered preliminary questions about it. A transcript of the workshop may be found in the Commission's public document room, 1717 H Street, NW., Washington, DC 20555.

During the comment period, the Commission received comments from six organizations and two individuals. Chief among the comments were the highly detailed ones submitted by the Nuclear Management and Resources Council (NUMARC), which were endorsed, or at least reflected to a large degree, by the comments submitted by the other organizations, among them two engineering firms and three reactor manufacturers. These comments also may be found in the Commission's Public Document Room in Washington, DC. This proposed rule incorporates many of the suggestions made in the comments. For instance, the rule provides for certification of "advanced" designs, establishes a rulemaking process which goes beyond notice and comment, provides that a design certification remains in effect during the proceeding on a request for renewal of the certification, and does not make the granting of a combined license dependent upon State and local government certification of willingness to participate in emergency planning, although it does seek the earliest possible resolution of emergency planning issues.

In some instances, the proposed rule does not incorporate suggestions made in the comments. These suggestions and our reasons for not including them are discussed in the appropriate places in Sections III, IV, and V below. In Section VI we raise certain questions on which we would appreciate comment. Some of these questions have to do with suggestions we have not incorporated in the proposed rule.

Although many intervenors have long supported standardization, even to the point of arguing that the Commission should make standardization mandatory, some of the comments on the Policy Statement opposed standardization. In particular, one individual claimed that standardization will stifle engineering ingenuity, close the public out of the licensing process, spread the safety problems of a given design to a large number of reactors, and eventually meet defeat at the hands of a multitude of site-specific changes to a certified design. This individual also claimed that it was not the proper role of the Commission to "enhance the availability of nuclear plants", as the Commission had put it in its Policy Statement on Standardization, or to "give priority" to standardization rather than the safety problems of present plants.

To the contrary, the Commission believes that competition among designers will more than adequately encourage ingenuity, that the public will be better able to participate in the licensing process if it is given an essentially complete design even before any plant of that design is built, that good design, thorough regulatory review, and long experience with nuclear power should together go a long way to preclude significant safety problems in certified designs, and that the proposed rule's restrictions on changes in certified designs should assure a lasting and high degree of standardization. Under the Energy Reorganization Act of 1974, the Commission is not permitted to develop nuclear power plants and then regulate what it has developed, but it may nonetheless do what it can by way of sound procedural mechanisms and appropriate distribution of resources to encourage and enable others to develop better designs and build better plants. The principal aim in such "enhancement" is, as always, public health and safety. In the light of this overarching aim, the Commission's statement that it intends to give priority to standardized designs and the like must not be misread to mean that the safety of the presently operating plants will become less important than the

review of standardized designs. This is not the case now and will not become so. The Commission's goal is to give priority to reviewing standardized designs and early site permits.

## II. General Scope and Structure

Part 52 is intended to improve the licensing of nuclear power plants by the use of three procedural innovations, two of which have been in partial use by the Commission for several years. The first of these is the early site permit or site-bank concept, already in partial use through the procedures of Appendix Q to 10 CFR Part 50. Subpart A of Part 52 formalizes the early site approval process, allowing a prospective applicant to obtain a permit for one or more pre-approved sites on which future nuclear power stations can be located. Subpart B carries forward the standard design approval process of Appendix O to Part 50 in much the same way, allowing a prospective applicant, vendor, or other interested party to obtain Commission approval of a design of a complete nuclear power plant or a major portion of such a plant. Subpart C establishes procedures for the issuance of a combined construction permit and conditional operating license (hereafter referred to as a combined license) for a nuclear power plant. The combined license is essentially a construction permit which also requires consideration and resolution of many of the issues currently considered at the operating license stage. It does not authorize operation. Operation will be authorized only after the Commission has decided that the relevant license conditions have been met. The procedures also provide an opportunity for a hearing on carefully-defined issues before operation is authorized. 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.

This structure reveals the overall purpose of Part 52: to improve reactor safety and to streamline the licensing process by encouraging the use of standard designs and by permitting early resolution of environmental and safety issues related to the reactor site and design. As a result, the scope of the combined license proceeding for a facility can be far more limited than the scope of the two-step licensing process currently in use. Similarly, after the combined license proceeding, the regulatory matters which would remain

for resolution before authorization to operate under the combined license would be much more limited and well-defined than are the issues which remain to be resolved in an operating license proceeding under the current practice.

All three subparts of the proposed Part 52 draw heavily on existing provisions in 10 CFR Part 50 and its appendices. Reference to pre-existing sections obviates the need to repeat identical provisions. In addition, most of the provisions of Part 50 have been in use for many years and are commonly understood by applicants, intervenors, and the NRC staff. Finally, Part 50 should remain intact because licensing under it may be expected to continue for some time in parallel with licensing under the improved procedures of Part 52. If, in the future, all licensing is conducted under Part 52, the two parts can be combined into a single part containing all provisions applicable to the licensing of production and utilization facilities.

## III. Definitions—Section 52.3

This section contains largely self-explanatory definitions of "combined license," "early site permit," "standard design," and "standard design certification". The omnibus provision in paragraph (e) incorporates other useful definitions from Part 50 and the Atomic Energy Act.

## IV. Subpart A—Early Site Permits

This subpart allows any prospective applicant for a construction permit or a combined license under Subpart C to apply for an early site permit, notwithstanding the fact that an application for a construction permit or combined license for a facility has not been filed. Filing requirements are set out in §§ 52.15 and 52.17. The application should describe, among other things, the number, type, and thermal power level of the facilities for which the site may be used. Section 52.17(b) requires that the application contain a plan for redress of the site for use in the event that site preparation activities are performed under the permit and the permit expires without having been referenced in an application for a construction permit or a combined license under Subpart C of Part 52. Finally, § 52.17(c) requires the application to demonstrate that the area surrounding the site is amenable to emergency planning which would provide reasonable assurance that adequate protective measures could be taken in the event of a radiological emergency at the site. This last

paragraph of § 52.17 also requires the application to include a description of contacts and arrangements made with local, state, and federal agencies with responsibility for coping with emergencies.

Section 52.19, along with conforming amendments to 10 CFR Part 170 which are currently being made as part of a general revision of Part 170, establish a new procedure for collection of fees associated with the review of an application for an early site permit or a renewal thereof. The applicant for the permit will be assessed these fees only when an application referencing the early site permit is filed while the permit is valid. If no application referencing the early site permit is filed, the permit holder must pay these fees at the end of the initial twenty-year period. Fees for a renewed permit will be assessed in the same manner. However, if an application for an early site permit or renewal is denied or withdrawn, any outstanding fees will be immediately due and payable by the applicant for the permit or renewal.

Section 52.21 states that an early site permit is a Commission license, and is subject to the applicable procedural requirements of 10 CFR Part 2.

The issues presented in an early site permit proceeding are to a considerable extent environmental, but because they also involve significant safety issues, a report by the Advisory Committee on Reactor Safeguards (ACRS) on the permit application is required by § 52.23.

Section 52.25 provides that issuance of an early site permit allows the holder of the permit to conduct site preparation activities without having to seek prior NRC approval. The holder possesses what is commonly referred to as an "LWA-1" for the site and may perform the activities permitted in 10 CFR 50.10(e)(1). Section 52.25 also requires redress of the site if the permit is not renewed and not referenced in an application.

An early site permit is valid for an initial period of twenty years (§ 52.27) and may, upon application, be extended for periods of up to twenty years each (§ 52.29), provided certain criteria are met (§ 52.31). Section 52.29 provides that any person whose interests may be affected by renewal of the permit may request a hearing.

An early site permit 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 early site permit 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 early site

permit and was docketed prior to the expiration of the early site permit (§ 52.29(c)). An application for renewal must be filed not less than twelve nor more than thirty-six months prior to the expiration date (§ 52.29(a)).

An approved site may be used for purposes not related to the construction of a nuclear power facility (for example, 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 (§ 52.35). 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 issuance of the permit were called into question.

Section 52.39(a) provides that, notwithstanding the provision in 10 CFR 50.109 for backfits aimed at substantial increases beyond adequate protection, during the initial or renewal period in which an early site permit is in effect, the Commission may not impose more stringent requirements on the early site permit or the site for which the permit was issued unless the Commission determines either that significant new information shows that more stringent requirements are necessary to bring the site or the permit into compliance with the Commission's regulations and orders in effect at the beginning of the initial or renewal period, or that more stringent requirements are necessary for adequate protection of the public health and safety. Section 52.39(b) provides that an applicant for a construction permit, operating license, or combined 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 elements of the permit.

#### V. Subpart B—Certified Standard Designs

The Commission's existing rules regarding standard designs are found in Appendices M, N, and O, to 10 CFR Part 50. Appendix M concerns licenses to manufacture one or more nuclear power reactors to be installed and operated at sites not identified in the license application. Appendix N concerns licenses to construct and operate nuclear power reactors of duplicate design at multiple sites. Appendix O governs the staff review and approval of standard designs for an entire nuclear power reactor or a major portion thereof, and includes a provision for Commission approval of a standard design in a rulemaking proceeding. This Subpart concerns only the latter provision of Appendix O. Subpart B is intended to set forth the procedures and requirements for Commission approval

of standard designs by rulemaking. The term "certification" is used for this approval to distinguish it from the preliminary and final staff approval of standard designs as set forth in Appendix O.

