DRAFT SUPPLEMENTAL PROPOSED RULE

Licenses, Certifications, and Approvals for Nuclear Power Plants; Supplemental Proposed Rule (RIN 3150-AG24)

Background Information

The Nuclear Regulatory Commission (NRC) is planning to supplement its proposed rule entitled "Licenses, Certifications, and Approvals for Nuclear Power Plants," which was published on March 13, 2006 (71 FR 12782). This supplemental proposed rule would amend the regulations applicable to limited work authorizations (LWA), which allow certain construction activities on nuclear power plants to commence before a construction permit or combined license is issued. The supplemental proposed rule would modify the scope of activities that are considered construction requiring a LWA and would also make changes to the review and approval process for LWA requests. The NRC is proposing these changes to enhance the efficiency of its licensing and approval process for new nuclear reactors.

The public comment period for the supplemental proposed rule is 30 days. Following the close of the public comment period and consideration of public comments, the NRC plans to adopt the changes in the supplemental proposed rule as part of the final Part 52 rulemaking. This will allow all of the changes affecting new nuclear reactor licensing to be published in one, comprehensive final rule. However, the Commission may publish the changes in the supplemental proposed rule as a separate final rule.

In order to provide as much time as possible for public consideration of the supplemental proposed rule, the NRC is publishing on the NRC website the supplemental proposed rule as approved by the Commission prior to its publication in the Federal Register. While the NRC does not anticipate any major changes to the language of the supplemental proposed rule as posted on the NRC website, the public should note that the language on the NRC website is subject to change prior to publication in the Federal Register. Once published in the Federal Register, the supplemental proposed rule will be made available in the "Proposed Rules" section of this website. Public comments should be submitted in accordance with the instructions to be provided in the Federal Register.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 50, 51 and 52

RIN 3150-AG24

Licenses, Certifications, and Approvals for Nuclear Power Plants; Supplemental Proposed Rule

AGENCY: Nuclear Regulatory Commission

ACTION: Supplemental proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to supplement its proposed rule entitled "Licenses, Certifications, and Approvals for Nuclear Power Plants," which was published on March 13, 2006 (71 FR 12782). The NRC is proposing to supplement that proposed rule by amending the regulations applicable to limited work authorizations (LWA), which allow limited construction activities on nuclear power plants to commence before a construction permit or combined license is issued. This supplemental proposed rule would modify the scope of activities that are considered construction requiring a LWA and would also make changes to the review and approval process for LWA requests. The NRC is proposing these changes to enhance the efficiency of its licensing and approval process for new nuclear reactors.

DATE: Submit comments by **[insert date 30 days after publication in the *Federal Register.]*** Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please

include the following number RIN 3150-AG24 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@ nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking web site at http://ruleforum.llnl.gov. Address questions about our rulemaking website to Carol Gallagher (301) 415-5905; email cag@nrc.gov. Comments may also be submitted via the Federal eRulemaking portal http://www.regulations.gov.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone (301) 415-1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking web site at http://ruleforum.llnl.gov.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at http://www.nrc.gov/NRC/ADAMS/index.html. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text

and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Geary Mizuno, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone (301) 415-1639; e-mail: GSM@nrc.gov.

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I. Background.

A. History of the Part 52 Rulemaking Proceeding

The NRC issued 10 CFR part 52 on April 18, 1989 (54 FR 15372), to reform its licensing process for future nuclear power plants. The rule added alternative licensing processes in 10 CFR part 52 for early site permits, standard design certifications, and combined licenses. These were additions to the two-step licensing process that already existed in 10 CFR part 50. The processes in 10 CFR part 52 allow for resolving safety and environmental issues early in the licensing proceedings and were intended to enhance the safety and reliability of nuclear power plants through standardization.

The NRC had planned to update 10 CFR part 52 after using the standard design certification process. The proposed rulemaking action began with the issuance of SECY-98-282, “Part 52 Rulemaking Plan,” on December 4, 1998. The Commission issued a staff

requirements memorandum on January 14, 1999 (SRM on SECY-98-282), approving the NRC staff's plan for revising 10 CFR part 52. Subsequently, the NRC obtained considerable stakeholder comment on its planned action, conducted three public meetings on the proposed rulemaking, and twice posted draft rule language on the NRC's rulemaking web site before issuance of the initial proposed rule on July 3, 2003 (68 FR 40026). However, a number of factors led the NRC to question whether the July 2003 proposed rule would meet the NRC's objective of improving the effectiveness of its processes for licensing future nuclear power plants (71 FR 12782). As a result, the NRC decided that a substantial rewrite and expansion of the original proposed rulemaking was desirable so that the agency may more effectively and efficiently implement the licensing and approval processes for future nuclear power plants under part 52. Accordingly, the Commission decided to revise the July 2003 proposed rule and published the revised proposed rule for public comment on March 13, 2006 (71 FR 12782). The public comment period on the March 2006 proposed rule ended on May 30, 2006.

II. Discussion

A. History of the NRC's Concept of Construction and the LWA

Section 101 of the Atomic Energy Act of 1954, as amended (AEA) prohibits the manufacture, production, or use of a commercial nuclear power reactor, except where the manufacture, production or use is conducted under a license issued by the Commission. While construction of a nuclear power reactor is not mentioned in section 101, section 185 of the AEA requires that the Commission grant construction permits to applicants for licenses to construct or modify production or utilization facilities, if the applications for such permits are acceptable to the Commission. However, the term construction is not defined anywhere in the AEA or in the legislative history of the Act.

To prevent the construction of production or utilization facilities before a construction

permit is issued, the NRC proposed a regulatory definition of construction in 1960 (25 FR 1224; February 11, 1960). The definition of construction was adopted in a final rule that same year and codified in 10 CFR 50.10(b) (25 FR 8712; September 9, 1960). As promulgated, § 50.10(b) stated that no person shall begin the construction of a production or utilization facility on a site on which the facility is to be operated until a construction permit had been issued. Construction was defined in § 50.10(b) as including:

> pouring the foundation for, or the installation of, any portion of the permanent facility on the site; but [not to] include: (1) Site exploration, site excavation, preparation of the site for construction of the facility and construction of roadways, railroad spurs and transmission lines; (2) Procurement or manufacture of components of the facility; (3) Construction of non-nuclear facilities (such as turbo-generators and turbine buildings) and temporary buildings (such as construction equipment storage sheds) for use in connection with the construction of the facility; and (4) with respect to production or utilization facilities, other than testing facilities, required to be licensed pursuant to section 104a. or section 104c. of the Act, the construction of buildings which will be used for activities other than operation of a facility and which may also be used to house a facility. (For example, the construction of a college laboratory building with space for installation of a training reactor is not affected by this paragraph). (25 FR 8712; September 9, 1960)

The definition of construction remained unchanged until 1968, when the driving of piles was specifically excluded from the definition (33 FR 2381; January 31, 1968). This change was implemented by amending § 50.10(b)(1) to read: "Site exploration, site excavation, preparation of the site for construction of the reactor, *including the driving of piles*, and construction of roadways, railroad spurs, and transmission lines." The rationale for this change, as articulated in the proposed rule (32 FR 11278; August 3, 1967), seems to have been that the driving of piles was closely related to "preparation of the site for construction" and that the performance of this type of site preparation activity would not affect the NRC's subsequent decision to grant or deny the construction permit. With the exception of the exclusion of the driving of piles from the definition of construction in 1968, the NRC's interpretation of the scope of activities requiring a construction permit *under the AEA* has remained largely unchanged.

