

**INITIAL EVALUATION OF NEI ENCLOSURE 3  
DETRIMENTAL CHANGES IN 2005 RE-PROPOSED PART 52 RULE**

NEI	Regulation(s)	Summary of concern	Staff Agree?	Staff Comment
1	52.17 52.47 52.79 52.157	Moving some, but not all technical requirements from Part 50 to Part 52 creates confusion as to what Part 50 requirements are applicable to Part 52 applicants.	No	Technical requirements remain in Part 50. Sections cited by NEI delineate (point to) the applicable Part 50 requirement (or requirement in other parts of 10 CFR).
2	52.47(a)(20) 52.79(a)(38) 52.137(a)(20)	Severe accident design information requirements are introduced in manner that implies they are part of design bases, as defined in 50.2.	No	Applications need to address severe accidents consistent with Commission policy and past practice.
3	52.47(b)(1) 52.80(a)	Full-scope, all modes PRA not needed for DCR and COL. COL should rely upon existing DCR PRA and account for site and plant-specific information, as appropriate.	No	Full-scope PRA done for AP1000, and COL could rely on that PRA.  NEI comment presumes that all COLs will reference DCRs with PRAs. Re-proposed rule language also addresses stand-alone COLs.
4	52.5	"Substantial interactions would be necessary to consider the implications and appropriateness of applying employee protection provisions to [DCR applicants], as well as compatibility with Section 211 of the ERA."	NA	No apparent industry position.
5	Part 21	DCR applicant or ESP holder required to report defects even if certified design or ESP is not being referenced.	No	Staff believes updating is necessary, inasmuch as there is no updating requirement for COL referencing DCR, or COL referencing ESP (except for environmental and EP information). Staff intends to develop information tracking system to ensure that reported information is utilized in staff review at referencing COL stage.

ENCLOSURE

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6	51.50(c)(1)	Rule language for “reasonable process” for identifying new and significant environmental information at COL stage is too subjective.	No	<p>Additional guidance on the essential attributes of a “reasonable process” for identifying new and significant environmental information can be developed in ESRP or other appropriate NRC document, with opportunity for public comment.</p> <p>Language is no different in subjectiveness than regulatory criteria in other reactor rules.</p> <p>OGC does not oppose development of more specific, performance-based language delineating the minimum characteristics of a process for identifying new and significant environmental information material to the proceeding.</p>
7	52.17(d) 52.79(a)(42) 52.137(a)(27) 52.157(p)	Provision allowing staff to request additional information “beyond that” specified in the “contents of application” sections is an inappropriately open-ended requirement.	Partial agreement	<p>Language drawn from existing language in § 52.47(a)(3). Staff determined that the regulatory rationale for this provision is generally applicable and should be applied across all Part 52 processes.</p> <p>Staff has no objection to inclusion of language which would appropriately restrict the reach of this provision.</p> <p>Commission has inherent authority to require submission of additional information, upon a determination that it is necessary for public health and safety or common defense and security, or to determine compliance with applicable requirements.</p> <p>Language could be modified to appropriately restrict the reach of this section consistent with the above discussion. This would be preferable from a legal standpoint.</p>

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8	52.17(a)(1)(x)	Requirement for ESP applicant to address impact of operating units on construction of new units is an issue for operating licensee to address, not ESP applicant. Re-proposed rule is inconsistent with NRC/industry understanding as documented in 2003 correspondence with NEI.	Yes	Staff's August 11, 2003, letter to NEI (ML031490478) set forth staff's position that § 50.34(a)(11) should not be applied to an ESP application. Staff position based upon view that ESP does not authorize construction activities that could pose safety/security issue to existing operating units onsite. However, staff letter indicated that operating unit(s) licensee(s) are expected to maintain awareness of activities performed under an ESP (i.e., activities authorized in accordance with 10 CFR 52.25(a)), to ensure no undue risk is posed to the operating plant from activities.
9	52.17(b)(3) 52.24(a)(5)	ITAAC on emergency planning is not precluded by existing language; as such, proposed rule language is unnecessary.	NA	No technical issue identified.  Staff cannot make "reasonable assurance" finding with respect to EP plans submitted at ESP stage unless EP ITAAC are included.  OGC notes that Section 185.b of AEA specifically refers to emergency preparedness ITAAC.
10	52.83 (deletion of existing language)	Deletion of current § 52.83 language specifying that requirements applicable to OLs apply to COL holders only after Commission's 52.103 finding has been issued does not clarify when operational program requirements apply.	No	Individual technical/regulatory requirements have been revised in re-proposed rule to specifically set forth the timing of their applicability.  NEI objected to requirements regarding timing of operational programs being "scattered throughout the proposed changes" as opposed to being contained in a "catchall" requirement in Part 52 but given the differences in timing of applicability of various requirements, there appears to be no other reasonable alternative consistent with concept that technical requirements should remain in the respective parts of 10 CFR.  NOTE: re-proposed rule contains two staff-determined exceptions which were contrary to OGC's advice that timing issues should be addressed in re-proposed rule rather than deferred.

