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(202) 234-4433

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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MEETING WITH STAKEHOLDERS TO DISCUSS PROPOSED RULE

ON

10 CFR PART 52,

"LICENSES, CERTIFICATIONS, AND APPROVALS

FOR NUCLEAR POWER PLANTS"

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TUESDAY,

MARCH 14, 2006

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The Workshop came to order at 9:00 a.m. in the Auditorium at 2 White Flint North located at 11545 Rockville Pike, Rockville, Maryland, Stephanie Coffin, Facilitator, presiding.

PRESENT FROM THE NUCLEAR REGULATORY COMMISSION:

STEPHANIE M. COFFIN, Facilitator

STEPHEN D. ALEXANDER

JOSEPH COLACCINO

NANETTE V. GILLES

GEARY S. MIZUNO

ROBERT M. WEISMAN

JERRY W. WILSON

BARRY ZALCMAN

ALSO PRESENT:

SANDRA SLOAN	AREVA MP
ALAN LEVIN	AREVA MP
GEORGE ZINKE	Entergy
EDDIE GRANT	Exelon
DAN WILLIAMSON	Exelon
STEVE FRANTZ	Morgan Lewis Bochius
GUY CAESAR	NuSTART
RUSSELL BELL	Nuclear Energy Institute
ANNE COTTINGHAM	Nuclear Energy Institute
ADRIAN HAYMER	Nuclear Energy Institute
BEN GEORGE	Southern Nuclear
ANDREA STERDIS	Westinghouse
MARK COLLIN	Westinghouse

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(9:02 a.m.)

MS. COFFIN: Good morning. Can you guys hear me okay? My name is Stephanie Coffin. I'm a Branch Chief at NRR Rulemaking, and today I'd like to welcome you to the workshop and introduce the main NRC speakers. On my right, Nanette Gilles, Senior Project Manager, Division of New Reactor Licensing. To her right is Jerry Wilson, Senior Policy Analyst, NRR Division of New Reactor Licensing. And on the far right there is Geary Mizuno, he's a Senior Attorney, Rulemaking and Fuel Cycle Division OGC.

This meeting is designed to facilitate your comments on the proposed rule which was issued yesterday, and published yesterday in the "Federal Register". The staff will be discussing the major proposed revisions, and we're here to answer your questions. We value your input. In fact, many of your comments on the 2003 version of this proposed rule are reflected in the most recent publication, and Lessons Learned, stakeholder input during recent early site permit reviews and design certifications have been considered, and also are reflected in this proposed rulemaking.

The primary goal is to establish in a

clear, logical, concise manner the licensing and approval processes for new nuclear power plants. This rulemaking will result in an even more effective licensing process that supports our mission to protect the public health and safety and the environment, and we also want this rulemaking to result in an optimized licensing process that demonstrates good stewardship of all of our resources.

Look forward to your engagement in the workshop, and your future comments on the proposed rule. We do have a very challenging schedule facing us. The public comment period closes around Memorial Day, and the Commission has requested the proposed final rule in October, so your input via the public comment process is critical to our success. We encourage your timely and constructive input during the comment response period, and I know that today's meeting will help facilitate how you review and respond to our request for comments on the rulemaking. And I thank you very much for your attendance today.

I'm going to turn it over to Nan Gilles, who will work out some logistics, and then we'll get started.

MS. GILLES: Good morning. As Stephanie said, my name is Nanette Gilles. I'd also like to

welcome you to NRC's public workshop on the 10 CFR Part 52 proposed rulemaking, proposed to be titled "Licenses, Certifications, and Approvals for Nuclear Power Plants", which was published yesterday, March 13th, in the "Federal Register" in Volume 71. The rulemaking begins at page 12781.

This proposed rule supersedes an earlier proposed rule that the Commission issued on this subject on July 3rd of 2003. Today's meeting is a Category 3 public meeting, which means participants can ask questions throughout the meeting. There are also public meeting feedback forms available on the table just outside of the auditorium. Also available on the table outside are handouts for today's meeting, which include a copy of the published "Federal Register" notice, the agenda for the day, and two communications we received from external stakeholders with early questions for consideration during the workshop.

Today's workshop is being transcribed, and we will post the transcript on the NRC's rulemaking website as soon as it becomes available. Because the workshop is being transcribed, we ask that if you do wish to ask questions or make comments during the workshop that you first state your name and

affiliation, and that you use one of the microphones. There are three freestanding microphones. If those are not accessible to you, just raise your hand and we have staff members with hand-held microphones, and they will bring that to you.

Visitors are free to move between this level and the main lobby level as long as you use the elevator that's just outside of the auditorium. If you try to use the stairs, you can only do that with an NRC escort because you'll eventually run into a security guard. The rest rooms are also located on this level just outside of the auditorium. Visitors are welcome to bring food and drink into the auditorium. And at this time, I'd like to ask you to please turn-off or silence any cell phones or pagers you may have with you.

I wanted to make a couple of comments regarding the comment process for this proposed rulemaking. You may ask questions or make comments during this workshop, but in order to receive a formal response in the final rulemaking, you need to submit your comments in writing, as indicated in the "Federal Register" notice.

In addition, as mentioned in the "Federal Register" notice, in light of the re-write of the 2003

proposed rule and the significant expansion of that rule, we will not be addressing comments received in the 2003 rule. If you want, if you feel that your comments have not been adequately addressed in the 2006 proposed rule, we ask that you please resubmit those on this proposed rule. If you have a copy of the agenda that was outside, I'll briefly go over that with you.

We're going to start this morning with an overview of the rulemaking and a discussion of some of the generic issues that cover a large portion of the rulemaking. Then we plan to discuss the key issues within Part 52, starting with the General Provisions, and then going through the various subparts, starting with "Early Site Permits, the Combined Licenses." Then we'll have a joint discussion of the "Standard Design Certification", and "Standard Design Approval Requirements", followed by ending the morning with a discussion of the "Standard Design Certification Rules" and Appendices A-D.

This afternoon we intend to wrap-up the Part 52 discussion with a discussion of the manufacturing license subpart, and then we will begin going through some of the other subparts that were most affected by the rulemaking. We're going to start

with Part 50, which is the domestic licensing requirements. Then we will cover Part 2, "Rules of Practice for Domestic Licensing"; Part 19, which is "Notices, Instructions, and Reports to Workers"; Part 21, "Reporting of Defects and Non-Compliances"; Part 51, which is the Environment Protection regulations, and then ending with a joint discussion of Parts 10, 25, 75, and 95, which all relate to various security safeguards or access authorization issues.

That being said, in keeping with the main objective of the workshop, if discussions go longer than the time allotted, we do not intend to cut those discussions short if there appears to be a great deal of stakeholder interest in a particular topic. We tried to structure the agenda to put the topics we thought were of most interest at the front-end of the agenda and, therefore, if there are topics we are not able to get to when we close the workshop, we will decide how best to handle those, including getting your feedback as to whether another follow-on meeting might be necessary.

With that, I'm going to turn the podium over to Jerry Wilson, who's going to give you a general overview, and discuss some generic issues.

MR. WILSON: Good morning. For those of

you who don't know me, I've been working on the development, codification, and implementation of Part 52 since 1987, so it's good to be here at another public meeting on Part 52. A lot of people here, I just point out, there's still a couple of empty seats up-front, and for Bruce Musico and some of the other staff, there are seats over here on the right. Don't hide back there, Bruce.

Okay. In this discussion, I'm going to talk about the reorganization of Part 52, standardization of subparts, segregation of Part 50 and 52 processes, the applicability of various requirements throughout Title 10, and the use of consistent terminology throughout Part 52.

MS. GILLES: Jerry, I'm going to interrupt you for a minute. I'm getting a signal from one of the staff members that he's having a hard time hearing Jerry. Those of you in the back, are you having a hard time hearing? Yes.

MR. WILSON: Okay. How is that? Sorry, I don't have a control on the volume.

MS. GILLES: Can you hear better from this microphone?

MR. WILSON: Okay.

MS. GILLES: I think we'll just plan to

speak from the table then.

MR. WILSON: Okay. How is this? In the original Part 52 rulemaking, the NRC created three new licensing processes. Those are in Subparts A, B, and C. And they moved Appendices M, N, O, and Q from Part 50 to Part 52. In this proposed rule, we are re-designating as new subparts Appendices M and O for manufacturing licenses and design approvals. Re-designating these Appendices as Subparts in Part 52 would result in consistent format and organization of the requirements applicable to each of the licensing and approval processes.

In addition, the re-designation would clarify that each of the licensing and approval processes in these appendices are available to potential applicants as an alternative to the processes in Part 50, specifically the construction permit and operating license, and the existing Subparts A-C.

The Commission is attempting to clarify the full range of alternatives that are available under Part 52 for use by potential applicants. And consistent with this broad scope for Part 52, the NRC proposes to retitle Part 52 as, "Licenses, Certifications, and Approvals for Nuclear Power

Plants".

Appendix N, which addresses duplicate design licenses would be removed from Part 52, and would be retained in Part 50, because a duplicate design license ends up as an operating license. Appendix Q which addresses early staff review of selected site suitability issues, would also be removed from Part 52, but retained in Part 50. This process has not been used in the past, and is separate from the early site permit process in Subpart A.

The NRC recognizes that there appears to be some redundancy between the early review of site suitability issues and the early site permit process. Accordingly, we propose to remove Appendix Q from Part 52, and we're proposing to retain it only in Part 50.

Now related to this action is Question 3 in the section on "Specific Requests for Comments." And for those of you following along in the "Federal Register" notice, those questions start on page 12830 of the "Federal Register".

Now if you look at Question 3, you'll see we are also considering removing Appendix Q from Part 52 in its entirety, and we're interested in your feedback on this alternative. One reason for removing the early site review process in its entirety is that

potential nuclear power plant applicants would use the early site permit process in Subpart A of Part 52, rather than the early site review process as it currently exists.

Also, in cases where a combined license applicant was interested in seeking NRC staff review of selected site suitability issues, which is what Appendix Q was originally designed for, the Applicant could request a pre-application review of these issues. The use of pre-application reviews for selected issues has been used successfully by applicants for design certification, so we're especially interested in your views of the potential combined license applicants as to whether there's any value in retaining the early site review process.

As part of this reorganization, the NRC's goal was to limit Part 52 to the processes for licenses, certifications, and approvals, and rely on the technical requirements in other parts of 10 CFR. The NRC also proposed to reorganize and expand the scope of administrative and general provisions that precede the Part 52 subparts. These provisions are set out in Section 52.0-52.11, and Mr. Mizuno will discuss that in the next presentation.

The NRC believes that adding the new

sections to Part 52, rather than revising the comparable sections in Part 50, is more consistent with the general format and content of the Commission's regulations in each of the major parts throughout 10 CFR.

The NRC used a standard format and content for revising the regulations and the existing subparts, and developing new subparts that address the current Appendices M and O. The standard format and content was modeled on the existing organization and content of Subparts A and C, such as the scope of the subpart in relationship to other subparts. The Commission believes that this standard format will make it easier for prospective applicants to navigate through the various licensing processes.

Now on the issue of segregation of Part 50 and 52, currently Part 52 allows an applicant for a construction permit to reference either an early site permit under Subpart A, or design certification under Subpart B. Specifically, in Section 52.11 it states that Subpart A sets out the requirements, NRC issuance of early site permits for approval of a site or sites. They have an application for a construction permit or combined license for such facility.

Similarly, 52.41 states that Subpart B of

Part 52 sets out the requirements and procedures for NRC issuance of standard design certification, filing separate from an application for a construction permit or a combined license. However, the current regulations in Part 50 that addresses the application for and granting of construction permits do not make any reference to a construction permit applicant's ability to reference either an early site permit or a design certification.

Also, the NRC has not developed any guidance on how the construction permit process would incorporate an early site permit or design certification, nor has the nuclear power industry made any proposals for the development of industry guidance on this subject. The NRC has not received any information from potential applicants stating an intention to seek a construction permit for construction of a future plant. In addition, the NRC recommends that future applicants who want to construct and operate a commercial nuclear plant use the combined license process in Subpart C of Part 52. Therefore, as set forth in Question 5, the NRC is considering removing from Part 52 the provisions that allow a construction permit applicant to reference either an early site permit or design certification,

and we're interested in your feedback on this alternative.

The clarification of applicability of various requirements throughout Title 10 is the most significant action taken in this proposed rule, and resulted in a large volume of changes. This action was taken in response to three comments submitted on the 2003 proposed rule. These comments came from Framatone A&P, Winston & Strawn, and Morgan & Lewis. The essence of these comments is the claim that there was significant potential in the 2003 proposed rule for imposing unwarranted Part 50 requirements on all Part 52 applicants, and that the Commission should tailor the applicable provisions of Part 50 to Part 52.

They also stated that while this revision process may initially be more burdensome on the Commission, it is necessary to avoid broadly applying sometimes inappropriate regulatory requirements to all of Part 52. The Commission agreed that it was often difficult to determine whether regulatory provisions in Part 50 apply to Part 52. When the various requirements throughout Title 10 were originally created, they were applied to construction permits and operating licenses. So, for example, you'll see

particular requirements that say for a construction permit you do this, and for an operating license you do that. It doesn't speak to what you would do for a combined license.

Subsequently, when Part 52 was created, we did not go back and clarify the applicability of these requirements. Instead, we relied on one sentence or one paragraph applicability statements, such as the current Sections 52.81 and 52.83. The NRC concluded that the 2003 proposed rule did not adequately address this problem, and decided to make conforming changes throughout 10 CFR Chapter 1 to reflect the licensing, certification, and approval processes in Part 52.

Now related to this, as Nan said, we recently received a letter from NEI dated March 8th, and copies of that were on the table outside. And in there, they provided a question on our process for clarifying the applicability of these various requirements. So if you look at their letter, and particularly Question 1, you see that they refer to - in Question 1, if you're looking at it, they have an A, B, and C, refer to different ways that we did this clarification. And they conclude with the question, "Why has the staff chosen to use three methods to accomplish this objective"?

First, we have a general applicability statement in 52.0(b) to make it clear that all requirements in 10 CFR Chapter 1 are applicable by their terms to early site permits, design certifications, combined licenses, design approvals, or manufacturing licenses. And I believe Mr. Mizuno will speak further on this requirement. Now this requirement is to alert the reader that the processes in Part 52 are not self-contained, and there are other applicable requirements.

We then made conforming changes to these various requirements to specify their applicability to the Part 52 applicants, licensees, and permit holders. And finally, we included pointers to various requirements from the contents of applications. These pointers do not incorporate the technical requirements in the Part 52. They indicate that your application must address how you plan to meet these requirements.

Now related to this, we also have Question 1 in the specific request for comments that discusses the general provisions to Part 52. The Commission is considering an alternative to the proposed rule, and Mr. Mizuno will discuss that approach.

Finally, we have tried to use consistent terminology throughout Part 52, and an example of this

is the use of the terms "parameters", which means postulated values, and "characteristics", which means actual values. So if you are in the design certification process where you're specifying the design but you don't know the site that you're going to use that design at, but you need certain siting values, such as the safe-shutdown earthquake to do the design, we would expect that you would have site parameters, postulated values. Whereas, if you're working in an early site permit where you're determining the actual value of these site issues, we would term those site characteristics. So that's an example of where we tried to clarify the terminology, and that we've tried to be consistent throughout Part 52 on terms like that.

So in conclusion, we believe the revised rule responds to several industry comments on previous proposed rule stating that the NRC should tailor the applicable provisions of Part 50 to Part 52 licensing processes. Changes are primarily clarifications of existing rule language, and should not have a significant impact on COL applicant preparations, and the revised rule, we believe, will enhance the NRC's effectiveness and efficiency in implementing the various Part 52 licensing processes.

So with that, if there are any questions on this overview of Part 52, I suggest this is a good time to ask them. Go ahead, Steve.

MR. FRANTZ: This is Steve Frantz from Morgan & Lewis. With respect to the issue of Appendix Q, Part 52 retention, and this applicant, COL applicant still be able to reference Part --

(Changing mics.)

MR. FRANTZ: Can you hear me now?

MR. WILSON: Yes.

MR. FRANTZ: Okay. My name is Steve Frantz from Morgan & Lewis. My question pertains to the removal of Appendix Q from Part 52, but the retention in Part 50. Would a Part 52 applicant, such as an ESP applicant or a COL applicant, be able to reference a Part 50 Appendix Q review?

MS. GILLES: Are you asking if a COL applicant would be able to have an early site suitability review done if the Appendix Q remained only in Part 50?

MR. FRANTZ: That's correct.

MS. GILLES: Yes. The intention is that by removing it from Part 52, they would not, that if you believe that it's important to keep that process available to Part 52 applicants, that I suggest you

make the comment that it be retained in Part 52. That was the intention, that it would be removed from Part 52 so that it would not be available to Part 52 applicants.

MR. FRANTZ: In this regard, why would you want to remove that option? I realize it has not been used by any of the existing applicants, and none of the prospective COL applicants propose using it, but what's the harm in leaving it in Part 52 in case somebody in the future would like to use it?

MR. WILSON: Your question is something that we would like to hear from stakeholders on, but our vision was that on selected issues, prospective COL applicants could use pre-application review process. But if you believe that retaining it in Part 52 for the scenario you described is worthwhile, then I would suggest you submit a comment with your rationale.

MR. FRANTZ: And then a somewhat related issue pertaining to the site suitability reviews provided for in Subpart F of Part 2. My understanding, talking with Mr. Mizuno, is that a ESP or a COL applicant would still be allowed to use that process. Is my understanding correct?

MR. WILSON: I'll let Geary chime in, but

Subpart F was originally derived, my historical belief, to support Appendix Q, so let me walk you through the scenario. Let's say you came in under Appendix Q to what in the past was in Part 50, and you got a staff review of a selected issue, say the safe-shutdown-earthquake. Then if you wanted additional finality to that resolution, you would use Subpart F to Part 2, and you could go through the hearing process. Add to that?

MR. MIZUNO: Yes. I think Subpart F refers back to 2.101.

MR. FRANTZ: Yes.

MR. MIZUNO: And this is my recollection, but 2.101, I believe, refers to submitting things in stages, and then it ties back to Subpart F. And Appendix Q is not directly mentioned in 2.101, as I recall, so to that extent, I guess I would disagree with my colleague here, and the removal - assuming that 2.101 does not reference Appendix Q, that the removal of Appendix Q from Part 52 would not preclude a COL applicant from using Subpart F as a procedural means for obtaining a hearing, going to hearing on matters before the rest of the application can be submitted.

MR. FRANTZ: Geary, that's my

understanding, too. And if that's the entire agency's understanding also, would you consider a change, a small change in Subpart F to make it clear that a COL applicant could use the Subpart F process? Because right now, there is nothing directly in Subpart F that discusses a COL applicant.

MR. MIZUNO: Yes, we would consider that. And just to make clear, because perhaps the 2.101 staged application process is not familiar to all the people in this auditorium, that process is to be distinguished from Appendix Q in this fashion. Appendix Q allows the potential applicant to select one or two issues of its own choosing with respect to site suitability. Under 2.101, however, all the matters relating to siting need to be submitted as part of the application. It's a phased application with the siting matters, and then the technical matters coming in at a separate time. And I think the third item that is going to be removed is the anti-trust information, because there's no longer a requirement for anti-trust review in light of the 2005 Energy Policy Act, so that's the major difference between the two different approaches.

MR. FRANTZ: Thank you.

MR. WILSON: And while Mr. Bell is getting

up, I'll just remind everyone that if you have comments on the rule, you need to submit the comments. We are not taking comments in this meeting. This is for the purpose of clarifying our proposal.

MR. BELL: I'm Russell Bell with NEI. Jerry, on your comments about clarifying the applicability of Part 50 and other technical requirements to Part 52 actions, you mentioned the staff was responding to some industry commentors in the 2003 NOPR, and that led to the significant number of changes you mentioned. This notion had been considered before. In fact, the industry thought this might have been the right thing to do back when Part 52 was being written.

In 1989, the Commission soundly rejected the notion that Part 52 was anything other than a process rule that would recognize and rely on requirements, technical requirements elsewhere. In the 2003 NOPR, it apparently did get some comments along these lines, but certainly, also got comments that this was not a necessary thing to do in terms of all the cross-references that have been built into this NOPR.

I just wondered if you could clarify or say a few more words about what's changed in the NRC's

thinking from the framer's emphatic no, to the notion that Part 52 required a bunch of these cross-references to where we are now, if you would, please.

MR. WILSON: I don't recollect the rejection aspect, but I can say that our experiences in implementing design certification and early site permits has added to the view that we got from the commentors, that we should clarify the rule on applicability. And I agree, I think the point you were making is yes, Part 52 is process rule, and it relies on technical requirements throughout Chapter 1. And the whole purpose here is to clarify the applicability.

Now previously, as I stated, we had one sentence or one paragraph applicability statements that read something like, that requirements in Parts 20, 50, 73, and 100 are applicable as they apply to your design. There's a judgment in there. I would argue that with all of the clarifying applicability statements we made, if you made the correct judgments, you'd come up with the same applicability that we did in this process. So this, from my perspective, makes it easier for prospective COL applicants on making these judgments about which requirements are applicable to the combined license process, or other

processes.

MR. MIZUNO: This is Geary Mizuno. May I add a few words in support of that? I guess I would disagree with your characterization that there has been a change of direction on the part of the Commission over the original Part 52 rulemaking in 1989. The purpose of this rulemaking continues to be that Part 52 is procedural, and that the technical requirements should be, if at all possible, be kept in Part 50 or other respective parts throughout Title 1 of 10 CFR. The primary change within Part 52 that is being made as part of this rulemaking is to have what we call internally pointers to those technical requirements, wherever they may be throughout Chapter 1. And there are changes within those technical sections to reflect the fact that, first of all, to make clear how they apply to specific Part 52 regulatory processes, and to the entities that either apply for or receive a regulatory approval under Part 52.

In some cases, the technical requirements had to be modified or changed to reflect the unique circumstances of, in particular, the combined license, but the Commission's general direction in preparing those substantive changes, which remain in the

technical portions of 10 CFR Chapter 1, are that we tried to emulate or continue the underlying substantive concept embodied in existing regulations. So, for example, if a Commission regulation, existing Commission technical regulation applied to a construction permit holder, we modified that technical requirement to also apply it to the combined license holder after issuance, but before the Commission made the 52.103(g) finding, which would then authorize or allow, I should say, allow the combined license holder to load fuel and begin operation.

By contrast, if an existing Commission requirement applied to a operating license holder, and if the Commission had considered the fact that it should only apply at the operating license stage, because some of our regulations were written with the assumption that they were to be applied - well, the vast majority of licensees at the time were operating license holders, and there was no consideration given to the prospect of future applicants, but barring that, if an existing technical requirement applied to an operating license holder, then the technical requirement would be modified to apply to a combined license holder only after the Commission had made the finding under 52.103(g).

So, in sum, I believe that the Commission's overall intent here is to maintain the concept that Part 52 is a process rule, and that the technical requirements should remain elsewhere, wherever they may be, in 10 CFR Chapter 1, to the extent possible.

MR. BELL: Let's see. The SECY came out last year on this. The Commission SRM pointed out a few additional pointers that they would like to see in there. As long as we're going down this path, the staff has included those in the NOPR now. We detect that there's still a number of technical requirements elsewhere in 10 CFR that are not yet pointed to. I guess I'm wondering what the staff's process was for identifying when to provide these pointers, and I guess the impact for failing to do, I guess, a perfect job of cross-referencing.

MR. WILSON: Well, I'll be the last person to claim perfection, but I would say that if you feel there were requirements that should have been pointed to, please send in a comment and notify us of that.

MR. MIZUNO: And if I could just add on that as a sort of an extension of my remarks, again, since the combined license has these two phases, the construction phase, and then the operation phase, it

would be useful in your comments to say that this technical requirement should apply to the construction phase only for a combined license, or to the operating phase only, or to both phases. And that way would be able to structure -- at least would be able to get an idea of your views as to how that technical requirement should apply to a combined license. And I guess I should say this also applies, of course, to the other regulatory processes in Part 52, as well.

MR. BELL: My question went to process. Were there criteria you used to determine when to include a pointer and when not to?

MS. GILLES: Russ, I think you're referring mainly to the pointers that we have in the contents of application section. Is that generally what you're speaking to?

MR. BELL: The bulk of them are there, yes.

MS. GILLES: Yes. Later in the day, I'll be talking a little bit more about 52.79, contents of a combined license application. But generally, we looked at the requirements that already existed in 50.34, and then in addition to that, we looked for requirements that were promulgated after the current fleet of plants began operating. And, therefore,

those would not have been captured in 50.34, and we tried to capture those. And, again, you'll hear about the fact that we included requirements that were related to operational programs for reasons I'll discuss later today, but this goes along with the Commission's position in SECY 05/01/97 on how to handle operational programs in a combined license application.

MR. MIZUNO: An example of a regulation that I would call the error, which Nan was just referring to as those things which were promulgated after the current fleet of reactors began operating, would be station blackout. The station blackout rule was written after most plants were operating. If you look at the requirements, they're written for an operating license. They're not written with any idea that a future plant would be licensed through construction, so there's no requirement for an application to include information with respect to station blackout. 50.34 also doesn't capture anything there.

Now one could argue, and I guess it would be a valid comment, to say well, that represented a Commission decision, and that issue should be simply carried over to the combined license. That's only

when the combined license holder is permitted to operate, after the 52.103(g) finding has been made, should station blackout be addressed. I believe it's the Commission's determination here that that would not be the correct thing. Station blackout is really a design matter, and should properly be addressed in the combined license application, or in a design certification application.

MR. BELL: Well, what you just described is a function of how you propose to structure clarifying applicability of operating requirements only after the 52.103(g) finding. There are other ways that that could be structured. It seems obvious to us that 50.63, the station blackout rule, is certainly one of the technical requirements that apply to COL applicants. Certainly, it's been a factor considered in design certification reviews, so I think there are ways to address the point you just made.