However, following the enactment of the National Environmental Policy Act of 1969, as amended (NEPA), the Commission adopted a major amendment to the definition of construction in § 50.10 (37 FR 5745; March 21, 1972). In that rulemaking, the Commission adopted a much more expansive concept of construction. Specifically, a new § 50.10(c) was adopted stating that no person shall effect "commencement of construction" of a production or utilization facility on the site on which such facility will be constructed until a construction permit has been issued. "Commencement of construction" was defined as

> any clearing of land, excavation or other substantial action that would adversely affect the natural environment of a site and construction of nonnuclear facilities (such as turbogenerators and turbine buildings) for use in connection with the facility, but does not mean: (1) Changes desirable for the temporary use of the land for public recreational uses, necessary boring to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site or to the protection of environmental values; (2) Procurement or manufacture of components of the facility; and (3) With respect to production or utilization facilities, other than testing facilities, required to be licensed pursuant to section 104a or section 104c of the Act, the construction of buildings which will be used for activities other than operation of a facility and which may also be used to house a facility. . . . (37 FR 5748)

The Commission explained that expansion of the NRC's permitting authority was:

> [C]onsistent with the direction of the Congress, as expressed in section 102 of the National Environmental Policy Act of 1969, that, to the fullest extent possible, the policies, regulations and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in that Act. Since site preparation constitutes a key point from the standpoint of environmental impact, in connection with the licensing of nuclear facilities and materials, these amendments will facilitate consideration and balancing of a broader range of realistic alternatives and provide a more significant mechanism for protecting the environment during the earlier stages of a project for which a facility or materials license is being sought. (37 FR 5746)

Thus, the Commission's interpretation of its responsibilities under NEPA, not the AEA, was the driving factor leading to its adoption of § 50.10(c).[1]

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[1] *See The Carolina Power and Light Company* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), 7 AEC 939, 943 (June 11, 1974)(hereinafter *Shearon Harris*)("The regulations were revised in 1972, not because of any requirements of the Atomic Energy Act, but rather to implement the precepts of NEPA which had then recently been enacted."); *Kansas Gas and Electric Company* (Wolf Creek Nuclear Generating Station, Unit No. 1), 5 NRC 1, 5 (Jan. 12, 1977)(explaining that NEPA led the AEC to amend its regulations in several respects, including the changes to 50.10(c)).

Two years after the expansion of the Commission's permitting authority resulting from the promulgation of § 50.10(c), the NRC promulgated § 50.10(e) (39 FR 14506; April 24, 1974). This provision created the current LWA process, which was added to allow site preparation, excavation and certain other on-site activities to proceed before issuance of a construction permit. Prior to the promulgation of § 50.10(e), NRC permission to engage in site preparation activities before a construction permit was issued could only be obtained via an exemption issued under § 50.12. The provisions of § 50.10(e) allowed the NRC to authorize the commencement of both safety-related (known as "LWA-II" activities) and non safety-related (known as "LWA-I" activities) on-site construction activities before issuance of a construction permit if the NRC had completed a final environmental impact statement (FEIS) on the issuance of the construction permit and the presiding officer in the construction permit proceeding had made the requisite environmental and, in the case of an LWA-II, safety-related findings.

B. NRC's Proposed Concept of Construction and the LWA (PRM-50-82)

The NRC received several comments in response to its Part 52 proposed rule revision published on March 13, 2006 (71 FR 12782), including comments submitted by the Nuclear Energy Institute (NEI) dated May 25, 2006.[2] NEI's comments suggested modifications to the NRC's LWA process including: (1) that non-safety related "LWA-I" activities, currently reflected in § 50.10(c) and § 50.10(e)(1), be allowed to proceed without prior authorization from the NRC, and (2) that the approval process for safety-related "LWA-II" activities be accelerated. NEI's comment also stated that the current definition of construction in § 50.10(b) reflects the correct interpretation of the Commission's licensing authority under the AEA.

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[2] *See* Letter from Adrian P. Heymer, Nuclear Energy Institute to Annette L. Vietti-Cook, Secretary, U.S. Nuclear Regulatory Commission, *Pre-Licensing Construction Activity and Limited Work Authorization Issues relating to NRC Proposed Rule, "Licenses, Certifications and Approvals for Nuclear Power Plants," 71 FR 12, 782 (March 13, 2006)(RIN 3150-AG24)*(May 25, 2006).

Further, NEI's comment letter stated that "[t]o the extent the NRC determines that these LWA issues cannot be addressed in the current rulemaking, we ask that the Commission initiate an expedited rulemaking." The NRC has determined that the changes suggested in the NEI comment could not be incorporated into the final Part 52 rule without re-noticing. Therefore, the Commission has decided that the NEI letter meets the sufficiency requirements described in 10 CFR 2.802(c) and is docketing the letter as a petition for rulemaking (PRM-50-82). Furthermore, the NRC has determined that it is appropriate to seek public comment on the action requested by petitioner within the context of this supplemental proposed rule, which has been developed in response to NEI's request, as allowed under 10 CFR 2.802(e).

NEI supported its suggested changes to the LWA process, stating that the business environment requires that new plant applicants seek to minimize the time interval between a decision to proceed with a combined license application and the start of commercial operation. In order to achieve this goal, NEI states that non safety-related "LWA-I" activities would need to be initiated up to two years before the activities currently defined as "construction" in § 50.10(b). In NEI's view, the current LWA approval process would constrain the industry's ability to use modern construction practices and needlessly add eighteen (18) months to estimated construction schedules for new plants that did not reference an early site permit (ESP) with LWA authority.

The NRC agrees, in part, with NEI's comments and is now issuing this supplement to the March 13, 2006 proposed rule.[3] This supplemental proposed rule would narrow the scope

[3]Industry stakeholders did not raise issues relating to perceived problems either with the LWA process or, more generally, with the definition of construction during the period leading to the March 2006 proposed rule and no such changes were suggested in the proposed rule. Therefore, the NRC is providing notice and an opportunity for public comment on the changes proposed in this supplement. The Commission may adopt this supplemental proposed rule either as part of the final rule promulgating the changes to Part 52 (*see* 71 FR 12782; March 13, 2006), or in a separate final rule.

of activities requiring permission from the NRC in the form of limited work authorizations (LWA) by eliminating the concept of "commencement of construction" currently described in § 50.10(c) and the authorization described in § 50.10(e)(1). Instead, under the supplemental proposed rule, NRC authorization would only be required before undertaking activities that have a reasonable nexus to radiological health and safety and/or common defense and security (i.e. excavation, subsurface preparation, installation of the foundation, and on-site, in-place fabrication, erection, integration or testing, for any structure, system or component of a facility required by the Commission's rules and regulations to be described in the site safety analysis report or preliminary or final safety analysis report). While this redefinition of "construction" would result in fewer activities requiring NRC permission in the form of a LWA, it also redefines certain activities (such as the driving of piles), that are currently excluded from the regulatory definition of construction given in § 50.10(b), as construction requiring a LWA.

Further, this proposed rule would provide an optional, phased application and approval procedure for construction permit and combined license applicants to obtain limited work authorizations. Specifically, the proposed rule would provide an environmental review and approval process for LWA requests that would allow the NRC to grant an applicant permission to engage in LWA activities after completion of a limited environmental impact statement addressing those activities, but before completion of the comprehensive environmental impact statement addressing the underlying request for a construction permit or combined license. Finally, this proposed rule would specifically address the environmental review required in situations where the LWA activities are to be conducted at sites for which the Commission has previously prepared an environmental impact statement for the construction and operation of a nuclear power plant, and for which a construction permit was issued, but construction of the

plant was never completed.