Section 52.43 addresses the relationship of Subpart B to Appendices M, N, and O of 10 CFR Part 50, as described in the preceding paragraph. These Appendices represent different approaches to standardization and will remain in effect, as will the replicate plant approach to standardization. Appendices M and N may be used independently of Subpart B unless the applicant also wishes to use a certified standard design. A final design approval under Appendix O is a prerequisite for certification of a standard design under this Subpart. An application for a final design approval must state whether the applicant intends to seek certification of the design, because staff review of a design for which certification is sought may be different from staff review of a design for which only a final design approval is sought. For the same reason, anyone who holds a final design approval on the effective date of this rule and wishes to apply for certification of the design must obtain a new final design approval. However, the application in this case may simply update and supplement the application which was filed for the original final design approval, and the staff's review of the new application need not revisit issues settled in the original review.

Sections 52.45 and 52.47 contain the requirements for filing and contents of applications for certifications of designs. These sections are drafted in general terms so that Part 52 will not have to be amended every time the information and safety criteria in 10 CFR Parts 20, 50, 73, and 100 undergo some further development. The NRC staff is currently developing safety criteria for application in the review of advanced reactor designs. These criteria will define minimum safety requirements for advanced reactors and will provide for assessment and documentation of the enhanced safety the Commission expects these reactor designs to embody. Part 52 deals only with procedural aspects of the certification of reactor designs. The staff will advise the prospective applicant for certification on precisely what information is required for the staff's consideration of the application.

Certification of a reactor design which differs from a design for which a final design approval has been obtained under Appendix O of 10 CFR Part 50 is a new procedure which the Commission is currently

There is a presumption in § 52.45 of the proposed rule that this maturity will have to be demonstrated through comprehensive testing of a prototype. The same section of the rule sets forth the criteria which must be satisfied if the presumption is to be overcome. The same criteria must be satisfied by any applicant proposing to demonstrate the maturity of a design by means of a prototype of only part of the design. If an applicant for a construction permit or combined license under this Part chooses to reference a final design approval for a design whose maturity must be demonstrated by prototype and has not yet been so demonstrated, the applicant will be subject to the requirements of § 50.34(a)(8) regarding research and development to confirm the adequacy of the design.

Ideally, designs for which certification is sought will be for an essentially complete plant. The designs would make more straightforward the preparation of a probabilistic risk assessment and safety analysis and would help minimize the extent of the staff's review of the license applications which reference a single design. The designs would also help assure that no two plants of the same design would vary significantly from each other. For these reasons, the NRC will not entertain applications for renewal of a license for a design which is not for an essentially complete plant. However, the NRC will entertain applications for certification of a major portion of a plant if, and only if, that portion contains all buildings, structures, systems, and components that can significantly affect the safe operation of the plant. See § 52.45(d) below.

Applications for certification of any design must contain a level of detail comparable to that required for a final design approval under Appendix O and sufficient to enable the staff to judge the applicant's proposed means of assuring that construction conforms to design, and to reach a final conclusion on all matters which must be decided before the certification can be granted. See § 52.47 below.

Section 52.49 parallels § 52.19 with regard to fees. Conforming amendments are being made to Part 170 as part of the general revision of that Part. One engineering firm argued that fees would be a substantial disincentive to potential applicants for certification. And, of course, any fee the NRC charges is to some degree a disincentive. However, the agency is now legally bound to charge fees which account for a substantial part of its budget. Design review will require substantial resources

which, under a series of statutes going back to the Independent Offices Appropriations Act, the agency must recoup at least in part.

However, the Commission is free under current law to lessen the disincentive effect of the fees it must charge for review of standardized designs. Therefore, in addition to not charging an application fee, the NRC will defer any fees associated with review of the application, pending the filing of an application for construction permit or combined license referencing the certified standard design. Any outstanding fees will become due and payable by the holder of the design certification at the end of the initial period of the certification. Fees for the renewal of a standard design certification will be assessed in the same manner.

Section 52.51 provides that a standard design certification is a rule that will be issued in accordance with the provisions of Subpart H of 10 CFR Part 2. Subpart H of 10 CFR Part 2 implements section 553 of the Administrative Procedure Act for NRC rulemaking proceedings. 10 CFR 2.805(b) provides that the Commission may hold informal hearings and may structure them as the Commission determines will best serve the purposes of the proceeding. In addition to notice of an application for a design certification, and an opportunity to provide written comments on the application, the Commission will provide an opportunity to request an informal hearing on the application before an Atomic Safety and Licensing Board. Any hearing held will provide an opportunity for written presentations made under oath or affirmation, and for oral presentations and questioning if the Board finds them either necessary for the creation of an adequate record, or the most expeditious way to resolve controversies. Ordinarily, the questioning will be done by members of the Board, using the Board's questions or questions submitted to the Board by the parties. The Board may also request authority to use additional procedures such as discovery, or may request that the Commission convene a formal adjudication on discrete issues involving substantial disputes of fact, necessary for the Commission's decision, that cannot be resolved with sufficient accuracy except in formal adjudication. The staff will be a party in any informal hearing, and the decision in the hearing will be based only on information on which all parties to the hearing have had an opportunity to comment.

The major issues associated with the review of an application for a certified

standard design concern the safety features of the design. Section 52.53 therefore provides for mandatory ACRS review of the application. Review by the ACRS will be limited to issues on which the ACRS has not made findings and recommendations in any earlier review of the design. The Commission may, of course, ask the ACRS to report on any matter within its expertise.

The certified standard design will initially be valid for ten years (§ 52.55), but it may be renewed, upon application, for periods of an additional five to ten years each (§ 52.57). The procedures to be used for a rulemaking proceeding on the application for renewal must be those required for rulemakings on applications for initial certification of designs. A design certification 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 any proceeding ultimately based on an application which references the certified design and was docketed prior to the expiration of the certification (§ 52.57(b)).

Section 52.59 contains the criteria for evaluating an application for renewal. The initial burden is on the applicant to show that the design complies with the Atomic Energy Act and all the Commission's regulations other than the design certification itself. During the rulemaking on the application for renewal, the Commission may, in addition to requiring that the design conform to current regulations and orders, impose more stringent safety requirements on the certification, but only if the Commission determines that 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 more stringent requirements and that the direct and indirect costs of implementation of those requirements are justified in view of this increased protection. If a renewal application is denied, the applicant may revise the design and file a new application for a standard design certification. See § 52.59(b).

The stability of a certified standard design is essential to the concept of standardization. For this purpose, § 52.63 contains provisions whose purpose is to preserve design stability against three possible sources of change. First, 52.63(a), which parallels § 52.39 for early site permits, provides that, during the initial or renewal period in which a design certification is in effect, the



Commission will not require design changes. The Commission believes that the changes are necessary to bring the design into compliance with the Commission's regulations and orders in effect when the certification was issued or renewed, or that the changes are necessary for adequate protection of public health and safety. Of course, as the Atomic Energy Act requires, the Commission will make such determinations without regard to economic costs. Modifications to a design certification rule will be applied to all plants referencing the certified design.

The Commission believes that carrying out modifications by way of rulemaking will not hamper the Commission's ability to act quickly in the event that plants referencing a certified design pose undue risks. There is no reason why such a rulemaking should proceed less quickly than a license amendment proceeding for the same purpose. Indeed, the procedures for rulemaking would appear to be simpler than those for license amendment. Moreover, the Commission has the authority to issue immediately effective interim rules, pending completion of final rulemaking resolutions of undue risk issues.

Members of the public may challenge a design certification rule by means of petitions for rulemaking and, during licensing proceedings on applications which reference a standardized design, only by claims that adequate protection of public health and safety, or compliance with the Commission's regulations and orders, requires modification of the rule. NUMARC urged that a design certification rule be subject to challenge by a member of the public only in a rulemaking proceeding. However, members of the public cannot be barred from making claims in a proceeding that the criteria by which the Commission is to make its decision on the application are not met. Moreover, paragraph 7 of Appendix O to 10 CFR Part 50, of which Subpart B of the proposed rule is an elaboration, provides for challenge to the design certification rule outside of rulemaking.

Second among the provisions aimed at maintaining stability for certified designs, § 52.63(b) provides that the holder of a design certification may request an amendment to the design by way of notice and comment rulemaking. The Commission will grant the amendment if it complies with the Atomic Energy Act and the

Commission's regulations and orders. An amendment to a design certification initiated by the holder of the certification will be applied to all plants referencing the design only if the amendment is necessary for adequate protection of the public health and safety.

Third and last, § 52.63(c), which parallels 52.39(b) for early site permits, provides that a licensee or an applicant for a facility license or amendment which references a certified standard design may request an exemption from one or more elements of the design certification rule. The Commission will grant the request if it complies with the requirements of 10 CFR 50.12(a). NUMARC suggested that a lesser standard than § 50.12 be applied to a request for an exemption, namely, that the request for an exemption simply meet the Commission's regulations (except, of course, for the particular design certification regulation itself). However, the Commission believes that the benefits of standardization will not be fully achieved unless significant site-specific variation among plants referencing a given certified design is kept to an irreducible minimum. In harmony with the aim of keeping variation to a minimum, § 52.63(d) permits the licensee of a plant built according to a standardized design to make a change to the standardized portion of the plant, without prior Commission approval, only if the change does not involve changes to the design as described in the rule certifying the design, or in the certifying rule together with any exemption which may have been granted the licensee under § 52.63(c).

#### VI. Subpart C—Combined Construction Permits and Conditional Operating Licenses

Section 161h of the Atomic Energy Act and 10 CFR 50.52 provide that the Commission may issue a single license for several activities which could otherwise be licensed separately. However, this provision has not been applied to construction permits and operating licenses for nuclear power plants. Indeed, the current licensing process has not changed substantially since it was originally enacted. In the early years of the nuclear power industry, there were many first-time nuclear plant applicants, designers, and consultants, and many novel design concepts. Accordingly, the process was structured to allow licensing decisions to be made while design work was still in progress and to focus on case-specific reviews of individual plant and site considerations. Construction permits

were commonly issued with the understanding that open safety issues would be addressed and resolved during construction, and that issuance of a construction permit did not constitute Commission approval of any design feature. Consequently, the operating license review was very broad in scope. Now that the nuclear industry has matured, it is possible to describe and evaluate plant designs on a generic basis, to have designs essentially complete in scope and level of detail prior to construction, and to propose and evaluate plant sites without plant design details. These circumstances make it possible to combine the construction permit proceeding with much of the operating license proceeding into a single proceeding for the issuance of a combined construction permit and conditional operating license. Full-power operation can then be authorized under the combined license following an opportunity for a hearing on a more limited set of carefully defined issues.