Of course, Jerry, you reviewed the three methods that we highlighted in our letter. I might have missed it. I'm not sure if I got the answer to why the staff felt all three methods were necessary. Of course, it's our view that omnibus or global applicability statement, such as 52.0, makes it clear that those requirements that are technically relevant,

and apply to the given Part 52 action, would apply to an applicant, or holder, or licensee. Can you say why you felt all three of these cross-referencing methods are --

MR. WILSON: Okay. Then starting -- okay, I'll let Geary.

MR. MIZUNO: I had planned to respond to that question in detail, so I think this will just be the time to do it. They're not three different concepts. At least the way NEI characterized as being three different concepts for showing applicability, and that's not really true. It's all part of an integrated concept that the Commission tried to accomplish.

Now admittedly, there are some - this is where we deviated from that - but generally speaking, 52.0 basically is an overall applicability statement that says yes, all these other technical and administrative requirements throughout 10 CFR Chapter 1 are applicable in Part 52 space. Okay?

However, leaving the regulatory process with that kind of global applicability statement would leave us in the same place that we were in the 2003 rule, in which at least some stakeholders indicated that that was a problem. And because the

applicability statement, a global applicability statement would not tell you which specific technical requirements would apply, nor would they tell you even if you went to a specific technical requirement, which everyone agreed applied, such as station blackout, when that requirement had to be fulfilled. Station blackout is a perfect example. It applies to operating licenses, even if you were to just say combined license, modify it to reflect that, would still not tell you okay, is it the combined license applicant, or is it the combined license holder once they get their -- once the Commission has made the 52.103(g) finding, which is, at least conceptually, the way that you would ordinarily want to modify the requirement, given the fact that the existing rule refers only to operating licensees.

MR. BELL: Would you say that the timing of the applicability of station blackout, sticking with that example, could be clarified through guidance documents, given that you said it's -- and I think it is clear that it applies.

MR. MIZUNO: I don't think there is any question that you could have "guidance" documents that clarify the Commission's intent, or its provisions. I think that there are two things, though, that are --

considerations to be considered in taking the guidance approach. One is that, of course, our stakeholders specifically said we'd rather see that in the regulation. And two, I think that putting it in the regulations would make it legally binding, so that if there were any disputes between the NRC and an applicant, or a licensee, and if it ultimately came to a question of whether an application should be denied, or whether an enforcement action should be taken against a licensee, there would be a clear legal basis for taking action by the NRC.

Furthermore, as you well understand, licensing decisions on applications and amendments are subject to the possibility for a hearing challenge through intervention, and it is clearly better for regulatory stability if all parties agree that there was a legal requirement, and that the legal requirement was clear with respect to its applicability to an applicant or a license holder. So those two aspects ensuring that there is certainty between the NRC and the applicant or the licensee, as well as try to minimize the possible space for litigation challenges, would both lead the NRC to believe that the best approach from a regulatory standpoint would be to pursue rulemaking changes, such

as what the Commission proposed in the March 2006 rule, as opposed to doing guidance. But certainly, guidance is possible. That is what the current combined license potential applicants and the ESP applicants who are currently in-house, and the design certifications have been going through.

It's certainly not an unreasonable process. The only thing I can say is that this was intended to be, in part, optimization, as well as the fact that we have not gone through a combined license process, and we certainly heard from stakeholders that intervention or participation in the early processes of design certification and early site permits were not useful, and so a lot of the hearing issues in terms of certainty would not be raised, but certainly, you would get those challenges at a combined license proceeding, or you certainly would have the opportunity for those kinds of things to be raised. And so, the Commission felt that, again, regulatory stability, certainty, predictability would be better enhanced through the combined license proceeding if we were to optimize the regulations by having specific pointers, and modifying the existing technical requirements to clearly state how they apply to the various processes and entities in Part 52.

MR. BELL: Just one more question. There are applicability statements, what standard should be applied for reviewing the various actions. Jerry mentioned one, 52.81, "The Commission shall use the existing standards of Parts 20, 40, 50, 73, 100", et cetera. A phrase has been proposed to be eliminated from those statements. The phrase is, "As those standards are technically relevant." Can you explain why those words are proposed to be struck from those provisions?

MS. GILLES: The reason we struck those words is because we went into the individual parts, and the individual requirements, and told you exactly there where those requirements were technically relevant to a design certification, or an early site permit, or a combined license at a given stage, so we didn't feel it was necessary to say that, because we had gone throughout 10 CFR to specifically define where they were technically relevant.

MR. MIZUNO: And I guess, again taking the station blackout rule as an example, the Commission did its best judgment as to how that requirement should apply. Of course, stakeholders may disagree, and so, therefore, it would be useful if you disagree with that, to not only say that you disagree with

that, and to say no, it should only apply, for example, in the station blackout case to a combined license once the 52.103(g) finding had been made, but also to provide a rationale as to why you believe from a technical standpoint it's only technically, or regulatorily relevant to that process at that particular point where you want it to apply.

It would be useful whenever you submit comments to provide a good rationale for your position. It would allow us to better evaluate the merits of your approach.

MR. BELL: If we and you continue down this new path, what are best efforts to identify all the pointers that are necessary come up short, and we miss a few, because we're all humans. What would be the impact of that, the lack of a pointer? How would you see that that would not become a problem potentially for a COL applicant down the line?

MS. GILLES: Well, I'll just say something while Jerry and Geary are conversing here, that obviously, it's very difficult to write the requirements for a process that you and we have never been through before. We learned that going through the first design certifications and the first early site permits. And as a matter of fact, we will

discuss some changes today that resulted in Lessons Learned in the first early site permits, and I think we will just have to work through those together when we are going through those combined license application reviews, and come to mutual agreement about how best to handle those during the reviews themselves. And then determine for future applicants whether additional changes may be needed to the regulations in the future.

MR. BELL: Do you think it might be helpful to retain those words "as technically relevant" against the day we find that we were not perfect in providing all the pointers? Would the staff entertain that language?

MS. GILLES: I'll be honest, we didn't discuss that concept, retaining those words for that reason, so I think if you believe it's worthwhile, that's a comment worthwhile making.

MR. WILSON: I'm sorry. I'll just add-on that in the scenario you describe where there's an oversight, we would be where we are today, referring to those more general statements, and making judgments at that point.

MR. BELL: One other global or general question for you in our letter of the other day that

you mentioned earlier, and that was outside on the table. I think it's of a general nature, so I raise it now, and staff has stated that the large number of changes, or a number of the changes go to addressing or heading-off potential generic issues that would otherwise arise in the context of a COL application. Could you identify a few examples of those?

MS. GILLES: Yes. I have a list somewhere, which I'm going to flip through here and find, but I remember one of them that we discussed was in Section 52.39, and also in one of the questions, specific request for comments, there's a pretty lengthy discussion of process for possibly updating ESP information, particularly in the areas of emergency preparedness information, and environmental information. We felt that that was one area that it would be best to try to resolve in the rulemaking, rather than leave it to future combined license proceedings. The requirements for Part 21, reporting of defects and non-compliances, there's also a fairly lengthy discussion of how those requirements apply to each of the processes in 10 CFR Part 52, including site permits and design certifications, and combined licenses.

There was also some changes with regard to

Quality Assurance requirements for ESP applicants, and we felt those could possibly come up in a combined license proceeding had they not been clarified in the rulemaking, so just a few examples. If I find my list, I'll give you the rest.

MR. WILSON: Are there other questions on this issue of applicability? I think this is a very important issue with regard to this rulemaking. I'm sure you've all heard a variety of discussions about the volume of this rulemaking, and the time from the last proposed rule, and this issue of clarifying the applicability requirements is a major reason for that. As you can imagine, we consulted a wide range of NRC staff throughout the agency to be sure that we have all these applicability statements correct, so that took a lot of time, and resulted in a lot of volume to this rulemaking, so other questions on this concept? This is a good time to ask them. There will be opportunities later in the day, but I think it's a good time to turn it over to Mr. Mizuno.

MR. MIZUNO: Okay. I'm going to speak to the general provisions in Part 52. The SOC discussion on these general provisions is at pages 12787 through 12788, and just for cross-reference because the reason for many of these general

provisions relate back to the overall Part 52 reorganization. That overall reorganized is discussed at pages 12783 through 12784. The general provisions are from 52.0 through 52.11. These are generally drawn from other, or we modeled our provisions after other parts of 10 CFR. The provisions are common to the substantive parts in 10 CFR, such as "Statement of Scope", "Interpretations", and "Exemptions".

Some examples of parts from which these general provisions were drawn are Part 4, Part 20, Part 26, Part 30, Part 70, and Part 73. These parts generally follow the same model as what we're proposing for Part 52. There are some individual changes because, obviously, the Commission promulgated these parts over a lengthy period of time, and there are various authors involved. But generally speaking, what we tried to do is to capture the essence of the other parts, and provide a consistent format, so that Part 52 did not stand out from any other part in Chapter 1 of 10 CFR.

Again, the intent is to avoid unnecessary disputes in individual proceedings on the applicability of these general regulatory provisions. And I might point out that the inclusion of these provisions, these general provisions, is consistent

with NEI's November 2nd, 2001 letter, which specifically requested during the process of formulating the original July 2003 rule, that a section involving written communications be added to Part 52, and that the Commission should consider adding other general provisions to make Part 52 more like the other parts. This is discussed in the March 2006 SOC at page 12787, second column, where we quote from the NEI 2001 letter.

We've already covered NEI's Question 1 from their March 8th, 2006 letter, so I do not propose to repeat that here. There is one provision in this general provisions which arguably represents a technical provision, and that is proposed Section 52.10, "Attacks and Destructive Acts", and I wanted to spend some time on that. This section is analogous to and was drawn from, and uses essentially the same language as Section 50.13. The only changes really were to modify it to refer to the Part 52 regulatory processes.

There were, obviously, two options available to the Commission with respect to extending the concepts in 50.13 to Part 52. The first would be to modify 50.13 to include the references over to Part 52 Regulatory Processes. And the other, which was a

provision which the Commission is proposing, is to include a new provision in Part 52 that mirrors 50.13. It was felt that this approach would be better for two reasons. One is that, arguably this could also be considered to be a general provision. It is located in Part 50, in what would be equivalent to the general provisions section or portion of Part 50, and there was a concern informally within the staff and OGC that any change to the language of 50.13 could be interpreted as a change to the Commission's substantive intent with respect to existing reactors. We did not want to do that.

Now there is no change, even through the addition of this new Section 52.10. The underlying substantive concept that is embodied in 50.13 has not changed. It's simply being applied over to Part 52 processes, but the problem that was, or I should say the concern that was raised was that whether in the process of changing 50.13, it would allow an opportunity for people to re-raise and reopen underlying policy considerations involved in 50.13. And so the Commission ultimately decided that by creating a new parallel provision in Part 52, it would avoid the possibility of reopening or affording a forum, or an opportunity for people to reopen

substantive and policy concerns that underlie Section 50.13.

The Commission could adopt a different approach, obviously, and we welcome stakeholder comments on that issue. Once again, it would be useful for the Commission to address some of the concerns that I talked about here, that led the Commission to adopt a new parallel provision in Part 52, as opposed to modifying Section 50.13. And now I'm open to questions.

MR. BELL: Thanks, Geary. You mentioned your incorporation of general provisions was consistent with a letter we wrote to you in November of 2001. As I recall, that letter provided you language for at least a couple of those general provisions. Has the staff - and you mentioned the NOPR is consistent with our letter - has the staff included those recommended provisions that were in our letter?

MR. MIZUNO: I'll only speak to the portion of the NEI letter dealing with general provisions. I looked at the proposed NEI letter, and it was my recollection that while in many cases I understood the NEI position that we felt that there was a different way of achieving the same goal as NEI,

and so we did not adopt all of the suggestions that NEI raised. But what we're trying to do is looking for the underlying motivations, or issues, or concerns that NEI was raising and attempting to see whether those are valid, and then coming up with an approach that met the Commission's policy and regulatory objectives.

MR. BELL: As I recall, I think our point at the time was it may not be appropriate to cut and paste from 50 and put into 52; rather, that because of the variety of applicants, holders, licensees, actions in Part 52, more care would need to be taken, more nuance, if you will, in tailoring those provisions to Part 52 actions. We'll look carefully at those.

MR. MIZUNO: Yes. I think that the Commission agrees that a simple cut and paste is not appropriate. And, in fact, we did not do that. In fact, as Jerry mentioned, the rulemaking team spent many hours going through the regulatory sections, consulting with the relevant regulatory staff responsible for the sections to determine whether they were applicable to Part 52 processes. And if so, how they should be carefully tailored, and if necessary, have the provisions changed to reflect the unique circumstances of Part 52.

MS. GILLES: Any additional questions on the general provisions? Okay. If not, then I'm going to move forward with a discussion of Subpart A, "Early Site Permits". I know it's about 10 after 10 now. I will go ahead and take the scheduled break at 10:30, even though they may likely be in the middle of our discussions here, just so that we keep our breaks on time.

There was not much change to the format or structure of Subpart A. We generally tried to use that as a model for some of the other subparts. We did remove a couple of sections that really became superfluous when we made conforming changes in other parts. We removed Section 52.19 that discussed permit and review fees, because that is covered in Part 170, and we moved Section 52.37, which discussed reporting of defects and non-compliances, because that was superseded by our changes to Part 21.

In general, the only new sections are Section 52.16 on general contents of applications, and those requirements were already contained in the old 52.17. And we added Section 52.28 on transfer of an early site permit. This, again, was partly in response to an NEI letter from November 13th of 2001, recommending that we address transfer of early site

permit in Subpart A.

I'm going to discuss the key changes to Subpart A. Mostly those fall within two sections, which are 52.17 and 52.39. Section 52.17 is the contents of application technical information. One of the things we did was we added an explicit requirement that an early site permit application include a site safety analysis report. We also modified the text to allow for the use of what's been come to be known as the plant parameter envelope approach, whereby a parameter envelope is established as a surrogate for actual design information at the early site permit stage. The language now in there says that the early site permit applicant should specify the range of facilities for which the applicant is requesting site approval.

We deleted all the existing cross-references to sections in 50.34, and we added those provisions from 50.34 that we believed applied to siting requirements. In addition, we added a requirement that early site permit applicants provide information demonstrating that adequate security plans and measures can be developed. This essentially was required by sort of a generic statement in the existing 52.17, that site characteristics comply with

Part 100. This requirement regarding adequate security plans and measures can be found in 100.21(f). We felt it was important to bring it forward because it was a section of the early site permit applications, and would have been a little more difficult to cull out without specifically stating it in 52.17.

Another change that was made regarded the requirements to characterize the seismic, meteorologic, hydrologic, and geologic site characteristics. And a proposal was made to add that these descriptions must reflect appropriate consideration of the most severe of the natural phenomena that have been historically reported for the site and surrounding area, and with sufficient margin for the limited accuracy, quantity, and time in which the historical data have been accumulated. The reason those words were added were to ensure that future plants built at the site would be in compliance with General Design Criteria 2 from Appendix A to 10 CFR Part 50. That requirement is basically contained in 10 CFR Part 2, and since those characteristics are established at the early site permit stage, we felt it was important to provide those requirements in 52.17. This was one of the ESP Lessons Learned that was

incorporated into this rulemaking.

In addition, I think I've mentioned this already, we added a requirement that an early site permit applicant submit a Quality Assurance program description in their early site permit application. This requirement did not exist previous to this proposed rulemaking. Because the early site permits are considered partial construction permits, and because by virtue of the finality requirements in Section 52.39, the Commission would be required to treat matters resolved in the early site permit as resolved, making findings on a license or application that references that early site permit. We felt it was important that the quality applied to early site permit activities was the same Appendix B quality that would be applied to the design activities and the combined license activities.

The next category of major changes in Section 52.17 relate to emergency preparedness. The minimum level of emergency preparedness information that an early site permit applicant can submit is identification of any physical characteristics that could pose a significant impediment to the development of emergency plans.

What the Commission has proposed to add is

a requirement that if an applicant identifies a physical characteristic that could pose a significant impediment to the development of emergency plans, that the applicant must also identify mitigation measures that would, when implemented, mitigate or eliminate the significant impediment. We added this to clarify the NRC's expectations in those cases where a physical characteristic is identified that might produce a significant impediment. Simply identifying such a physical characteristic would not provide the NRC with enough information to determine if the characteristic was likely to pose a significant impediment.

We made a similar change in Section 52.18, to state that the Commission must determine whether the information supplied by the applicant shows that there is no significant impediment to the development of emergency plans that cannot be mitigated or eliminated by measures proposed by the applicant.

In addition, with regard to the other options for submitting emergency preparedness information in an early site permit application, that is to propose major features of emergency plans, or to propose complete and integrated emergency plans, the NRC is proposing to require that for these two options, the applicant also submit the inspections,

tests, analysis, and acceptance criteria, that the combined license applicant referencing the ESP would have to perform and meet in order to provide reasonable assurance that the facility has been constructed and would operate in conformity with the license and the Act, and the Commission's regulations.

We propose these requirements for consistency with Subpart C. We believe that if we are making a Reasonable Assurance finding regarding emergency preparedness at the early site permit stage, we need to have an equivalent level of information as that which we would have at a combined license stage that proposed the complete and integrated emergency plan. And we believe that the Commission would not be able to make its Reasonable Assurance finding at an early site permit stage without the inspections, tests, analysis, and acceptance criteria.

One of the questions in Section 5, the specific request for comment relates to emergency preparedness for early site permit applicants. It's Question 2. Again, this comes out of one of the Lessons Learned during the first three early site permit applications, and that lesson was that there was a lack of uniform understanding regarding how the use of the option to submit major features of

emergency plans was to implemented. The current regulations do not define the term "major features", nor is there any criteria set forth for how the Commission is to determine whether major features are acceptable, which is the criteria outlined in Section 52.18.

For those reasons, the Commission is considering removing the option of proposing major features for an early site permit applicant, and asks stakeholder feedback on this proposed option. The Commission is also considering modifying the concept of major features if it is retained as an option for early site permit applicants. The Commission believes that we need to further define what a major feature is, if we do intend to retain it, and a proposed definition was sent forward that major features of the emergency plans means the aspects of those plans necessary to (1) address one or more of the sixteen standards in Section 50.47(b); and (2), describe the emergency planning zones, as required in 50.33(g), 50.47(c)2, and Appendix E to 10 CFR Part 50.

The Commission believes that with this definition, a level of finality associated with each major feature would be equivalent to the level of finality associated with a Reasonable Assurance

finding for a complete and integrated plan. And the Commission is requesting stakeholder comment and feedback on both the consideration of eliminating the major feature option, and the consideration of if the option is retained, further defining it to provide a greater level of finality.

One of the other modifications made in Subpart A relates to Section 52.17(c), and 52.25, which discusses extent of activities permitted, or what's commonly referred to as limited work authorization activities. One slight modification was made to specify that the applicant, the early site permit applicant, should specify in their site safety analysis report those activities it wishes to perform under such an authorization, and that the NRC, when it issues the early site permit, that the NRC specify in the permit itself the activities that are authorized under the permit. And this was just a matter to provide greater clarity to all parties to know what was requested, and what was authorized in the early site permit regarding limited work activities.

Finally, with regard to Section 52.39, which discusses finality of an early site permit application, I'll ask for your forgiveness, as myself, an engineer, tries to go through this rather

legalistic process. The current rule tries to distinguish among issues that may arise when a combined license applicant references an ESP in the following manner.

It discusses a reactor that does not fit within one or more of the site parameters, and says that those are to be treated as valid contentions; discusses issues where a site is not in compliance with the terms of an early site permit, and those issues are to be subject to hearings under the provisions of the Administrative Procedures Act. And it discusses terms and conditions of an early site permit that should be modified, and those are to be processed in accordance with the NRC's Section 2.206 petition process.

After making the rest of the changes to 10 CFR Part 52, particularly the changes that Jerry discussed where we tried to standardize the terminology using the terms "site characteristics", "site parameters", "design characteristics", and "design parameters", the Commission proposed to re-characterize or clarify these issues in the following manner.

The proposed rule discusses questions regarding whether the site characteristics, design

parameters, or terms and conditions specified in the early site permit have been met, questions regarding whether the early site permit should be modified, suspended or revoked, or significant new emergency preparedness and environmental information not considered on the early site permit. If you read the Statements of Consideration, you'll see that questions about whether the referencing application demonstrates compliance with the early site permit do not attack the underlying validity of the permit, and are specific to the proceeding for the referencing application. Therefore, the Commission proposes that they should be regarded as a question material to the proceeding and admissible as a contention in the referencing application proceeding. That's assuming all the relevant criteria in Part 2, such as standing and admissibility, have been met.

The Commission also considers new emergency preparedness information submitted in the referencing application which materially changes the Commission's determination on emergency preparedness matters as an issue material to the proceeding, and admissible as a contention. Likewise, any significant environmental issue material to the combined license application which was not considered in the early site

permit proceeding is also subject to litigation during a proceeding on the referencing application under the Commission's proposal in this rulemaking.

Other questions regarding whether the permit should be modified, suspended, or revoked will be challenges to the validity of the early site permit, and would fall under the Commission's process for challenges to the validity of a license in Section 2.206.

I'm going to direct your attention to Question 9 in Section 5, specific request for comment. This is the longest question in Section 5, and I'm going to attempt to hit on the key points for you. All that being said with regard to what the proposed rule says in Section 52.39, the Commission is considering adopting in the final rulemaking an alternative to this process regarding the procedure for addressing new and significant environmental or emergency preparedness information at the combined license stage, when an early site permit is referenced.

The Commission is considering requiring a combined license applicant planning to reference an early site permit to submit a Supplemental environmental report for the ESP to address whether

there is any new and significant environmental information with respect to the environmental matters addressed in the early site permit Environmental Impact Statement. Based on the information, the NRC will prepare a Supplemental Environmental Assessment or Supplemental Environmental Impact Statement setting forth the agency's determination regarding the new and significant information. That draft supplement will be issued for public comment under this proposal, and after considering those comments, the NRC would issue final Supplemental Environment Assessment or Environment Impact Statement. ESP finality provisions in Section 52.39 would apply to the matters addressed in the Supplemental Environmental Assessment or Environmental Impact Statement, and those matters need not be addressed in any combined license proceeding referencing the early site permit. No updating of environmental information would be necessary in the combined license proceeding.

One of the advantages to this process is that since an early site permit can be referenced more than once, this approach would provide for issue finality of the updated information, and preclude the need for reconsideration of the same environmental issue in successive combined license proceedings

referencing the early site permit.

A similar approach is proposed for emergency preparedness information resolved in an early site permit. The Commission is separately considering requiring a combined license applicant referencing an ESP to provide the NRC new emergency preparedness information necessary to update or correct information that was in the early site permit. The NRC will, as necessary, approve changes to the early site permit emergency plan, the early site permit inspections, tests, analysis, and acceptance criteria, or the terms and conditions of the early site permit. Once the Commission has resolved the emergency preparedness updating matters, these matters will be accorded finality under 52.39, and there would be no separate updating necessary in any combined license proceeding referencing the early site permit.

The Commission views this process as preserving the distinction between the early site permit and any referencing combined license proceeding, and again would provide for issue finality and preclude the need for reconsideration of the same issue in successive combined license proceeding.

Another item that the Commission is proposing with this process is that this required ESP

updating be done in advance of a combined license application to minimize the possibility that the ESP updating process could adversely effect the combined license proceeding referencing that ESP.

The Commission has proposed to require that a combined license applicant intending to reference an ESP be required to submit the updated information no later than 18 months prior to the submittal of the combined license application. The Commission recognizes that this process may increase regulatory complexity, and could also add the possibility that resources may be unnecessarily expended if that combined license applicant subsequently decides not to pursue a combined license application. However, that is balanced against the advantage of providing early resolution of those issues in a proceeding separate from the combined license proceeding.

The Commission has asked for stakeholder feedback on this updating process on the requirement to possibly have an 18 month lead time for the ESP update information, or whether it would be beneficial to simply require that the ESP update information be submitted at the same time as the combined license application referencing that ESP.

Regarding public participation in the early site permit updating process, the Commission is considering two ways of allowing public participation. First, is to allow an interested person to challenge the proposed updating by submitting a petition processed in accordance with Section 2.206. This approach would be most consistent with the existing provisions in Section 52.39, in as much as updating an ESP is roughly equivalent to a request that the terms and conditions of an ESP be modified. The consequence of this approach is that the potential scope of matters which may be raised is not limited to the ESP matters which the ESP holder or combined license applicant and the NRC conclude must be updated.

The other approach the Commission is considering is to treat any necessary updating as an amendment to the ESP, for which an opportunity to request a hearing is provided. This approach would limit the scope of the hearing to those matters for which the amendment is requested. The consequence of this approach is that under a hearing granted on any amendment necessitated by the updating process, it would likely be more formalized than a hearing accorded under the 2.206 petition process.

The Commission requests public comment on

the approach the Commission should adopt, together with the reasons for the commentor's recommendation.

MR. MIZUNO: Can I just add one thing to that?

MS. GILLES: Of course.

MR. MIZUNO: Which is that the updating process for environmental information is a Commission proposal which should be considered separate from the process for updating emergency preparedness information. The Commission could adopt either one, or it could adopt both, and the Commission requests stakeholder comment on the merits of each approach, and whether each approach should be adopted.

MS. GILLES: It's 10:30 now. If there are no objections, I propose we take a 15-minute break, and then immediately following the break, take questions regarding the early site permit process. Okay. We'll reconvene at 10:45.

(Whereupon, the proceedings went off the record at 10:32 a.m. and went back on the record at 10:47 a.m.)

MS. GILLES: We'll go ahead and start off asking if there are any questions about the proposed changes for Subpart A on early site permits.

MR. PEER: Chuck Peer, Southern Nuclear.

I do have one question.