C. NRC's Proposed Concept of Construction and the AEA

This change is fully consistent with the Commission's radiological health and safety and common defense and security responsibilities under the AEA.[4] Specifically, the Commission has determined that the site-preparation activities that would no longer be considered construction under this proposed rule do not have a reasonable nexus to radiological health and safety, or the common defense and security. Further, as previously mentioned, the term "construction" is not defined in the AEA or in the Act's legislative history. Instead of expressly defining the term in the AEA, Congress entrusted the agency with the responsibility of determining what activities constitute construction.[5] The Commission believes that its proposed definition of the term "construction" is reasonable.

D. Proposed Supplement Complies With NEPA

1. NRC's Proposed Concept of Construction is Consistent with the Legal Effect of NEPA

The proposed change in the definition of construction is also consistent with the legal effect of NEPA. Section 50.10(c) was originally added to part 50 due to the interpretation that the enactment of NEPA, not a change in the powers delegated to the agency in the AEA, required the NRC to expand its permitting/licensing authority. However, subsequent judicial decisions have made it clear that NEPA is a procedural statute and does not expand the jurisdiction delegated to an agency by its organic statute.[6] Therefore, while NEPA may require the NRC to consider the environmental effects caused by the exercise of its permitting/licensing

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[4] *See State of New Hampshire v. Atomic Energy Commission*, 406 F.2d 170, 174-75 (1st Cir. 1969).

[5] *Shearon Harris*, 7 AEC 939.

[6] *See,e.g., Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350-52 (1989); *Natural Resources Defense Counsel v. U.S. Environmental Protection Agency*, 822 F.2d 104, 129 (D.C. Cir 1987); *Kitchen v. Federal Communications Commission*, 464 F.2d 801, 802 (D.C. Cir. 1972).

authority, the statute cannot be the source of the expansion of the NRC's authority to require construction permits, combined licenses, or other forms of permission for activities that are not reasonably related to radiological health and safety or protection of the common defense and security. Since NEPA cannot expand the Commission's permitting/licensing authority under the AEA, the elimination of the blanket inclusion of site preparation activities in the definition of construction under § 50.10(c) does not violate NEPA.

2. NRC's Proposed Concept of the "Major Federal Action" is Consistent with NEPA Law

Because the AEA does not authorize NRC to require an applicant to obtain permission before undertaking site preparation activities that do not implicate radiological health and safety or common defense and security, as a general matter the Commission considers these activities "non-Federal action" for the purposes of implementing its NEPA responsibilities. Generally, non-Federal actions are not subject to the requirements of NEPA.[7]

Further, the Commission believes that these non-Federal site preparation activities would not generally be "federalized" if the Commission were to ultimately grant a combined license or construction permit. The grant of a construction permit or combined license by the Commission is not a legal condition precedent to these non-Federal, site preparation activities. While the Commission recognizes that there may be a "but for" causal relationship between certain non-Federal site preparation activities and the major Federal action of issuing a construction permit or combined license, such a "but for" causal relationship is not sufficient to require non-Federal, site preparation activities to be treated as Federal action for the purposes of NEPA.[8]

In addition, under the proposed definition of construction, the Commission does not

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[7] *Save the Bay, Inc. v. U.S. Army Corps of Engineers*, 610 F.2d 322, 326 (5th Cir. 1980)

[8] *See Landmark West! v. U.S. Postal Service,* 840 F.Supp. 994, 1006 (S.D.N.Y. 1993)(citing cases).

believe that it has sufficient ability or discretion to influence or control the non-Federal, site preparation activities to the extent that its influence or control would constitute practical or factual veto power over the non-Federal action. Further, the Commission does not believe that allowing the non-Federal, site preparation activities to be undertaken would restrict its consideration of alternative sites or the need to assess whether there is an "obviously superior" site. Specifically, while the Commission recognizes that narrowing the definition of construction may result in substantial changes to the physical properties of a site, many of the fundamental elements that enter into a determination of the existence of an "obviously superior" site would not be affected by the changes to those physical properties. For example, meteorology and seismology would not be affected in any significant way by the non-Federal site preparation activities.

However, while the effects caused by the non-Federal, site preparation activities would not be considered effects of the Commission's licensing action, the effects of the non-Federal activities would be considered during any subsequent "cumulative impacts" analysis. Specifically, the effects of the non-Federal activities would be considered in order to establish a baseline against which the incremental effect of the Commission's major Federal action (i.e. issuing a LWA, construction permit or combined license) would be measured. These incremental impacts may be additive or synergistic.

3. NRC's Phased Approval Approach is not Illegal Segmentation Under NEPA

The phased application and approval of LWAs does not raise the concerns underlying the prohibition of segmentation under NEPA law. Generally, the NEPA segmentation problem arises when the environmental impacts of projects are evaluated in a piecemeal fashion and, as a result, the comprehensive environmental impacts of the entire Federal action are never considered or are only considered after the agency has committed itself to continuation of the project. Another associated segmentation problem arises when pieces of a Federal action are

evaluated separately and, as a result, none of the individual pieces are considered "major federal actions" requiring an EIS.[9]

Neither of these segmentation concerns are presented by the approach proposed here. First, under both LWA application options, the environmental effects associated with the LWA activities and the project as a whole (i.e. issuance of a construction permit or combined license) would be evaluated in an EIS. Therefore, the segmentation problem of considering a project in phases, thereby avoiding completion of an EIS, is not an issue. In addition, all of the environmental impacts associated with the construction and operation of the proposed plant, *including the impacts associated with the LWA activities*, would be considered together, through incorporation by reference, in the EIS prepared on the construction permit or combined license application. This comprehensive consideration of environmental impacts would take place *before* the NRC is committed to issuing any construction permit or combined license. The fact that the NRC will not have prejudged the ultimate decision of whether to grant a construction permit or a combined license by issuing the LWA, coupled with the requirement that the site redress plan be implemented in the event that the permit or license is ultimately not issued, also ensures that issuance of the LWA would not foreclose reasonable alternatives.

In addition, the proposed application and approval process is consistent with the Commission's previously expressed position that NEPA does not, as a general matter, prohibit an agency from undertaking part of a project without a complete environmental analysis of the whole project.[10] The key factors used to support the Commission's position in *Clinch River* were; (1) that the site preparation activities in that case would not result in irreversible or irretrievable commitments to the remaining portions of the project and (2) the environmental

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[9]Daniel R. Mandelker, *NEPA Law and Litigation*, 9-25 (2nd ed. 2004).

[10]*See Tennessee Valley Authority* (Clinch River Breeder Reactor Plant), 16 NRC 412, 424 (Aug. 17, 1982)(hereinafter *Clinch River*).

impacts of the site preparation activities allowed in that case were substantially redressable.[11]

These considerations are reflected in the provisions of the supplemental proposed rule. Specifically, § 50.10(c)(6) of the proposed rule states that any activity undertaken pursuant to a LWA are entirely at the risk of the applicant, that the issuance of the LWA has no bearing on whether the construction permit or combined license should be issued, and that the environmental impact statement associated with the underlying request will not consider the sunk costs associated with the LWA activities. In addition, § 50.10(c)(3) would require an applicant requesting a LWA to submit a plan for redress of the site to be implemented in the event that the LWA holder is ultimately not issued a construction permit or combined license. This site redress plan must "achieve an environmentally stable and aesthetically acceptable site suitable for whatever non-nuclear use may conform with local zoning laws" in the event that the LWA holder is not ultimately issued a construction permit or combined license. The redress plan would achieve this objective by addressing site impacts resulting from LWA activities. Impacts associated with pre-LWA activities would not be addressed in the redress plan. Further, § 50.10(c)(7) would require that the site redress plan be implemented within a reasonable time and that the redress of the site occur within eighteen (18) months of the Commission's final decision denying a construction permit or combined license.