The application for a combined license may, but need not, reference a standard design which has been certified under Subpart B, or a site for which an early site permit has been issued under Subpart A (§ 52.73). If the facility is to be of a design which has been certified, the scope of the proceeding on the application for a facility license is narrowed, the major safety questions having been resolved in the earlier rulemaking on the design. Similarly, if the facility is to be located on a site for which an early site permit has been issued, the scope of the facility license proceeding is further narrowed. If an early site permit is not referenced, the early site review procedures of 10 CFR Part 2 remain available to expedite the environmental review. Obviously, the efficiency and effectiveness of the combined licensing process is maximized if both a certified standard design and a pre-approved site are referenced. For this reason, the Commission anticipates that this will be the preferred approach, particularly with regard to standard designs. In order to encourage standardization, the Commission will give priority among applications to those which reference certified standard designs and pre-approved sites.

Sections 52.75 through 52.79 contain the requirements for filing and contents of applications. It should be noted that an environmental report is not required if a pre-approved site is proposed for the facility (§ 52.77). The applicant must make good faith efforts to obtain certifications from responsible State and

local governmental agencies that the proposed emergency plans are practicable and that the responsible agencies are committed to execution of their responsibilities under the plans. If the certifications cannot be obtained, the applicant must nonetheless demonstrate that the proposed plans provide reasonable assurance that adequate protective measures will be taken in the event of a radiological emergency at the plant (§ 52.79(d)). The antitrust review will be conducted as it has been done in the past for construction permit applications. Because the antitrust review can proceed in parallel with the technical review, the antitrust review should not affect the efficiency of the combined license proceeding.

Sections 52.81 and 52.83 incorporate, where appropriate, the technical standards and requirements of Part 50 as they would be applied to power plant license applicants and licensees under the existing system. That is, applications for a combined license will be reviewed according to the Part 50 standards for construction permits and operating licenses, where appropriate (§ 52.81), and holders of Part 52 combined licenses will be held to the appropriate Part 50 standards for plants under construction or, upon authorization for operation, in operation (§ 52.83). All limitations contained in the Part 50 provisions (for example, requirements for plants receiving operating licenses after a certain date) carry forward to Part 52.

The combined license hearing will be governed by the appropriate sections of 10 CFR Part 2 (§ 52.85). ACRS review of the application is mandatory (§ 52.87), although the scope of the report will be much narrower if the application references a certified standard design or a pre-approved site that the ACRS has previously reviewed. Section 52.89 provides that, if the application references an approved site or a certified standard design, the environmental review must focus on the suitability of the site for the design and any other significant environmental issue not considered in any previous proceeding on the site or the design. It should be noted that because both the early site permit and the standard design certification require the preparation of an environmental impact statement, only an environmental assessment need be prepared in connection with the application for a combined license. If the application does not reference a pre-approved site, the usual Part 51 procedures must be

followed for review of the environmental part of the application.

As noted above in the discussion of Subpart A, once the application for a combined license has been docketed, an applicant who plans to use a site for which an early site permit has been issued may perform "LWA-1" activities (see § 50.10(e)(1)) without prior NRC approval. If the application does not reference an approved site, the applicant must request this authorization before performing "LWA-1" activities (§ 52.91). If the activities are carried out and the application is withdrawn or denied, redress of the site will, in some cases, be required. To perform "LWA-2" activities, all applicants must seek authorization from the Licensing Board under § 50.10(e)(3)(i), which allows further construction activities at the site prior to issuance of a construction permit or combined license.

Section 52.93 governs the extent to which a certified standard design or an early site permit may be modified by the applicant during a proceeding on an application for a combined license. As provided in § 52.93(a), the applicant may request an exemption from one or more elements of the design for that particular facility. The Commission will grant the request if it complies with the requirements of 10 CFR 50.12(a). As provided in § 52.93(b), if the application for the combined license references an early site permit, the applicant may also request a variance from some element of the permit.

Section 52.97 provides that the Commission may issue a combined license for a facility if the applicable requirements of §§ 50.40, 50.42, 50.43 and 50.50 have been met and there is reasonable assurance that the facility will be constructed and operated in conformity with the license, the provisions of the Atomic Energy Act, and the Commission's regulations. In addition to technical specifications, the license will include the inspections, tests, and analyses that the licensee shall perform and the acceptance criteria therefor which will provide reasonable assurance that the facility has been constructed and will be operated in accordance with those requirements. The Commission will verify the licensee's compliance those requirements through its inspection program (§ 52.99).

Section 105c. of the Atomic Energy Act requires that the Commission determine whether "significant changes" have taken place with respect to the antitrust situation during the review of an application for an operating license.

This is done because the competitive circumstances could alter markedly between the issuance of the construction permit and the completion of the facility. The proceeding on the application for a combined license includes consideration of the antitrust situation. However, because operation under a combined license cannot be authorized until the plant is constructed, § 52.101 provides for possible further antitrust review at the stage when authorization of operation is being considered. If significant changes have occurred since issuance of the combined license, the statutory antitrust review must precede commercial operation of the facility and could result in the imposition of additional license conditions. However, because most issues will be decided prior to issuance of a combined license, and because the scope of the proceeding authorizing operation under the license will be correspondingly narrowed, the time between issuance of the combined license and the authorization of operation should be short enough to make significant changes in the antitrust situation unlikely.

Before the facility may operate, the holder of the combined license must apply for authorization of operation under the combined license. The Commission will publish a notice of the proposed authorization in the Federal Register pursuant to 10 CFR 2.105. Within 30 days, any person whose interests may be affected by the authorization may request a hearing on the basis (1) that there has been a nonconformance with the license, the licensee's written commitments, the Atomic Energy Act, or the Commission's regulations and orders, which has not been corrected and which could materially and adversely affect the safe operation of the facility; or (2) that some modification to the site or the design is necessary to assure adequate protection of public health and safety or the common defense and security. 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 assure that the operating license proceeding is focused on significant safety issues.

## VII. Commission Questions

The Commission will, of course, appreciate receiving comment on any aspect of this proposed rule. However, the Commission will be particularly

appreciative of comment on the following questions:

1. In implementing by rulemaking the Commission's legislative proposals on standardization, does this proposed rule take full advantage of the Commission's authority under the Atomic Energy Act? Does it in any way exceed the Commission's authority?

2. Should a design certification take the form of a license rather than a rule? Does the Commission have the authority under existing law to license a design? NUMARC believes that the rights and obligations which attach to a license may be more clearly understood than those which would attach to a certification which took the form of a rule. The proposed rule accords with paragraph 7 of Appendix O to 10 CFR Part 50 in treating the certification as a rule. Rulemaking may provide greater procedural flexibility than a license proceeding does, and certification by rule would be open to a wider pool of applicants than certification by license (see 10 CFR 50.38).

3. What procedures are appropriate for design certification by rulemaking?

4. Should the Commission require, as part of a certified standard design, the standardization of construction practices, operation and maintenance practices, quality assurance, and personnel training?

5. Section 52.45(d) of the proposed rule says that the NRC will entertain an application for certification of a design of only a major portion of a plant only if that portion contains all buildings, structures, systems, and components that can "significantly affect the safe operation of the plant". The intent of this language is to rule out of consideration for certification any incomplete design in which events in the balance of plant could have an adverse impact on the safety of that portion of the plant for which certification is sought. Would some phrase other than "significantly affect the safe operation of the plant" better serve as a standard by which to determine whether to accept an application for certification of an incomplete design? Should the NRC, in addition, require of any such application a showing of good cause, or the like, for seeking certification of a design of less than full scope?

On the other hand, should the language of § 52.45(d) be more lenient and permit an application for certification of a design of a major portion of a plant, as long as the application contains the requirements for the interface between the portion for which certification is sought and all buildings, structures, systems, and components which can "significantly

affect the safe operation of the plant," but does not contain the detailed design for such buildings, structures, systems, and components? Such an approach would be more consistent with the legislation the Commission proposed in March of 1987. Section 104 of the proposed legislation would entertain an application for certification of "any major subsystem which represents a discrete element" of a nuclear power facility.

6. What are the appropriate standards to apply to a request by a holder of a design certification to amend the certification? If the amendment is granted, should all plants which reference the certification be required to backfit to comply with the amended certification, or only some, as required by the proposed rule?

7. In order to prevent continual regression from standardization among plants initially built according to the same design, should stricter standards than those in 10 CFR 50.12 be applied to requests for exemptions from a design certification rule?

8. The proposed rule generally permits the NRC to impose modifications on site permits and design certifications only for the sake of compliance or adequate protection. Under the proposed rule, only when an early site permit or a design certification comes up for renewal would the NRC be able to impose modifications which went beyond requiring adequate protection. Does the proposed rule provide a reasonable degree of finality to early site permits and design certifications?

9. The proposed rule places a term of twenty years on early site permits and allows for an unlimited number of renewals of up to twenty years each. Should a longer or shorter term be placed on the permit? What should the respective burdens of the permit holder and the NRC be at renewal?