MS. GILLES: Sorry. Repeat your name one more time.

MR. PEER: Chuck Peer, Southern Nuclear.

MS. GILLES: Thank you.

MR. PEER: For the new ESP provisions, you look at the QA program and there's a very specific provision in there for where you insert the date of the final rule. But there are other requirements as you go through here that are new.

For applicants that have submittals in at the time of this rule change, an ESP submittal at the time the rule change is underway, how does this rule revision affect that, affect what the applicants have submitted with these differences for these rule changes?

MS. GILLES: Yes. As far as the applications they submitted?

MR. PEER: Right. Because --

MS. GILLES: Yes. They are not required to go back and revise their applications to meet these requirements. They had to meet the requirements that were in effect at the time they submitted their application for those contents of applications.

MR. PEER: So the requirements that are in

this provision would not apply for those applicants that have an ESP already submitted.

MS. GILLES: As far as the contents of their applications. Is that what you're referring to?

MR. PEER: Right.

MS. GILLES: Yes.

MR. PEER: Okay.

MS. GILLES: The contents of their applications. Their applications have already come in, and they were required to meet those requirements that were in effect at the time they submitted their applications.

MR. PEER: Thank you.

MR. BELL: Nan, I'm told this is working now. Do we have confirmation? Okay. Congratulations to the staff overcoming that technical problem.

First on the EP ITAAC, this is a concept that was discussed in one or two public meetings. As I recall, when it was discussed the concept was that an ESP applicant may choose or may wish to propose ITAAC as a mechanism for resolving or addressing emergency planning issues.

I must say, I and a number of us were intrigued that that might be a terrific idea. I know we were comforted in the notion that it was an option

at the time. When the rule language came out in August and again here, it's not an option. The staff is requiring EP ITAAC of ESP applicants corresponding, as I understand it, to either the major features or the complete and integrated.

I guess I'm -- since it's untried, and to the extent we're talking about a different set of ITAAC than those that were discussed in the context of COL applications and addressed in SECY 05.0197, I guess the requirement to provide ITAAC makes me a little nervous, since we haven't -- we haven't done this yet.

Can you explain why you think it's required and not -- I think what we agreed or what we were talking about one or two years ago now is that there were other ways to address open items or action items or -- without calling these things ITAAC, which, of course, has special meaning.

MS. GILLES: Our goal was to provide the same level of finality for a complete and integrated plan submitted with an early site permit, as would be provided with a complete and integrated plan submitted at the combined license stage. We felt that to get to that reasonable assurance finding that the staff is required to make on a complete and integrated plan the

ITAAC were necessary.

Now, that's not to say that a stakeholder could not suggest another way to reach that same level of finality, but we felt that since -- that the EP ITAAC was a known quantity, that it had been discussed at great length in the combined license meetings, that it was a natural fit to have the same sort of process for a complete and integrated plan at the early site permit stage.

MR. BELL: The proposed rule talks about emergency plans on each major feature of an emergency plan must include proposed ITAAC. Just let me understand, is the notion of ITAAC on emergency planning focused on the complete and integrated alternative, or for major features as well?

MS. GILLES: I admit there is a couple of points of confusion in the statements of consideration I tripped across myself. The rule text is for ITAAC for major features and complete and integrated plans. And for a major feature, remember, that would only be any ITAAC associated with that particular major feature that would be necessary for the staff to make a reasonable assurance finding on that feature.

MR. BELL: You mentioned, and you said it again just then, that an ITAAC necessary to make a

reasonable assurance finding, I hope you're about to demonstrate that ITAAC on major features are not necessary to make a reasonable assurance finding. I know Entergy, Clinton, and North Anna are hoping that you're prepared to do that.

It just goes to the notion that -- the question of whether it should be a requirement that this be done, or whether there are alternatives.

MS. GILLES: Yes. I believe the terminology in the existing rule regarding major features is that this Commission finds them acceptable, which to my knowledge is not an equivalent finding of reasonable assurance. So I think in the proposed rule we're trying to get to a greater level of finality for major features.

Now, I'll have to admit I have not been involved in the latest discussions with the current early site permit applicants on how that has all played out, but that's my understanding.

MR. BELL: Thank you. As long as I'm holding this thing --

MR. MIZUNO: Well, let me just add a little bit to Nan's answer. I think that it would be fair to say that whatever the technical staff determines are appropriate for ITAAC in a combined

license proceeding that the same scope would also apply in early site permit, regardless of whether there is a full and integrated plan, or a major feature. And, of course, the ITAAC would be then only related to that major feature.

I mean, if the technical staff were ultimately to determine, and the Commission approve, the fact that with respect to a particular emergency preparedness area that no ITAAC were necessary from a combined license standpoint, then the same approach would be taken with respect to an early site permit with regard to that area.

In other words, so it would be consistent regardless of whether you're dealing with a combined license or an early site permit. But what this rulemaking is not intended to address is whether ITAAC for any specific environmental -- sorry, any specific emergency preparedness matter is required. That's something that's being addressed by the technical staff in another forum.

MR. BELL: Thank you. That's helpful. The ITAAC for emergency planning appropriate for a combined license is something we've gotten to the bottom of and we understand. And to the extent that it's the same scope of issues or the same scope of

ITAAC that would be appropriate to ESP, that's a helpful clarification.

MS. GILLES: Let me add to this that my understanding of the development of the current set of EP ITAAC for a combined license is that this is the minimum set of ITAAC that would be acceptable to reach that reasonable assurance finding, and that a particular applicant may conclude that additional ITAAC are needed. An, as you may well reason --

MR. MIZUNO: They may be desirable.

MS. GILLES: Desirable. Thank you. As you may well reason, at the early site permit stage a particular applicant may know less than they would know regarding emergency preparedness at the combined license stage. So a particular applicant could conclude that additional ITAAC are needed at the early -- or are desirable at the early site permit stage.

MR. GRANT: Can I take a turn? My name is Eddie Grant. I'm working on the Exelon early site permit, and as such I have a couple of questions about the early site permit changes. One is a followup to Chuck's question. As he indicated, the piece on QA plan and the indication that it would be a necessary part of future applications has the specific phrase that this would only apply after a specific date. But

there are three other sections that don't have that phrase.

Can you expound a little bit on what the difference is, on the one that does have the phrase that it's only after a certain date, and the others that don't?

MS. GILLES: Well, we recognize the QA requirement as a new requirement. There had been previous correspondence with the ESP applicants that they were not required to meet Appendix B. I'm not sure what the other three new requirements you're referring to are.

MR. GRANT: The standard review plan comparison, for instance, is also a new requirement. But it doesn't have that phrase.

MS. GILLES: I guess we don't view that as a new requirement, being that an early site permit is a partial construction permit, and under 50.34 they would have been required to provide that information.

MR. GRANT: I don't believe that was provided on any of the three applications. And that part of 50.34 wasn't called out in 52.17. We would consider that to be a new requirement.

MS. GILLES: Okay.

MR. GRANT: Similarly, Section 10, where

you have to now explain the impact on the currently operating plant, again, that's a new requirement, doesn't have that phrase. So we're a little confused as to why one does and the other new ones don't.

MS. GILLES: I think that the general thought was things that were in 50.34, applicable to a construction permit, we did not add that phrase in front of. The QA was clearly an outlier for us for ESP applicants.

MR. GRANT: The other obvious one is the one we've just been talking about with ITAAC.

MS. GILLES: A good comment I think, a comment that's worth making and probably would require some resolution in the final rule.

MR. GRANT: And one other question that is related to the requirement to add the QA plan. In that particular section, it refers to Appendix B as the identification of the information that would be required. I note that under Part 50 there is also a change to Appendix B that adds some requirements for an early site permit information.

I note that in reading that that the wording is slightly different than it is for a construction permit. And since an early site permit is a partial construction permit, could you expound on

why the wording would be different for what would be required for an early site permit than for a construction permit?

MS. GILLES: Well, if I recall, and correct me if I'm going down the wrong path here, we tried to phrase the early site permit requirements to be specific to siting. Is that what you're referring to? And keep out any design information?

MR. GRANT: It would be similar to that. In each case for the construction permit, the COL, for whatever other, it says that you should provide a description of the quality assurance program to be applied to the design, fabrication, construction, and testing.

But for the early site permit, it indicates that you should provide a description of the quality assurance program applied to site activities related to the design, fabrication, construction, and testing. And it's not clear why the wording would be different, that Appendix B applies to design, construction, fabrication, and why the wording would be different here for another site permit.

MS. GILLES: Well, I think we were trying to avoid the argument that there is no design or fabrication being done under an early site permit,

which is, you know, discussions we've had before. And, therefore, we were trying to say, if you have early site permit activities that will relate to -- that will relate to design/fabrication, that those need to be conducted under Appendix B.

MR. GRANT: So the words that were there before weren't sufficient.

MR. MIZUNO: I mean, basically, I think the argument that was raised by some members, some external stakeholders, perhaps some potential applicants in the ESP, were that no activities that were conducted in anticipation of or in obtaining an early site permit had anything to do with fabrication, construction, design, etcetera, etcetera. And so, therefore, a QA program was not necessary.

Apart from the legalistic reading of the requirements, simply just looking at it from a -- what I would call a logical standpoint -- and I believe the NRC staff has taken a different position -- those activities that are done in anticipation of obtaining an early site permit, as well as information that is necessary to obtain it and perhaps activities after an early site permit is received, are in many cases relevant to the ultimate use of that site, and have a relationship to things that involve safety-related

structures, systems, and components.

And so, therefore, those activities should be subject to Appendix B. And, therefore, the words of the proposed regulation were written to preclude such an argument.

MR. GRANT: Okay. What's not clear is why those same activities that would occur for a construction permit would not be covered under this proposed change to Appendix B.

MR. MIZUNO: I think the issue is that -- that the existing words of Appendix B and 50.34 also raise an issue about whether they apply to the pre-application activities. And we were not attempting to resolve that issue generically or on a global fashion. I mean, that -- you can perhaps provide a little bit more there.

But at least we knew that for purposes of Part 52, for both early site permits -- and I might also point out this is the same issue with respect to combined license applicants -- that those pre-application activities should be subject to Appendix Q -- I'm sorry, Appendix B. And so, therefore, the regulation words were modified to provide for that applicability, even though existing words don't actually make that clear with respect to existing

applicants for construction permits.

MS. GILLES: Let me make a generic statement here, and I don't know if this will help or not. But in general, we viewed the purpose of this rulemaking as being strictly tied to addressing issues associated with the Part 52 licensing process. And there were many cases when -- particularly when we were working in Part 50 where we came across issues that it appeared could be -- it would be helpful to clarify similar issues for the Part 50 licensing process.

But we took a pretty strict view that that was not the goal or purpose of this rulemaking, to help fix the Part 50 licensing process issues. So we made a deliberate decision not to address Part 50 licensing issues in this rulemaking.

MR. FRANTZ: The proposed rule -- this is Steve Frantz from Morgan Lewis. The proposed rule requires the Commission to make a finding for an ESP issuance that the applicant is technically qualified to conduct the activities authorized by the ESP, and yet there is no requirement for the application itself to show technical qualifications.

There's a discussion of this in your statement of considerations. I was wondering why

there would be a requirement for technical qualifications for an ESP applicant who is not authorized to do any safety-related work during the ESP term.

MR. WILSON: Back to the discussion. This is a partial construction permit, and so we're taking requirements for a construction permit. In this particular case, it's possible for an ESP applicant to seek authority to perform certain work, commonly referred to as limited work activities. And that -- as I recall, that requirement is directed to that type of activity.

MR. FRANTZ: The ESP applicant can only do what's equivalent to LWA-1 work, which is not safety-related. Only a COL applicant can request authorization to do LWA-2 work --

MR. WILSON: That's correct.

MR. FRANTZ: -- which is safety-related. So why does an ESP applicant need to demonstrate technical qualifications to do non-safety work?

MR. WILSON: I would say the qualification proportional to the work. Now, certain --

MR. FRANTZ: Yes.

MR. WILSON: -- of those activities, such as excavation for the foundation of a safety-related

building, have some impact.

MR. FRANTZ: I guess a related question is: how is an ESP applicant to show this? Given the fact that the term of the ESP may be 20 years, it could be renewed. The applicant may not know the individuals that it will use to do this work 20 years in the future.

MR. WILSON: I think that's a good comment that should be made.

MR. FRANTZ: Thank you.

MR. ZINKE: George Zinke, Entergy and NuStart. One of the changes you discussed was the new wording that -- relative to the request for the LWA-1 with an early site permit. You described the activities you're going to do, and that's put in the safety analysis.

My question is: given that the -- that whole activity is tied to the environmental report, the redress plan goes in the environmental report, the analysis of the activities is done environmentally, the evaluation of the redress is an environmental evaluation, why did you choose to put the listing of the activities in the safety report instead of the environmental report?

MR. WILSON: First of all, in general, the

review for an early site permit or the review from LWA-1 is not limited to an environmental review, your site safety review, and the environmental impact of those activities. So you need both of those reviewed and approved in order to authorize either an LWA-1 or a prospective COL applicant, or for an early site permit. Does that answer your question?

MR. ZINKE: I don't understand. No, I understand that you do the total review. It just seemed an odd location to put the listing.

MR. BELL: It's Russell Bell again with NEI. I think Eddie might have mentioned this in passing. There's a requirement for ESP applicants to address impacts on operating units, the impacts of constructing new units on the existing sites. Actually, that's opposite what was resolved between ESP applicants and NEI on a generic -- on this very generic issue.

A couple of years ago, there was an exchange of correspondence, and in that correspondence it was agreed that that sort of assessment was appropriate for the COL applicant to do once the ESP is actually being referenced. Can you explain why the change of heart?

MS. GILLES: I'll be honest, Russ, it

wasn't a change of heart. We did not have before us or consider this earlier corresponding to or referring to when we made the decision to put that requirement in the early site permit subpart. We merely put it there thinking that, gee, this sounds like a siting issue, sounds like it should be covered in the early site permit.

MR. BELL: Okay.

MS. GILLES: Subsequently, it's been identified to us that there was this earlier agreement and there was earlier Commission correspondence or staff correspondence on the issue. So I think a comment to that effect is a fair comment and one the staff will consider. I can't say how we will resolve it, but I don't know of any reason why we would change our earlier position on that issue.

MR. BELL: Thank you. I have one more question, and we'll see -- it comes up first here. There's actually a similar provision in I guess four of the subparts. It would allow NRC to require applicants for an ESP certification, COL, or standard design approval, and manufacturing to -- to allow the NRC to require those applicants to include any information beyond that specified and application requirements. It seems like a bit of a blank check

for the staff.

Given your existing authority to obtain necessary information and the historical process, the RAI process, which it works well to do that, why is the staff proposing these new requirements?

MS. GILLES: I'll just say that when we were going through our exercise to try and provide consistency between the subparts, this language existed in one of the current subparts. And I don't recall off hand which one it was, and so the staff thought, well, for consistency's sake, we need to promulgate that through the rest of the subparts.

MR. MIZUNO: And I guess I might point out that simply the RAI process is consistent with that provision.

MR. BELL: You may get a stakeholder comment that would suggest you make the rule consistent by going the other direction. If that provision might have been -- made sense back when nobody knew what a design certification was, it clearly may have passed its time and not be necessary anymore -- again, given the effectiveness of the RAI process, which as Geary indicates is consistent with the intent of this provision.

MR. MIZUNO: Yes. But I'm indicating that

that provision, that legal provision, accommodates the RAI process. So I don't quite understand the argument that says that that legal provision is somehow unnecessary. It simply provides the legal basis for the RAI process in one sense, or simply confirms the validity of the RAI process.

MR. FRANTZ: This is Steve Frantz from Morgan Lewis. The existing provisions in 52.24 state that if the Commission makes the requisite findings for an ESP it shall issue the ESP. The proposed rule would change that to "may issue the ESP."

What's the basis for that change? And it seems to imply that the Commission could arbitrarily withhold its approval, even though it makes the requisite findings.

MR. MIZUNO: I believe that in other provisions throughout 10 CFR Chapter 1 the decision of the Commission to issue a license or some other regulatory approval is a couch in terms of "may." It's inconsistent, we will agree, but the Commission -- it was the determination at the working level that we would go with the "may" language to indicate that the Commission still holds a residual authority to withhold the issuance of the regulatory approval or the license for some reason, even though the standards

have otherwise been met.

Now, clearly that is something that is challengeable, if it's arbitrary and capricious, not supported by fact. I mean, the standard APA requirements for -- you know, for challenges to agency action. But at least at the initial stage it was felt that we would standardize on the "may" issue language, which I think is -- also appears in at least one other section of Part 52.

MS. GILLES: Any additional questions on Subpart A?

MR. MIZUNO: I have one thing to mention --

MS. GILLES: Okay.

MR. MIZUNO: -- which is the issue about applicability of standards. I believe that stakeholders, the ESP applicants in particular, should probably submit a comment on the applicability statement, because, quite frankly, we have not focused in on that issue.

And under the existing regulatory construct, at least if you take the backfitting rule as -- and the existing language under issuance of a construction permit, the regulatory requirements are subject to change for which an applicant has to meet

up to the point in time that the construction permit is issued. Presumably, that same model would be adopted by the Commission in the ESP proceeding.

So we had not really thought about the fact that there were these ESP applicants whose applications were well under their way. There still may be regulatory reasons why the Commission would say, "No, we don't care whether the regulatory requirement came out five days before the issuance of the ESP. You still have to meet the new requirement." But I think it would be fair to say that the Commission didn't directly consider the implications of issuing a final rule in the midst of the ESP -- the current ESP process.

But what I can say is that under the existing regulatory structure, and certainly the regulatory history, the way that our regulations have been applied with respect to construction permits, construction permit applicants had to meet the requirements in effect at the time that the construction permit was issued.

That is not the case, however, for operating licenses. For operating licenses, they are locked in to some period before and, of course, whatever is in their licensing basis that was approved

as part of the original construction permit.

MS. GILLES: And, Geary, just to be clear, that issue can be resolved the way we resolved it for the QA requirement, which was by to insert a timing preamble.

MR. MIZUNO: Yes. It would be inserted in the rule. And assuming that the Commission decided to provide a timing and a grandfathering clause for the ESP applicants that are currently under consideration. It could be the Commission has the regulatory tools necessary at the final rule stage to accomplish a possible grandfathering.

MR. BELL: It's Russell Bell again with NEI. I think this relates to a question I had for some point. The Commission's SRM on the rulemaking says the staff should engage industry and stakeholders, I think on this issue, to enhance the efficiency and effectiveness, preparation of COL applications, in situations where a change to an applicable regulation may occur prior to the completion of the staff's associated review.

I couldn't find -- can you point to where the stakeholder question, where that's -- how do we respond to that?

MS. GILLES: Yes. We didn't view that as

a stakeholder question to be inserted in the rule. But what we did view that as was an opportunity to, for example, in a forum such as this ask potential applicants if they are -- have ideas regarding such regulatory processes that could aid in the situation that's described in the SRM.

There was no further guidance provided beyond the words in the SRM, and the staff, in thinking on this issue itself, you know, going back to past experience, could not put our finger on regulatory processes that had been used in the past to sort of avoid the issue or overcome the issue. So we are certainly open to suggestions on that very topic, you know, in commenting on the rule or outside of that forum.

MR. MIZUNO: Or at this meeting.

MS. GILLES: Yes.

MR. MIZUNO: I mean, we know -- I mean, I think the NRC has on its website, external public website, a list of its current rulemakings that are under review, and certainly I know a fair number of them. There's the various security rulemakings. There's fitness for duty. There's 50.46(a). There's this ongoing, you know, petitions for rulemaking involving M-5, which was a subject of some comment

where, you know, we just recently withdrew the manual actions rulemaking.

I mean, there are a number of rulemakings that are out there that have some potential impact upon the ESP applicants, design certification, potential design certification applicants, and potential combined license applicants. And I think it was just very difficult for us to structure a public meeting and a presentation that would, you know, allow us in the short time that we have available, at least at this meeting, to do that.

But our view was that we could have this meeting, and that in the course of going through the various technical requirements in Part 50, and the requirements, you know, in 25, 95, 26, you know, in the later part of the workshop, that that would provide a forum for people to say, "Hey, how would this apply in terms of a current or, you know, imminent application?"

And, again, depending upon the level of stakeholder interest, at the end of the day we hadn't gone through all the topics. Nan had talked about the fact that we could discuss the need for another meeting.

MS. GILLES: Any further questions on

Subpart A?

Okay. Then, we'll begin a discussion of changes to Subpart C, combined licenses. The published Federal Register notice, this discussion in the statements of consideration, begins on page 12794 in the third column. I'm going to discuss some of the key proposals, starting with Section 52.79, which is the contents of the combined license application. Some of these issues we've touched on already.

Currently, Section 52.79 states that a combined license application must contain the technically relevant information required of applicants for an operating license by 10 CFR 50.34. The proposal in this rulemaking is to remove the reference to 50.34 all together, and to replace it with those items from 50.34 that both 50.34(a) and (b), which is the requirements for a construction permit and an operating license, and list those individually in Section 52.79(a).

In addition, as we've discussed before, we did add some requirements that you will not find in Section 50.34(a). Typically, those were requirements that had been promulgated after the current fleet of operating plants were licensed, and, therefore, were not captured by 50.34(a).

In addition, we added requirements to 52.79 for descriptions of operational programs that need to be included in a final safety analysis report to make a reasonable assurance, a finding of acceptability for those programs. That particular amendment is in support of Commission direction to the staff, first in an SRM to SECY 02.0067, dated September 11, 2002, that a combined license applicant was not required to have ITAAC for operational programs, if the applicant fully described the operational program and its implementation in the combined license application.

Later the Commission clarified its description of "fully described" in another SRM to SECY 04.0032, where it stated that "fully described" should be understood to mean that the program is clearly and sufficiently described in terms of scope and level of detail to allow a reasonable assurance finding of acceptability.

In its latest paper on this subject, in SECY 05.0197, the staff made a proposal to the Commission which basically stated that it believed that all programs, with the exception of emergency preparedness, could be fully described in the combined license application, precluding the need for ITAAC.

Therefore, we took the information from that SECY paper regarding those operational programs that would be covered in a combined license application, along with some correspondence from external stakeholders on that topic, and try to come up with a list that should be included here in 52.79.

There is also a question in Section 5, the specific request for comments related to this topic -- that is question 7. And basically, this question asks for stakeholder feedback on whether there are additional programs that the staff may have missed in its review of the regulations that should also be added to Section 52.79.

The staff restructured 52.79 so that the first requirements would be for a full combined license -- in other words, a combined license that did not reference any other type of Part 52 approval. And the following sections -- B, C, D, and E -- would describe how those requirements would change if you were referencing an early site permit, design certification, a design approval, or manufacturing license.

One additional change we made in this area was that we revised 52.79 to require that the emergency plan submitted with a combined license be

included in the final safety analysis report. This was a consistency issue with past practice. Under the requirements in Section 50.34, emergency plans are required to be submitted in the safety analysis report.

The staff split out a separate Section 52.80 to describe the contents of the rest of the COL application outside of the final safety analysis report. Those items would include the probabilistic risk assessment, the inspections test, analysis, and acceptance criteria, and the environmental report.

We also stated that if a combined license applicant referenced a design certification or -- a design certification, design approval, or a manufactured reactor, that the probabilistic risk assessment should use the PRA that was used for that certification approval or manufactured reactor, and be updated to account for plant-specific design information, any design changes, departures, or variances.

And, finally, there was a requirement that a combined license applicant that did not reference a design certification must contain the plant-specific PRA. These proposals were not new in the 2006

rulemaking. They were -- appeared in the 2003 rulemaking also.

Back to Section 5, the specific request for comments, there was a question there, question 12, that related to the requirements in 52.99, which cover inspection during construction. We stated there that the Commission is considering adopting a new provision that would require combined license applicants or the combined license holder to submit a detailed schedule for the licensee's completion of ITAAC.

Some dates were proposed for a timeframe for submission of that schedule, such as within 12 months after the combined license is issued, and there was also a proposed requirement that a combined license holder update the schedule every six months until 12 months before scheduled fuel load and monthly thereafter.

The reason the Commission is considering adopting this requirement is to support the staff's inspection and oversight with respect to the completion of inspections, tests, and analyses, and also to facilitate publication of the Federal Register notices the staff is required to issue upon successful completion of ITAAC.

A second part of that question states that

the Commission is also considering adopting a provision that would establish a specific time by which the licensee must complete all ITAAC to allow sufficient time for the NRC to verify successful completion of ITAAC without adversely affecting the licensee's schedule for fuel load and operation. And the Commission has proposed a time limit of 60 days prior to scheduled date for initial fuel load as a reasonable time to have all ITAAC completed.

The Commission has also contemplated possibly a 30-day or a 90-day requirement and asked for stakeholder feedback on both the need for such a requirement and the timing of that requirement.

With regard to Section 52.103, a couple of changes proposed under this section. 52.103(g) currently requires the NRC to find that the acceptance criteria in the combined license have been met before operation of the facility, but does not mention fuel load.

However, the current version of 52.103(f) states that fuel loading and operation under the combined license will not be affected by the granting of a petition to modify the terms and conditions of the combined license unless the Commission order is made immediately effective.

To provide consistency between these sections, the Commission has proposed to amend 52.103(g) to require that the NRC find that the acceptance criteria and the combined license are met before fuel load and operation of the facility. And it's generally believed that this has been the common interpretation of 52.103(g).

Back to Section 5 on the specific request for comments, there is a question there relating to Section 52.103. It's question number 6, and it says that "The Commission is considering revising Section 52.103(a) in the final rule to require that the combined license holder notify the NRC of its scheduled date for loading of fuel no later than 270 days before that scheduled date, and to advise the NRC every 30 days thereafter if the date has changed; and, if so, provide the revised date." And, again, this is to assist and aid the NRC in its planning of its inspection activities during construction.