It should be noted that while redress of site impacts may have the practical effect of mitigating some environmental impacts, the redress plan is not a substitute for a thorough evaluation of environmental impacts, or development of mitigation measures that may be necessary to provide relief from environmental impacts associated with the proposed LWA activities. The primary purpose of the site redress plan is to ensure that impacts associated with any LWA activities performed at the site will not prevent the site from being utilized for a

[11] *Id*.

permissible, non-nuclear alternative use. In this way, the redress plan helps to preserve the Commission's ability to objectively evaluate an application for a construction permit or combined license, despite the fact that LWA activities have been undertaken at the site.

E. Inclusion of Additional Activities as "Construction" under § 50.10(b)

A significant change proposed in this supplemental proposed rule is the inclusion of activities – such as the driving of piles and excavation of foundations for safety-related structures – in the definition of construction that are not currently defined as construction in §50.10(b).

Although the driving of piles was not expressly included in the definition of "construction" contained in § 50.10(b) before the amendment of § 50.10(b)(1) in 1968, this activity was generally considered to be encompassed in the existing definition of construction at that time (*See* 33 FR 2381; January 31, 1968). The proposed rule suggesting that the driving of piles be expressly excluded from the definition of construction simply states that the "activity is closely related to, and may be appropriately included in" site preparation activities, which were not considered construction (32 FR 11278; August 3, 1967).[12] The rationale for not including the driving of piles, and site preparation activities generally, in the definition of construction seems to have been that these activities would have no effect on the NRC's ultimate decision to grant or deny a construction permit and that these activities were undertaken entirely at the applicant's risk (32 FR 11278).

The NRC does not currently believe that the exclusion of a site preparation activity from the definition of construction should hinge on this factor. The Commission believes that the site preparation activities described in § 50.10(b) of this supplement, including the driving of piles and excavation of foundations in certain situations, have a reasonable nexus to radiological

[12]The proposed rule language was promulgated without modification in the final rule. 33 FR 2381.

health and safety, and/or common defense and security and, therefore, are properly considered "construction" as that term is used in § 185 of the AEA. In addition, the inclusion of these activities in the definition of construction (i.e. requiring an LWA before they are undertaken), coupled with the phased approval process suggested in this supplemental proposed rule, would allow for early resolution of the safety issues associated with these activities. Early resolution of safety issues is consistent with the general rationale underlying the licensing and permitting processes provided in 10 CFR Part 52.

F. Phased Application and Approval Process

Another significant change suggested in this supplemental proposed rule is the modification of the procedure for obtaining LWA approval by implementing an optional phased application and approval process. Specifically, as proposed, § 2.101(a)(9) would allow applicants for construction permits and combined licenses the option of submitting either: (1) a complete application or (2) a two part application with part one including information required for the NRC to make a decision on the applicant's request to undertake LWA activities and part two containing all other information required to obtain the underlying license or permit. The proposed rule would allow the NRC to consider the environmental impacts attributable to the requested LWA activities separately, either as part of a comprehensive environmental impact statement (EIS) in the case where a complete application is submitted, or in a separate EIS addressing only the LWA activities in the case of a two-part application. After consideration of the environmental impacts and the relevant safety-related issues associated with the LWA activities, the NRC would be permitted to allow the applicant to undertake the LWA activities, even if the EIS on the underlying request (i.e. construction permit or combined license) is not complete.

The NRC believes that this phased application/approval process would add efficiencies to the licensing/construction process by preventing unnecessary delay in construction

schedules, which would result if issuance of a LWA for safety-related activities were delayed until the final environmental impact statement and adjudicatory hearing on the entire underlying license application were complete. In addition, the proposed application/approval process would result in the timely resolution of relevant safety and environmental issues at an earlier stage in the licensing process. As previously discussed, the NRC believes that these efficiencies can be gained without compromising the agency's NEPA responsibilities, as the phased approach presented in this supplemental proposed rule does not constitute illegal segmentation.

G. EIS Prepared, but Facility Never Constructed

The supplemental proposed rule also specifically addresses the situation where a request is made to perform LWA activities at a site for which an EIS has previously been prepared for the construction and operation of a nuclear power plant, and a construction permit has been issued, but construction of the plant was never completed. In this special situation, the proposed supplement would allow an applicant to reference the previous EIS in its environmental report, but requires that the applicant identify any new and significant information material to the matters required to be addressed in the proposed § 51.49(a). Further, in these special cases the proposed supplement would allow the NRC to incorporate the previous EIS by reference when preparing its draft EIS on the LWA activities. The draft EIS on the LWA request would be limited to the consideration of any significant new information dealing with the environmental impacts of construction, relevant to the activities to be carried out under the LWA. Further, in a hearing on issuance of a LWA at such sites, the presiding officer would be limited to determining whether there is significant new information pertaining to the environmental impacts of the construction activities encompassed by the previous EIS that are analogous to the activities to be conducted under the LWA. The presiding officer would evaluate significant new information in determining whether a LWA should be issued as

proposed by the Director of Nuclear Reactor Regulation.

This provision is designed to gain efficiency by using existing environmental impact statements to evaluate the environmental impacts of activities to be performed under a LWA. The Commission believes that this practice is appropriate because the referenced environmental review will come in the form of a FEIS prepared by NRC staff for sites on which permission to construct a nuclear power plant was ultimately granted by the Commission. The Commission understands that the activities proposed in a current LWA request may be different from the activities proposed and analyzed in the previous FEIS referenced by an applicant and relied upon by NRC staff. However, it is the Commission's intent that if such differences will likely result in significant changes to the environmental impacts caused by the LWA activities currently proposed by the applicant, then the differences should be considered "new and significant information" material to the environmental impacts that may reasonably be expected to result from the LWA activities and, therefore, should be addressed in the applicant's environmental report, analyzed by the staff in a supplement to the existing FEIS, and considered by the presiding officer.

Further, for the reasons previously discussed in section D.3, the Commission does not believe that authorizing LWA activities before completion of the FEIS on the combined license or construction permit would have the effect of prejudging the license/permit, or foreclosing reasonable alternatives.

III. Section-by-Section Analysis

Part 2

Section 2.101 Filing of application

Section 2.101 would be revised to add a new paragraph (a)(9), which would state that an applicant for a construction permit or combined license may submit a request for an LWA either as part of a complete application under paragraphs (a)(1) through (4), or in two parts

under this paragraph (*i.e.*, a "phased LWA application"). If the LWA application is submitted as part of a complete construction permit or operating license application, the application must include the information required by § 50.10(c).

If the application is a phased LWA application, the first part must contain the information required by § 50.10(c) on the LWA, as well as the general information required of all production and utilization facility applicants under § 50.33(a) through (f). The second part of the application would contain the remaining information otherwise required to be filed in a complete application under § 2.101(a)(1) thorough (4). However, the applicant would have the further option of submitting part two in additional subparts in accordance with § 2.101(a-1). The second part (or the first subpart of multiple subparts under § 2.101(a-1)) must be filed no later than twelve (12) months after the filing of part one. Part two of the application (or the first subpart of any additional subparts submitted in accordance with § 2.101(a-1)) must be submitted no later that twelve (12) months after submission of part one of the application.

An applicant for an early site permit may *not* submit its LWA application in advance of the underlying early site permit application, and therefore is not permitted to use the procedures of Subpart F.

Section 2.104 Notice of hearing.

Paragraph (d)(1)(iii) of § 2.104 would be modified to more clearly refer to the authority requested under § 52.17(c) as the limited work authorization under § 50.10.

Subpart F

The title of Subpart F would be revised to reflect the broader scope of matters covered under this section, as described under § 2.600.