10. How might the proposed rule provide for a "sign-as-you-go" process of NRC inspection of a plant being constructed according to a certified design? NUMARC suggested instituting such a process in order to secure the earliest possible resolution of quality assurance and design conformance questions. The NRC encourages the earliest possible resolution of these questions. To this end, the rule requires applications for design certifications and combined licenses to propose for inclusion in the certification or license inspections, tests, analyses, and related acceptance criteria which will help provide reasonable assurance that the facility has been well constructed. See §§ 52.47 and 52.79 of the proposed rule. Moreover, the NRC would, during

construction authorized by this part, devote the resources necessary to achieve the earliest possible staff-level identification and resolution of quality assurance and design conformance questions. However, the NRC does not see how Commission-level finality can be afforded the resolution of such questions without risking an almost continual hearing on the construction of the plant.

11. The National Governors' Association adopted the following Recommendation, among others, at its 79th annual meeting, July 26-28, 1987: "In the future, emergency plans should be approved by the NRC before it issues the construction permit for any new nuclear power plant." To what extent should approval of emergency plans be required before an early site permit or a combined license is issued? Are the provisions of the proposed rule adequate in this regard? See §§ 52.17(c) and 52.79(d).

12. The staff is considering whether there is a need for further rulemaking or guidance for future reactors, both light-water reactors and other types, to assure that future license applications adequately address the Commission's Safety Goal Policy Statement (51 FR 30028; August 21, 1986), and the licensing criteria set forth in the Commission's Severe Accident Policy Statement (50 FR 32138; August 8, 1985), particularly the criteria that call for demonstration of compliance with the applicable parts of 10 CFR 50.34(f) and completion of a probabilistic risk assessment (PRA) together with a systematic consideration of any severe accident vulnerabilities the PRA might expose. Is the language in §§ 52.47(a) and 52.47(b) sufficient to assure that future applications adequately address these matters? Given the Commission's guidance, in its Policy Statement on Safety Goals for the Operation of Nuclear Power Plants, that the Safety Goals should not be used to make individual licensing decisions (51 FR at 30031-32), should the rule contain the requirement in § 52.47(b)(3) that an applicant provide "a realistic assessment of the degree to which the design conforms to the Commission's Safety Goals"?

#### Replicate Plant Concept

The replicate plant concept involves an application by a utility for a license to construct or operate one or more nuclear power plants of essentially the same design as one already licensed.

The design of the plant already licensed (termed the base plant design) may be replicated at both the



construction permit and operating license stages, and in applications for combined construction permits and operating licenses in a one-step licensing process. Replication of an approved base plant design at the construction permit stage is a prerequisite for its replication at the operating license stage. Although replication of the base plant design at the operating license stage is not mandatory, that is, the operating license application may be submitted as a custom plant application, it is strongly recommended.

An application for a replicate plant must demonstrate compliance with the four licensing requirements for new plant designs as set forth in the Commission's Severe Accident Policy Statement (50 FR 32136; August 8, 1985).

Each application proposing to replicate a previously licensed plant will be subjected to a qualification review to determine the acceptability of the base plant for replication and to define specific matters that must be addressed in the application for the replicate plant. A further requirement for qualification is that the application for a replicate plant must be submitted within five years of the date of issuance of the staff safety evaluation report for the base plant. The qualification review will consider the following information:

- (1) The arrangement made with the developers of the base plant design for its replication;
- (2) The compatibility of the base plant design with the characteristics of the site proposed for the replicate plant;
- (3) A description of any changes to the base plant design, with justification for the changes;
- (4) The status of any matters identified for the base plant design in the safety evaluation report, or subsequently identified by the ACRS or during the public hearings on the base plant application as requiring later resolution;
- (5) Identification of the major contractors, with justification for the acceptability of any that are different than those used by the base plant applicant; and
- (6) A discussion of how the replicate plant design will conform to any changes to the Commission's regulations which have become effective since the issuance of the license for the base plant.

#### **Environmental Impact: Categorical Exclusion**

The proposed rules would amend the procedures currently found in Part 50 and its appendices for the filing and reviewing of applications for

construction permits, operating licenses, early site reviews, and standard design approvals. As such they meet the eligibility criteria for the categorical exclusion set forth in 10 CFR

§ 51.22(c)(3). That section applies to "[a]mendments to . . . Part[] 50 . . . which relate to (i) procedures for filing and reviewing applications for licenses or construction permits or other forms of permission . . ." As the Commission explained in promulgating this exclusion, "[a]lthough amendments of this type effect substantive parts of the Commission's regulations, the amendments themselves relate solely to matters of procedure. [They] . . . do not have an effect on the environment." (49 FR 9352, 9371, col. 3; March 12, 1984) (final environmental protection regulations).<sup>2</sup> Accordingly, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with these proposed rules.<sup>3</sup>

#### **Paperwork Reduction Act Statement**

The proposed rule contains information requirements that are subject to the Paperwork Reduction Act of 1980 ("the Act") (44 U.S.C. 3501 et seq.). This proposed rule will be submitted to the Office of Management and Budget (OMB) for review and approval under the requirements of the Act. When the proposed rule is submitted to OMB, the Commission, in compliance with section 3507(a)(2)(B) of the Act, will publish a notice in the Federal Register stating that the

<sup>2</sup> It makes no substantive difference for the purpose of the categorical exclusion that the proposed amendments will be placed in Part 52 rather than in Part 50. The amendments are, in fact, amendments to the Part 50 procedures and could have been placed in that Part.

<sup>3</sup> The requirements concerning testing of full-size prototypes of advanced reactors, see § 52.45(c) of the proposed rule, may appear not to fit into the category excluded by § 51.22(c)(3), since to comply with the requirement, an applicant must likely will have to build and test a prototype plant, an act clearly with an environmental impact. Nonetheless, § 52.45(c) is eligible for exclusion under § 51.22(c)(3). Unlike, for instance, the promulgation of a safety rule which applies to operating plants, the formal action of promulgating § 52.45(c) will have only a potential impact on the environment. That impact becomes actual only if a designer chooses to pursue certification of an advanced design. Under the present circumstances, no meaningful environmental assessment or impact statement can be made. Cf. 49 FR at 9372, cols. 2-3 (entering into an agreement with a State under Section 274 of the Atomic Energy Act has no immediate or measurable environmental impact and therefore warrants a categorical exclusion). The issuance of the construction permit and operating license for a prototype plant would, of course, be a major federal action with a significant impact on the environment, and would entail the preparation of an environmental impact statement. Cf. id., col. 3 (the States must prepare detailed environmental analyses before they license certain activities).

Commission has submitted the rule to OMB and setting forth the information which section 3507(a)(2)(B) requires the agency to set forth in the notice.

Pending submission of the proposed rule to OMB, it may be useful to commenters to note three aspects of the information collection requirements in this proposed rule. First, most of them rely on information collection requirements already approved by OMB for promulgation in other parts of 10 CFR, particularly Part 50. Second, the rule is expected to reduce the reporting burden on applicants for construction permits and operating licenses for nuclear plants, because any person seeking a Part 52 combined license which references a Part 52 early site permit and a Part 52 design certification will, simply by referencing the permit and certification, be relieved of the burden of providing much of the information Part 50 requires of applicants for construction permits and operating licenses. Third, the public reporting burdens which would be imposed by Part 52 are estimated to range from a low for an early site permit (which would require only part of the information required for a construction permit) to a high for certification of an advanced reactor design (which probably would involve the licensing under Part 50 of a full-size prototype).

The Commission welcomes any suggestions for reducing the burdens which would be imposed by the information collection requirements in the proposed rule. The numbers of the sections of the proposed rule which set forth the information requirements are listed in § 52.8 of the proposed rule.

#### **Regulatory Analysis**

As presently constituted, the American population of nuclear power reactors consists largely of one-of-a-kind designs. Experience has shown that the highly individualistic character of this population has consumed enormous resources in the processes of design, construction, and safety review. Because, typically, design of a plant was not complete when construction of it began, many safety questions were not resolved until late in the licensing proceeding for that plant. This late resolution of questions introduced great uncertainty into proceedings, because the process of resolution often entailed lengthy safety reviews, construction delays, and backfits. Moreover, the low incidence of duplication among designs has meant that experience gained in the construction and operation of a given plant has often not been useful in the construction and operation of any other

plant, and has made the generic resolution of continuing safety issues more complicated.

In the face of this experience with a population of unique plants, there have long been fundamentally only three alternatives for Commission action, the last two of them not mutually exclusive: either make no effort to bring about an increased degree of standardization, or propose legislation on standardization, or enact by rulemaking as much of a scheme for promoting standardization as the Commission's current statutory authority permits. The Commission has for some time concluded against the first alternative, having decided that a substantial increase in standardization would enhance the safety and reliability of nuclear power plants and require fewer resources in safety reviews of plants, and that the Commission should have in place provisions for the review of standardized designs and other devices for assuring early resolution of safety questions. The Commission has therefore pursued standardization both by proposing legislation—without success—and by promulgating rules, in particular Appendices M, N, and O to Part 50 of 10 CFR. Lacking legislation on standardization, the Commission believes that the most suitable alternative for encouraging further standardization is to fill out and expand the Commission's regulatory scheme for standardization and early resolution of safety issues.

Therefore, the Commission now proposes to promulgate a new set of regulations, to be placed in a new Part, 10 CFR Part 52. This new Part facilitates the early resolution of safety issues by providing for pre-construction-permit approval of power plant sites, Commission certification of standardized designs, and the issuance of licenses which combine permission to construct a plant with a conditional permission to operate it once construction of it has been successfully completed.

Ideally, a future applicant will reference an approved site and a certified design in an application for a combined license, thus obviating the need for an extensive review of the application and construction. The provision in Part 52 for Commission certification of designs has the additional objective of encouraging the use of standardized designs, thereby adding to the benefits of early resolution the safety benefits of accumulated experience and the economic benefits of economies of scale and transferable experience.