That concludes my discussion of the major proposals and changes under Subpart C. I'll take any questions.

MR. MIZUNO: Can I just add one thing --

MS. GILLES: Certainly.

MR. MIZUNO: -- to the last item with

respect to expected date of fuel load. I believe that that information, since it would be publicly available, would also be used or could be used by the presiding officer in any hearing associated with the 52.103(g) finding.

MS. GILLES: No questions? No. Okay. Hold on.

MR. HAYMER: Adrian Haymer, NEI. In your proposed 52.79(d), I think (3), you appear to have added a provision that says the final safety analysis report must demonstrate that all requirements and restrictions set forth in the referenced design certification rule must be satisfied by the date of issuance of the combined license.

Can you clarify what you mean by that, because if you go to the design certification rules I think Roman numeral four defines additional requirements and restrictions of design certification rules. But there's obviously other things, and we just wonder what all of that means.

MR. WILSON: My recollection is that the provision you cite, Section 4 of the specific design certification rules, are the requirements and restrictions that are referred to in that particular item.

MR. GRANT: Eddie Grant again with Exelon. If that's the case, then it would be better to have a very specific reference to that particular piece of the rule than the open-ended identification.

MR. WILSON: Submit that as a comment. Just adding on to that, I mean, in references -- there's a -- we're back to standard terminology. In other provisions, there's references to terms and conditions. In the standard design certification rule, we had those -- we didn't use the standard terminology terms and conditions, because we had the specific provision there and that's what led to that language about requirements and restrictions, to take the language from that Section 4.

MR. GRANT: If I might follow up on that, there's a similar provision that if it -- if the design or if the COL application references an early site permit, that all of the terms and conditions of the early site permit would be completed at the time of the COL issuance.

That is not consistent with several of the permit conditions that are currently proposed for the early site permits. There are a number of those that could not be completed at the time the COL is issued.

MS. GILLES: Yes. And we have been having

some discussions, and my OGC colleagues can correct me if I'm wrong, but the fact that those permit conditions may need to be rewritten to -- to state that, for example, a particular activity be reflected in the combined license condition. And that would satisfy it if it -- if it were in the combined license as a condition, that would satisfy the permit condition.

MR. FRANTZ: This is Steve Frantz from Morgan Lewis. We have a number of questions that pertain to the 52.103 process, and the NRC's question to stakeholders on that process. In particular, I think we agree that the 180-day period is a relatively short period to try to resolve contentions that are submitted after that 52.103(a) notice.

I guess our first question is: has the NRC given any other consideration other than having this 30-day or 60-day period between the last completion of the ITAAC and the fuel load? Has the NRC given any other consideration as to ways to shorten the existing time periods for contentions and dealing with contentions to help give the Licensing Board more time to rule on the contentions and resolve issues?

MR. WEISMAN: This is Bob Weisman from the

Reactor Programs Division of the Office of General Counsel. And, you know, your question, Steve, is: how can we shorten the times? We're trying to think of ways, but I can't really give you anything specific now. If you all have any bright ideas in that regard, we'd be glad to hear them.

MR. FRANTZ: Yes, we'll probably submit a few. Something similar, right now if you look at the Atomic Energy Act, Section 189, it gives a 60-day period after the 52.103(a) notice for filing contentions. Is that an absolute cutoff date that there are no contentions or petitions to intervene allowed after that 60-day period? Or do you envision a process for submitting late contentions or late petitions to intervene?

MR. WEISMAN: I think that the -- our current thinking has been that the late filed contention rule would still apply, and late filed contentions could be submitted. Particularly to address the problem of, well, an ITAAC might not be completed by then, so a potential intervenor, when looking at the documentation on a particular ITAAC that was completed after that date, might then have a basis for a contention. And the late filed contention rule would then be applied to that -- to such a

proposal.

MR. FRANTZ: And that brings up another question, and I'm not sure I have a great answer for this either. But there could be late filed contentions coming in, for example, the day before fuel load, because perhaps the ITAAC are not done until the day before fuel load.

How do you envision the process going forward if that's the case? For example, would the Commission still go ahead and authorize fuel load, even though it hasn't had a chance to rule on these late filed contentions?

MR. WEISMAN: Well, you are asking a good contention -- I mean, a good question. And the -- I would say that that plays into the Commission's proposal to set a date for completion of ITAAC before the date of fuel load. If ITAAC are all completed, for instance, 60 days before the scheduled date for fuel load, that might help obviate that kind of a problem.

So I guess I would ask that that's something that you should consider in the context of the Commission's proposal for setting a date for completion of ITAAC, and see if there might be any suggestions for resolving that kind of a problem.

MR. MIZUNO: You know, just to point back to the existing rule which -- and the rule provision which is continued in the current reproposed rule, there is a provision for the Commission to allow interim operation, even though a contention had been filed.

And I would think that as a first matter the Commission, even if it received a request the day before a date of scheduled fuel load, and assuming that the Commission had up to that point in time resolved all issues or had dealt with other issues consistent with that provision in 52.103(c), that the Commission would expeditiously look at the submission to see whether it could make that finding.

If it couldn't make that finding, on its face one would think that the Commission could not authorize -- could not -- well, couldn't make the finding. I want to be careful here, because the Commission, under the current rule, does not authorize fuel load and operation. It merely makes the finding under 52.103(g) that the ITAAC have been satisfied.

Now, I assume that we're talking about contentions that deal with whether ITAAC have been satisfied, because clearly if it has nothing to do with ITAAC being satisfied, but involving a contention

-- I shouldn't say contention -- a claim that the ITAAC themselves are insufficient, then that would not hold up a finding. It would be processed as a 2.206 petition.

MR. FRANTZ: Thank you. One other concept we're looking at -- we don't know whether we actually favor this or not yet -- but it is a concept where the NRC would allow an opportunity to submit petitions to intervene and contentions as the ITAAC are done, and as the NRC issues a 52.99 notice. I was wondering whether the staff had looked at that itself and has any reaction to that.

MR. MIZUNO: Well, not to be sarcastic, but that's very nice, that the industry has now what I would call come around to what we had presented back in the 2001 timeframe. Any concept is open for consideration by the Commission. The only thing that I will point out, though, is that we -- the Commission would have to deal with the republication issue, and whether we could adopt, in a final rule, an approach that would not require renoticing.

Now, off the top of my head, this is in fact something that probably would not require renoticing, but I think we would need to look at that. And certainly, any comment -- any comment that you

submit with respect to changes in the final rule which were not part of the concepts that were raised in the questions you should be aware of and consider, and perhaps even directly address the republication issue.

And also, if you feel that republication would be necessary, you know, a recommendation as to whether the Commission should, as a separate rulemaking, go forward to implement these changes.

But, yes, there are a whole variety of other mechanisms that the -- that the NRC had considered to help speed up the hearing, primarily by pushing back the hearings and completion of them to earlier and earlier phases, or at least getting information out there earlier rather than later that would allow for early consideration and decision with respect to ITAAC completion.

MR. WEISMAN: I'd also like to respond to that. If you're going to make a comment in that regard, I would ask that you would please consider two things, just as a practical matter. What would be the difficulties in having essentially an ongoing proceeding for virtually the entire period of construction? And, second, what would be the real benefit, given our understanding of the schedule for completion of ITAAC? Understanding that many, if not

most, of them might be completed in the last year of construction.

MS. GILLES: We have another question.

MR. HAYMER: Adrian Haymer from NEI. In 52.79, I think it's (a)(38), there is a requirement there that is new dealing with prevention and mitigation of severe accidents. And I've got several parts to a question here.

The first part is: why did you think that was necessary to put that in there when four certifications have gone forward and included severe accident mitigation features in the designs that have been certified and they arose of themselves?

Secondly, why did you word it in the way you did? It appears to us to make that now a design basis requirement. And why is it -- and the third part is: why is it that we're now dealing with prevention and mitigation?

MR. WILSON: Okay. I was going to address this during my presentation on design certification, but we'll jump ahead and do it now. Similar to what -- we're talking about, first of all, the contents of applications for design certification. And some -- or, I'm sorry, COL, but I think Adrian asked it in the context of a design certification, and in effect it

applies to both, whether you're referencing a design certification or coming in with design information for a custom design.

But in that contents of application, similar to what Nan said in early site permits and combined licenses, we went through and determined the applicability of provisions in the former existing 50.34, plus other requirements that were developed after that. Then, during the course of the design certifications, additional requirements came through what I would call Commission policy.

There was an exchange of SECY papers and SRMs, and additional things such as a requirement to address severe accident at mitigation design alternatives during a design certification review. And in this particular case, requirements and I'll cite SECY 93.087, or applicants for design certification and, more specifically, future plants, provide features, design features for prevention and mitigation of severe accidents.

And so as part of this completing the contents of applications, we added those items on there, because that is information that you need in your application for either a design certification or a combined license.

Now, as you say, that information was provided in, in effect, the FSAR, and so, yes, that is design basis information, similar to other information in the FSAR.

And I'm sorry, there was three parts to your question. I think I only touched on two of them. Could you remind me which one I missed?

MR. HAYMER: Well, it was why, and you've kind of touched on the why -- why is it prevention and mitigation and not just mitigation? And the third was the design basis aspect, and it does appear to me -- well, I'll let you respond, because otherwise it's just a comment. I don't want to get into comments here.

MR. WILSON: Back up to the wording, we're open to suggestions on the wording. In essence, what we're trying to capture are those requirements that the Commission impose via policy or via SRM on that SECY paper 93.087, and how to capture that generically in a line item on contents of applications.

Now, what you would expect to see is, when we come out with a final rule, we're going to have a section-by-section discussion that will have more detail on meeting these requirements. And in there I would expect we would point to that SECY where the

specific requirements are described.

MR. HAYMER: So just, again, for clarification, you believe these are design basis events.

MR. WILSON: No, I didn't say that. There's a distinction here between a so-called design basis accident or -- I'm not sure what you mean by design basis event versus design basis information. And that distinction has always been in our regulatory process.

MR. HAYMER: Okay. Well, let's put it another way, then. So all of the requirements that are imposed upon design basis information would apply to these features and designs.

MR. WILSON: No. And that's an important part of that distinction. There is equipment that's provided to mitigate design basis accidents that has certain requirements placed on that equipment. And I believe all the people are familiar with how we've handled the severe accidents as that kind of requirement does not apply to the design features that are put in for severe accidents.

MR. HAYMER: Thanks, Jerry.

MR. GRANT: Eddie Grant here. One follow up to that, if I might. On that Section 38 that

Adrian was just referring to, that is a requirement to include this information in the FSAR, I believe.

MR. WILSON: Yes.

MR. GRANT: But if you go back to Part 51 and the changes that are proposed there, you specifically changed 51.55 to indicate that for a design certification this severe accident mitigation design alternative information would now be in an environmental report. Can you explain to us why you need it in both an FSAR and in an environmental report?

MR. WILSON: And there's two different requirements here, and I think you and Adrian were talking about two different things. At least I hope you were. So let me clarify.

There's a -- let's go back to either design -- contents of applications for design certification or a combined license. There is a requirement in there to address SAMDAs, severe accident mitigation design alternatives. That's a NEPA requirement. It's to consider design alternatives.

During the course of the initial design certification reviews, it was determined to -- in order to get additional finality in the resolution of

design features, that we should also perform that NEPA design alternative review. And so that's where the requirement came from to address design alternatives, and that is outside the FSAR, and, as you say, is part of the ER, but in the case of a design certification is submitted separately.

That is different than what I believe Mr. Haymer was discussing, which is the requirement to provide design features to prevent and mitigate severe accidents, which previous applicants for design certification have all provided. There's two -- one's a deterministic type review, and the other is a design alternatives consideration under NEPA.

Did that help?

MR. BELL: I guess I have a follow up, too. I'm trying to sit there and formulate this question in my mind, but I'm having some deja vu, Jerry. In the mid '90s, the staff proposed to take the policy decisions that were in the SECY that you mentioned -- 93.087 -- and the SRM and convert those into a suite of applicable regulations and proposed to put those into I guess it was the design certification rules.

The Commission declined to do that. How is this -- what you've described here different from

what was tried and ruled on in the mid '90s?

MR. WILSON: First of all -- let me back up. Yes, there was at the time that we were dealing with this whole issue of how to handle -- or let me put it differently, how the Commission should deal with the potential for severe accidents, which originated with the severe accident policy statement, I believe in 1985.

At one point it was considered whether we should codify those requirements. And under our current policy, if that would have happened, that would have been in a Part 50 requirement. The Commission decided not to codify them, but to apply those to future applicants, and they did it via an SRM and some other modifications to the specific design certification rules, which we don't need to get into for this discussion.

So I see this different than that activity. This is just saying that we're applying -- in your application, consistent with what has been required of previous applicants, you need to describe how you're meeting those requirements. I'm using the term "requirement" a little loosely. I'm not meaning it in the context of a codified regulation, but the expectation of the Commission that you're going to

provide those design features.

MR. MIZUNO: Maybe to put it in a different way, when the Commission dealt with the policy issues back in the mid '90s, the staff, as I understand it, was trying to impose a positive or a substantive technical requirement to address severe accidents as part of the design, so that it would become part of -- do we want to call it the licensing basis or the design basis for individual design certifications? And I guess also for combined licenses that did not reference design certifications.

And the Commission said, "No, we are not going to do that. We're not going to codify that specific requirement. What we are, instead, going to do is do it on a case-by-case basis and deal with it without codification of a requirement in the regulations."

That policy determination remains effective today, and this rule is consistent with that, and that it simply says you are to describe how you're going -- and I'm talking about here the provision in 52.79 that says your application needs to explain what features, if any I guess, you are going to provide with respect to consideration of severe accidents.

That doesn't actually tell you, and there is no corresponding technical requirement in Part 50 that tells you this is the minimum requirement for providing design features to address severe accidents. So in one sense this requirement in Part 52 is pointing to nothing, because there is nothing to point to. There is no technical requirement. It's simply, "Provide us information from a safety standpoint, and we will deal with what is an appropriate severe accident design feature on a case-by-case basis."

All of this is in the safety standpoint. Okay? The other requirement in Part 51 is dealing with the Commission's obligation to address alternatives to the design for addressing severe accidents or environmental impacts which are not remote and speculative.

The purpose of the requirement in Part 51 is to say, "Apart from what you are going to address from a safety standpoint, please tell us whether from an environmental standpoint whether there are severe accident design alternatives that you have considered and rejected or decided to accept and include into your design," which presumably then would be described under the safety aspect, under 52.79, subparagraph 38.

But the NEPA analysis that is required by

Part 51 is really driven by the need for the Commission to consider alternatives to the proposal. And in this case it would be the design, an alternative design. And typically -- I will just speak to design certifications, because that's where these SAMDA analyses have been done to date.

They go through a potential population of design alternatives, evaluate their worth and their cost, and, of course, this is the most cost effective point in time to deal with them, because you have a paper design. And for the most part, most of these severe accident design alternatives were rejected on the basis that they were not cost justified in light of the worth that it would be -- that they would provide.

That's what the environmental report that is to be required under Part 51 would address, and under Part 51 the environmental analysis for design certification, or the environmental impact statement for the combined license, would, as appropriate, address the same thing, whether the -- from a NEPA standpoint whether there were any design alternatives that should be included in order to address or to minimize environmental impacts which are not remote and speculative.

And, Bob, did you have anything else to add on this?

MR. WEISMAN: Well, I just wanted to -- I wanted to summarize in response to Russ' question. My understanding was the staff proposed a set of applicable regulations for each design certification back in the '90s. Those were going to set the substantive standards for the design.

When the Commission reviewed those, they said, "Well, we have the design in front of us in the form of the DCD, and there's no need to have those substantive requirements in the rule, because they are merely redundant to what the design already embodies."

So as my colleagues have said, the Commission considered that to the extent those -- the severe accident prevention and mitigation measures would be included in the design, that would be a design-specific -- a case-specific kind of review. And in the '90s, there was no need to put in the individual design certification rules those substantive requirements.

All this provision does is say, "Please do that review on a case-specific basis for the new applications."

MR. BELL: Thank you. I have one other

question. It relates to the PRA provision. We appreciate the elimination of the proposal to require a full scope, all modes PRA. Also, appreciate a response to a question -- response provided by Gary Holahan at last week's regulatory information conference, the fact that the staff does not now intend to seek full scope, all modes PRA via guidance now that the Commission has asked them not to do so via rulemaking.

Rather, Gary indicated that the staff got the deeper message from the Commission that it would not be appropriate to require a full scope, all modes PRA amidst ongoing questions about the quality and scope of PRAs necessary to support plant operations and risk-informed initiatives. And we appreciate all that.

We remain concerned that the regulations -- the requirement reads that the design certification and COL applications must contain PRAs. This doesn't seem to reflect the lesson learned during design certification that the PRA is not actually submitted per se, or has not been permitted -- submitted per se to the NRC.

Rather, there was a Chapter 19 which summarized the methodology and insights that came from

the PRA, and the PRA itself was made available in a form for the staff to review. We envision a similar approach for COL applicants. In other words, we do not envision that the PRAs per se would be submitted along with the COL application.

Can you clarify your expectation or how we should --

MR. WILSON: Yes. I'll start out with I think you mischaracterized, though, what has happened in design certification. Those PRAs were submitted as part of the application.

Now, we did clarify -- and Nan mentioned this in the COL, and I was going to say this in the design certification -- you look in contents of application. We distinguished between those things that come into the FSAR versus those things that are a part of the application but not in the FSAR. And the PRA is in that latter category, and that, I believe, is consistent with the latter treatment in these design certifications.

But in the design certifications, the PRAs were submitted with the design certification. That was part of the application and part of what we required.

MR. BELL: Well, and I may -- there may be

help in the room for me here, but my understanding is that the PRA per se, not -- the codes, the cut sets, the decks necessary to run the PRA were not provided to the staff. However, I guess I'm aware there was an extensive report provided on the PRA. If that's what you're talking about, then I think we agree.

MR. WILSON: Well, it's difficult to answer this, because there's varying levels of detail with a lot of submittals, not just PRAs. But the amount of information that was necessary to submit -- meet the staff's needs for the use of the PRA has been submitted in the past.

Now, what has happened is that we got into this issue under a prior situation on design certification when there was an opportunity for a hearing where certain portions of the PRA were retained in the design control document, but not all of the PRA submittal.

If that's the distinction you're trying to get at, yes, that was the case. But the PRA was still submitted as part of the application and still reviewed as part of the application, but not all of what was submitted was documented in the design control document that's referenced in the design certification rule. That's a different distinction.

MS. GILLES: Russ, I might add, I take a little different take from your question that perhaps there's not a common interpretation of what it means to submit the PRA, and perhaps there are some words that either need to go into the rule itself or into the statements of consideration or section-by-section analysis to explain maybe in more detail what that document or collection of documents is. And I think that comment would be helpful.

MR. BELL: That may be appropriate.

MR. MIZUNO: And just as a little addition, if you believe that further guidance is necessary, again, the simple suggestion that additional guidance would be necessary is, of course, a good thing.

But it would be even better from the Commission standpoint is that if external stakeholders were to suggest what -- not necessarily the words of the guidance, but generally speaking, if you felt that there should be certain things which should be enlightened in the guidance, or what the guidance contents should deal with in terms of saying, okay, these aspects are things that we believe need to be submitted, these things simply need to be incorporated by reference, I think that that would be a -- that

would be a much more useful comment from the Commission's standpoint.

MR. BELL: We will not be bashful about doing so.

(Laughter.)

I had one other question about this. In fact, it appears to me that the staff went back largely to the 2003 provision in this regard. At that time, we made a comment about the language. The requirement reads that the PRA must be updated to account for site-specific -- a design PRA must be accounted -- updated to account for the site-specific design information and any design changes, departures, or variance.

My antennae go up whenever I see the word "all" or "none" or "any," as I do here. And I guess I'm asking, what is the intent of the word "any" in this context, given that there will certainly be changes to the plant that do not affect the PRA, and, therefore, would not be reflected in any PRA update.

MR. WILSON: Well, once again, you can make that comment about a lot of things. But my expectation is that those changes that would affect the PRA would be part of the update. It would use that same level of threshold as we have used in past

design certification PRAs.

MR. BELL: That's a helpful clarification. I'm not sure that that's a good interpretation of the word "any," but we can provide you that comment.

MR. WILSON: Okay.

MS. GILLES: Mr. Williamson has been sitting back there for quite some time.

MR. WILLIAMSON: Hopefully a simple question.

MS. GILLES: State your name and affiliation, please, Stan.

MR. WILLIAMSON: Stan Williamson, Exelon. 52.79 -- A, B, C, D -- were they -- are they intended to be applied concurrently? If I'm making an application that's referencing a certified design, is the intent to comply with 52.79(a) and (d), and (b) or (c) if it's an ESP? Or are they intended to be stand-alone? If it's a certified design, just go to (d).

MS. GILLES: If I'm recalling right, I don't -- I think the intention is that, if I recall, they say each of those B, C, D, E say that you do not need to submit information previously submitted, correct?

MR. WILLIAMSON: Well, D certainly says that, right, and that was part of the confusion. If

I apply A and D, A says, "Include information in the SAR," and D says I don't need to. I was left not sure what the intent was when you drafted --

MS. GILLES: Yes. I guess the intent was that you would need -- not need to include those items from A that were covered by the design cert. But you would need to include the rest of the information.

MR. WILLIAMSON: So they are intended -- yes, with some interpretation they're intended to apply concurrently.

MS. GILLES: Right.

MR. WILLIAMSON: Both be required.

MS. GILLES: Right.

MR. MIZUNO: I mean, just to be clear, since I drafted it up, the regulation was written -- I mean, or paragraph A was written as sort of the fallback or default requirement, which has to apply to a stand-alone, combined -- combined license application. Then, the remaining sections -- B, C, D, and E -- refer to the special situations where the combined license references one of these other alternative regulatory processes.

And I believe we wrote the language in those things to say that to the extent that the design certification, in the case of D, covers an item or

items that are in paragraph A, then you need not include -- reinclude that information. But if the design certification does not cover a piece of information that is otherwise required to be submitted as part of the application as set forth in paragraph A, then your application would have to contain that.

So there was never -- the intention was not to have duplication of submission of information, but, at the same time, to ensure that there was no gap in the application. So that anything that was not covered by a referenced application -- sorry, a referenced regulatory process -- get an early site permit, design approval, whatever -- that the combined license application would have to contain that information.

MR. WILLIAMSON: The current rule language explicitly mentions incorporation by reference as acceptable. That was -- there was no intent to change that in splitting it up.

MR. MIZUNO: That's correct.

MR. WILLIAMSON: Okay. Specifically then, given that understanding, 52.79(a)(41) that deals with SRP evaluation, 52.71 -- 79(a) is telling me that, as an applicant, I must look at the SRP six months prior

to my application, even for design stuff.

But I take from this discussion that the intent would be to use 52.79(d) and allow the design -- the SRP evaluation that the DCD -- the design cert did against the SRPs applicable at that time would still govern.

MS. GILLES: That's correct.

MR. WILLIAMSON: Okay.

MS. GILLES: Any comment you wish to make to help clarify that would be appreciated.

MR. WILLIAMSON: And in order.

MR. FRANTZ: This is Steve Frantz from Morgan Lewis. Proposed changes to Section 2.105 state that, as part of the 52.103(a) notice, the NRC may identify conditions, limitations, or restrictions to be placed on the license in conjunction with the 52.103(g) finding. Can you describe for me what you have in mind there? What conditions, limitations, and restrictions would you impose as part of the 52.103(g) finding?

MR. MIZUNO: I believe -- you know, the staff should be answering this, but I believe -- my recollection was that that was intended to address those situations where a condition or limitation was originally imposed, either in the early site permit or

the design certification, or the combined license.

And it was subsequently determined, I think, that -- and this applies to really the design certification and ESP that is currently in place -- that for some reason they could not be dealt with prior to the issuance of the -- I'm sorry, prior to the 52.103(g) finding

So there would have to be some other kinds of conditions that would -- or limitations that would be imposed, so that they would continue to be effective post-52.103(g) finding, because, after all, the ITAAC disappear right after the 52.103(g) finding. So there has to be some other regulatory vehicle to ensure that something that governed startup testing and power ascension would continue to be included and be met by the combined license holder after the 52.103(g) finding. That was my recollection.

MR. WILSON: I'm not sure that's the question Steve is asking. He'll clarify. As Geary is describing, yes, there were certain activities that -- issues that may come up during the combined license review that -- and originated with either an ESP or a design certification that can't be resolved before issuance of the combined license, and so, therefore, we would make them conditions of the combined license.

MR. MIZUNO: But there will be things after the 52.103(g) finding that would also propose --

MR. WILSON: But the license conditions are still part of the combined licensing.

MR. MIZUNO: Right. But I think the -- going back to the notice thing, the only -- the intent was that if the Commission thought that there were likely to be those kinds of conditions -- that would post-52.103(g) kind of conditions -- that the notice would also identify them as likely things up front.

MR. FRANTZ: I guess to follow up on both of your comments, I tend to agree with Jerry that if there's anything like that that it would be imposed as part of the COL proceeding. For example, I would assume that the COL license would actually have the standard condition that existing OLs have that say that you need to implement your startup and power ascension test program in accordance with the SAR, and notify the NRC if there are any changes.

I assume that's part of the COL proceeding. I'm having difficulty identifying anything else that might be imposed as part of the 52.103(g) process. I come up with a blank of any new conditions that might be imposed beyond those already that would exist in the COL itself.

MR. MIZUNO: Oh, you mean new things? Well, I guess it could come up as a result of the hearing.

MR. FRANTZ: But the 52.103(a) notice would actually identify these conditions, and so that would occur well before the hearing. This is why I'm having some difficulty understanding --

MR. MIZUNO: Yes, I think --

MR. FRANTZ: -- what you have in mind.