Section 2.600 Scope of subpart

The statement of scope in § 2.600 would be revised to reflect the new set of procedures for phased LWA applications in proposed §§ 2.641 through 2.649.

Section 2.601 Applicability of other sections

Section 2.601 would be corrected to add references to subparts C, L and N of part 2, in order to make clear that these subparts (in addition to subparts A and G) apply to applications and proceedings under subpart F, except as specifically provided in subpart F.

Section 2.606 Partial decision on site suitability issues

Paragraph (a) of § 2.606, which provides that a LWA may not be issued without completion of the "full review" required by NEPA, would be revised to remove the reference to a LWA, inasmuch as LWAs would now be covered in §§ 2.641 through 2.649.

Section 2.641 Filing fees

Section 2.641, which is comparable to current § 2.602, provides that a phased LWA application shall be accompanied by the applicable filing fees in § 50.30(e) and part 170 of this chapter.

Section 2.643 Acceptance and docketing of application for limited work authorization

Section 2.643, which is comparable to current § 2.603, describes the acceptance and docketing requirements for phased LWA applications, and the requirement for publication in the Federal Register of a notice of docketing. Paragraph (a) provides that each part of the application, when first received, will be treated as a tendered application and assessed for

sufficiency. If the submitted part of the application is determined to be incomplete, the Director of NRR (Director) will inform the applicant. The determination of completeness will generally be made in 30 days, barring unusual circumstances.

Under paragraph (b), the Director will docket part one of the application only if that part is "complete." The NRC would use the existing guidelines and practices for determining the completeness of applications under this section, as are used in determining completeness under § 2.101. Upon docketing, the Director will assign a docket number that will be used throughout the entire proceeding (including that part of the proceeding on part two of the application). Under paragraph (c), the Director would make the designated distributions to the Governor of the state in which the nuclear power plant will be located, and publish a notice of docketing in the Federal Register. Often in practice, the notice of hearing required by the AEA is included in the notice of docketing, but as with existing applications, this will remain a matter of discretion by the NRC, who will determine what is the most efficient course of action in this regard.

Paragraph (d) provides that part two of the application will be docketed, as with part one, when it is determined to be complete. The Commission reiterates that "part two" could be submitted in several subparts, if the applicant chose to take advantage of the provisions of § 2.101(a-1), which provides for submission of applications in three parts.

Finally, under paragraph (e), the Director will publish a second notice of docketing in the Federal Register, in this case for part two of the application. As with the notice of docketing for part one, the notice of docketing for part two may also include a notice of hearing on the second part of the application.

The Commission notes that nothing in § 2.101(a)(9), or any part of subpart F, requires that the hearing on part one of the application be completed and an initial decision issued by

the presiding officer, before part two of the application is filed.

Section 2.645 Notice of hearing

Section 2.645, which is comparable to current § 2.604, sets forth the content of the notice of hearing for each of the two parts of the proceeding. Paragraph (a) provides that the notice of hearing for part one specify that the hearing will relate only to consideration of the matters related to § 50.33(a) through (f), and the limited work authorization issues under review. Although not explicitly stated in this paragraph, interested persons who seek to intervene in the hearing on part one of the application must file a petition to intervene in accordance with the notice of hearing, and § 2.309.

Under paragraph (b), a supplementary notice of hearing will be published in the Federal Register when part two of the application is docketed. This provides a second opportunity for interested persons to file petitions to intervene with respect to the matters relevant to part two of the application. These petitions must be filed within the time period specified in the notice of hearing, and must meet the applicable requirements of subpart C of part 2, including the contention requirements in § 2.309.

Paragraph (c) of the proposed rule differs somewhat from § 2.604, in that the Commission proposes not to allow a party admitted in part one of the proceeding, who did not withdraw or was not otherwise dismissed, to automatically continue as a party in phase two of the proceeding. Instead, each party who wishes to participate in the second phase must submit a second petition to intervene in accordance with § 2.309, but the petition need not address the interest and standing requirements in § 2.309(d). The petition must be filed within the time period provided by the supplementary notice of hearing published in the Federal Register for part two of the application.

As noted in the section-by-section analysis for § 2.643, nothing in § 2.101(a)(9) or

subpart F requires that the hearing on part one of the application be completed and an initial decision issued by the presiding officer, before part two of the application is filed. Thus, there may be simultaneous hearings on parts one and two of the application. However, as reflected in paragraph (e), the Commission's intent is that the membership of the Atomic Safety and Licensing Board designated for hearings under part one be the same as for the hearings under part two, to the extent practical and consistent with timely completion of each hearing.

Section 2.647 [Reserved]

This section is reserved fo future use by the Commission.

Section 2.649 Partial decisions on limited work authorization

Section 2.649, which is comparable to § 2.606, denotes the provisions in subparts C and G relative to issues such as oral arguments, immediate effectiveness of the presiding officer's initial decision, and petitions for Commission review, that apply to partial initial decisions on a LWA rendered in accordance with this subpart. This section also states that the LWA may not be issued without completion of the environmental review required for LWAs under subpart A of part 51. Finally, this section provides that the time periods for the Commission to exercise its review and *sua sponte* authority are the same time periods provided for in part 2 with respect to a final decision on issuance of a construction permit or combined license.

Part 50

Section 50.10 License required; limited work authorization

Paragraph (a)

This paragraph, which is unchanged from the current rule, prohibits any person within

the United States from transferring or receiving in interstate commerce, manufacturing, producing, transferring, acquiring, possessing, or using any production or utilization facility except as authorized by a license issued by the Commission, or as provided in § 50.11.

Paragraph (b)

This paragraph, which is substantially modified from the current rule, prohibits any person from beginning the "construction" of a production or utilization facility on a site on which the facility is to be operated until that person has been issued a construction permit, a combined license under part 52, or a limited work authorization under paragraph (c) of this section.

The remainder of this paragraph is devoted to specifying what activities are, and are not, deemed to constitute "construction" for purposes of this paragraph's prohibition. Activities, such as site clearing, grading, site exploration, test boring, erection of temporary buildings and erection of permanent structures which are *not* required to be described in the site safety analysis report, preliminary safety analysis report, or final safety analysis report, would not be regarded as "construction," and no NRC approval would be needed to conduct those activities. The only work that would be considered construction would be the excavation, subsurface preparation, and on-site, in-place fabrication, erection, integration or testing (including the installation of foundations) of any structure, system or component required by the Commission's rules and regulations to be described in the site safety analysis report, preliminary safety analysis report, or final safety analysis report. The term, "on-site, in place, fabrication, erection, integration or testing " is intended to describe the historical process of constructing a nuclear power plant in its final, on-site location, where components or modules are integrated into the final, in-plant location and elevation. The definition is intended to

exclude persons from having to obtain a LWA, construction permit, or combined license, in order to fabricate, assemble and test components and modules in a shop building, warehouse, or laydown area located on-site.

Thus, the proposed redefinition of construction for the most part returns to the pre-1972 definition of "construction" in § 50.10(b), and removes the need for NRC approval to conduct the activities currently described in § 50.10(e)(1), except in two important respects. First, whereas existing § 50.10(b) allows the driving of piles for the facility, proposed § 50.10(b) would not permit driving of piles for any structure, system or component required to be described in an SSAR, PSAR, or FSAR unless NRC permission is obtained in the form of a LWA, construction permit, or combined license. Second, existing § 50.10(e)(1) allows a person, with NRC permission in the form of a LWA, to excavate and install the structural foundations for any structure, systems and components "which do not prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public." The proposed redefinition would not remove the need for NRC approval, but substitutes a slightly different scope of structures, systems and components whose excavation and foundation installation may be allowed under an LWA, *viz.*, those which are required to be described in the FSAR.