Quantification of the costs and benefits of this rulemaking is probably

not possible. Much depends on the extent to which the industry pursues standardization. Clearly, if the Commission and the industry spend the resources necessary to certify a score of designs and then no applicant references any of them, those resources will have been largely wasted. On the other hand, it is just as clear that if a score of plants uses a single certified design, there will have been a great saving of the resources of the industry, the agency, and the interested public alike. To be added to the uncertainties surrounding the industry's response, there are also uncertainties concerning the costs of the certification process, and the costs of developing the designs themselves, especially the advanced designs, which, it is presumed, will require testing of prototypes. However, if the industry finds it in its interest to proceed with the development of nuclear power, there is every reason to expect that the safety and economic benefits of standardization will far outweigh the upfront costs of design and Commission certification: Review time for applications for licenses will be drastically reduced, the public brought in to the process before construction, construction times shortened, economies of scale created, reliability of plant performance increased, maintenance made easier, qualified vendor support made easier to maintain, and, most important, safety enhanced.

Thus, the rationale for proceeding with this rulemaking: There is no absolute assurance that certified designs will in fact be used by the utilities; however, it is certain that if the reasonably expected benefits of standardization are to be gained, then the Commission must have the procedural mechanisms in place for review of applications for early site approvals, design certifications, and combined licenses. The most fundamental choice is, of course, the industry's, to proceed or not with standardization, according to its own weighing of costs and benefits. But the Commission must be ready to perform its review responsibilities if the industry chooses standardization.

#### Regulatory Flexibility Act Certification

The proposed rule will not have a significant impact on a substantial number of small entities. The proposed rule will reduce the procedural burden on NRC licensees by improving the reactor licensing process. Nuclear power plant licensees do not fall within the definition of small businesses in section 3 of the Small Business Act, 15 U.S.C. 632, the Small Business Size Standards of the Small Business Administration in

13 CFR Part 121, or the Commission's Size Standards published at 50 FR 50241 (Dec. 9, 1985). The impact on intervenors or potential intervenors will be neutral. For the most part, the proposed rules will affect the timing of hearings rather than the scope of issues to be heard. For example, many site and design issues will be considered earlier, in connection with the issuance of an early site permit or standard design certification, rather than later, in connection with a facility licensing proceeding. Similarly, a combined license proceeding will include consideration of many of the issues that would ordinarily be deferred until the operating license proceeding. Thus, the timing rather than the cost of participating in NRC licensing proceedings will be affected. Intervenors may experience some increased preparation costs if they seek to reopen previously decided issues because of the increased showing that will be required. Once a hearing commences, however, an intervenor's costs should be decreased because the issues will be more clearly defined than under existing practice. Therefore, in accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared.

#### Backfit Analysis

If this proposed rule becomes final, it will not modify or add to the 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 construct or operate a facility. However, it could be argued that this rule will modify and add to the procedures or organization required to design a facility, because the rule would add to, or else at least spell out, the requirements for applicants for design certifications. Moreover, the rule, if made final, will, at the very least, substantially modify the expectations of anyone who had hoped to apply for a design certification under the existing paragraph 7 of Appendix O, particularly of any such who presently hold preliminary or final design approvals under that Appendix.

Nonetheless, the Commission believes that the backfit rule does not apply to this proposed rule and, therefore, that no backfit analysis pursuant to 10 CFR 50.109(c) is required for this proposed rule. The backfit rule was not intended to apply to every action which

substantially changes settled expectations. Clearly, the backfit rule would not apply to a rule which would impose more stringent requirements on all future applicants for construction permits, even though such a rule arguably might have an adverse impact on a person who was considering applying for a permit but had not done so yet. In this latter case, the backfit rule protects the construction permit holder, not the prospective applicant, or even the present applicant. The proposed rule below is of the character of such a hypothetical rule. The proposed rule arguably imposes more stringent requirements for design certification and thereby may have an adverse impact on some persons. However, the effects of any final rule based on this proposed rule will be largely prospective, and such a final rule will not require any present holder of a design approval (no person holds a design certification) to meet new standards in order to remain in possession of such an approval.

#### List of Subjects in 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.

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, and 5 U.S.C. 553, the Commission is proposing to add to 10 CFR Chapter I a new Part 52:

#### PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

##### General Provisions

###### Sec.

- 52.1 Scope.
- 52.3 Definitions.
- 52.8 Information collection requirements: OMB approval.

##### Subpart A—Early Site Permits

- 52.11 Scope of subpart.
- 52.13 Relationship to Subpart F of 10 CFR Part 2.

- 52.15 Filing of applications.
- 52.17 Contents of applications.
- 52.18 Standards for review of applications.
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- 52.21 Hearings.
- 52.23 Referral to the ACRS.
- 52.25 Extent of activities permitted.

###### Sec.

- 52.27 Duration of permit.
- 52.29 Application for renewal.
- 52.31 Criteria for renewal.
- 52.33 Duration of renewal.
- 52.35 Use of site for other purposes.
- 52.37 Reporting of defects and noncompliance; revocation, suspension, modification of permits for cause.
- 52.39 Finality of early site permit determinations.

##### Subpart B—Standard Design Certifications

- 52.41 Scope of subpart.
- 52.43 Relationship to 10 CFR Part 50, Appendices M, N, and O.
- 52.45 Filing of applications.
- 52.47 Contents of applications.
- 52.49 Fees for design certification and certification renewal.
- 52.51 Administrative review of applications.
- 52.53 Referral to the ACRS.
- 52.55 Duration of certification.
- 52.57 Application for renewal.
- 52.59 Criteria for renewal.
- 52.61 Duration of renewal.
- 52.63 Finality of standard design certifications.

##### Subpart C—Combined Licenses

- 52.71 Scope of subpart.
- 52.73 Relationship to Subparts A and B.
- 52.75 Filing of applications.
- 52.77 Contents of applications; general information.
- 52.79 Contents of applications; technical information.
- 52.81 Standards for review of applications.
- 52.83 Applicability of Part 50 provisions.
- 52.85 Administrative review of applications.
- 52.87 Referral to the ACRS.
- 52.89 Environmental review.
- 52.91 Authorization to conduct site activities.
- 52.93 Exemptions and variances.
- 52.97 Issuance of combined licenses.
- 52.99 Inspection during construction.
- 52.10 Pre-operational antitrust review.
- 52.103 Authorization to operate under a combined license.

Authority: Secs. 103, 161, 162, 163, 166, 169, 68 Stat. 936, 946, 953, 954, 955, 958, as amended, sec. 234, 63 Stat. 1244, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); sec. 201, 202, 206, 68 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5961, 5942, 5946).

##### General Provisions

###### § 52.1 Scope.

This part governs the issuance of early site permits, standard design certifications, and combined construction permits and conditional operating licenses for nuclear power facilities under the Atomic Energy Act of 1954, as amended (68 Stat. 919), and Title II of the Energy Reorganization Act of 1974 (88 Stat. 1242).

###### § 52.3 Definitions.

(a) As used in this part—  
“Combined license” means a combined construction permit and conditional operating license for a

nuclear power facility issued pursuant to Subpart C of this part.

“Early site permit” means a Commission approval, issued pursuant to Subpart A of this part, for a site or sites for one or more nuclear power facilities.

“Standard design” means a design which is sufficiently detailed and complete to support licensing of a nuclear power facility or approval of a major portion of such a facility when referenced in an application for a construction permit, combined construction and conditional operating license, or standard design certification, as appropriate, 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 certification” means a Commission approval, issued pursuant to Subpart B of this part, of a standard design for a nuclear power facility, or a major portion of such a facility. A design so approved 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.

###### § 52.8 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 of 1980 (44 U.S.C. 3501, et seq.). OMB has approved the information collection requirements contained in this part under control number 3150(b)—

(b) The approved information collection requirements contained in this part appear in §§ 52.15(b), 52.17, 52.29(a), 52.35, 52.37, 52.39(b), 52.45, 52.47, 52.57(a), 52.63(b), 52.63(c), 52.75, 52.77, 52.78, 52.83, 52.91(a), 52.93, 52.99, 52.101, and 52.103.

##### Subpart A—Early Site Permits

###### § 52.11 Scope of subpart.

This subpart sets out the requirements and procedures applicable to Commission issuance of early site permits for approval of a site or sites for one or more nuclear power facilities separate from and prior to the filing of an application for a construction permit or combined license for such a facility.

###### § 52.13 Relationship to Subpart F of 10 CFR Part 2.

The procedures of this subpart do not replace those set out in Subpart F of 10

CFR Part 2, Subpart F applies only when early review of site suitability issues is sought in connection with a forthcoming application for a permit to construct certain power facilities. This subpart applies when any person who may apply for a construction permit under 10 CFR Part 50 or for a combined license under 10 CFR Part 52 seeks an early site permit separately from and prior to an application for a construction permit for a facility. This subpart may not be used once an application has been docketed pursuant to 10 CFR 2.603.

#### § 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 10 CFR Part 52, may file with the Director of Nuclear Reactor Regulation an application for an early site permit. 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 or sites for which a permit is sought.

(b) The application must comply with the filing requirements of 10 CFR 50.30 (a), (b), and (f).

#### § 52.17 Contents of applications.

(a)(1) The application must contain the information required by 10 CFR 50.33 (a)-(d) and 50.34(a)(1). In particular, the application should describe the following:

- (i) The number, type, and thermal power level of the facilities for which the site may be used;
- (ii) The boundaries of the site;
- (iii) The proposed general location of each facility on the site;
- (iv) The anticipated maximum levels of radiological and thermal effluents each facility will produce;
- (v) The type of cooling systems, intakes, and outflows that may be associated with each facility;
- (vi) The seismic, meteorological, hydrologic, and geologic characteristics of the proposed site (see Appendix A to 10 CFR Part 100); and
- (vii) The existing and projected future population profile of the area surrounding the site.

