

December 4, 1998

SECY-98-282

FOR: The Commissioners
FROM: William D. Travers */RA/*
Executive Director for Operations
SUBJECT: PART 52 RULEMAKING PLAN

PURPOSE:

To obtain the Commission's approval to proceed with rulemaking to update 10 CFR Part 52, in accordance with the attached rulemaking plan.

DISCUSSION:

This rulemaking effort will implement part of Direction Setting Issue #10, "Reactor Licensing for Future Applicants," by updating and enhancing 10 CFR Part 52 on the basis of the lessons learned during the previous design certification reviews and discussions with nuclear industry representatives on the early site permit and combined license review processes.

COORDINATION:

The Office of the General Counsel has no legal objection to this rulemaking plan.

The Office of the Chief Financial Officer has reviewed this plan for resource implications and has no objections. The resources to conduct this rulemaking effort (approximately 1 FTE spread over a 2 year period) are within the current budget.

The Office of the Chief Information Officer has reviewed the rulemaking plan for information technology and information management implications and concurs in it. However, the plan suggests changes in information collection requirements that may require submittal of a clearance package to the Office of Management and Budget (OMB) at the same time the rule is forwarded to the Office of the Federal Register for publication.

CONTACT:
Jerry N. Wilson, NRR
415-3145

RECOMMENDATION:

That the Commission approve the staff's plan to proceed with the Part 52 rulemaking. The staff requests that the Commission act within 10 days. The staff will take no further action until the SRM is issued. We consider this action to be within the delegated authority of the Executive Director for Operations.

William D. Travers
Executive Director
for Operations

Attachment: Part 52 Rulemaking Plan

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William D. Travers
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Attachment: Part 52 Rulemaking Plan

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***See previous concurrence**

Tech Editor concurred on 11/24/98

Concurrences were received from CFO, CIO, ADM, and RES by Memo; OE by Email

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DATE	11/24/98 *	11/24/98 *	11/24/98 *	11/ /98	11/ /98	11/ /98	11/ /98

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PART 52 RULEMAKING PLAN

10 CFR Parts 52 and 50

Regulatory Issue

The purpose of this rulemaking is to update and correct 10 CFR Part 52 based on “lessons learned” from the previous design certification rulemaking efforts and discussions with industry representatives on combined license review issues. This rulemaking effort will also delete Appendices M, N, O, and Q from 10 CFR Part 50.

How will the regulatory problem be addressed by this rulemaking?

This rulemaking effort will: (i) correct errors in Part 52; (ii) modify Part 52 to enhance its provisions on the basis of “lessons learned” from the two design certification rulemaking efforts and other staff efforts in implementing 10 CFR Part 52, such as the early site permit process; (iii) consider minor corrections and clarifications in the two certified designs (Appendices A and B) proposed by GE and ABB/CE following publication of the final design certification rules; and (iv) consider other proposed revisions resulting from solicitation of comments on the proposed rule.

Rulemaking Options

There are no rulemaking options because the purpose of this rulemaking effort is to correct and enhance the existing licensing process set forth in 10 CFR Part 52. Also, there are no consensus codes and standards that exist with respect to standardization of nuclear power plant designs and combined licenses that could be adopted as an alternative to these proposed modifications to Part 52.

Impact(s) on Licensees

No new impacts or burdens on future applicants or licensees are expected from this rulemaking effort. The correction of errors does not involve any unintended regulatory consequences or expenditure of licensee and NRC resources not otherwise anticipated when the underlying regulatory requirements were adopted. There may be some burden relief resulting from the deletion of 10 CFR 52.43(c). This provision is no longer needed because the nuclear plant designers and NRC staff now have experience with design certification reviews.

Legal Analysis by the Office of the General Counsel (OGC)

OGC does not expect to raise any legal objections to this rulemaking effort. This rulemaking effort is needed to correct known problems with the general requirements in 10 CFR Parts 50, 52, and 140. Some of the problems that would be corrected by this rulemaking follow:

- (i) Deleting Appendices M, N, O, and Q from Part 50, because these appendices were intended to be transferred from Part 50 to Part 52.
- (ii) Adding to Part 52 a provision analogous to the current Section 50.9, which would apply to applicants for design certifications, and possibly to applicants for and holders of early site permits (ESPs).
- (iii) Requiring a combined license holder who has been authorized to operate under Sections 52.99 and 52.103 to have financial protection under Part 140, as is currently required of holders of operating licenses under Part 50.

In addition, this rulemaking effort will address issues that were identified during the first two design certifications, as well as during the NRC staff's discussions with industry representatives on combined licenses and ESPs. These issues follow:

- (i) Whether the design certification vendor has any ongoing obligation *after the design certification rule is adopted* to inform the NRC of errors and newly discovered information that brings into question the safety of the certified design.
- (ii) The desirability of clarifying that the "operational requirements" in Title 10, as applied to holders of combined licenses, become effective only after the Commission has made the findings under Sections 52.99 and 52.103.
- (iii) The desirability of requiring holders of ESPs to periodically update, throughout the duration of an ESP, emergency planning information and plans approved as part of an ESP.

OGC agrees with the staff's analyses contained in Rulemaking Options, Category of Rule, Backfit Analysis, and Supporting Documents Needed.

Category of Rule

This rulemaking effort will involve corrections and procedural enhancements and, therefore, is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act. Therefore, the rule can become effective without waiting for the required 60-day period for Congressional review.

Backfit Analysis

This rulemaking effort will correct known errors in Part 52 and will modify Part 52 to enhance its provisions on the basis of "lessons learned" and, therefore, will not constitute a backfit as defined in Section 50.109(a)(1). This is because any changes will have only a prospective effect on future design certification applicants, and on applicants and licensees under 10 CFR Part 52. However, there may be a small possibility of backfitting with respect to correcting minor errors and clarifying the language in the two existing design certification rules (Appendices A and B). However, such backfits would likely be "compliance backfits" pursuant to Section 50.109(a)(4)(I) and would not require preparation of a backfit analysis.

Supporting Documents Needed

This rulemaking effort will not require preparation of an environmental assessment because it appears that the categorical exclusions in 10 CFR 50.51(c)(2) and (c)(3) will apply. A regulatory analysis will be provided as part of the rulemaking package and an OMB clearance package may be required for this rulemaking effort. No other supporting documents are needed.

Issuance by EDO or Commission

The proposed rule will be issued by the Commission.

Interoffice Management Steering Group

An interoffice steering group will not be needed because this rulemaking effort will merely refine an existing rule.

Public/Industry Participation

The nuclear industry, via the Nuclear Energy Institute, has indicated an interest in this rulemaking effort. Therefore, a public meeting is planned after the proposed rule is issued.

Resources

NRR Lead: Jerry N. Wilson, Senior Policy Analyst
License Renewal Project Directorate
Division of Reactor Program Management

OGC Contact: Geary Mizuno or Stuart Treby

Other Contact: Christopher Grimes, Director
License Renewal Project Directorate
Division of Reactor Program Management

It is estimated that this rulemaking will require 1/8 to 1/4 of an FTE from OGC and less than 1 FTE from NRR over a 2 year rulemaking period. A small amount of ADM resources will also be needed for support of the rulemaking effort.

Schedule

Proposed Rule to EDO 7 months after Rulemaking Plan approved

Final Rule to EDO 16 months after Rulemaking Plan approved

An OMB clearance package may be submitted to OMB at the same time the proposed rule is forwarded to the Office of the Federal Register for publication. Because this rulemaking has a lower priority than the AP600 design certification rulemaking and relies on some of the same staff, the milestones will be met as NRC staff resources permit.