"Excavation," as used in paragraph (b), excludes initial site grading to attain the final ground elevation, and erosion control measures to preclude run-off, at the location where further excavation will be required for a structure, systems or component required by the Commission's regulations to be described in the FSAR. By contrast, the removal of any soil, rock, gravel or other material below the final ground elevation, in preparation for the placement of the foundation and associated retaining walls, is excavation that may not be performed without an LWA, construction permit, or combined license under part 52. The "driving of piles"

not related to ensuring the structural stability or integrity of any structure, systems or component required by the Commission's regulations to be described in the FSAR does not fall within the definition of construction in this paragraph. Therefore, piles driven to support the erection of a bridge for a temporary or permanent access road would not be considered "construction" under this section and may be performed without a LWA, construction permit, or combined license. "Installation of the foundation," means soil compaction; the installation of drainage systems and geofabric; the placement of concrete (e.g., "mudmats") or other materials which will not be removed prior to placement of the foundation of a structure; the placement and compaction of a subbase; the installation of reinforcing bars to be incorporated into the foundation of the structure; the erection of concrete forms for the foundations that will remain in-place permanently (even if non-structural); and placement of concrete or other material constituting the foundation of any structure, systems or component required by the Commission's regulations to be described in the FSAR. Foundation installation activities will require a LWA, construction permit, or combined license.

Construction is deemed to also include the "on-site, in-place," fabrication, erection, integration or testing activities for any structure, system or component required by the Commission's regulations to be described in the FSAR. The use of the term, "on-site, in place," is intended to allow such structures, systems and components, including any "modules" and subassemblies, to be fabricated, assembled and tested in a shop building, warehouse, or laydown area located on-site without a LWA, construction permit, or combined license. However, the installation or integration of that structure, system, or component into its final location in the reactor would require either a construction permit or combined license. The Commission notes that this paragraph does not apply to manufacturing, inasmuch as "manufacturing" is not "construction." Moreover, paragraph (b) refers to construction "on a site

on which the facility is to be operated;" which is not within the scope of a "manufacturing license" under subpart F of part 52. Accordingly, manufacturing is not covered by paragraph (b).

Paragraph (c)

This paragraph, which is substantially modified from the current rule, addresses the need for, nature and contents of an application for a LWA. Paragraph (c)(1) allows the Commission to issue an LWA in advance of a construction permit or combined license, authorizing the holder to perform certain delineated construction requirements.

Paragraph (c)(2) provides that an LWA application may be submitted as:

- Part of a complete application for a construction permit or combined license under § 2.101(a)(1) through (4).
- Part one of a phased application under § 2.101(a)(9).
- Part of a complete application for an early site permit under § 2.101(a)(1) through (4).
- An amendment to an already-issued early site permit

Paragraph (c)(3) establishes the requirements for the content of an LWA application. The application must include a safety analysis report, an environmental report, and a redress plan. The safety analysis report, which may be a stand-alone document or incorporated into the construction permit or combined license application's preliminary or final safety analysis report, as applicable, must describe the LWA activities that the applicant seeks to perform, provide the final design for the structures to be constructed under the LWA and a safety analysis for those portions of the structure, and provide a safety analysis of the design demonstrating that the activities will be conducted in accordance with applicable Commission safety requirements.

The environmental report must meet the requirements of 10 CFR 51.49, which is discussed in more detail in the section by section analysis for that provision.

The redress plan must describe the activities that would be implemented by the LWA holder, should construction be terminated by the holder, the LWA is revoked by the NRC, or upon effectiveness of the Commission's final decision denying the associated operating license application or the underlying combined license application, as applicable. The primary purpose of the redress plan is to return the site to an environmentally stable and aesthetically acceptable condition that would allow the site to be utilized for alternative, non-nuclear uses that conform with local zoning laws. This will be accomplished through redress of site impacts resulting from LWA activities performed at the site. Redress of site impacts resulting from pre-LWA activities will not be required under the redress plan. In addition, while redress of site impacts may have the practical effect of mitigating some environmental impacts, the redress plan is not a substitute for a thorough evaluation of environmental impacts, or development of mitigation measures that may be necessary to provide relief from environmental impacts associated with the proposed LWA activities.

Paragraph (d)

This paragraph, which is substantially modified from the current rule, generally addresses the requirements associated with issuance of a LWA. Paragraph (d)(1) sets forth the requirements for the appropriate Director to issue an LWA under this section. The Director may issue an LWA only after making the appropriate findings on: (i) necessary technical qualifications, and the matter of foreign ownership or control relevant to the information required by § 50.33(a) through (f), as mandated by sections 103.d. and 182.a. of the AEA; (ii) making the necessary findings on public health and safety and common defense and security with

respect to the activities to be carried out under the LWA; (iii) NRC staff issuance of a final EIS on the LWA in accordance with the applicable requirements of part 51; and (iv) the presiding officer finding on the environmental issues relevant to the LWA in accordance with the applicable requirements of part 51, and a finding on the safety issues relevant to the LWA.

Paragraph (d)(2) requires that the LWA specify the activities that the holder is authorized to perform, consistent with the LWA application and as modified based upon the NRC's review. In addition, each LWA will be issued with a condition requiring implementation of the redress plan if the LWA holder terminates construction, the LWA is revoked, or upon effectiveness of the Commission's final decision denying the associated operating license application or the underlying combined license application, as applicable. As discussed in the analysis of paragraph (e), this condition survives the merging of the LWA into the underlying construction permit, early site permit, or combined license.

Paragraph (e)

This paragraph, which is substantially modified from the current rule, addresses the legal effect of an issued LWA. Paragraph (e)(1) provides that any activities undertaken under a limited work authorization shall be entirely at the risk of the applicant and, with exception of the matters determined under paragraph (c)(4)(ii) and (iii), the issuance of the limited work authorization shall have no bearing on the issuance of a construction permit or combined license with respect to the requirements of the Act, and rules, regulations, or orders promulgated pursuant thereto. Thus, this paragraph states that the environmental impact statement for a construction permit or combined license application for which a limited work authorization was previously issued will not address, and the presiding officer will not consider, the sunk costs of the holder of limited work authorization in determining the proposed action

(*i.e.*, issuance of the construction permit or combined license).

Paragraph (f)

This new paragraph would require the LWA holder to begin implementation of the redress plan in a reasonable time, and complete the redress no later than eighteen (18) months after termination of construction by the holder, revocation of the LWA, or upon effectiveness of the Commission's final decision denying the associated operating license application or the underlying combined license application, as applicable.

Part 51

Section 51.4 Definitions.

Section 51.4 would be revised by adding a new definition of "construction," which would make applicable throughout part 51 the definition of construction in proposed § 50.10(b). This would have the effect of excluding from an EIS for any early site permit, construction permit, combined license, or LWA issued under § 50.10(c), any discussion, evaluation or consideration of the environmental impacts or benefits associated with non-construction activities as effectively defined in § 50.10(b). This would also remove the need for the NRC decision maker, including a presiding officer, to make a NEPA finding with respect to the environmental impacts or benefits associated with those non-construction activities.

Section 51.17 Information collection requirements; OMB approval

Paragraph (b) of § 51.17 of the March 2006 proposed rule would be further modified by adding a reference to a new § 51.49, which requires submission of an environmental report by LWA applicants. While § 51.49 contains a new information collection requirement, it is not

expected to result in a net increase in the burden placed on LWA applicants because the information required under this new section was formerly required to be submitted by such applicants as part of a complete environmental report for the underlying construction permit or combined license under § 51.50, or for the ESP application (or amendment) under Part 52. The primary effect of this supplementary proposed rule would be to delay submission of most of the environmental information to the time that the underlying construction permit or combined license application and environmental report is submitted. Thus, the environmental report submitted under § 51.49 at the LWA stage would be limited in scope to address environmental impacts of LWA activities.