(2) A complete environmental report as required by 10 CFR 51.45 and 51.50 must be included in the application.

(b) The application must propose a plan for redress of the site in the event that the activities permitted by § 52.25(a) are performed and the site permit expires before it is referenced in an application for a construction permit or a combined license issued under Subpart C of this part. The application must demonstrate that there is

reasonable assurance that redress carried out under the plan will achieve a self-maintaining, environmentally stable, and aesthetically acceptable site suitable for whatever non-nuclear use may conform with local zoning laws.

(c) The application must demonstrate that the area surrounding the site is amenable to emergency planning which would provide reasonable assurance that adequate protective measures could be taken in the event of a radiological emergency at the site. The application must include a description of contacts and arrangements made with local, state, and federal governmental agencies with responsibility for coping with emergencies.

#### § 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 as they apply to applications for construction permits for nuclear power plants. In particular, the Commission shall prepare an environmental impact statement during review of the application, and the Commission shall determine, after consultation with the Federal Emergency Management Agency in accord with the applicable portions of 10 CFR 50.47(a)(2), whether the information required of the applicant by § 52.17(c) demonstrates that the area surrounding the site is amenable to emergency planning which would provide reasonable assurance that adequate protective measures could be taken in the event of a radiological emergency at the site.

#### § 52.19 Permit and renewal fees.

The fees charged for the review of an application for the initial issuance or renewal of an early site permit are those for special projects, as defined in 10 CFR 170.3 and set forth in 10 CFR 170.21. There is no application fee. All fees for the review of an application are deferred as follows:

(a) If an application is filed for a construction permit or combined license for a facility to be located at a site for which an early site permit has been issued, the permit holder shall pay the applicable fees for the permit at the time the facility application referencing the early site permit is filed. If, at the end of the initial period of the permit, no facility application referencing the early site permit has been docketed, the permit holder shall pay any outstanding fees for the permit.

(b) If the permit is renewed, the permit holder shall pay any outstanding fees for the renewal at the time a facility

application referencing the early site permit is filed. If, at the end of the renewal period, no facility application referencing the permit has been filed, the permit holder shall pay any outstanding fees for the renewal.

(c) If an application for the issuance or renewal of an early site permit is denied or withdrawn, any outstanding fees associated with the review of the application are due immediately and payable by the applicant for the permit or renewal.

#### § 52.21 Hearings.

An early site permit is a partial construction permit and is therefore subject to all procedural requirements in 10 CFR Part 2 which are applicable to construction permits, including the requirements for docketing in §§ 2.101(a)(1)-(4), and the requirements for issuance of a notice of hearing in §§ 2.104 (a), (b)(1) (iv) and (v), (b)(2) to the extent it runs parallel to (b)(1) (iv) and (v), and (b)(3). All hearings conducted on applications for early site permits filed under this part are governed by the procedures contained in Part 2.

#### § 52.23 Referral to the ACRS.

The Commission shall refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS shall report on those portions of the application which concern safety.

#### § 52.25 Extent of activities permitted.

(a) The holder of an early site permit may perform the activities at the site allowed by 10 CFR 50.10(e)(1) without first obtaining the separate authorization required by that section.

(b) If the activities permitted by paragraph (a) of this section are performed at a given site and the permit is not renewed for that site and not referenced in an application for a construction permit or a combined license issued under Subpart C of this part, then the permit remains in effect solely for the purpose of site redress, and the holder of the permit shall redress the site in accord with the terms of the site redress plan required by § 52.17(b). 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.

An early site permit issued under this subpart is valid for twenty years from the date of issuance. 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.

**§ 52.29 Application for renewal.**

(a) Not less than twelve nor more than thirty-six months prior to the end of the initial twenty-year period, 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 2.714. If a hearing is granted, notice of the hearing will be published in accord with 10 CFR 2.703.

(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 proceedings on an application for a construction permit or combined license referencing the permit and docketed before the end of the initial period of the permit, or a later renewal period. An unrenewed permit also continues to be valid in proceedings on an application for an operating license which is based on a construction permit referencing the permit and docketed prior to expiration of the permit or renewal.

(d) The application for renewal must be forwarded to the Advisory Committee on Reactor Safeguards (ACRS), which shall review the application and report its findings and recommendations to the Commission. The ACRS need not reconsider issues on which it has made findings and recommendations in any earlier review of the site which is the subject of the application.

**§ 52.31 Criteria for renewal.**

(a) The Commission shall grant the renewal if the Commission determines that the site complies with the Atomic Energy Act and the Commission's regulations and orders in effect at the time of the renewal and any more stringent requirements the Commission may wish to impose after a determination that 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 more stringent requirements and that the direct and indirect costs of

implementation of those requirements are justified in view of this increased protection.

(b) A denial of renewal on this basis 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 in which it is used which correct the deficiencies cited in the denial of the renewal.

**§ 52.33 Duration of renewal.**

Each renewal of an early site permit will be for not less than ten nor more than twenty years.

**§ 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 Nuclear Reactor Regulation of any significant non-nuclear activities for which the site is to be used. The information about the activities must be given to the Director in advance of any actual construction or site modification for the activities. If the Director finds that a particular non-nuclear use may have a significant adverse effect on the suitability of the site for the purposes described in the early site permit, the Director may issue an order to show cause why the permit should not be revoked or modified.

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

For purposes of Part 21 and 10 CFR 50.100, an early site permit is a construction permit.

**§ 52.39 Finality of early site permit determinations.**

(a)(1) Notwithstanding any provision in 10 CFR 50.109, during the initial period in which a permit issued under this subpart is in effect, the Commission may not impose more stringent requirements, including more stringent emergency planning requirements, on the early site permit or the site for which it was issued unless the Commission determines either that

(i) Significant new information shows that a modification is necessary to bring the permit or the site into compliance with the Commission's regulations and orders in effect at the time the permit was issued; or

(ii) A modification is necessary to assure adequate protection of the public health and safety or the common defense and security.

(2) Similarly, notwithstanding any provisions in CFR 50.100, during any renewal period in which an early site

permit issued under this subpart is in effect, the Commission may not impose more stringent requirements, including more stringent emergency planning requirements, on the permit or the site for which it was issued unless the Commission determines either that

(i) Significant new information shows that a modification is necessary to bring the permit or the site into compliance with the Commission's regulations and orders in effect at the time the permit was renewed; or

(ii) A modification is necessary to assure adequate protection of the public health and safety or the common defense and security.

(b) An applicant for a construction permit, operating license, or combined license, or any amendment to this type of license, who has filed an application referencing an early site permit issued under this subpart may include in the application a request for a variance from one or more elements of the permit. In determining whether to grant the variance, the Commission shall be guided by the considerations set forth in 10 CFR 50.92, which guide the Commission's determinations on applications for amendments to construction permits.

**Subpart B—Standard Design Certifications**

**§ 52.41 Scope of subpart.**

This subpart sets out the requirements and procedures applicable to Commission issuance of rules granting standard design certifications for nuclear power facilities, or major portions thereof, separate from the filing of an application for a construction permit or combined license for such a facility.

**§ 52.43 Relationship to 10 CFR Part 50, Appendices M, N and O.**

(a) Appendix M to 10 CFR Part 50 governs the issuance of licenses to manufacture nuclear power reactors to be installed and operated at sites not identified in the manufacturing license application. Appendix N governs licenses to construct and operate nuclear power reactors of duplicate design at multiple sites. These appendices may be used independently of the provisions in this subpart unless the applicant also wishes to use a certified standard design approved under this subpart.

(b) Appendix O governs the staff review and approval of preliminary and final standard designs. These designs may be challenged in individual licensing proceedings. This subpart



governs Commission approval, or certification, of standard designs by rulemaking, as set forth in paragraph 7 of Appendix O. A final design approval under Appendix O is a prerequisite for certification of a standard design under this subpart. An application for a final design approval must state whether the applicant intends to seek certification of the design. If the applicant does so intend, the application for the final design approval must, in addition to containing the information required by Appendix O, comply with the applicable requirements of 10 CFR Chapter I, particularly §§ 52.45 and 52.47.

#### § 52.45 Filing of applications.

(a)(1) Any person may seek a standard design certification for an essentially complete nuclear power facility, or a major portion of such a facility. An application for certification may be filed notwithstanding the fact that an application for a construction permit or combined license for such a facility has not been filed. Applications for certification of less than a complete facility must meet the criteria set forth in paragraph (d) of this section.

(2) Because a final design approval under Appendix O of 10 CFR Part 50 is a prerequisite for certification of a standard design, a person who seeks such a certification and does not hold, or has not applied for, a final design approval, shall file with the Director of Nuclear Reactor Regulation an application for certification. Any person who seeks certification but already holds, or has applied for, a final design approval, also shall file with the Director of Nuclear Reactor Regulation an application for certification, because the NRC staff may require that the information before the staff in connection with the review for the final design approval be supplemented for the review for certification.

(b) The applicant shall comply with the filing requirements of 10 CFR 50.30 (a) and (b) as they would apply to an application for a nuclear power plant construction permit.

(c) The NRC will entertain an application for certification of a reactor design which differs significantly from reactor designs which have been built and operated. However, certification of such a design will be given only after the design has been shown to be sufficiently mature.