MR. MIZUNO: I think that, again, there were -- again, this is -- you know, my recollection is that there were -- and, really, I'm sorry that the staff can't address this, but I believe there were some situations that we're trying to deal with that suggested that we needed to include the possibility for this.

It might turn out that there wouldn't be any need, but it gives us a more facilitative requirement or a facilitative provision. I don't think that there was anything in mind that I can recall.

MR. FRANTZ: Okay. Thanks.

MR. BELL: At some risk, because I know it's probably lunchtime -- I did have one more. I think it relates to this subpart. It's Russell Bell

again with NEI.

In light of requirements to address the SRP guidance in effect six months prior to application, as well as USIs, GSIs, why does the staff feel the new requirement on operational experience is necessary? Especially because, I mean, operational experience presumably would be a substantial basis for the review of the application. There's no -- I'll just stop there and ask you why you felt the new requirement is necessary.

MR. WILSON: This is along with an answer to an earlier question. During the course of the design certification reviews, the Commission determined that insights from operational experience should be considered as part of those design reviews. And so we just placed that requirement in the contents of applications for design certifications and combined licenses.

MR. BELL: And there is the element in the new requirement regarding international operating experience, which is interesting. By what process and criteria would the staff expect applicants and licensees to identify international operating experience to meet this requirement?

MR. WILSON: Well, in general, we would

expect, consistent with past practice, that operating experience from U.S. plants would provide the necessary insights to the -- most of the plants that we have been or expect to review. But we're forward-looking in this rulemaking and envision there may be designs for which U.S. operating experience aren't relevant to that particular design, but there may be some international operating experience that would provide some insights that should be considered. So that's why that provision was put in there.

MR. BELL: And, certainly, the staff has highlighted some of that type of experience and incorporated in it its own generic communications for consumption domestically. Again, I'm just wondering what you consider the obligation of Entergy to find and apply -- or find, assess, and perhaps apply operating experience internationally.

MR. WILSON: Once again, it would depend on which particular plant design Entergy was planning on building. Just hypothetically speaking, let's say they decided build the ESBWR. I doubt that there would be international operating experience that would directly apply.

MR. BELL: Thank you.

MS. GILLES: If there are no further

questions, I think we'll break for lunch now. And let's return at 1:15. Thank you.

(Whereupon, at 12:19 p.m., the proceedings in the foregoing matter recessed for lunch until 1:19 p.m.)

MS. GILLES: Okay, before we get into our next topic, I will try to clarify one of the questions this asked because we may have answered the wrong question. I believe it was Mr. Williamson that asked this question.

It relates to the question about the SRP update -- the requirement to address SRP in effect six months before the submittal of an application. And I believe the question was if in 52.79 you are referencing a design cert -- now ask your question because apparently I have interpreted it differently than some other folks, if you don't mind, Dan.

MR. WILLIAMSON: Well, that was just one example. There are a couple like that. Operational experience is another one.

But if the design cert, which used an SRP that was applicable six months prior to that certification, was used and reviewed in establishing the design and/or any other requirements that show up in the DCD, which may be operational related or not --

and that's where there may be an A and a B part to this answer -- if I am referencing that design cert and now I come into 52.79, I've got 52.79(a) which seems to imply I need to redo that based on the latest SRP, assuming there has been a revision.

MS. GILLES: Okay. And that's what I took your question to. That you would have to redo the design information already done under the design cert to a later version of the SRP or address the requirements to a later version of the SRP. And the answer is no.

MR. WILLIAMSON: And the answer was no.

MS. GILLES: No.

MR. WILLIAMSON: You would -- and maybe the -- we didn't carry it on further but if it was an operational-related issue that would apply also? If it had been addressed in the DCD and there was no COL item associated with it?

MS. GILLES: I'm at a loss as to what you mean by an operational requirement in the DCD. Maybe Jerry can help.

MR. WILSON: Well, let's go back and be clear. This issue that we are asking for -- this information we are asking for is to facilitate the review. So a combined license application that

references a design certification , that is to resolve the design issues but operational issues are not resolved in the design certification. They are resolved in the combined license review.

And so a lot of sections that would be discussed in the combined license review like Chapter 13 that discusses operational program may be looking at the SRP sections that apply to that. And that information that would aid that review would be useful in the combined license application.

MR. WILLIAMSON: The newer SRP?

MR. WILSON: Whichever one would apply to the combined license application --

MR. WILLIAMSON: Right.

MR. WILSON: -- relative to that review of the operational issues. But as Nan said, we're not reopening the design review.

MR. WILLIAMSON: And so there would be circumstances where there would be two SRPs that would apply. The older one would apply to the design-related issues. The newer one might apply to operational issues associated with that design.

MR. WILSON: Yes.

MR. WILLIAMSON: Okay.

MR. WILSON: I mean we're talking about

the SRP that the staff would use in its review, yes.

MS. GILLES: Okay, thank you. I think we're going to go on with the next topic which is a discussion of the standard design certification and standard design approval subparts of Part 52.

MR. WILSON: Okay.

MR. HAYMER: Before we do, we've still got a number of questions on the COL process, I think, with regards -- and I guess we could take some of them in D.C. because some of them relate to having a COL going on in parallel with an early site permit.

Anne, did you want to lead off on that? I mean if you want to take some more time or cut the discussion off, that is fine. But we do have some more questions on the COL items.

MS. GILLES: Let's take the questions. We don't want to cut the discussion off.

MS. COTTINGHAM: In our March 8th letter to the NRC, this is an issue that we had highlighted -- I'm talking at Gary but I'm trying to speak to everyone here -- as one on which we would like to have some clarification specifically dealing with the situation in which you have an applicant -- COL applicant that references either an ESP application or a DC application.

There is current language in Part 52 that applicants may do so at their risk. But other than that permissive language, there is no indication of how this would actually work.

And we would like to know if the NRC would consider providing some clarification of how this would work so as to eliminate unnecessary duplication or duplicative licensing reviews both by the NRC staff and possibly by the Potomac Safety and Licensing Boards.

MR. WILSON: First of all, could you state your name and affiliation?

MS. COTTINGHAM: I'm sorry, I'm sorry. Anne Cottingham, NEI.

MR. WILSON: Yes, the reason we originally put that provision in there about proceeding at your own risk is because there is no guidance or procedures for that approach.

Can it be done? I would assume we'd have to work through it and figure it out as we went along. At the moment, I'm not aware that the NRC is trying to develop any guidance on that.

MS. GILLES: Yes, I'll just say that there was no intention to address that subject any further in this rulemaking other than what exists in the

current rules. The staff didn't intend to make any changes in that regard. And the Commission didn't ask us to make any changes in that regard.

That being said, you know, we certainly welcome comments on any part of the rule. And if you believe, you know, additional guidance either in the rule or in the statements of consideration may be useful, we would certainly be willing to consider those comments.

Of course they would be subject to consideration of whether they would meet a republication standard or not.

MS. COTTINGHAM: And there may be other regulatory vehicles for addressing this situation.

MS. GILLES: Certainly.

MR. ZINKE: Relative to LWA --

MS. GILLES: Identify yourself again, George.

MR. ZINKE: I'm sorry. George Zinke, Entergy New Start. With regard to LWA, Commissioner Diaz had indicated that with the Part 52 rulemaking -- let's see, his words were that changes to the limited work authorization process will be considered. And he was talking in the context of, again, optimization of the 52 process.

I know what is in here now, there isn't a lot of change. But we weren't sure if -- you know, we can provide the comments but we sure if you are working on something with regard to what he directed.

MS. GILLES: The staff has not been directed to do anything further at this point in time other than the changes that were in the proposed rulemaking. That's not to say that we may not be directed to do so in the future. But the only changes we are proposing in this particular rulemaking are those you see before you.

If you believe further clarification is warranted or changes, you know, we welcome your comments. And, again, I'll say that we are certainly willing to consider them but would have to discuss with the Office of the General Counsel and the Commission whether they could go forward in a final rule.

MR. ZINKE: All right. Thank you.

MS. GILLES: Any further questions related to the combined license process?

(No response.)

MS. GILLES: Okay. Then Jerry is going to go ahead and discuss design certifications and design approvals.

MR. WILSON: Okay. I think this may go a little faster given that some of the questions I anticipated on design certification were asked this morning.

First of all, standard design certification, the NRC has a lot of experience with this particular process now. In re-looking at this, we really didn't make any significant reformatting in this particular process.

In the first parts under relationships to other subparts and filings, the only significant change was the deletion of the prerequisite to have a final design approval in order to get design certification. The Commission believes we have sufficient experience with the design certification process and we don't need that requirement any longer.

Under contents of applications, as we discussed earlier, we went through the requirements in 50.34 and the other requirement and put pointers in there as to the information you need for design certification.

And then as I also stated earlier, certain things came out in the earlier design certification reviews that the Commission imposed by policy such as the severe accident mitigation design alternative

review, looking at insights from operating experience, and including design features for severe accident. And so we added those into the contents of information requirement.

Then also we separated, as I said before, that information that should be in the FSAR from the information that is part of the application but not in the FSAR.

And finally there is a section C on some additional requirements on scope and if you use a modular design approach.

Under issuance of standard design certification, we revised that format and content to conform with the content in sections 50.50 and 50.57.

And then I think the major change in this has to do with finality. And there are two changes in that area. Change number one deals with the ability to make some changes in the design certification rule language. The finality provision for design certification, the Commission included a special back fit standard such that once the design issues are resolved, that you would have to meet the special back fit standard in order to make any changes to that design information.

Well, subsequently, we wanted to include

the new version of 50.59 in the 50.59-like change process. It is a part of the design certification rules. We recognized that we needed to have a provision to enable that sort of a change to happen.

And so in this proposed rule, there is an additional provision in 52.63.1 that allows for changes that would reduce regulatory burden and that was included in the proposed rule and that was the basis on which we also made change to the 50.59-like change process in each of the existing design certification rules.

Now in addition to that, we also have a proposal in question 14. And that relates to -- I'm looking for it -- an e-mail we received the other day. And that was provided as part of the handouts out front. And that was an e-mail from Westinghouse that was asking about the ability to make amendments to an existing design certification.

And the Commission in their SRM directed us to pose this question, which is, as I said, question 14 on whether or not -- or soliciting views from stakeholders on whether an additional process should be provided as part of the finality provision that would allow for an amendment to an existing design certification.

And in there, in question 14, you will see that the NRC is requesting public comment on whether provisions should be added to 52.63(a)(1) to allow generic amendments to design certification information that would meet applicable regulations in effect at the time that the rulemaking is completed.

And two, whether the generic resolution should be incorporated into a design certification rule without meeting a back fit requirement which would allow for completion of design certification information and facilitate standardization or whether the applicant for a generic amendment should be required to meet a back fit requirement such as 51.09.

Now the origin of this is the fact that the existing design certifications really didn't have all of the design information that was expected when we originally wrote this provision. We have what is called design acceptance criteria in lieu of certain design information.

And as it was envisioned at the time that that concept was agreed to is that the COL applicants would have to provide that information as part of their COL application. Recognizing the number of prospective COL applications we have coming and the workload that might entail, the Commission is hoping

that we can get some sort of a generic resolution to that information prior to the review of those COL applications.

And so the Commission is considering adding this amendment that would -- I'm sorry -- adding this provision that would allow the Commission to make generic amendments to existing design certification reviews to complete and finalize that information that addresses the design acceptance criteria. So we are soliciting your views on adding that amendment to the process.

And that's about all I intended to say about design certification. Are there questions on design certification at this time?

MS. STERDIS: I'm Andrea Sterdis from Westinghouse. And Westinghouse does appreciate, Jerry, the position that you have been taking regarding the possible changes to facilitate an amendment to existing design certification rules.

We also appreciate Chairman Diaz's continued focus on allowing and affording us this opportunity. We believe that providing these mechanisms directly in the rule will further facilitate early resolution of issues. And also continued emphasis on standardization.

However, there are a couple of comments. You just now referred to design acceptance criteria or design issues that were left open. We also believe that this would be very well focused to include early closure generically of COL action items or information items where possible. Do you care to comment on that?

MR. WILSON: Yes, you probably noticed that the SRM was directed at design acceptance criteria but the question refers to design acceptance criteria or other design information. And we would like stakeholders' views on expanding that.

In general, I would say that COL action items were intended to go to operational information or citing information that could not be resolved in a design certification. But I recognize there may be some generic design-type information that was called for in some of these combined license action items.

And if there are other types of design information like that, then we would be seeking views on should be try to have generic resolution so that information also is part of an amendment to an existing design certification rule.

MS. STERDIS: We would also go an additional step in that area because as we go through the detail design, we are finding that there are some

changes we need to make. Some changes to tier one information although limited in scope, some to tier two star, and some that fall within the tier two and section 8 criteria of the rules.

Is it also your intent to afford that opportunity for those kinds of changes?

MR. WILSON: My view is if a provision like that was added to the process, that that would open up the opportunity to do things like that.

MS. STERDIS: Okay.

MR. WILSON: We could also make design changes. And that's part of what should be considered in commenting on this is that on the one hand, trying to do as much as we can on these designs to get the design information resolved and finalized.

On the other hand, you know, it wasn't the intent that we would be continually changing these designs with time as every time someone comes forward with a better mousetrap, now I don't think that's what you are talking about.

MS. STERDIS: No, it's not.

MR. WILSON: But we all have to think of the long term as we do this not just some of these short-term issues that would be nice to resolve. So yes, I understand what you are discussing and we all

need to think about that as we proceed on this particular issue.

MR. MIZUNO: I think Westinghouse and other stakeholders should consider the implications of what they are seeking. For example, if you open up the ability to go into tier one and to amend that without the special back fitting requirements there, it would also potentially open up the capability of someone to submit a petition for rulemaking who is not the vendor, who is not a utility, to change the design in some fashion because they were not satisfied with the Commission's resolution of that issue.

Now conceivably the Commission could adopt what I would call an asymmetrical petition process whereby the only person who could submit such a request would be the vendor. I would suggest that that kind of an asymmetrical approach would have very adverse implications in terms of public confidence.

The other consideration that the stakeholders should consider is that changes to design certifications at this time are relatively easy to accept because no one has used the design certification in a combined license.

This situation changes markedly once a design has been used one, two, or three times under

the existing back fitting requirements, sort of finality requirements, any change which the Commission adopts with respect to tier one information automatically becomes a mandatory requirement upon all licensees and applicants who reference the design certification unless the modification or change has been rendered technically irrelevant. Is that correct?

And so therefore, were Westinghouse or any other vendor to change their design and introduce additional changes and if they were adopted absent some special, again, grandfathering which the Commission would then have to explain why it is moving away from a standardization approach, it would become mandatory upon existing combined licenses to modify their plant designs to reflect the new design information.

So I'm just raising these issues. I think that all of the vendors as well as the utilities who may be considering these design certifications and who may be adversely effected by these post-design certification changes consider them and attempt to deal with these issues.

MS. STERDIS: Geary, you raised two of the additional points that I was going to ask, one being

the restriction that only the vendor would be permitted. Could you expand a little bit on your concern about the public confidence -- adverse impacts of that?

MR. MIZUNO: Okay. If it isn't already obvious, if Mr. Riccio or someone from the NRDC were to come in and say why is it that a vendor is allowed to modify its design or seek modifications of its design certification.

But I, NRDC, or public citizen who have our own independent experts and who -- I mean presumably have the capability or would have at least the opportunity to present information that suggests that the design should be modified in some fashion to address a safety issue, to optimize it, for whatever reason I mean because we are now departing from the very high back fitting standards associated with tier one information, the question is why is the Commission making a distinction between the vendor versus other interested stakeholders?

MS. STERDIS: Okay. What if there were a timing limitation that it was substantiated prior to the first or the first of a series of COL application referencing a rule?

MR. MIZUNO: Well, that goes to the second

point that I was making about the mandatory use or the mandatory imposition of the change once adopted upon all referencing combined license applicants and stakeholders. But that still wouldn't address the issue about the asymmetrical nature of who may request a change to the design certification.

It would alleviate one aspect of the concern in that it would reduce the potential for an adverse impact upon referencing applicants and licensees. But that still would not address other external stakeholders' views that that is inappropriately limiting their ability to request the Commission to modify the design certification rule.

MR. WILSON: Well, I'd like to add on to that that when we originally created this special back fit standard, the intent was that it applied to all the parties. Not just the vendor but the NRC and the public, as Geary stated, all parties had an opportunity to participate in the development of that design certification. And so the standard for making changes should apply the same.

Now if we talk about opening up this and remove the back standard so that we can include generic resolutions of additional design information, just remember the road goes both ways. If that

opportunity is there for the vendor, the opportunity would be there for the staff and the public as well, as Geary said.

So keep that in mind as we try to consider how to proceed on this matter.

MS. STERDIS: I have one last question. Has the staff looked at the information that was provided by NEI in this area of the proposal back in the 2003 time frame? And if so, what kind of evaluation have you done of those words?

MR. WILSON: My recollection of that was that that proposal was different than what we are talking about. Now my recollection may be incorrect but I recall that what was being proposed was some sort of 50.59-like process for vendors. And the Commission hasn't been in favor of that.

MR. MIZUNO: Well let me just add one thing which is that I think that when the NEI comment came in, I think that was just their latest I guess opportunity to urge the staff to adopt a looser change standard for design certifications.

And to the extent that the rule includes 52.63(a)(1)(iii) includes that reduces unnecessary regulatory burden and maintains protection. That was, in one sense, the NRC staff's attempt to address what

we felt were the underlying -- at least some of the underlying concerns expressed by NEI and the stakeholders.

But in a way that we felt still maintained a relatively high back fitting standard in order to avoid issues involving departure or movement away from the concept of standardization.

And also ensuring that there continues to be a, you know, finality for all parties in that we don't allow changes to be made, you know, basically by any person except under very unusual circumstances, i.e., the very high back fitting standards are set forth in the rule.

MS. STERDIS: Okay. Thank you.

MR. WILSON: Other questions on design certification?

MR. FRANTZ: This is Steve Frantz from Morgan Lewis.

I have, I think, hopefully two quick clarifying questions. One, the proposed rule would require the design certification rules specified design characteristics whereas the rules already include the DCD. Is there anything beyond the DCD that you have in mind?

MR. WILSON: Basically no. But let me

broaden my response to this. It is something that Geary Mizuno and I have discussed in the past.

As you know, the combined license process would reference either an early site permit or a design certification or both. And at that time of the referencing in the application, you need to match up the assumptions and the characteristics.

And so what we were envisioning was a situation where right now in the design certification, you specify site parameters. Well, then we got over and we are doing early site permits. And make assumptions about the design over there so now you have design parameters in the early site permit in site characteristics.

Well, to match that you should have site parameters and design characteristics in the design certification stage.

Now you are correct. That information is in the DCD. You have to look through it to find it. It would be nice if it was listed or itemized in some manner where it would be easy to make that comparison when the time comes from and so that was the vision we had in mind as we did that.

But I would expect that those design characteristics that you need to match up to the

assumed design parameters that were identified in the early site permit review would already be there.

MR. FRANTZ: I guess I am somewhat confused then on the answer. Are you saying that we now need an actual listing of the design characteristics in addition to what we have in tier one and tier two?

MR. WILSON: I'm saying that would be nice but I don't envision a requirement to say that it has to be a listing. Just that the information has to be in there.

MR. FRANTZ: Okay.

MR. WILSON: But it would certainly facilitate the process down the road.

MR. MIZUNO: Steve, to put it another way, it would be nice to have a nice table or an appendix or whatever where it is all compiled together. But we felt that we couldn't force you to do that especially given we never did it before.

But -- I mean moving forward, I think it would be useful to do that. But I guess it would be acceptable throughout tier one and tier two, wherever the -- well, I guess it would only be in tier one -- wherever tier one information appears, if there is some kind of label that designates this as design

characteristics so that there would be little capability for people to be searching around and arguing over what has to be matched up with respect to design characteristics when you are actually marrying it to an ESP.

If it were clearly identified throughout the text, I think that that would be the minimum necessary, legally speaking. But anything more than that I think would be useful in making sure that the process proceeds in an expeditious fashion.

MR. FRANTZ: I guess just the initial reaction to hearing that is that would take a very substantial amount of effort. One, just to develop a listing; two, to try to get agreement with the NRC on that. Let's make sure it is complete and sufficient.

I'm afraid arguing over the NRC on non-substantive issues over a list of existing designs doesn't seem very productive.

But going on to my next question, this pertains to the scope of the ITAAC required for design certification. Currently the rules say that you need ITAAC to confirm that the plant meets the design certification. The proposed rule would expand that so that you need ITAAC to confirm that the plant meets the design certification, the act, and the

regulations.

Is there any intent there to require more or different ITAAC for design certification than what we currently have?

MR. WILSON: It's not an intent to require more. It is a clarification. As I have explained in previous public meetings, that statement you are referring to is a shorthand statement. The actual requirement is in the current 52.97. And we are just restating it to make it clear in 52 --

MR. FRANTZ: Forty-seven?

MR. WILSON: Forty-seven, thank you, Steve. And it is also in 52.79. So all three of them should say the same thing. At the moment, 52.97 and 52.79 say the same thing and 47 had a shorthand statement of it. But --

MR. FRANTZ: Thank you.

MR. WILSON: -- the proper requirement is in 97.

MR. FRANTZ: Thank you.

MR. COLLIN: Mark Collin representing Westinghouse.

There currently are four designs that have been certified. The proposed rules would add requirements for design certification applicants that

were not in existence at the time the current design certification rules were going through their reviews and processing.

The question revolves around an assumption that we would not have to go back and reopen the design certification rules that are currently in existence in order to take a count of the new requirements, assuming that the new requirements are included in the rule as it is finally adopted.

The question is at the COL stage, I am assuming that the new requirements would also be foreclosed as issues because of 52.63. And, therefore, the design cert couldn't be reopened at the COL stage merely to look at these new issues that have been added by regulation amendment that is currently being proposed.

MR. WILSON: Yes, I believe that is a correct assumption. First of all, this rulemaking, this proposed rule is a forward fit rule. We are not back fitting to the existing design certifications. And second of all, there is a provision on resolution of issues in the existing design certification rules -- and I recall it is section 6 of the design certification rules that explicitly states how those issues are resolved and the circumstances under which

it could be changed.

But in general, I believe what you are saying is correct.

MR. COLLIN: Thank you.

MR. BELL: It's Russell Bell with NEI.

There are requirements for design certification information with respect to design and control of liquid and gaseous effluents. The wording is a little different than it used to be. And, you know, rather than it clarifying applicability or anything, I wonder if it is potentially a change to a technical requirement.

But basically it used to be that a design certification applicant should describe the design -- no, the mean by which those effluents would be limited and controlled. The wording now says shall describe the design features for limiting and controlling those effluents.

I wonder if you could explain that change.

MR. WILSON: My recollection is that as we were going through all these contents of applications, as discussed earlier, we went back to both the existing 50.34 and those existing requirements that came out after original 50.34 was written and tried to clearer with regard to the particular requirements on

the wording.

So I'm struggling with this. I don't recall that we made a change. But we may have clarified the wording relative to the requirement in the regulations in Part 50.

And the only other point I would make on this, as I said earlier, is we have gone back to all of the technical staff to have them look at this and make sure that they agreed with that wording.

MR. MIZUNO: Well let me just add in a little bit here. Since we are focused on design certifications, remember we are talking about design features because that is all a design can do.

The more general language in 50.34 which is, I think, what you are referring to that uses the term means could refer to both design features as well as processes and procedures.

And so I believe that that change was simply intended to narrow the scope of the matters that had to be addressed in the application to things which are design matters which are properly the scope of the design certification rule.

MR. WILSON: Any further questions on design certification?

(No response.)

MR. WILSON: Okay. I will move on to standard design approvals, proposed subpart e to Part 52. This has been -- this is the former Appendix O. It has been the most frequently used of the processes that we have. We have issued many design approvals in the past.

In making the changes, we have reconfigured this provision to look like subparts a, b, and c. And so you see a lot of formatting changes but most of the requirements came forward from the old Appendix O. But we did expand the contents of applications.

Now under standard design approvals, you can get approval of either a complete design or a major portion thereof. We retain that provision from the past.

But in the past, it also provided an opportunity for preliminary design approval and we deleted that provision based on experience we have had with getting final design information under design certification and didn't see a need to retain that preliminary design approval that used to be provided under this process.

Now moving on to contents of applications, you will see that the contents are very similar to the

contents for standard design certifications including the breakdown between FSAR information and that information that is in an application but not part of the FSAR.

Now a key difference between design approvals and design certifications is in the amount of finality that it provides. Design certification goes up and has a review up through the Commission via the rulemaking whereas the design approval just represents an NRR staff approval.

And related to that, some of the additional requirements that we had in design certification didn't come forward into design approvals. So, for example, when we included the consideration of severe accident mitigation design alternatives to ensure that we had finality in all design information we didn't require that for design approvals.

There is no requirement for ITAAC for design approvals. Requirements on conceptual design information and tech specs also didn't come forward.

So there are some things that we don't ask for in the contents of applications for design approval that we do ask for in design certification. And as I said, the difference here is it doesn't have

the same level of finality,

And I think that is all I have to say about design approvals. Any questions on that process?

(No response.)

MR. MIZUNO: Shall we start on manufacturing licenses then?

MR. WILSON: Why don't I cover design certification rules first.

MR. MIZUNO: Oh, sorry.

MR. WILSON: I know you are anxious.

Okay, the next item on the agenda is design certification rules. And Mr. Collin pointed out that we have four design certification rules now. What we have tried to do and our intent in the future is to keep these rules as consistent as possible except for design-specific reasons.

Now we made a couple of changes to the design certification rules in this proposed rule based on some earlier comments and also, as I said, we revised the 50.59-like change process to conform to the latest version of 50.59.

The significant area in the design certification rules is Question No. 11. When we were completing the design certification rule for AP1000,

we received some generic comments on the design certification rules from NEI.