Section 51.20 Criteria for and identification of licensing and regulatory actions requiring environmental impact statements

Section 51.20 would be revised by adding a new paragraph (b)(6), explicitly stating that issuance of a LWA under § 50.10 is one of the actions requiring the preparation of an environmental impact statement (or a supplement to environmental impact statement).

Section 51.49 Environmental report-limited work authorization

Section 51.49 is a new section that the Commission proposes to add to part 51, to require the applicant for an LWA to submit an environmental report containing certain specified information. Both paragraph (a), which applies to an applicant requesting a LWA as part of a complete application, and paragraph (b), which applies to an applicant submitting its application in two parts under § 2.101(a)(9), must submit an environmental report which describes the activities proposed to be conducted under the LWA, the need to conduct those activities in advance of the main action, a description of the environmental impacts that may reasonably be

expected to result from the conduct of the requested activities, the mitigation measures to be implemented in order to achieve the level of environmental impacts described, and a discussion of the reasons for rejecting other mitigation measures that could be utilized to further reduce environmental impacts.

Paragraph (c) describes the contents of the environmental report when the request for the LWA is submitted as part of an early site permit application. There is no opportunity for an early site permit holder to submit its application in two parts, with the LWA information submitted in advance of the main early site permit application.

Paragraph (d) describes the contents of the environmental report when the LWA request is submitted by an early site permit holder. In this situation, the environmental report need only contain information on the LWA activities and their environmental impact, and would not include the general information required by § 51.50(b).

Paragraph (e) establishes a limited exception from the information required by paragraphs (a) and (b) to be submitted in an environmental report. For those situations where the LWA is to be conducted at a site: (i) for which the Commission previously prepared an environmental impact statement for the construction and operation of a nuclear power plant, (ii) the construction permit was issued, but (iii) the construction of the plant was never completed, then the applicant's environmental report may reference the earlier environmental impact statement. However, in the event of such referencing, the environmental report must identify whether there is new and significant information relative to the matters required to be addressed in the environmental report with respect to the environmental impacts of the requested LWA activities, as specified in paragraphs (a) or (b).

Paragraph (f) would require, for any application containing a LWA request, that the environmental report must separately evaluate the environmental impacts and proposed

alternatives to the activities proposed to be conducted under the limited work authorization. However, at the option of the applicant, the environmental report may also include the information required by § 51.50 to be submitted in the environmental report for the construction permit or combined license application. In those situations, the "integrated" environmental report would separately address the total impacts of constructing (including the LWA activities) and operating the proposed facility. This will allow the NRC to prepare in parallel the EIS for the LWA activities and a supplemental EIS for the underlying construction permit or operating license, or a complete EIS at the LWA stage.

Section 51.50 Environmental report-construction permit, early site permit, or combined license stage.

Section 51.50 of the March 2006 proposed rule would be modified by deleting in its entirety, proposed paragraph (c)(4), and revising paragraph (b), to eliminate the requirements for submission of a redress plan by an early site permit applicant. The redress plan would be required under § 50.10(c)(3)(iii).

Section 51.71 Draft environmental impact statement-contents

Section 51.71 would be modified by redesignating the current paragraph (e) as paragraph (f), and a new paragraph (e) would be added to re-emphasize that the draft environmental impact statement for the underlying construction permit or combined license will not address or consider the sunk costs associated with the LWA. Paragraph (e) is consistent with §§ 50.10(c)(6) and 51.71(e).

Section 51.76 Draft environmental impact statement-limited work authorization

Section 51.76 is a new section that the Commission proposes to add to part 51, governing the NRC's preparation of a draft environmental impact statement to support a decision on a LWA. The internal organization of § 51.76 parallels that of § 51.49. Paragraph (a) addresses the EIS to be prepared in connection with a complete application for a construction permit or combined license. This section allows the NRC to prepare either an EIS limited to LWA activities (to be followed by a supplemental EIS on the underlying construction permit or combined license), or a single, complete EIS for the construction permit or combined license. The Commission notes that this paragraph addresses the situation where the application for the construction permit or combined license is complete and includes the request and necessary information for a LWA. Paragraph (b), by contrast, addresses the situation where the LWA request is submitted in advance of the complete application for the construction permit or combined license.

Paragraph (b) applies to an EIS prepared in support of a phased LWA under § 2.101(a)(9). In this situation, if the environmental report submitted in part one is limited to the LWA activities, then the NRC will prepare an EIS limited to the LWA activities. Once part two of the application is received, which includes the environmental report required by § 51.50, the NRC will prepare a supplemental EIS for the construction permit or combined license in accordance with §51.71, and § 51.75(a) or (c), as applicable. By contrast, if the environmental report submitted in part one is a complete environmental report required by § 51.50, then the NRC will prepare a single, complete EIS for the construction permit or combined license in accordance with §51.71, and § 51.75(a) or (c), as applicable.

Paragraph (c) applies to an EIS prepared for issuance of an early site permit which will also include a LWA. The EIS will address the scope of matters required to be addressed under § 51.75(d), which depends upon the matters which the applicant chooses to address in its

environmental report, as well as the environmental impacts of conducting the LWA activities requested.

Paragraph (d) addresses the situation where an early site permit holder (as opposed to an applicant) requests a limited work authorization. In this situation, siting and many of the environmental issues have been addressed and resolved in the EIS supporting issuance of the ESP. This paragraph provides for the NRC to prepare a supplemental EIS, addressing the impacts of conducting LWA activities (including any new and significant information that would change the NRC's prior conclusion with respect to those construction activities which would actually be conducted earlier under the LWA instead of a referencing construction permit or combined license), and the adequacy of the proposed redress plan. Other than this updating, the supplemental EIS will not present any updated information on the matters resolved in the ESP EIS.

Paragraph (e) addresses the nature of the EIS prepared for a LWA requested for a site that was approved by the NRC for a plant which was never built. In such cases, the EIS will incorporate by reference the earlier EIS, address whether there is any significant new information with respect to the environmental impacts of construction relevant to the scope of activities to be performed under the LWA, and evaluate any such information in accordance with § 51.71 in determining if the LWA should be issued, or issued with appropriate conditions.

Paragraph (f) indicates that in all cases, the EIS must separately address the impacts of and proposed alternatives to the activities to be conducted under the LWA, in order to ensure that there are specific environmental findings addressing LWA activities for purposes of transparency of the final NRC NEPA findings and decision on the LWA request.

Section 51.103 Record of decision-general

Section 51.103 would be revised by adding a new paragraph (a)(6), which specifies that in a construction permit or combined license proceeding, where a LWA was previously issued, the Commission's decision on the construction permit or combined license application will not address or consider the sunk costs associated with the LWA. This provision, which is consistent with §§ 50.10(c)(6) and 51.71(e), is intended to ensure that the Commission's decision whether to issue the construction permit or combined license is not biased in favor of issuance in evaluating the environmental impacts and benefits of the construction permit or combined license.

Section 51.104 NRC proceedings using public hearings, consideration of environmental impact statements or environmental assessment

Section 51.104 would be revised by adding a new paragraph (c) specifying that in a LWA proceeding, a party may only take a position and offer evidence on the aspects of the proposed action within the scope of NEPA and this subpart which are within the scope of that party's admitted contention. This paragraph would also specify that the presiding officer will decide the matters in controversy among the parties, *viz*., the contentions related to the adequacy of the environmental impact statement prepared for the LWA.