(1) The maturity of such a design must be demonstrated by means of an appropriately sited, full-size, prototype reactor, unless the following criteria are satisfied:

(i) The performance of each safety feature of the design has been

demonstrated through either previous experience or full-scale testing;

(ii) Interdependent effects among the safety features of the plant have been found acceptable by analysis, testing, or previous experience; and

(iii) Sufficient data exist on the performance of the safety features of the plant to assess analytical tools used for safety analyses over a full range of operating and accident conditions, including equilibrium core conditions and the response of the safety features over the lifetime of the plant.

(2) The Appendix O final design approval of such a design must identify the specific testing required for certification of the design.

(d) Designs should be essentially complete in scope. The NRC will entertain an application for certification of a design of only a major portion of a plant only if that portion contains all buildings, structures, systems, and components that can significantly affect the safe operation of the plant and are not fixed by site-specific considerations or parameters. In any case, site-specific elements, such as the service water intake structure or the ultimate heat sink, may be excluded from the scope of the design. However, excluded site-specific elements that can significantly affect safe operation must be addressed by the application in the technical information which §§ 52.47(b) and 52.47(d) require the application to provide on the site parameters and interface requirements for the design.

#### § 52.47 Contents of applications.

The application must contain a level of design information equivalent to that required for a final design approval under Appendix O. The information submitted for a design certification must include performance requirements and design specifications sufficiently detailed to permit the preparation of procurement specifications and acceptance and inspection requirements. The information must also be sufficient to enable the staff to judge the applicant's proposed means of assuring that construction conforms to design and to reach an final conclusion on all matters which must be decided before the certification can be granted. In particular,

(a) The application must contain the technical information which is required of applicants for construction permits or operating licenses by Part 20, Part 50 and its appendices, and Parts 73 and 100, and which is not site-specific or irrelevant to the design for which the applicant is seeking certification. In particular, the application must demonstrate compliance with any

applicable portions of the Three Mile Island requirements set forth in 10 CFR 50.34(f). The staff shall advise the prospective applicant for certification on whether the information required by the listed portions of 10 CFR Chapter I is appropriate to the staff's consideration of the application, and on whether any additional technical information on the design is required.

(b) The application must also include

(1) The site parameters postulated for the design, and an analysis and evaluation of the design in terms of such parameters;

(2) Proposed technical resolutions of the Unresolved Safety Issues and medium- and high-priority Generic Safety Issues applicable to the design;

(3) A design-specific probabilistic risk assessment ("PRA"), together with a consideration of any severe accident vulnerabilities that the PRA exposes and a realistic assessment of the degree to which the design conforms to the Commission's Safety Goals for plant operations; and

(4) Proposed tests, analyses, inspections and acceptance criteria which are necessary to provide reasonable assurance that a plant which references the design is built and operated within the specifications of the design.

(c) An application seeking certification of a modular design must describe the various options for the configuration of the plant and site, including variations in common systems, interface requirements, and system interactions. The final safety analysis and the probabilistic risk assessment should, when necessary, take into account differences among the various options, and the analysis should set forth any restrictions which will be necessary during the construction and startup of a given module to ensure the safe operation of any module already on line.

(d) An application for a design certification must meet the following criteria:

(1) The application must contain 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 final safety analysis and design-specific probabilistic risk assessment required by paragraph (b) of this section.

(2) The application must demonstrate that compliance with these interface requirements is verifiable through inspection, testing (either in the plant or elsewhere), previous experience, or analysis. Compliance with interface

requirements dealing with reliability of components must be verifiable through previous experience or testing.

(3) The application must also contain a representative design for those portions of the plant for which the application does not seek certification. The representative design must illustrate how the interface requirements can be met, so as to aid the staff in its review of the final safety analysis and probabilistic risk assessment required by paragraph (b) of this section.

#### **§ 52.49 Fees for design certification and certification renewal.**

The fees charged for the review of an application for the initial issuance or renewal of a standard design certification are set out in 10 CFR Part 170, together with a schedule for their phased recovery as the certified standard design is referenced. There is no application fee. All fees for review of an application are deferred as follows:

(a) Each time an application is filed for a construction permit or combined license for a facility referencing the design for which a standard design certification has been issued, the holder of the design certification shall pay the specified portion of the applicable fees for the approval at the time the facility application referencing the certified standard design is filed. If, at the end of the initial period of the certification, no facility application referencing the certified standard design has been filed, the holder of the design certification shall pay any outstanding fees for the certification.

(b) If the standard design certification is renewed, the holder of the design certification shall pay the specified portion of any outstanding fees for the renewal each time a facility application referencing the certified standard design is filed. If, at the end of the renewal period, a facility application referencing the certified standard design has not been filed, the holder of the design certification shall pay any outstanding fees for the renewal.

(c) If an application for the issuance or renewal of a certified standard design is denied or withdrawn, any fees associated with the review of the application are immediately due and payable by the applicant for the design certification or renewal.

#### **§ 52.51 Administrative review of applications.**

A standard design certification is a rule that will be issued in accordance with the provisions of Subpart H of 10 CFR Part 2. The Commission shall initiate the rulemaking after an application has been filed under

§ 52.45(a) and shall specify in detail the procedures to be used for the rulemaking. The rulemaking procedures must provide notice and comment and an informal hearing before an Atomic Safety and Licensing Board. The procedures for the hearing must include the opportunity for written presentations made under oath or affirmation and for oral presentations and questioning if the Board finds them either necessary for the creation of an adequate record or the most expeditious way to resolve controversies. Ordinarily, the questioning will be done by members of the Board, using either the Board's questions or questions submitted to the Board by the parties. The Board may also request authority to use additional procedures, such as discovery, or may request that the Commission convene a formal adjudication on discrete issues involving substantial disputes of fact, necessary for the Commission's decision, that cannot be resolved with sufficient accuracy except in formal adjudication. The staff will be a party in the hearing. During the rulemaking, the treatment of proprietary information will be governed by 10 CFR 2.790 and applicable Commission case law. The decision in such a hearing will be based only on information on which all parties have had an opportunity to comment.

#### **§ 52.53 Referral to the ACRS.**

The Commission shall forward the application to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS shall review the application and report its findings and recommendations to the Commission. The ACRS need not reconsider issues on which it has made findings and recommendations in any earlier review of the design which is the subject of the application.

#### **§ 52.55 Duration of certification.**

A standard design certification issued pursuant to this subpart is valid for ten years from the date of issuance. An applicant for a construction permit or 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 twelve nor more than thirty-six months prior to expiration of the initial ten-year period, or any later renewal period, the holder of the design certification 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 procedures to be used for a rulemaking proceeding on

the application for renewal must be those required by § 52.51 for rulemakings on applications for initial certification of a design.

(b) A design certification, either original or renewed, for which an application for renewal has been timely 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 proceedings on an application for a construction permit, combined license, or operating license referencing the certified design and docketed prior to expiration of the certification or renewal.

(c) The Commission shall forward application for renewal to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS shall review the application and report its findings and recommendations to the Commission. The ACRS need not reconsider issues on which it has made findings and recommendations in any earlier review of the design which is the subject of the application.

#### **§ 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 and orders in effect at the time of the renewal, and any more stringent safety requirements the Commission may wish to impose after a determination that 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 more stringent requirements and that the direct and indirect costs of implementation of those requirements are justified in view of this increased protection.

(b) Denial of renewal does not bar the holder of the design certification or another applicant from filing a new application for certification of the design which proposes design changes which 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 five nor more than ten years.

#### **§ 52.63 Finality of standard design certifications.**

(a)(1) Notwithstanding any provision in 10 CFR 50.109, during the initial period in which a design certification issued under this Subpart is in effect, the

Commission may not impose more stringent safety requirements on the certification unless the Commission determines in a rulemaking either that significant new information shows that a modification is necessary to bring the certification or the referencing plants into compliance with the Commission's regulations and orders in effect at the time the certification was issued, or that a modification is necessary to assure adequate protection of the public health and safety or the common defense and security.

(2) Similarly, notwithstanding any provision in 10 CFR 50.109, during any renewal period in which a design certification issued under this Subpart is in effect, the Commission may not impose more stringent safety requirements on the certification unless the Commission determines in a rulemaking either that significant new information shows that a modification is necessary to bring the certification or the referencing plants into compliance with the Commission's regulations and orders in effect at the time the certification was renewed, or that a modification is necessary to assure adequate protection of the public health and safety or the common defense and security.

(3) Any modification the NRC imposes on a design certification rule under paragraphs (a)(1) and (a)(2) of this section will be applied to all plants referencing the certified design.

(b) The holder of a standard design certification issued under this Subpart may file a request for an amendment to the design certification by way of notice and comment rulemaking. 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. The amendment will be applied to all plants referencing the design only if the amendment is necessary for adequate protection of the public health and safety or the common defense and security. Any other amendment will apply only to plants referencing the design after the amendment is granted.

(c) An applicant for a construction permit, operating license, or combined license, or a licensee whose license references a certified standard design issued under this subpart, may request an exemption from one or more elements of the design certification. The Commission shall grant such a request if it determines that the exemption complies with the Atomic Energy Act, the Commission's regulations and orders, and the requirements of 10 CFR 50.12(a). Exemptions apply only to the

license for which the exemption was requested.

(d) The licensee of a plant built according to a standardized design may make a change to the standardized portion of the plant, without prior Commission approval, only if the change does not involve changes to the design as described in the rule certifying the design, or in the certifying rule together with any exemption which may have been granted the licensee under § 52.63(c).

### Subpart C—Combined Licenses

#### § 52.71 Scope of subpart.

This subpart sets out the requirements and procedures applicable to Commission issuance of combined construction permits and conditional operating licenses ("combined licenses") for nuclear power facilities.

#### § 52.73 Relationship to Subparts A and B.

An application for a combined license under this subpart may, but need not, reference a standard design certification issued under Subpart B of this part or an early site permit issued under Subpart A of this part.