The Commission addressed those comments relative to AP1000 in the AP1000 rulemaking and you'll see the resolution of those comments in the statements of consideration for the AP1000 rule which was published in the Federal Register on January 27th of this year.

The Commission has expressed a willingness to reconsider those generic comments as they relate to all four of the design certification rules. And so if you look to Question 11, you will see where soliciting your views on those generic comments -- I'm not going to go through them -- there is a number of them but they are all described in Question 11.

And we are seeking your views on what you think we should do about those comments as they relate to all four of the design certification rules. And, as I said, our goal is to try and keep these rules the same except for design-specific reasons.

So with that, any questions on the four design certification rules?

MR. BELL: I'm just looking at the agenda to see if there is a better time.

MR. WILSON: We are coming up on the lunch

break if you are following the agenda.

(Laughter.)

MR. BELL: To see if there was a better time for this question but perhaps not. It goes to the change process that is in each of the design certification rules and in particular the process for making changes that effect severe accident design information in the DCDs.

The language in there is -- well at Section VIII(B)(5)(c) of any one of the four rules if you want to turn to it. And there are two criteria there.

These criteria were crafted in the 1994 time frame. And that predates much of the risk-informed initiatives and the emergence of PRA analysis in evaluating license applications and supporting operations and so forth.

I think if the staff and the industry were to sit down and try and write these criteria today, they might do so a little differently.

In fact -- and we have had some preliminary conversations with the staff and certainly on numerous occasions amongst ourselves, struggling to interpret what those words mean now that applicants are stepping forward, referencing these rules and must

face the need to implement these criteria.

We are thinking that we might need to consider a rule change there. Our thinking is that it could be a rule change. Or it could be guidance that clarifies the existing requirements possibly.

But we believe we need to meet perhaps during the comment period on the rule to discuss alternatives to the existing criteria including, perhaps, the use of risk management process techniques that are now in prevailing use in designing new plants and operating the current ones. And perhaps other alternatives.

But I guess that is an observation about a need that needs to be addressed in the rulemaking. And wondering if the staff would be amenable to those kinds of interactions.

I think it needs to take place during the comment period so that we can figure out is it rule, is it guidance. If it is rule, what do the criteria need to be? And that would support us in providing you that recommendation by May 30th.

MR. WILSON: Well, first of all when we created that change requirement we did not develop guidance at that time. And I agree with you and I have stated in other public forums that we need to

develop some guidance on how to implement that provision.

So far, staff hasn't been considering changing it. But, you know, as in any comment, we are open to proposals here.

MS. GILLES: Yes and I think with regard to the thought that perhaps another meeting during the comment period, I think that, you know, we are amenable to any sort of request for additional meetings during the comment period.

And, again, I think before we close the workshop tonight we should discuss whether there are other issues that may fall into that category.

MR. MIZUNO: I guess it would be remiss, however, for me to keep mentioning the potential impact of the need to republish any change.

If the guidance or the implementing criteria that you seek are risk informed, just looking at the language of the rule itself, it seems that risk-informed criteria could be adopted by the Commission either in the SOC or in some separate guidance. And would not constitute -- would not require a change in the existing rule language.

But that is just off the top of my head and without really knowing what specific aspects you

are intending to change.

I think the devil is in the details but when the external stakeholders look at the need to develop more detailed guidance or criteria -- I will just say criteria with respect to implementing this, you will have to take into account the potential impact of the need for rulemaking and whether that rulemaking would require at least that portion to be republished.

And that doesn't represent something insuperable. It can be done. It is just another wrinkle in the process.

MR. WILSON: Any other questions on the design certification rules?

(No response.)

MR. WILSON: With that, I'll turn it over to Geary to talk about manufacturing licenses.

MR. MIZUNO: Okay. The discussion of the subpart F, which now contains the Commission's requirements for manufacturing licenses are pages 12800 through 12801 of the March 2006 notice.

The changes basically provide for a greater extent of issue resolution and finality in proceedings referencing the manufacturing license. Right now, the manufacturing license concept involves

basically the approval of a construction permit, a level of information with respect to a design of a reactor to be manufactured.

The current regulations call for the manufacturing licenses to be issued and then an amendment to the manufacturing license to be provided following a second hearing once final design information has been developed for the manufactured reactor.

So in one sense, it is an analog to the Part 50.52 licensing process. I think it is the Commission's view that that process was not the most efficient way of having issues being resolved. That's why we moved to Part 52.

The Commission didn't look at the manufacturing license process and the need for updates in 1989. And we felt that it was time to take a look at that concept as part of this rulemaking.

The new paradigm for manufacturing license is that the manufacturing license would be issued upon review and approval of basically design certification information -- final design information. And the requirements for the content of the manufacturing license are basically drawn from a combination of the DCR and combined license application.

The current rule -- I'm sorry -- the proposed rule provides for ITAAC that would be demonstrated by the licensee who is utilizing the manufactured reactor. And these ITAAC would be focused on the successful manufacture, shipping, and placement and integration of the reactor into the site-specific SSCs.

That probably is not the most efficient way for constructing ITAAC. But we felt that in the absence of, you know, agency interaction with the stakeholders, that this was as much as we were willing to go beyond the existing process.

The Commission raised a question. It is on pages 12830 to 12831 that talks about should the final rule include an option for design certification where the ITAAC address the actual manufacturer.

An ITAAC will be demonstrated by the manufacturer of the reactor, the concept being that instead of waiting for the licensee who is going to use the manufactured reactor to demonstrate that the reactor had been manufactured, it is the actual manufacturer who is going to be conducting the tests, inspections, analyses, and demonstrating compliance with the ITAAC.

So that once those ITAAC had been

satisfied, the Commission would not ordinarily be looking at the concept that the reactor had been manufactured successfully. The only thing we would be looking at is whether the completed reactor had been properly shipped and then integrated into site-specific structure systems and components.

In one sense this is an analog to the process that the FCC and the FAA use for approval of aircraft or of electronic devices.

It is not the ultimate user that determines whether the aircraft had been properly manufactured by Boeing or Airbus. It is not the end user, the consumer that determines whether the computer or radio had been successfully manufactured. It is the manufacturer itself.

And under -- the question that is raised by the Commission, the ITAAC would be implemented and demonstrated by the manufacturer to show that the manufactured reactor had been properly manufactured.

The other issue that the Commission wished to raise is the question about whether there should be a "mandatory" hearing before issuing the initial manufacturing license.

Under the existing regulations and consistent with the one experience that the Commission

had with Offshore Power Systems for issuing a manufacturing license, a "mandatory" hearing notice was held -- was, I'm sorry, published in the Federal Register. And the proposed rule would continue that paradigm of having a mandatory hearing.

The Commission would like stakeholder input, however, as to whether there should be a mandatory hearing before issuing an initial manufacturing license. And the discussion on that is on pages 12836 through 12837.

So that basically concludes my presentation on the Commission's proposed reformatting or restructuring of the manufacturing license concept. And I am open to questions. And I would say this is an area, again, where stakeholder input is welcomed.

And even if we do not go to -- for reasons of stakeholder input we decide that we cannot go to a final rule, I do not believe that the Commission would be adversely, you know, would have an adverse feeling towards that given that this was something that was developed primarily without stakeholder input.

MR. COLLIN: Mark Collin representing Westinghouse. I have just one question. On page 12831 in the first column of the Federal Register notice, the NRC says or proposes a possible second

model. The other model that the NRC would adopt would be a combination of the approval process used by the FCC and FAA and so forth.

And then it says to be completely consistent with the FCC and FAA models, the NRC would issue a manufacturing license only after a prototype of the reactor has been constructed and demonstrated.

Prototype is defined by the Commission regulations in 52.1 as meaning a nuclear power plant that is used to test new safety features such as testing required under 10 CFR 50.43(e).

When Offshore Power Systems proposed the manufacturing license for the floating nuclear plant, they used one of the Westinghouse reactors that was currently in operation -- then currently in operation -- as the basis for the floating plant.

Assuming that a manufacturing license were issued and there was this regulation, would the fact that a manufacturer was using the same reactor that was already in place for the floating nuclear plant satisfy the prototype requirement?

MR. MIZUNO: I am wanting to say that when we are talking about prototype in the SOC, we were not using it as a term of art the way that we were talking about in the regulations. And at least my concept --

and this was just put out as a possible alternative -- I wasn't -- the Commission wasn't necessarily saying that this was the model that it would use but there is a possibility where you could require -- the Commission would only issue a manufacturing license after a first-of-a-kind reactor of that particular design had been built and demonstrated.

So that -- let's just take AP1000. Assume the AP1000 -- well, that perhaps is not a good thing because it was probably highly unlikely that you would build that in a factory and ship that as a reactor. But let's just assume there is a design out there that would like to be manufactured.

Using this "prototype" approach, the Commission would only issue a manufacturing license allowing multiple copies of that reactor to be built in an industrial setting only after at least one reactor of that type had been built and operated to the point where the Commission felt yes, this was a reactor design that now can be manufactured.

The concept being that, of course, that we wouldn't want to authorize the manufacture of a reactor for which there was no experience with.

And so the Commission would be -- well, there would be question as to whether it would be a

prudent regulatory move to approve multiple copies of a reactor to be manufactured even before there had been any demonstration, real-life demonstration that that reactor could work.

Now whether it is going to be the actual thing or whether it is going to be modified in some fashion to reflect the fact that as a first-of-a-kind, you might want to have additional safety features which would not be included in the manufactured reactor. I mean those are the details.

But the concept being that you would build a reactor of the type -- basically of the type that is to ultimately be manufactured but you would have to demonstrate that that thing can be constructed and operated correctly before the Commission would ultimately allow the manufacture of that design.

MS. GILLES: Any further questions on the manufacturing license process?

(No response.)

MS. GILLES: Okay. Let's go ahead and take a 15-minute break now and then we will continue with a discussion of 10 CFR Part 50. So we will be back here about 2:37.

(Whereupon, the foregoing matter went off the record at 2:23 p.m. and went back on the record at

2:41 p.m.)

PART 50, DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

MS. GILLES: We are going to go ahead and get started again. It's 20 to 3:00 right now. I think what we'll do is we will go through as much of the agenda as we can. And as we approach 4:00 o'clock, we will stop and see if we want to continue. If we are not finished, I believe the panel is willing to stay until about maybe 4:45 or 10 to 5:00. And hopefully we can get through most, if not all, of the agenda by then.

The next topic covers the changes proposed to 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities." While there was a large bulk of changes to Part 50, really, the vast majority of those changes were strictly confirming changes so that Part 50 technical requirements would recognize the Part 52 processes. So I'm really only going to highlight a couple of areas.

We have already talked a lot about what we did regarding the requirements that existed in 50.34 for the content of applications. We were challenged with how to handle 50.34 because of its construct so closely tied to the construction permit operating

license process from Part 50. It was clear that at some point, some attempt was made to reference back to some of the Part 52 processes, but it was not a thorough job done at that time. And there were also conflicting requirements in Part 52 regarding contents of applications for those processes that were referred to in 50.34.

In addition, we were very sensitive to not causing any consternation on the part of the operating reactors regarding how any change to requirements may affect them. And that is why we decided basically to strip all the references to Part 52 requirements from 50.34 and keep all of the contents of application requirements in Part 52 itself.

There is one exception to this rule. And that exception is 50.34(f), which is the TMI requirements. There was a lot of discussion about whether we should take those requirements and try to parse them out and copy them over into Part 52 also. And just due to the size and the complexity of the requirements in 50.34(f), we decided for the proposed rule to simply make the reference back to 50.34(f) in each of the contents of application section in Part 52.

The next major area of proposed changes in

Part 50 is in 50.47 in appendix E, which are the requirements for emergency planning and preparedness for production and utilization facilities.

Generally, we added requirements that an emergency preparedness reasonable assurance determination was required for complete and integrated plants submitted in either a combined license or an early site permit.

In appendix E, new subsections were added to address the timing of full participation and on site exercises; for example, with respect to fuel loading for a combined license applicant. It also allows a combined licensee to perform exercises and have those incorporated into the existing and ongoing exercises for cases where that combined license is at an existing site.

We also made changes including the addition of a new condition in section 50.54(g)(g). And this is "conditions fuel load and operation to a successful full or partial participation exercise by a COL holder, including limiting operation to five percent power until all off site deficiencies are resolved."

The five percent limit is removed 30 days after FEMA informs the NRC that off site deficiencies

have been corrected or resolved unless the NRC notifies the COL holder that a reasonable assurance has not been provided.

So generally we try to maintain the requirements that exist for an operating license holder that allows them to go to five percent with off site deficiencies defined.

We felt we had to add the new license condition because of the construct of the combined license process, where the license will be issued with ITAC before the exercise is performed.

In addition, we looked at sections 50.54 and 50.55 in their entirety, which 50.54 is conditions of all licenses and 50.55 currently is conditions of constructions permits. We try to maintain this split as far as the Part 52 processes are concerned. So we added requirements to 50.54 for combined licenses after the 52.103(g) finding is made.

We also excluded manufacturing licenses since it does say conditions of all licenses. And in 50.55, we specified certain requirements that would be applicable to early site permits, combined license before the 52.103(g) finding, and manufacturing licenses.

The other area where some significant

changes were made -- we have already discussed this -- was appendix B, where quality assurance requirements were specified for each of the Part 52 processes. And we have discussed previously the changes that are made to the early site permit requirements for quality assurance.

Those really outline the major changes there were other than straight conforming changes to Part 50. Does anybody have any questions on these issues or other issues that were raised in Part 50?

MR. FRANTZ: The staff is proposing to modify the maintenance rule. And the modification seems to be somewhat internally inconsistent. 50.65(a) says a COL must supplement the maintenance rule after the Commission has made the 52.103(g) finding. 50.65(c) says it has to be implemented in 30 days before a fuel load. I was wondering if you could address this inconsistency.

MS. GILLES: Can you just quote the requirements once again?

MR. FRANTZ: 50.65(a) and 50.65(c).

MS. GILLES: And what is the difference? I'm sorry. Off the top of my head, it's not coming to me what the difference between the two provisions is.

MR. FRANTZ: Once says that we have to

implement it after the Commission has made the 52.103(g) finding. Subsection (c) says it's 30 days beforehand. So there seems to be a discrepancy in the timing.

MS. GILLES: There certainly does. And I will be frank. I'm at a loss to know why we would have put different timing for the same requirement in.

I know that in some cases, particularly cases where there was an operational program involved, we tried to specify implementation slightly before it would be required to allow for our inspectors to inspect the program. That is likely where the 30-day requirement came from, but I am at a loss to tell you why it didn't appear in both places. So that does appear to be an inconsistency that should be resolved in the final rule.

MR. FRANTZ: If it is the staff's intent that we implement this 30 days before fuel load, I am wondering whether that is going to be physically possible during that 30-day period. There still may be some ongoing construction activities. There may be preoperational test activities.

How can you implement the monitoring and the goals and corrective action portions of the maintenance rule when you're still involved in

preoperational testing?

MR. MIZUNO: Well, certainly the goals determination should be done well before the 52.103(g) finding.

MR. FRANTZ: Yes, I agree in terms of setting the goals.

MR. MIZUNO: But the actual implementation in terms of the monitoring, yes, I would agree that there is a disconnect there in the regulation. Thank you for bringing that to our attention.

Certainly if the industry has a concept as to what portions or what activities of the maintenance rule should be ready to I guess be in place for inspection prior to the 52.103(g) finding versus what activities under maintenance rule would need to be implemented after the 52.103(g) finding, I think that that would also be useful because then you could tailor the implementation requirement appropriately.

MR. FRANTZ: Thank you.

MS. GILLES: Steve, it looks like Mr. Alexander from the NRC staff would like to add.

MR. ALEXANDER: Right. I'm Steve Alexander. And I am actually the person responsible for NRC's oversight of the maintenance rule right now.

First of all, I can tell you that there

was not an intention to do anything but have the requirements of having established or implemented a maintenance rule program other than at some period of time, in this case 30 days they've said, before the certifications under 52.103(g).

The structure of the maintenance rule as it is indicates that the paragraph (a) talks about the general applicability of the rule. And the specifics of timing were intended to be put in paragraph (c).

However, having said that, it is clear that there does appear to be an ambiguity here. And maybe depending on how you read it, it could even be read as a contradiction. So we can clarify that language, but the intent was that at some time or that the program would have to be implemented, obviously, when you're in the period after that certification and the timing for actual implementation was expected to be before that. But, again, we recognize that.

With regard to the 30 days, when we say implementation of the maintenance rule program, the extent to which the program is implemented is going to be governed from a logic point of view by how many systems are actually even in service at that time. There would be certain systems that would be required to be operable and available at that time by tech

specs and the design requirements and operating procedures and so forth.

MR. FRANTZ: I don't believe that's correct. I don't think the tech specs kick in until you have --

MR. ALEXANDER: Well, okay. By operational requirements and operational procedures and so forth, there may be systems that would be required to be available. And as they come on line, it is envisioned that that would be verified through -- first of all, programmatically initially it would be looked at when the program is reviewed against the SRP, which I am writing and I am certainly looking for input on, and also by inspection.

There are also parts of the maintenance rule program that you wouldn't necessarily be expected to have unless that part was applicable. For example, you mentioned goals. You are only required to set goals, establish goals, and monitor against goals for those systems that are under paragraph (a)(1) status.

If you do like most licensees do and put everything in a -- in other words, it's innocent until proven guilty, instead of guilty until proven innocent. So if you put everything in (a)(2) status, then those things that are within the scope of the

maintenance rule -- the scope would be expected to be established. We do expect to have the scope established. We would expect to see that for those things in (a)(2) status that are in scope, you would have to have your performance criteria or some means of verifying effective control or performance condition, as (a)(2) says.

And so clearly there would be parts of the maintenance rule that wouldn't be logical to expect someone to have at that point but those parts that would be reasonably expectable.

And you have to realize that the history of the maintenance rule for the most part has been one of what is reasonable, what is not reasonable.

MR. FRANTZ: And, unfortunately, that concept of reasonableness is not built into the rule language.

MR. ALEXANDER: It is not built into the rule language. And it has always been treated that way.

MR. FRANTZ: All I am saying is if you read the proposed rule, it doesn't say only selected requirements have to be implemented. It says basically all of the requirements of the rule have to be implemented 30 days before a fuel load.

MR. ALEXANDER: Well, to be in compliance with the rule doesn't mean every detail of the program is being in operation.

MR. FRANTZ: Once again, you might have a problem there with the rule language.

MR. ALEXANDER: Okay.

MS. GILLES: I think it's fair to say that it sounds like a comment that would be warranted and would be invited in that area to help us clarify that.

MR. WEISMAN: Yes. And I would like to expand a little bit on what Steve was saying. And I am going to make reference to conversations that we have had in public meetings with respect to the validity of ITAC.

Our understanding is that the industry would like to rely on certain operational programs to maintain the validity of an ITAC that has been satisfied early in the process.

For instance, if a certain pump is shown to have met its ITAC two years before a scheduled fuel load, then there is going to be maintenance done on that pump to maintain its validity.

To the extent that a licensee wants to rely on an operational program which could include the maintenance rule, that program would have to be

implemented at the time that the licensee begins to rely on it.

So there may be an additional disconnect here in the rule to something for us to think about and for you to think about when you are making your comments.

MR. FRANTZ: Yes. The maintenance rule itself basically just has requirements for establishing goals and monitoring against those goals and taking the right corrective action.

I see that as being distinct and separate from what you have been talking about, Bob, for the need to have preventative maintenance and take corrective action when you find a fault or a deficiency in some particular point.

I think you are right that is going to have to be done as part of our corrective action in its program after we complete a particular RTI. I see all of that as being separate from a monitoring that is required by the maintenance rule.

MR. WEISMAN: Do you see that more as like an appendix B kind of issue?

MR. FRANTZ: Yes.

MR. WEISMAN: Okay. I just thought I would raise it.

MS. GILLES: Any additional question? I'm sorry. Geary?

MR. MIZUNO: I'm just focusing, thinking about what Steve was talking about. And I think I understand what he is trying to say now, which is that the requirement in (a)(1) about monitoring is the way that the industry has implemented the maintenance rule is not the default. It is paragraph (a)(2) which is the default, where you develop a rationale for why monitoring and goal setting are not required. Is that right, Steve? Right, effective control that precludes, right, for this monitoring.

So (c) basically says you have to implement the entire requirements of the maintenance rule 30 days, no later than 30 days, before a scheduled date for initial loading of fuel, which means that if you are going to rely upon (a)(2), which is the default under the industry's guidance for implementation, it has to be done in 30 days before a scheduled day before initial fuel load.

But if you don't choose to rely upon (a)(2) and go into monitoring, then you have to do that at the time that the 52.103(g) finding was made. Now it's all coming back to me.

MR. ALEXANDER: I would also add that the

maintenance rule at present doesn't go into how much detail on what constitutes adequate implementation of the maintenance rule. This was determined by, first of all, a review of the program and the baseline inspections.

We envisioned something similar. There will be a requirements for program description in an SRP, which would be reviewed and approved. And then adequate implementation of that would be inspected in the field.

And so to the extent that the maintenance rule never required it before and those things were handled by inspection without the language being in the rule, it wasn't changed.

If you're suggesting that maybe the rule should address that, you know, we can certainly take that under advisement.

MS. GILLES: Any additional questions on Part 50?

(No response.)

MS. GILLES: Okay. The next item on the agenda is Part 2, "Rules and Practices for Domestic Licensing Proceedings and Issuance of Orders." Geary Mizuno?

PART 2, RULES OF PRACTICE FOR DOMESTIC

LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

MR. MIZUNO: I really wanted to roll through this very quickly because I suspect most people are not interested in this. Part 2 covers a bunch of different things, including the administrative procedures for licensing actions, our administrative procedures governing rulemakings, procedures for the conduct of adjudicatory hearings with one provision dealing with FOIA and access to information.

We made a few changes to Part 2 that are substantive. A lot of other changes were just conforming changes to reflect the existence of the licensing and regulator processes in Part 52. I did want to talk about a couple of the more substantive changes in 2.104. We did add new paragraphs to address notice of the hearing for a manufacturing license, combined license or at least early site permit.

2.104 deals with mandatory hearings and the notices associated with that. We also indicated that there is a 30-day minimum period provided between the Federal Register notice and any mandatory hearing that would be conducted.

I did want to note that there is an

apparent discrepancy between this 30-day minimum period versus the 60-day period in 2.309(b), but that was a deliberate decision to have 2.104 reflect the statutory minimum; whereas, 2.309(b) reflects the Commission's discretion, well, its discretionary determination that a 60-day period be afforded to allow interested members of the public to digest information before requesting a hearing.

We also added a new paragraph M, which essentially represents current paragraph E but revised to provide for transmission of notice of hearing for ESPs, combined licenses, to the state and local officials.

Turning to 2.105, which is a notice of proposed action, this provision governs situations where a mandatory hearing is not required by the Commission's regulations or the Commission has not found that a hearing is necessary or desirable for the public interest.

It adds a new paragraph (a)(12), requiring Federal Register notice of intended operation under 52.103(a) and also adds a new paragraph (b)(3) governing the content of a Federal Register notice of intended operation.

Section 2.106, "Notice of Issuance," has

been modified by adding a new paragraph (a)(3) requiring Federal Register notice of a Commission finding under 52.103(g) and revises (b)(2) to address the content of the Federal Register notice of that finding. So, with these changes, the combined license process and the nature of the Federal Register notices are completely covered at this point.

The other substantive change that I wanted to briefly touch upon in this area is 2.340, involving immediate effectiveness of certain decisions, primarily initial designs by the presiding officer, which in some cases would be the Commission. This is discussed on pages 12815 through 12816 of the Federal Register notice. And 2.340 was modified to address ESP issuance and combined license issuance and the Commission's finding under 52.103(g).

The one thing that I wanted to alert you to is that there was an error in the statement of consideration. There is a reference to 2.340(a)-1. That really should be 2.340(a)(1). The Federal Register wouldn't allow us to use an (a)-1 numbering scheme. So the rule language was changed, but, unfortunately, we failed to make the conforming change in the statement of consideration.

Basically, the change to 2.340 simply

provides additional guidance as to how the Commission would handle immediate effectiveness in the context of issuance of combined licenses and the 52.103(g) finding.

Turning to subpart H, which governs rulemaking, the subpart has been restructured to treat applications for design certification as a special kind of petition for rulemaking. Under the proposal 2.801 through 810 would apply to ordinary petitions for rulemaking and petitions to amend existing design certifications filed by third parties.

Sections 2.811 through 2.819, which are new provisions, are added to address initial applications for design certification rulemakings and applications for amendments filed by the original applicant or their successor in interest, the concept being that although Part 52 does set forth that design certifications are rulemakings, the actual procedures and the restrictions governing the agency's administrative process for rulemakings are, in fact, set forth in subpart H. And so it was felt that we would just conform subpart H to reflect that. But there is really no substantive change intended by this. It's more an administrative/bookkeeping kind of a conforming change.

And let's see. There was a question that was raised in the March 8th, 2006 NEI letter requesting whether the NRC intended to include detailed processes and expected milestone schedules in Part 2 to promote more timely ESP and COL hearings in completion of the 52.103 process.

I think, Russ, you raised this a little bit earlier in the morning session. And the Commission's, I should say the working level staff's, response at this point is that the Commission has issued a model milestones rule. And at the time that it issued that rule, it was well-aware of, you know, the need to address or the possibility that there would be hearings for issuances of combined licenses as well as for 52.103(g) proceedings.

The Commission ultimately determined that they would not be issuing model milestones at this time, probably, in part, because of the lack of experience with respect to the conduct of those kinds of hearings as well as the fact that the process itself is in a flux.

The Commission did not foresee any further rulemaking in the Part 52 rulemaking to deal with milestones, but, of course, stakeholders could request that that be done.