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11	52.47(a)(19) 52.79(a)(27)	Guidance is not provided on threshold or regulatory mechanism for consideration of international experience.	NA	Requirement is consistent with Commission guidance on operational experience in its SRM on SECY-90-377.  Language is no different than other regulatory provisions directing consideration of information, e.g., § 50.65(a)(10), § 50.69(e).
12	52.79(a)(24) 50.43(a)	“Substantial interactions are needed to understand the full implications [of the proposed rule on new testing requirements].” Proposal appears to conflict with SOC for 1989 Part 52 Final Rule.	No	This requirement is consistent with Commission policy as explained in the SOC Section III.B of re-proposed rule.
13	52.17(a)(1)(ix)	Based upon ESP lessons learned, Part 100 radiation consequence analyses should not be a requirement for ESPs, but are an option if requisite design-specific information is known.	No	Consistent with current requirements and needed for finality.  The NEI comment represents a change from the NRC staff’s interpretation and practice in implementing the existing rule.
14	52.28 50.80(a)	Not all criteria for license transfers in current § 50.80 are applicable to transfer of ESP (e.g., financial qualifications).	Partial agreement	Staff agrees that some criteria may not apply to transfer of ESP.
15	52.47(a)(24) 52.137(a)(24)	Requirements that DCR and standard design approval address design features necessary to satisfy Part 73 regarding security is too broad, and should be addressed in separate rulemaking approved by Commission in SRM on SECY-05-120.	No	Re-proposed rule provisions are simply to specify that appropriate design features needed to address Part 73 must be included in the application.  By contrast, the rulemaking authorized by SECY-05-120 is intended to specify the necessary attributes or performance objectives or those design features.
16	52.47(a)(22)	Submission of technical specifications as part of the design certification application would be inconsistent with ongoing industry-NRC interactions on technical specifications.	No	Current DCRs include technical specifications (TS) in DCD.  Staff has not reached a position on current industry proposals with respect to DCR TS.
17	52.54(b)	Requirement for DCR to specify “design characteristics” is a new requirement, whose intent, purpose, and need are unclear, given that design characteristics are incorporated by reference into DCD.	NA	Proposed rule language makes clear that DCRs will include “design characteristics.” Incorporation by reference of design characteristics in DCD is consistent with proposed § 52.54(b) language.

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18	50.46(a)(3)	Imposition of § 50.46(a)(3) reporting requirements for discovered errors in ECCS analyses is unnecessary burden, since COL applicant will be required to make and identify the changes.	No	DCR applicant, after certification, may determine that its ECCS calculations supporting the certified ECCS design are incorrect. Accordingly, reporting requirement should apply, to allow NRC to determine if DCR must be modified or individual licenses amended consistent with the applicable change restrictions in § 52.63.
19	Part 50, Appendix A (deletion of existing language)	Deletion of statement that GDC apply to LWRs is unwarranted, and would impose inapplicable requirements on non-LWRs.	NA	Re-proposed rule does not delete existing Appendix A language identified by NEI.  NEI incorrectly interprets the Office of Federal Register-required format for setting forth proposed rule language as deleting the relevant language.
20	Part 50, Appendix (deletion from Part 52, and retention in Part 50 only)	Deletion of Appendix Q from Part 52 will remove important flexibility for future COL applicants, and should be retained in Part 52.	No	Staff does not believe that there is benefit to offering another approach for obtaining early consideration and resolution of siting issues in a subsequent COL licensing proceeding. Pre-application review is currently available for COL applicants as an alternative. However, SOC for re-proposed rule requests public comment on this matter.  Appendix Q and Subpart F of Part 2 are currently available to COLs. These provisions offer another approach for obtaining early consideration and resolution of siting issues in a subsequent COL licensing proceeding.
21	52.98(b)	As written, 52.98 would not allow a COL holder to request a license amendment unless the amendment met the backfit criteria.	NA	Language does not prohibit COL holder from requesting license amendment unless backfit criteria are met, <i>except</i> where the COL references a DCR. In such circumstance, the principle that the change restrictions in the DCR apply to a referencing COL has already been accepted by the Commission, as illustrated by the inclusion of change restrictions in each of the current DCRs in Part 52, Appendices A through C (see Section VIII, <i>Processes for Changes and Departures</i> ).
22	List of 25 provisions in re-proposed rule	"Additional concerns" exist with respect to a list of provisions in the re-proposed rule.	NA	No technical issue identified.