#### § 52.75 Filing of applications.

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 Nuclear Reactor Regulation. The applicant shall comply with the filing requirements of 10 CFR 50.4 and 50.30 (a) and (b) as they would apply to an application for a nuclear power plant construction permit. The fees associated with the filing and review of the application are set out in 10 CFR Part 170. The applicant shall include an environmental report with the application if it does not reference an early site permit.

#### § 52.77 Contents of applications; general information.

The application must contain all of the information required by 10 CFR 50.33 and 50.33a as those sections would apply to an applicant for a nuclear power plant construction permit. In particular, the applicant shall comply with the requirement of § 50.33a(b) regarding the submission of antitrust information.

#### § 52.79 Contents of applications; technical information.

(a) The application must contain the final safety analysis report required by 10 CFR 50.34(b). The report may incorporate by reference the final safety analysis report for a certified standard design, but must be supplemented to include, as appropriate, the information

required of applicants for operating licenses by 10 CFR Part 50. In particular, an application referencing a certified design must describe those portions of the design which are site-specific, such as the service water intake structure or the ultimate heat sink. An application referencing a certified design must also demonstrate compliance with the interface requirements established for the design under § 52.47(d) of this part. If the application does not reference a certified design, the application must comply with the requirements of § 52.47 of this part for level of design information, and shall contain the technical information required by §§ 52.47(a), 52.47(b)(2) and (3), and, if the design is modular, 52.47(c). The application must also include proposed technical specifications prepared in accordance with the requirements of 10 CFR Part 50.

(b) The application for a combined license must include the proposed inspections, tests, and analyses which the licensee shall perform and the acceptance criteria therefor which will provide reasonable assurance that the facility has been constructed and will operate in conformity with the application, the provisions of the Atomic Energy Act, and the Commission's regulations.

(c) If the application references an early site permit, the application must demonstrate the suitability of the site for the design and must discuss any other significant environmental issue not considered in any previous proceeding on the site or the design. If the application does not reference an early site permit, then the application must contain the information required by § 52.17(b) of this part on redress of the site in the event that the activities permitted by § 52.91(a) of this subpart are performed.

(d) The application must contain emergency plans which provide reasonable assurance that adequate protective measures can be taken in the event of a radiological emergency at the site.

(1) The applicant shall make good faith efforts to obtain certifications by the responsible local and State governmental agencies 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) These agencies are committed to executing their responsibilities under the plans in the event of an emergency.

(2) The application must contain any certifications that have been obtained. If these certifications cannot be obtained, the application must demonstrate that the proposed plans nonetheless provide reasonable assurance that adequate protective measures can be taken in the event of a radiological emergency at the site.

**§ 52.81 Standards for review of applications.**

Applications filed under this subpart will be reviewed according to, as appropriate, the pertinent standards set out in 10 CFR Part 50 and its appendices as they apply to applications for construction permits and operating licenses for nuclear power plants.

**§ 52.83 Applicability of Part 50 provisions.**

Unless otherwise specifically provided in this subpart, 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 issued under this subpart. Similarly, 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 who have received written authorization for full-power operation under § 52.103. However, any limitations contained in Part 50 regarding applicability of the provisions to certain classes of facilities continue to apply.

**§ 52.85 Administrative review of applications.**

A combined license is subject to all applicable procedural requirements contained in 10 CFR Part 2, including the requirements for docketing (§ 2.101) and issuance of a notice of hearing (§ 2.104). All hearings on combined licenses are governed by the procedures contained in Part 2.

**§ 52.87 Referral to the ACRS.**

The Commission shall forward the application to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS shall review the application and report its findings and recommendations to the Commission. The ACRS need not reconsider issues on which it has made findings and recommendations in any earlier review of the site or the design which is the subject of the application.

**§ 52.89 Environmental review.**

If the application references an early site permit or a certified standard design, the environmental review must focus on the suitability of the site for the design and any other significant environmental issue not considered in any previous proceeding on the site or

the design. The results of this limited review must be presented at the hearing on the application. However, the Commission may not modify any final determination on an issue that has been considered and decided in any earlier proceeding on the referenced site or design, except as provided in § 52.39 and 52.63 regarding finality of early site permit determinations and finality of standard design certifications, respectively. If the application does not reference an early site permit or a certified standard design, all of the environmental review procedures set out in 10 CFR Part 51 must be followed, including the issuance of a final environmental impact statement.

**§ 52.91 Authorization to conduct site activities.**

(a) If the application references an early site permit, the applicant may perform the site preparation activities authorized in § 52.25 after the application for a combined license has been docketed. Otherwise, the applicant shall request authorization to conduct site preparation activities pursuant to 10 CFR 50.10(e)(1) and (2). In either case, 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).

(b) If, after an applicant for a combined license has performed the activities permitted by paragraph (a) of this section, the application for the license is withdrawn or denied, and the early site permit referenced by the application expires or the holder of the early site permit so requests, then the applicant shall redress the site in accord with the terms of the site redress plan required by § 52.17(b). If, before redress is complete, a use not envisaged in the redress plan is found for the site or parts thereof, 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, under 10 CFR 50.12, for an exemption from one or more of the Commission's regulations, including any part of a design certification rule. The Commission shall grant such a request if it determines that the exemption will comply with the Atomic Energy Act, the Commission's regulations, and the requirements of 10 CFR 50.12(a).

(b) An applicant for a combined license, or any amendment to a combined license, who has filed an application referencing an early site permit issued under this subpart may include in the application a request for a variance from one or more elements of the permit. In determining whether to grant the variance, the Commission will be guided by the considerations set forth in 10 CFR 50.92, which guide the Commission's determinations on applications for amendments to construction permits.

**§ 52.97 Issuance of combined licenses.**

(a) The Commission may issue a combined license for a nuclear power facility upon finding that the applicable requirements of §§ 50.40, 50.42, 50.43, 50.47, and 50.50 have been met, and that there is reasonable assurance that the facility will be constructed and operated in conformity with the license, the provisions of the Atomic Energy Act, and the Commission's regulations.

(b) The Commission shall identify in the license the inspections, tests, and analyses that the licensee shall perform and the acceptance criteria therefor which provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Atomic Energy Act, and the Commission's regulations.

**§ 52.99 Inspection during construction.**

After issuance of a combined license, the Commission shall assure through inspections, tests, and analyses that construction of the facility is completed in conformity with the combined license, the provisions of the Atomic Energy Act, and the Commission's regulations. The Commission shall apply to holders of combined licenses the same inspection program applied to holders of nuclear power plant construction permits. Holders of combined licenses shall comply with the provisions of §§ 50.70 and 50.71.

**§ 52.101 Pre-operational antitrust review.**

Prior to conversion of a combined license to an operating license, the NRC staff shall conduct an antitrust review pursuant to § 50.42(b) to determine whether significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission in connection with the issuance of the combined license. If the Commission determines that significant changes have occurred, the antitrust review required by section 105(c)(1) of the Atomic Energy

Act must be completed prior to commencement of commercial operation of the facility. Upon completion of this review, and following receipt of the advice of the Attorney General, the Director of Nuclear Reactor Regulation may impose any additional license conditions needed to avoid creating or maintaining a situation inconsistent with the antitrust laws as specified in section 105a of the Atomic Energy Act.

**§ 52.103 Authorization to operate under a combined license.**

(a) Before the facility may operate, the holder of the combined license shall apply for authorization of operation under the combined license. If the combined license is for a modular design, each module is the subject of a separate authorization. The Commission shall publish a notice of the proposed authorization in the *Federal Register* under 10 CFR 2.105. Within 30 days, any person whose interests may be affected may request a hearing on the basis either (1) that there has been a nonconformance with the license, the licensee's written commitments, the Atomic Energy Act, or the Commission's regulations and orders, which has not been corrected and which could materially and adversely affect the safe operation of the facility; or (2) that significant new information shows that some modification to the site or the design is necessary to assure adequate protection of public health and safety or the common defense and security. The petitioner shall set forth with reasonable

specificity the facts and arguments which form the basis for the request.

(b) If a hearing is not requested, or if all requests are denied, the Commission may authorize operation under the combined license, as provided in § 50.56, upon making the findings in § 50.57.

Dated at Rockville, MD, this 17th day of August 1988.

For the Nuclear Regulatory Commission.  
Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-18964 Filed 8-22-88; 8:45 am]

BILLING CODE 7830-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Ch. I

[Summary Notice No. PR-88-9]

#### Petition for Rulemaking; Summary of Petitions Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for rulemaking received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of

the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before October 24, 1988.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. \_\_\_\_\_, 800 Independence Avenue, SW., Washington, D.C. 20591.

**FOR FURTHER INFORMATION:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 16, 1988.

Deborah E. Swank,  
Acting Manager, Program Management Staff.

#### PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
24969	National Rifle Association of America	14 CFR § 108.11	To add a new paragraph to read that no certificate holder shall place upon, or in any way attach to, the outside of checked baggage or any other checked parcel any markings of any kind which would indicate that the baggage or parcel contained a firearm. Denied: August 8, 1988.

[FR Doc. 88-19028 Filed 8-22-88; 8:45 am]  
BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 88-NM-97-AD]

#### Airworthiness Directives; Boeing Model 757 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which would require replacement of both spoiler wheel command units. This proposal is prompted by reports that a potential failure mode exists which could cause uncommanded deployment of three flight spoilers on one wing to their full up position. This condition, if not corrected, could result in a sudden large rolling moment and, after recovery by the pilot, diminished roll capability and a significant loss of lift.

**DATES:** Comments must be received no later than October 17, 1988.

**ADDRESSES:** Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-97-AD, 17900 Pacific Highway South, C-66986, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information