Because Part 2 is a procedural rule, were the Commission to go forward, we do not believe that we are legally required to have afforded the public opportunity for notice and comment. However, the Commission would have to consider whether it would be prudent on the basis of public transparency and public confidence to afford the public that kind of an opportunity where we do go forward and develop additional milestones in that area.

That's all I have to say. Are there any questions with respect to any of the changes in Part 2?

MR. ALEXANDER: I have one more thing that I needed to digress very briefly, if I may, and point out. I would refer everyone to page 12809. This is something that we discovered quite recently, right after the Federal Register notice was published. And it's really what amounts to a typo, but it can be more substantive than that if you read it the wrong way.

It doesn't reflect the actual proposed language to change the maintenance rule itself. This is just the short paragraph that summarizes the proposed change. And after the title, upper left-hand part under "Section N," "Section 50.65, Requirements," it has the title "Requirements," "From monitoring the

effectiveness of maintenance of nuclear power plants," the first sentence, "This section presents the requirements for a maintenance program in nuclear power plants," which, of course, it does nothing of the sort.

What is missing there is the words "effectiveness monitoring" in between "maintenance" and "program" or words to that effect should have been there because that is what this section does now.

And, going to the second sentence, "Section 50.65(a) would be revised to clarify that holders of operating licenses issued under Part 50 and combined licenses issued under Part 52 must have a maintenance program." And I think the intent if you look at the language of the actual proposed rule would be that, again, the words "effectiveness monitoring" would go in between "maintenance" and "program" in there.

The maintenance rule itself doesn't require a maintenance program. At least it never has. And I wasn't aware of any requirement or any intent to have it require one specifically now since that is required by other things.

That's all.

MS. GILLES: Thank you for that

clarification, Steve. If there are no further questions on Part 2, the next time on the agenda is to discuss Part 19, "Notices, Instructions and Reports to Workers: Inspection and Investigations."

PART 19, NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

MR. MIZUNO: Part 19 covers basically three different items. They set forth requirements for notices, instructions, and reports to persons participating in NRC-regulated activities. They also set forth the rights and responsibilities of the NRC and individuals during intervals compelled by subpoena as part of the NRC inspection or investigation under AEA, Atomic Energy Act of 1954, as amended, section 161(c). And it also prohibits sexual discrimination under any activity licensed by the NRC.

Part 19 is discussed on pages 12817 through 12818 of the Federal Register notice of March 2006. The changes that the Commission is proposing fall into these three areas: changes in the posting and notice requirements to account for early site permits, standard design approval, standard design certifications, combined licenses, and manufacturing licenses.

Sections 19.14 and 19.20 were revised to

apply to NRC-regulated entities, such as design certification applicants and standard design approval applicants and holders.

And, finally, section 19.32 was revised to extend sex discrimination prohibition to activities that are carried on under any title of the Energy Reorganization Act of 1974, as amended, which is consistent with section 401 of the Energy Reorganization Act of 1974, the difference between the current rule versus the proposed rule being that the proposed rule is broader to cover any activity carried on, as opposed to licensed, which is the current language of Part 91. And that broadening of the language is consistent with the existing language of section 401, which is the statutory basis for this regulatory provision.

I also wanted to point out that the Commission has published a proposed rule on NRC civil penalty authority over contractors and subcontractors at 721 FR 5015, January 31st, 2006. That rulemaking clarifies the Commission authority to impose civil penalties on contractors and subcontractors.

And I raise this because, as we discussed earlier, there will be a general provision that we are proposing in Part 52 that addresses employee

protection. And right now that language reflects the current rule language in Part 50 and other parts of 10 CFR, which do not reflect civil penalty authority over contractors and subcontractors.

Since this Part 52 rule is going to go forward and it is likely to precede the final rule on civil penalty authority, we are not going to be making any change to that, but I would suspect that should the Commission go forward with a final rule on civil penalty authority, they will change the language in what will be the general provision in Part 52 on employee protection to include contractors and subcontractors.

And that covers my presentation on Part 19. Are there any questions?

(No response.)

MS. GILLES: If no questions, we'll go on to Part 21, "Reporting of Defects and Noncompliances."

PART 21, REPORTING OF DEFECTS AND NONCOMPLIANCE

MR. MIZUNO: Okay. Part 21 implements section 206 of the Energy Reorganization Act of 1974, as amended. It basically ensures that vendors are basic components, which is a term of art. It provides appropriate notice of defects -- again, defects is a term of art -- to NRC and licensees who use those

basic components.

The Commission's discussion of Part 21 is contained at pages 12818 though 12822 of the March 2006 Federal Register notice. That discussion sets forth and explains the Commission's proposal to apply Part 21 to the various Part 21 entities and processes in Part 52.

As indicated in statement of consideration, three principles inform the Commission's proposals for Part 21 applicability to Part 52 entities and processes. The first principle is that Part 21 should be a legal obligation throughout the entire regulatory life of a license, standard design approval, or standard design certification.

The second principle is that reporting under the act should occur whenever that information on defects would be most effective in ensuring adequacy of the NRC's activities and those of Part 52 entities, including contractors and subcontractors.

The final principle, principle 3, is that each entity subject to Part 21 must develop and implement procedures and practices to ensure accurate and timely compliance with Part 21 obligations.

The current Commission requirements

implementing section 206 of the Atomic Energy Act are split between part 21 and section 50.5055(e), where Part 21 addresses operation and general regulatory processes and activities other than construction and construction-like activities; whereas, section 50.5055(e) addresses construction and construction activities.

The proposed Part 52 attempts to maintain that distinction so that combined licenses before the section 52.103(g) finding and manufacturing licenses are addressed in 5055(e). Whereas, early site permits combine licenses after the section 52.103(g) finding, standard design approvals, standard design certifications are addressed in Part 21.

If you look at the table on page 12821, I think it's labeled "Table A-1, Applicability of NRC Requirements Implementing Section 206 of the Energy Reorganization Act to Part 52, 'Licensing and Approval Processes.'" That would be a useful table to help you put your arms around what the Commission intends to do as part of the final rule should it implement it.

There is one Commission question that was raised on page 12837 of the Federal Register notice. That question is whether NRC's reporting obligations implementing section 206 should be extended to early

site permit and combined license applicants.

And that completes my presentation on that. As you well know, the Commission proposed in the July 2003 rule how we would apply Part 21. It received significant comment from external stakeholders. And the revised rule reflects a further consideration of those comments and further justification for the Commission's position.

With respect to answering some of the technical and policy questions behind that, Steve Alexander of the staff is here. He was at the time that the rule was being prepared, both the July 2003 rule as well as the March 2006 rule, the primary technical staff consultant on this matter. So any questions that you may direct up here may, in fact, be answered by Steve. Steve Frantz? Yes? Yes?

MR. FRANTZ: Is it possible for me to get a microphone so I can sit here?

MR. MIZUNO: Yes.

MR. FRANTZ: Part 21 has been in existence for almost 30 years now. And during that entire 30-year period, it has only applied to licensees and not to license applicants. Why after that 30-year period of successful implementation of Part 21 is the NRC now proposing to expand Part 21 to applicants?

MR. ALEXANDER: Do you want me to answer that?

MS. GILLES: Before you answer, Steve, let me clarify. Are you referring to the question that was proposed?

MR. FRANTZ: I am just referring to the actual language in the proposed rule, which refers not only to licensees but also to applicants.

MS. GILLES: Okay. Thank you.

MR. ALEXANDER: First let me clarify the one point on the premise of your question. It was always applied not only to licensees but also to vendors and contractors who supply basic components as well.

MR. FRANTZ: To licensees, yes.

MR. ALEXANDER: Well, to vendors and to contractors who supply basic components, period. They may not supply them directly to a licensee. They may be going to a licensee facility eventually, just to make sure we understand that part.

MR. FRANTZ: Yes.

MR. ALEXANDER: And that has been maintained in the proposed expansion of the applicability of Part 21. The short answer is we're smarter now than we were then. And our experience,

particularly with early site permits, has shown us that in order to have a meaningful implementation of Part 21 throughout, as Geary pointed out, the regulatory life of license, it certainly would behoove people to have a program in place where they are going to record and retain information that may be pertinent to the safety of some plant that could use that information in its design and construction and operation in the future.

And so it occurred to us that it would make sense, then, for those people who are entering into a Part 52 process to be required to have that program in place so that any time information was developed that could be relevant to or if when later used, that it would have been recorded and retained in accordance with the proposed retention requirements in Parts 21 and could be reported in a timely manner and/or retained for future reporting depending on the circumstances so that we would be able to have an historical record of these things as we go through because we realize that, for instance, applicants and others for a combined operating license, for early site permits, design certifications may not actually use those approvals, to use the general term, for quite some time.

And, yet, the information that they have gathered or that they may have identified that is pertinent could be relevant when those things potentially could be used in the construction of a plant. And they certainly would know if a plant is actually constructed.

So requiring it to be formalized under a Part 21 program, retained, recorded, reported, and so forth, as necessary, seemed like the only prudent thing to do in order to have a Part 21 process to be meaningful.

I don't know if that -- that was pretty much the rationale behind it.

MR. MIZUNO: Let me add a little bit because we did discuss this in the SOC. At the point in time that an application is docketed and accepted, the Commission begins its regulatory process. And there is what we'll call the regulatory umbrella over that activity.

It would seem prudent and useful, both conservative of the Commission's resources as well as public confidence, to assure that all activities, all the review activities, that the Commission conducts with respect to that application are done with full knowledge of the quality and both the positive and any

potentially adverse information associated with that application.

Part 21, as I understand it, -- I mean, looking back at the act and the impetus for the act -- was intended to address the situation where the NRC and the licensee were not being afforded information to allow them to carry out their regulatory responsibilities. In this case, it would be the licensing decision.

And to not apply Part 21 in the application process once the application had been docketed would seem to be inconsistent with the underlying concept of the act.

MR. FRANTZ: There are proposed requirements in 52.6 that will ensure the completeness and accuracy of information in applications. Why isn't that sufficient? Why do you also need to impose the Part 21 obligations on applicants?

MR. MIZUNO: Because it is the classic example of hear no evil, see no evil. You may think that. I mean, if you close your eyes and have no process for identifying, evaluating potentially adverse information or just new information, one can say there is no violation of those provisions with respect to completeness and accuracy of an application

should you decide to play dumb and happy.

I mean, let's be frank here. That is what the rule is all about. That is what the statute was all about. The purpose of this thing is to ensure that should there be some new information that comes in that could be potentially adverse, you have a procedure in place that properly evaluates that information in a timely fashion. And if it's determined to be potentially adverse; that is, reported to proper authorities, high authorities, within the company and that it is ultimately reported to both the licensee or the applicant that uses that component or if you're the end user licensee, that you report it to the NRC so that the NRC can also take appropriate regulatory action.

It's full disclosure. It's consistent with the concept that more information is better than less information. And if there is some countervailing regulatory policy reason against that, I would be very interested in hearing that.

MR. FRANTZ: I guess we do have 30 years of experience here. I don't know of applicants who have played, as you say, dumb and happy. When applicants have identified information that affects their application, my experience is that they

immediately change their application and report it to the NRC without Part 21. Is your experience different?

MR. MIZUNO: There will never be a violation by those applicants of Part 21. And I see no reason why they would have anything to fear from its application.

MR. FRANTZ: Going on to the period after issuance of the approval, whether it be a design certification or an ESP, until the period of time when either the ESP or the design certification is referenced in a COL, as I understand it from the statement of considerations, a design certification applicant does not need to make a report under Part 21 but an ESP applicant does. Can you explain why there is this difference in treatment?

MR. MIZUNO: I think that that represents, as I recall, a dispute within the NRC staff over when that reporting requirement is most useful. And I will acknowledge that it is inconsistent. And I think, as I understand it, it was the NRC staff's view that with respect to an early site permit, given the -- and, as I recall, it was done prior to the concept that there was going to be an updating requirement associated with each combined license application or possibly

outside of that depending upon whether the Commission adopts that alternative approach, but I believe the NRC staff's concept was that given the likelihood that environmental information and early site permitting information is likely to be subject to a greater potential for change than design certification information, that it would be prudent to require the updating and the imposition of the reporting requirement for early site permits, as compared to design certifications.

I mean, on one hand, you have design certifications. On one hand, you have design certification information. If you believe that we are in the point of optimization for many of these plants and designs, there is not likely to be significant new information with respect to a significant design matter that would actually constitute a defect, as defined by the act and our implementing regulations, but the potential in the early site permit area and the information that is covered with respect to site matters, environmental matters, it was the staff's determination that the likelihood of new, significant new, information was much higher there. And so, therefore, they felt that a reporting, a continued reporting requirement, should be imposed in that area.

But it was a matter of contention. And I think that stakeholder comments on that would be appreciated. And, you know, we are open to countervailing arguments. And I will admit that there are those things. And I think it would be useful for external stakeholders to identify some of those things so that the Commission would have a full appreciation of the perspectives involved with respect to this because, admittedly, reporting does represent a burden upon the industry.

MR. FRANTZ: That is very helpful.

MR. MIZUNO: Steve, do you want to say anything more?

MR. ALEXANDER: Well, I would say that there is an apparent inconsistency there. And if you make a formal comment on that and then in general, what we would do would be to review the applicability or the desirability of making it applicable against our three principles that we have laid out in the Federal Register notice to see if perhaps other things should or maybe should not be based on review against those three principles.

MR. FRANTZ: In the statement of consideration, as we mentioned, the design certification applicant would not be required to

report until the design certification is actually referenced in a COL application. And we agree with that concept.

However, the rule language itself does not seem to reflect that concept. Could you explain why there is this apparent discrepancy between the statement of consideration and the rule language?

MR. MIZUNO: If there is a discrepancy, then we will attempt to rectify it in the final rule.

MR. FRANTZ: Okay.

MR. MIZUNO: Because the concept of reporting of a design certification applicant after the certification has been issued, to have that reporting delayed for defects discovered after the certification has been issued until the time that the certification is referenced in a combined license was the Commission's concept -- I should say our concept. And if we weren't successful in having rule language that makes that clear, then we need to change that.

MR. FRANTZ: In the 2003 proposed rule, there was the proposal that an ESP holder would not need to report until the ESP was actually referenced by COL application.

What has changed between 2003 and now to leave the staff to change its mind on that point?

MR. MIZUNO: It was all of those factors. I mean, further consideration of the nature of the information that is and the issues that are addressed in an early site permit and the fact that those matters, subject matters, are potentially subject to greater change, as compared with the information and the matters that are covered in a design certification.

MR. ALEXANDER: I would also again refer you if you haven't had a chance to look at it really carefully because this has only been published since yesterday to go through and read that whole -- there are five pages on the rationale of why the changes were made. And I think that may very well answer many of your questions.

And after having considered that, if you will find and some of the ones you find are, in fact, over and above that, apparent inconsistencies, but if you still have some questions as to the whys behind it, then we would certainly invite a comment on that.

But I think you will find that if you do get a chance to read that, it will answer many of the questions. It's at least where we were coming from, if you will, in changing the scope of applicability.

MR. FRANTZ: We did have some comments on

some of that, those discussions, also. If you look at Part 21, it requires reporting of defects that involve a substantial safety hazard. The industry has always been concerned that an ESP holder may not be able to make that determination until there is actually a design selected for that particular site.

MR. ALEXANDER: Well, there is a provision, 21.21(b), that provides for any supplier of a basic component who becomes aware of a deviation which is a departure from technical requirements of a procurement document or a failure to comply. And that means failure to comply with rules, regulations, orders, or licenses of the Commission in the Atomic Energy Act of 1954, as amended.

If they become aware of any of that situation and if they determine that they are not capable of doing a 21.21(a) evaluation, then they are required within five days of that determination to inform all licensees and affected purchasers of that. And basically they're encouraged and allowed to pass the buck if they are not qualified to do that evaluation.

MR. FRANTZ: Yes, but the ESP holder can't pass the buck. The ESP holder has to make that determination. And how can the ESP holder make that

determination unless he's chosen a design for his particular site?

MR. ALEXANDER: Well, the technical details that determine whether or not it's reportable or going to be part of the evaluation that the ESP holder does. Maybe I don't understand the question.

MR. FRANTZ: I guess let me go through one of the examples you have given in the statement of consideration where perhaps the safe shutdown earthquake may be a little bit higher than what is reported in the ESP application itself. But if the design has even a higher safe shutdown earthquake, there is obviously no substantial safety hazard.

The design of the plant can accommodate a higher SSE. Obviously until you have that design, you don't know that. You can't make this determination.

MR. ALEXANDER: Well, then it would be incumbent upon the ESP holder to report that to the NRC, even if they don't know that something later might make that moot. All they know is there is a discrepancy that they have discovered that the safe shutdown earthquake, for example, is higher than what they found during the initial analysis. That would be something that would be reportable.

MR. FRANTZ: Okay. So we have now moved

away from substantial safety hazard to any discrepancy, thinking that's not reflected in the rule language.

MR. ALEXANDER: Well, they would be in the same situation as someone who may not be able to make the determination as to substantial safety hazard.

I see your point if you're saying it's not reflected in the current rule language, certainly something that we would look at to consider. And maybe it needs to be clarified in the rule language.

MR. MIZUNO: Perhaps I guess the way I would put it is that the comments are really going to the question about what should be considered a substantial safety hazard. I think that those are valid concerns.

And certainly I will look upon them as a valid consideration to determine whether the rule language is tolerable or implementable. And certainly stakeholder comment on that would be advisable.

MR. ALEXANDER: I would also point out that -- and, in fact, this is almost extending your argument -- what is reportable is not limited to those things. If you read the four kinds of things that are a defect, a defect in general is reportable.

And a defect of the fourth kind -- you

know, it's like a close encounter. A defect of the fourth kind is a condition or circumstance that could lead to exceeding the safety limits of technical specifications. Well, it's not likely that an early site permit holder would know that either.

And so to the extent that the early site permit holder knows that there is something that they need to report because they can't evaluate it, as I said, we would certainly consider these circumstances being a little different than they were before. We would certainly consider a comment to that effect. And perhaps there needs to be chlorophane in the rule.

MR. FRANTZ: By the same token, though, I mean, just to use your example of the SSE, we do have under the DPE concept a concept that the ESP holder would be defining the maximum or I should say the seismic capability of a plant or they would have a specific plant in mind. I mean, that is the way the current rule is structured, that there would actually be a specific design in mind with specific characteristics.

Certainly the ESP holder because those things are supposed to be part of -- I mean, they are part of the ESP. An evaluation as to whether a change in the SSE adversely affects either the capability or

the ability of that site to support either the specific design for which that early site permit was approved to or the plant parameter envelope for which that ESP was approved to would be well within the capability of the ESP holder.

Now, if the argument evolves to a question about whether that constitutes a significant safety concern or, you know, falls within the various kinds of terms of art that require reporting, I think that that is something that we can talk about. And that is certainly again a valid issue. Obviously it has to be resolved in order that ESP holders and applicants are able to, you know, successfully carry out their responsibility.

But I think what we are looking for here is whether those things are insuperable, you know, obstacles to implementation of this concept or whether those obstacles represent a fundamental concern with the underlying theory of imposing a reporting requirement on the ESP applicant and the ESP holder.

MR. FRANTZ: One last question. Under the existing and proposed structure for Part 52, the design certification applicant need not be the actual vendor for a plant that references the design certification.

In that case. shouldn't the vendor, the actual vendor, be subject to Part 21, rather than the design certification applicant because the vendor will be basically the designer of record, rather than the design certification applicant?

MR. WILSON: I might use slightly different terminology, but yes. There is a certification granted, but that doesn't mean that the company applied for that certification is the company that is actually providing that design to a COL applicant. And we have a provision in the rules that in the event that something like that happens, that new company would have to demonstrate that they have that detailed level of design information and ability to provide that design.

And at that point, I would agree that they would now take over responsibility for all of that notification on that design information.

MR. MIZUNO: Yes. And let me add to that by pointing out that --

MR. WILSON: Let Steve amplify it.

MR. ALEXANDER: Yes. To the extent that a design is a basic component and it fits the definition under Part 21.3 of a basic component, the design if it's sold to someone is a basic component.

And, therefore, the vendor who came up with the design would have Part 21 reporting responsibilities because they had sold that product to another entity as a basic component.

And if the other entity didn't even buy it as a basic component and dedicated it, then the entity who purchased it would have Part 21 reporting responsibilities, but they would be required to have an audible record under Part 21 currently of the dedication process.

MR. MIZUNO: Not to contradict my colleagues here, but I'm sure this is something of interest to Westinghouse. Let's say we have an AP1000 design that's certified by Westinghouse but now Brown and Root or Halliburton, Brown, and Root provides the final design for that AP1000 that sells it to Southern.

At least coming from this attorney here, it would seem to me that Halliburton may have a Part 21 obligation imposed upon it, but that does not absolve Westinghouse of its own independent Part 21 obligation should it discover a problem with the AP1000.

The fact that they might not have a reporting obligation to Southern because they have no

contractual relationship, Part 21 would not impose a reporting requirement on them, but Westinghouse would still have a requiring obligation under the proposed rule to the NRC because the NRC is the entity that needs to be made knowledgeable of this concern because, after all, if there is no reporting to Southern because there is no contractual relationship and Westinghouse keeps quiet, Southern and Halliburton are going to proceed with their implementation of the AP1000 design without any knowledge that there is a significant concern.

MR. ALEXANDER: That's right. If a basic component is supplied, the supplier of the basic component initially has the Part 21 reporting obligations for as long as Part 21 says they do. And the only time when that responsibility shifts or is assumed, as opposed to having an additional Part 21 reporting responsibility, is in the case of commercial-grade dedication. Part 21 provides for that.

But, as Geary said, once you have supplied a basic component, you have Part 21 reporting responsibilities. And if you are a licensee, you still have Part 21 reporting responsibilities because if you discover something even that the vendor didn't

discover, you still have to report it.

One other thing to refer to your initial questions. I'm sorry. This will only take a second. If you look at 21.21(a), it talks about evaluations are based on the potential for bad things to happen. It says that if the condition were to remain uncorrected and it could create a substantial safety hazard, then it's reportable.

MR. GEORGE: My name is Ben George. I am Manager of Licensing for Southern Nuclear Operating Company. I am partly responsible for licensing activities on six operating reactors and responsible for signing off on Part 21 evaluations that we do every day across the fleet.

After listening to this early site permit discussion on the applicability of Part 21, we have had a process here that is in place, like Steve said, for 35 years that I fully understand. Now I am really confused after listening to the discussion.

I'll tell you why, because if you have an early site permit, you don't have technology, I don't see how you get to a substantial safety hazard finding.

My problem in listening to this conversation is I think we're getting 50.9 or 52.9 or

whatever it is on accuracy of information mixed up with Part 21 reporting obligations.

If we find out through our early site permit that we have a high seismic issue or whatever that the NRC relied upon to make a safety decision, we're responsible under 50.9 to come back to you guys and tell you that and correct it.

Under no circumstances can I fathom how I can go through my 35-page procedure on Part 21 and conclude I have a substantial safety hazard when I haven't even located a technology on that site.

So I am really somewhat perplexed here about the NRC confusing the current regulation that we all currently understand.

MR. ALEXANDER: That kind of goes to the same question as he said.

MR. MIZUNO: As I said before, the 50.9 requirement applies to a situation where a licensee either knows of or negligently and deliberately fails to apprise itself of erroneous information having -- and I can't remember exactly the words that are covered in the 50.9. It's a complex area.

But the legal liability or I should say the scope of activities for which a licensee is subject to sanction under 50.9 is relatively narrow.

And it would not cover the situation where a licensee or a contractor or subcontractor does not have appropriate procedures in place to evaluate potentially significant information and determine, in fact, whether it represents the kind of information that needs to be reported to the NRC.

And I might point out that there is information which is "not erroneous" or "wrong" but which, nonetheless, constitutes information that could be reportable under Part 21 because it has a significant safety implication.

I don't want to get bogged down in that, in part, because I am not a Part 21 expert, but I do know that --

MR. GEORGE: I'm really picking up on where Steve was talking about reporting all of these deviations. There is a criteria under Part 21. And that is the substantial safety hazard test.

And I'm saying I don't see how you can get there with an early site permit. We would never get there. We would exit on the first page of the procedure as far as reporting things to the NRC.

I understand that you are talking about contractual obligations between vendors and suppliers who report defects. I understand that. But I don't

understand this reporting requirement.

MR. MIZUNO: Okay. If we're now focusing in on the concept of whether there would be a substantial safety hazard created by the defect, again, I think that your concept as to what constitutes a substantial safety hazard is based upon your experience operating a nuclear power plant. I mean, that's what we've had, 30-40 years experience in that. And Part 21 is well-understood in that context.

What we are dealing with here is a new regulatory process of an early site permit, which is a partial construction permit. And I don't think too many people here have too much experience in the nitty-gritty of construction permits, much less this new process of an early site permit.

And what I'm suggesting is that the Commission based upon its experience that it has been trying to dig up with respect to construction permits and the problems that it had in trying to get information reported to it properly and in a timely fashion, that we felt that there was an area of -- I don't want to call it vulnerability but an area where there was a regulatory gap which could be filled to account for any potential safety problems.

If it turns out, again, when you work

through the guidance, implementing guidance, that there may be very little potential exposure to early site permit applicants and holders with respect to Part 21, that's fine because, after all, all we are concerned about here is ensuring that significant information, safety information, gets reported to the appropriate entities, to NRC and licensees.

And if that's a very small area of vulnerability or responsibility, then that's fine. The main thing, though, is that the regulatory gap is filled so that should there be a situation where such information comes to light that licensees and their contractors and subcontractors have in place the procedures and well-understood that they need to evaluate that information and do appropriate reporting in a timely fashion.

And if there is little there that actually has to be done, then that's fine.

MR. GEORGE: All I am trying to do here, Geary, is tell you in the case of an early site permit, in and of itself, there is an NRC expectation that we are going to be doing Part 21 reports when we haven't selected a technology. It won't get there. It won't get there. It will get there through some other mechanism, but Part 21 process, it wouldn't

work.

MR. ALEXANDER: Let me, if I might, try to address that one also. If I understand your question correctly, you are pointing out the fact that Part 21 as it is currently written without regard to the changes in applicability but the technical requirements of it say that you have to evaluate deviations. We know what deviations are, pretty well-defined. We know what failures to comply are. And you have to evaluate those to determine if there is a defect, keeping in mind the four kinds of defects, or if the failures to comply create a substantial safety hazard. And then there is some stuff in the definitions that define a substantial safety hazard.

And if I understand your point correctly, you're saying that it's difficult, to say the least, for an early site permit holder to determine whether or not there is a substantial safety hazard or whether or not a defect exists based on the current definitions of the substantial safety hazard.

And if it's the NRC's expectation that, as Geary put it, important or substantial safety information get reported, that may be our desire, but Part 21 language as currently written won't get us

there if you were to read it the way it's written now. Is that a fair statement?

MR. GEORGE: Yes, sir.

MR. ALEXANDER: Okay. Well, then what we could say is that we could certainly take a comment on that and re-look at that and see if we find that the regulatory gap is actually filled by the current language of Part 21 in view of the situation. It's possible that maybe it's not. We certainly can look at that.

And I think I understand your question now. It may be covered anyway. But it kind of sounds like you were saying that we are expecting you to report deviations to the NRC. Certainly those deviations if you can't evaluate them would need to be reported to any affected licensees or purchasers of whom you are aware. The language is already in Part 21 to require that.

But to get it to report it to the NRC, it needs to rise to the level of a substantial safety hazard or a defect. And we understand that. So we will take a look at it.

MR. WEISMAN: My comment, then, was in your comments, please, we just ask that you please explain why it is that it would come out that there

wouldn't be anything to report. We would be interested in hearing that.

MR. GEORGE: Thank you, Bob.

MR. BELL: Just let me come at this slightly differently. Forgive me if it's in there, but even the panel has used the AP1000 as an example for how this might apply if it came out as proposed.

AP1000 was certified under the existing requirements. Is it clear here or will it be clear that Westinghouse would be subject to the new Part 21 requirements for AP1000, AP600, System 80 Plus; you know, in other words, retroactively applicable?

MR. MIZUNO: Yes

MR. ALEXANDER: That's already happened to somebody, the situation. And I believe it was Exelon. And I know that we made a trip up to their offices at Kennett Square to talk about this. They had a situation where they ended up having to come up with a plan for a look-back, talking to vendors and so forth, to get information because I guess it was determined that they had entities to whom Part 21 should have been applicable and it wasn't. Either it wasn't clear or it just wasn't made applicable. And so there was a look-back required in this particular case.

Now, I don't remember all of the details of the case, but that kind of a situation has come up. It was resolved because the entity who was making application had a program in place and it wasn't so far down the road that it went beyond the capability to get the information to review for any potential information

Clearly we couldn't expect someone to go back beyond what records they would have been required to have at the time to look at. And so in a request for additional information kind of environment, there was a look-back that was requested. And they came up with the information. And I don't want to say everybody was happy, but we were happy.

MR. FRANTZ: This is Steve Frantz again.

Let me see if I understand you correctly. You are saying that an applicant such as Combustion Engineering --

MR. ALEXANDER: This was an ESP situation in this case.

MR. FRANTZ: Okay. But Russ mentioned the design certification applicants. And you're saying it would be applicable to the existing design certifications. So somebody like Combustion Engineering, System 80 Plus, or GE with the ABWR, I

don't know whether they, in fact, provide Part 21 to their vendors or not, but let's assume that they did not. They now have to go back and revise their existing contracts with their contractors who worked ten years ago to apply Part 21 to those contractors.

MR. ALEXANDER: Geary said that. I didn't. No. Actually --

MR. MIZUNO: I didn't say that because --

(Laughter.)

MR. ALEXANDER: Actually, he didn't say that. I'm just being facetious.

MR. MIZUNO: That, as I understood it, was should this rule go into effect, would they have to comply with Part 21? And the reporting requirement and the implementation of a program would have to be complied with.

But the vendors, they have done all of that stuff. They're not subject to it at this point. We are not backfitting it on them.

MR. FRANTZ: That was the question. Okay. I thought you said you were going to be backfitting Part 21 on the existing design certifications.

MR. MIZUNO: No. Well, we are going to require the existing design certification applicants, I should say the applicants who got their design

certifications or their successors in interest, to now comply with Part 21.

MR. ALEXANDER: The example that I gave, it doesn't really fit the situation that you're talking about, actually. It was a unique situation. And I guess it probably is not exactly applicable to your question.

It was a situation where, as I said, if I'm not mistaken, the entities who supplied information should have been subject to Part 21 and were not. And so then there was a look-back required.

And in fact, George Strambach of GE asked me that question over lunch, too. So --

MR. MIZUNO: Just to be clear, I'm not suggesting that there is going to be a look-back requirement for the existing vendors. They're not going to be required should this rule, the final rule, go into place to then do a retrospective look to see if there were any defects in the past. And the obligation would be a forward-looking obligation.

At the time that the rule comes into place, then at that point that vendor would have an obligation to implement procedures and should any new information come to its attention, to bring it to our attention if the reporting requirements are needed.

As far as from what I gather since ABWR and a System 80 Plus have not been sold in the United States, there is no obligation to, I mean, as a practical matter, to evaluate it and to pass things on to subsequent licensees that may be using it.

MR. FRANTZ: If I understand you correctly, then, this obligation would not be imposed upon the contractors for the existing design certification to have completed their work, may never have had Part 21 in their contracts.

MR. MIZUNO: Yes. I mean, we are not proposing to backfit them that way. And we would have indicated that that was our intention. We would have had to perform a backfit analysis. And, as you well know, it would probably be impossible to do that, to justify that, at this point in time.

MR. ALEXANDER: Yes. That's not inconsistent. The situation I was talking about was a situation in which there were vendors who were supposed to have Part 21 requirements imposed on them for, for some reason or other, they didn't have programs or it wasn't applicable.

MS. GILLES: Thank you.

At this point in time, it is 4:00 o'clock now, the scheduled time we were supposed to end. And

I just want to ask before we go on if there is an interest in going on with the remaining topics and extending the time of the workshop.

I guess by show of hands, are there those that are interested in finishing the agenda?

(Whereupon, there was a show of hands.)

MS. GILLES: Okay. We will go forward, then.

PART 51, ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RelatED REGULATORY FUNCTIONS

MS. GILLES: The next topic on the agenda is 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions." The statements of consideration discussion for Part 51 can be found in the published Federal Register notice starting on page 12823 through 12828.

Part 51 was reviewed in its entirety during the rulemaking process to incorporate requirements for all of the Part 52 processes for which environmental reviews, in one form or another, were required or desirable.

I will start by talking about NEPA compliance for design certifications. We've mentioned this briefly already today. For each of the four

existing design certification rules, the NRC prepared an environmental assessment, which provides the basis for the Commission finding of no significant impact, environmental impact, for issuance of the design certification regulation and identified and addressed the need for incorporating severe accident mitigation design alternatives into the design certification rule.

Based on the experience with the four design certification rules, the NRC proposes to make changes to Part 51 to accomplish a couple of objectives for design certification.

First, the NRC proposes to view Part 51 to eliminate the need for the NRC to make repetitive findings of no significant environmental impact for future design certifications and amendments to the design certifications.

And, secondly, the NRC proposes to require that severe accident mitigation design alternatives be addressed at the design certification stage; SAMDAs, alternative design features for preventing and mitigating severe accidents, which may be considered for incorporation into the proposed design. And the SAMDA analysis is the element of the SAMDA analysis dealing with design and hardware issues.

And at the design certification stage, the NRC's review is directed at determining if there are any cost-beneficial SAMDAs that should be incorporated into the design and if it is likely that future design changes would be identified and determined to be cost-justified in the future based on cost-benefit considerations.

The NRC believes that it is most cost-effective to incorporate SAMDAs into the design at the design certification stage. and, therefore, it proposes to add these requirements to Part 51.

Regarding NEPA compliance for manufacturing license, the NRC believes that its current approach for meeting the Commission's NEPA responsibilities for standard design certifications should be extended to manufacturing licenses for nuclear power reactors under proposed subpart F to Part 52, the manufacturing license is similar to the standard design certification in that a final nuclear power reactor design would be approved. Therefore, the NRC is proposing similar requirements for the manufacturing license in that the SAMDA be addressed at the manufacturing license stage.

With regard to the consideration of any NEPA obligations associated with the 52.103(g) finding

on ITAC, the statement of considerations points out that the NRC never intended to make an environmental finding in connection with the 52.103(g) finding on ITAC. And the NRC does not believe that NEPA requires such a finding.

Therefore, it follows that no contentions on environmental matters should be admitted at any hearing under 52.103(g). And the Commission has proposed to amend Part 51 by adding 51.108 to clarify that the Commission will not make any environmental findings in connection with the finding under 52.103(g) and that contentions on environmental matters may not be admitted in any 52.103(g) finding on completion of ITAC.

With regard to the proposed changes on environmental reports, at the combined license stage, in particular, where a combined license applicant is referencing an early site permit, the Commission is proposing to add a requirement or requirements in section 51.50 that the combined license applicant's environmental report need not contain information or analysis submitted to the Commission at the early site permit stage but must contain information to demonstrate that the design of a facility falls within the site characteristics and design parameters

specified in the early site permit, information to resolve any other significant environmental issue not considered in the early site permit proceeding, and any new and significant information on the site or design to the extent that it differs from or is in addition to that discussed in the early site permit environmental impact statement.

The Commission is also proposing to add a requirement that the applicant must have a reasonable process for identifying any new and significant information regarding the NRC's conclusion in the early site permit environmental impact statement.

Under NEPA, the combined license environmental review will be informed by the environmental impact statement prepared at the early site permit stage. And the NRC staff intends to use tiering and incorporation by reference whenever it is appropriate to do so.

The combined license applicant must address any other significant environmental issue not considered in an previous proceeding, such as issues deferred from the early site permit to the combined license stage.

The combined license applicant must identify whether there is new and significant

information on any such resolved issues. And, as I stated, should have a reasonable process to ensure it becomes aware of new and significant information that may have a bearing on the earlier NRC conclusion and should document the results of this process in an auditable form for issues which the combined license applicant does not identify any new and significant information.

To summarize, the applicant, the combined license applicant, is required to provide information sufficient to resolve any other significant environmental issue not considered in the early site permit proceeding. Therefore, the environmental report must contain new and significant information on the site or design to the extent that it differs from or is in addition to that discussed in the early site permit environmental impact statement.

That concludes my discussion of the proposed changes in 10 CFR Part 51.

MR. MIZUNO: May I make two additional points?

MS. GILLES: Go ahead, Geary.

MR. MIZUNO: With respect to the 52.103(g) finding, I wanted to make reference to 51.22, in which we included a categorical exclusion so that it makes

clear that the Commission need not prepare an environmental document to support the 52.103(g) finding.

The other matter is with respect to a manufacturing license issuance. In a change from the existing NRC regulatory practice and I believe the regulation, the environmental document, environmental impact assessment, I believe, that we would prepare to support issuance of manufacturing license would only focus on SAMDAs and would not focus on any environmental impacts associated with manufacturing the reactor or reactors at any particular location because the manufacturing license does not represent an approval to manufacture a reactor at any particular location or any particular facility.

MS. GILLES: Go ahead, George.

MR. ZINKE: George Zinke, Entergy, NuSTART.

My question is, for clarification on the new and significant information, as I understand it, you're asking the COL applicant that is referencing an early site permit to determine what new information exists from what the staff used in its independent evaluation in the EIS, not what the applicant used in its evaluation in the ER.

So you are asking the COL applicant to evaluate the sources that the staff used and determine if there is new information from the sources the staff used versus the new information from what the applicant used or the ESP applicant used in its early site permit environmental report. Is that correct?

MS. GILLES: I am going to refer you to Mr. Barry Zalcman, who was the key staff member involved in the drafting of the proposed changes to Part 51. Go ahead, Barry.

MR. ZALCMAN: Thanks. Barry Zalcman.

Let me make sure the general public understands the key licensing documents for an early site permit are the applicant's safety analysis report and the NRC's environmental impact statement. It is not the environmental report. That is the basis for the grant of the early site permit.

So that represents the environmental envelope that has to be considered at the time of the COL. So your point that you may have identified information in the environmental report that perhaps was not used, not considered, not used as a basis for conclusion in the EIS is, in fact, correct, but it's the environmental impact statement that matters for the early site permit and, therefore, the basis for

the COL. It's the incoming position for the COL.

MR. ZINKE: So am I to assume that the -- the process for me to determine what information the staff used in its EIS, I would need to just consider those things that are documented as references in the EIS?

MR. ZALCMAN: Yes. The information that is used to draw any conclusion in the EIS would have been identified either specifically as a reference or an analysis performed in the EIS.

MR. ZINKE: So you're asking me if I take a section in the EIS and it references some report that the staff used. You're asking the COL applicant now to see if there are any newer revisions to those reports in order to say, "Here is new information that the staff didn't use."

MR. ZALCMAN: If you want to rely upon a conclusion that was made by the NRC in the environmental impact statement, you have to determine that that conclusion still is valid at the time of the COL. So you need to look and determine whether or not there is new information that in any way would cloud the conclusion of the Commission earlier.

MR. ZINKE: Thank you.

MS. GILLES: Any additional questions on

Part 51? Yes?

MR. CAESAR: Guy Caesar with NuSTART.

Perhaps a quick clarification. The reasonable process, I certainly to understand why somebody has to have that process to develop the review, to do the review that Barry is talking about.

However, the word "reasonable" process seems to be difficult. It's not clear. Could you clarify how you would audit against that, what type of expectations the staff has in implementing that?

It seems like it's prone to having a lot of variability given that it's a process that one would be prudent to have but not clear on what you're looking for.

MR. ZALCMAN: Well, let me try and respond very quickly. Throughout this rulemaking, we have drawn an analogy with the experience that we have had with license renewal. It was important to be able to bring previously concluded analyses on the part of the Commission forward, whether it's from a generic environmental impact statement for license renewal to a site-specific environmental impact statement to evaluate an application for the combined license application referencing an early site permit. We would envision exactly the same.

And our intent is trying to provide guidance previously, which was for license renewal in regulatory guide 4.2, supplement 1, specifically talks to the attributes that we would expect to be included in an undertaking by an applicant to identify, reveal, and evaluate new information to determine whether or not it is significant. That is the same kind of process that we would anticipate for the COL applicant.

While the regulatory guidance isn't out in that arena, you would be well-informed if you looked at that information in 4.2, supp 1.

MS. GILLES: Sandra?

MS. SLOAN: I have one question. This is Sandra Sloan from AREVA MP. And I had a question regarding the SAMDA analysis.

In this rulemaking, it mentions an environmental report to be submitted by the design certification applicant. Am I to read that to say that the NRC expects, in addition to the design certification submittal requirements in 52.47, that there is a separate environmental report required with the submittal.

MR. ZALCMAN: Let me try and take a quick response. That is, in fact, the current framework

that we're looking at from the early discussion that we had on SAMDA.

SAMDA is a NEPA issue. It is not a safety issue. And how we go about complying with our NEPA responsibilities is laid out in Part 51. We have tried to reengineer what Part 52 looked like to bring back into Part 51 all of the attributes associated with the environmental review, burden on the agency staff as well as a burden on the applicants.

To make it clear, the information that should be considered for the environmental review, the most appropriate way to do that is to create some environmental document. We call that an environmental report.

MS. SLOAN: So you're saying instead of putting it in a chapter in the DCD, you expect to see it packaged separately and identified explicitly as an environment report?

MR. ZALCMAN: Yes. How you go about packaging that, we have seen the environmental impact statement where the environmental report is a component of the application. How you go about packaging that I think we can deal with on an individual basis. The clarity that is needed to specifically refer to the information that's going to

be used for a NEPA review is what we are trying to see.

And if it becomes more burdensome to create a stand-alone document, as long as that information is available to the staff, we will know how to look for it. We will know how to find it. We will know how to use it.

MS. SLOAN: Then I would just recommend clarification in the reference to an environmental report, which is not mentioned in 52.47.

MR. ZALCMAN: I understand that. And I would encourage you to offer that comment. For those familiar with applications that require NEPA reviews, the environmental report is a most convenient way to isolate the information and provide it to the staff.

MS. GILLES: I just want to add one clarification to that topic. Sandra, you said that in the past, the SAMDA information has been included in the DCD. You will notice that we have sort of grouped the DCD information in the proposed rule under the heading of an FSAR. And so I think that we would not want to have that environmental information in the FSAR going forward.

MR. LEVIN: This is Alan Levin from AREVA. Can I get a little bit of a clarification just to

follow up what Sandra was saying?

Up to this point for the existing design certifications, there is a requirement in 50.34(f) that says you're supposed to do a PRA evaluation for cost-beneficial improvements to various aspects of the plant. And it's been that analysis that has been used actually to do the SAMDA evaluation. And that's what SECY 91-229 was all about, how to accomplish those two things at the same time.

So now you are going to take the SAMDA analysis out, put it separately in the ER, in a new ER. Is the 50.34 analysis in the DCD still required or can that be pointed to the ER as having satisfied both requirements?

MR. WILSON: My recollection is that in responding to that SECY that you referred to and providing that SAMDA analysis, that was much broader than that 50.34(f) requirement. I recognize they are related, but my understanding is much broader.

Nonetheless, the applicants in the past have put those in a variety of different locations in sperate reports, part of their application.

MR. LEVIN: When I saw that requirement, I looked very hard to see where because it refers specifically to part 50.34 in the SECY paper. I went

back and got a copy of it. And the only place I could find any reference was 50.34(f) something something. I can't remember what it is, but it says you have to do a PRA and you have to use it to do an analysis for cost-beneficial improvements to various design elements of the plant.

And the whole point of 91.229 was for the staff to find a way to use that analysis, the disposition of the SAMDA requirements in NEPA. And the way they did that was to use that analysis and the environmental information in the DCD to produce an ER that they could use to make a finding of no significant hazards.

So it sounds to me like you're doing the same analysis twice. If you can disposition the whole thing by doing it in an ER, calling it SAMDA, and then being able to point back to the 50.34 requirement, that's fine, but if you're going to require the same analysis twice, that's kind of redundant.

MR. WILSON: Well, I don't think we're requiring the same analysis twice. I would say it differently. I mean, I recognize that the 50.34(f) requirement that you're referring to is a TMI requirement that was a safety requirement; whereas, what we're trying to do is also take care of that NEPA

obligation to do design alternatives.

Now, if you can do an analysis that covers both of them, that's fine. I was just also pointing out that other applicants have put that NEPA analysis in separate reports. I know that we did that. I'm thinking of ABWR had a separate report that we referred to in the design certification rule that I would agree if you can do one analysis and cover both requirements, that's fine.

MR. LEVIN: Cost-benefit analysis of severe accident design alternatives is a cost-benefit analysis of severe accident design alternatives. I mean, I don't see any difference between the two requirements unless you can point out a specific area where the two elements differ.

MR. WILSON: Well, as I said, the --

MR. LEVIN: That was the whole premise in 91-229, is you're doing the same thing to disposition both the safety issue and the environmental issue.

MR. WILSON: That TMI requirement, though, once again, is a safety requirement. It's not a NEPA requirement.

MR. LEVIN: I understand.

MR. WILSON: It has a very narrow focus; whereas, the design alternatives may be broader.

There may be more alternatives you have to consider to satisfy that NEPA requirement than what you had to look at in that TMI requirement.

MR. LEVIN: Well, you might want to go back and look at the discussion on the SECY paper because I think they actually disposition them the same way.

MS. GILLES: It sounds like that would be a good comment to make on the rulemaking.

Any further questions on Part 51?

(No response.)

MS. GILLES: Okay. Then our final topic before closing remarks covers four sections, Parts 10, 25, 75, and 95, all related to national security information, safeguards information, authorization access issues. Geary?

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

PART 25, ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

PART 75, SAFEGUARDS ON NUCLEAR MATERIAL--IMPLEMENTATION OF US/IAEA AGREEMENT

PART 95, FACILITY SECURITY CLEARANCE AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION

AND RESTRICTED DATA

MR. MIZUNO: Briefly. Just most of these changes that were made were conforming changes that were intended to update the Commission's requirements with respect to a range of security and safeguards matters. I really don't have very much to say because I don't think there is going to be very much interest with these provisions.

Any questions?

(No response.)

MR. MIZUNO: Okay.

MS. GILLES: Okay. Then I think Geary is going to make some closing remarks.

MR. MIZUNO: Why don't you just start?

MS. GILLES: Okay. I'll start. First of all, we have a staff member who would like to make a plug for his own public workshop coming up tomorrow. So I am going to let Joel Colaccino go ahead and make a plug.

MR. COLACCINO: Thanks, Nan.

Hi. My name is Joe Colaccino. I am working on the COL application reg guide, as most of you know.

Tomorrow we're going to be meeting at 8:30 A.M. That is the good news. The bad news is we are

not meeting in this building. Those of you who have seen the meeting notice know that we are meeting in Bethesda at the Marriott Residence Inn, 7335 Wisconsin Avenue. That translates to two blocks south of Bethesda Metro on the east side of Wisconsin Avenue.

So we will start at 8:30. The first morning we will lay out the entire reg guide as we have got it on our Web site right now. In the afternoon, we will talk about the first 2 of 39 sections that have been issued as work in progress documents.

One of them is the COL application checklist. The second one was issued just this morning, better late than never, on radiation protection.

What we hope to talk about in this meeting is go through that section as well as what the staff thinks will be the technical topics associated with the review of a COL application.

As I said, that is available now. I don't remember the session number off the top of my head, but I did put about 30 copies on the table outside the door here. So you can pick up a copy and give yourself some reading by the television tonight as you sleep if you're here from out of town.

Anyway, we'll see you at 8:30 tomorrow morning for those of you who are coming. Oh, I guess yes. How many people do plan to come tomorrow? Hands?

(Whereupon, there was a show of hands.)

MR. COLACCINO: Do I have enough? I have enough copies. Okay. Thank you all at the table. I appreciate it.

MS. GILLES: Okay. I also had a request from a panel member to go back to one of the comments made earlier. This was a comment regarding the fact that some of the permit conditions that have been issued in, I believe, the final safety evaluation reports for the early site permits, that those were inconsistent with the rule language in the proposed rule regarding the need for those conditions to be satisfied at the time of COL issuance.

And the request was "Please help us by pointing to the specific conditions you're talking about where they are inconsistent with the rule language. That will help us greatly."

We heard at least one subject matter where there may be a need for an additional meeting during the comment period. I guess I just wanted to offer the opportunity for anyone in the audience to suggest

that additional meetings might be needed.

MR. BELL: Which topic was that?

MS. GILLES: The topic, I believe, -- and, Russ, correct me if I am wrong -- was the severe accident change criteria for design certification rules. Adrian?

MR. HAYMER: Yes. And I think there are two other areas. One is the 52.103 process, just to go through that. I really think it would be very beneficial if we worked our way through how that would play out in detail.

We have been at a high level. We need to come down and really walk through that process and to see if we have got that right. And perhaps we do. And perhaps it's just a process issue. But if there are reasons why we need to adjust the rule language, it would be good to try and identify those if we can in the period of time we've got during the comment period.

And the other one I think, I'm not quite sure if we closed everything out on the process for LWA. Perhaps we did, and perhaps that is just a process issue. But I still think that at least we have got to get a better understanding of what that is from a process perspective.

So there are those three areas.

MS. GILLES: Adrian, regarding the LWA issue, that is also an issue that you think needs to be addressed during the public comment period? I mean, a meeting needs to occur during the public comment period?

MR. HAYMER: Well, I think it would be good just to aim for that. I wouldn't say at this point in time it's vital, but I think it would be beneficial just in case we suddenly recognize as we're talking through it, that there is something that we need to address. And sooner is always better than later.

MS. GILLES: Okay.

MR. ZALCMAN: Nan, if I could address that for a moment?

MS. GILLES: Yes, sir?

MR. ZALCMAN: I think it was an important point earlier in the day when somebody mentioned the Chairman had some remarks regarding the LWA, but the staff was not directed to make a change to the rule in that area.

If you're going to pursue that, then I am going to use Geary's admonition that any change in this area may warrant recirculation. So walk the fine

line between what you are looking for and what the implications may be.

MS. GILLES: Thank you, Barry. That is a good point.

CLOSING REMARKS

MS. GILLES: I just want to take a quick minute to thank a couple of other staff members without whom this workshop would not have come off. That's Wesley Held, who was instrumental in setting up everything to do with this workshop; and Harry Tovmassian, who was also a great help and is part of the rulemaking team.

Finally, I just wanted to reiterate that there are public meeting feedback forms on the table outside. We appreciate any feedback you have so that in the future, we can improve on these types of meetings. I'm going to turn it over to Jerry to make any final comments he has.

MR. WILSON: Thank you.

Just a reminder that any comments you have you need to submit. Don't rely on this meeting. And, as we stated in the proposed rule, beyond what we stated in the SOC, we are not going to be addressing comments that were submitted on the 2003 version of the rule. So if you believe any of those comments

weren't addressed, you need to resubmit those also.

And it looks like Adrian has a question.

MR. HAYMER: Yes. You did say right at the beginning, Nan, when the transcript would be available. I just wondered, could you just repeat that for us?

MS. GILLES: I don't think I said when. I think I said we would post it on the Web site as soon as it was available to us. I think that's probably going to be within a week.

MR. HAYMER: Okay. Thank you very much.

MR. WILSON: And before we leave, I want to commend those of you who lasted through the whole day. That's impressive. It's a big turnout today. So I hope that you found this useful. With that, goodbye.

(Whereupon, the foregoing matter was concluded at 4:33 p.m.)