Section 51.105 Public hearings in proceedings for issuance of construction permits or early site permits; limited work authorizations

Section 51.105 of the March 2006 proposed rule would be modified in two respects. The title of this section would be modified to add a reference to LWAs, reflecting the expanded scope of matters addressed in this section. Second, a new paragraph (c) would be added to specify the determinations which must be made by the presiding officer in a LWA hearing

associated with either a construction permit or early site permit. Under this new paragraph, the presiding officer would:

- Determine whether the requirements of section 102(2)(A), (C) and (E) of NEPA have been met with respect to the activities to be conducted under the LWA.
- Independently consider the balance among conflicting factors with respect to the LWA.
- In an uncontested proceeding, determine whether the NRC's NEPA review has been adequate.
- In a contested proceeding, determine whether in accordance with the regulations in subpart 51 the LWA should be issued.

Section 51.107 Public hearings in proceedings for issuance of combined licenses; limited work authorizations

Section 51.107 of the March 2006 proposed rule would be modified in two respects. The title of this section would be modified to add a reference to LWAs, reflecting the expanded scope of matters addressed in this section. A new paragraph (d) would also be added to specify the determinations which must be made by the presiding officer in a LWA hearing associated with a combined license. This paragraph is essentially the same as § 51.105(c).

Part 52

§ 52.1 Definitions

A new definition of limited work authorization would be added to § 52.1 of the March 2006 proposed rule, which would be defined as the authorization provided under § 50.10(c).

The Commission wishes to clarify that an applicant of an early site permit who requests authority to perform the activities permitted by § 50.10(c), would not, if the request were granted, receive a limited work authorization separate from its early site permit. Instead, the early site permit itself would authorize the activities permitted by § 50.10(c). This regulatory approach is consistent with the current language of § 52.17(c) and 52.25(b). However once an ESP is issued, the holder could apply for, and would be issued a LWA directly under § 50.10(c).

§ 52.17 Contents of applications; technical information

Paragraph (c) of § 52.17 of the March 2006 proposed rule would be modified by removing the proposed language with respect to limited work authorizations, and instead specify that if the applicant wishes to obtain a LWA, then the information required by § 50.10(c)(2) must be included in the site safety analysis report.

§ 52.24 Issuance of early site permit

This section would be removed from the March 2006 proposed rule. The requirements applicable to the holder of an early site permit with respect to limited work authorization activities are set forth in proposed § 50.10(f).

§ 52.25 Limited work authorization after issuance of early site permit.

Section 52.25 is a new section that allows an early site permit holder to request a LWA in accordance with § 50.10.

§ 52.79 Contents of application; technical information in final safety analysis report

Section 52.79 of the March 2006 proposed rule would be modified by removing the

proposed language in paragraph (a)(23) with respect to limited work authorizations. Instead, this paragraph would specify that if the applicant wishes to obtain a LWA, then the applicant must include the information required by § 50.10, either as part of a complete application under § 2.101(a)(1) through (4), or as a phased application under § 2.101(a)(9).

§ 52.80 Content of applications; additional technical information

Paragraph (c) of § 52.80(c) of the March 2006 proposed rule would be modified to require that a combined license application containing a request for a LWA must contain an environmental report, either: (i) in accordance with 10 CFR 51.50(c) if a limited work authorization under 10 CFR 50.10 is not requested in conjunction with the combined license application; or (ii) in accordance with §§ 51.49 and 51.50(c) of part 51 of this chapter if a limited work authorization is requested in conjunction with the combined license application.

IV. Specific Request for Comments.

As explained above, this supplemental proposed rule would impact the types of activities that could be undertaken without prior approval from the NRC, with NRC approval in the form of a LWA, and with NRC approval in the form of a construction permit or combined license. Therefore, in addition to the general invitation to submit comments on the proposed rule, the NRC also requests comments on the following questions:

1. What types of activities should be permitted without prior NRC approval?
2. What types of activities should be permitted under a LWA?
3. What types of activities should only be permitted after issuance of a construction permit or combined license?

V. Availability of Documents.

The NRC is making the documents identified below available to interested persons through one or more of the following methods as indicated.

Public Document Room (PDR). The NRC Public Document Room is located at 11555 Rockville Pike, Rockville, Maryland.

Rulemaking Web site (Web). The NRC's interactive rulemaking Web site is located at http://ruleforum.llnl.gov. These documents may be viewed and downloaded electronically via this Web site.

NRC's Public Electronic Reading Room (EPDR). The NRC's electronic public reading room is located at http://www.nrc.gov/reading-rm.html.

The NRC staff contact. Geary Mizuno, Mail Stop O-15D21, Washington, DC 20555, 301-415-1639.

Document	PDR	Web	EPDR	NRC Staff
2006/05/25-Comment (4) submitted by Nuclear Energy Institute, Adrian P. Heymer on Proposed Rules	X	X	ML061510471	
SECY-98-282,Part 52 Rulemaking Plan.....			ML032801416	
Staff Requirements – SECY-98-282 – Part 52 Rulemaking Plan.....			ML032801439	
Regulatory Analysis.....	X	X	ML062750434	X

VI. Plain Language.

The Presidential memorandum dated June 1, 1998, entitled "Plain Language in Government Writing" directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). In complying with this directive, the NRC made editorial changes to improve the organization and readability of the existing

language of the paragraphs being revised. These types of changes are not discussed further in this document. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be submitted using one of the methods described under the **ADDRESSES** heading of the preamble to this proposed rule.

VII. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement States Programs," approved by the Commission on June 20, 1997, and published in the Federal Register (62 FR 46517; September 3, 1997), this rule is classified as compatibility "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or provisions of Title 10 of the Code of Federal Regulations, and although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

VIII. Voluntary Consensus Standards (Public Law 104).

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this rule, the NRC is proposing to: (i) redefine the scope of activities constituting "construction" for which NRC approval is required; (ii) redefine the scope of activities constituting construction which the NRC may approve in a limited work authorization granted in advance of the issuance of a construction permit or combined license, or which may be conducted by a holder of an early site permit; and (iii) revise the NRC's

procedures for granting limited work authorizations. This rulemaking does not establish standards or substantive requirements with which all applicants and licensees must comply. For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 2, 50, 51 and 52.

IX. Environmental Impact – Categorical Exclusion.

The NRC has determined that the changes made in this rule fall within the types of actions described in categorical exclusions described in 10 CFR 51.22(c)(1) and (c)(3). Specifically, the conforming changes made to 10 CFR Part 2 would qualify for the categorical exclusion described in § 51.22(c)(1). The changes to Parts 50, 51 and 52 that describe procedures for filing and reviewing applications for limited work authorizations would qualify for the categorical exclusion described in § 51.22(c)(3)(i). All other changes would qualify for the categorical exemption described in § 51.22(c)(3)(iv).[13] Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

X. Paperwork Reduction Act Statement.

The proposed rule published on March 13, 2006 imposed new or amended information collection requirements contained in 10 CFR parts 21, 25, 50, 52, and 54 that are subject to the

[13]Although the industry's request came in the form of a comment on the proposed Part 52 rule (71 FR 12782; March 13, 2006), the comment letter stated; "To the extent the NRC determines that these LWA issues cannot be addressed in the current rulemaking, we ask that the Commission initiate an expedited rulemaking." The NRC has determined that the changes suggested by the industry in Comment 4 (docketed on May 30, 2006, 4:50PM) could not be incorporated into the final Part 52 rule without re-noticing. Therefore, the Commission has decided to treat the comments submitted by the industry as a petition for expedited rulemaking and is publishing this supplemental proposed rule for public comment. The NRC has determined that Comment 4 meets the sufficiency requirements described in 10 CFR 2.802(c) and that it is appropriate to seek public comment on the petition by publishing this proposed rule developed in response to the petition, as allowed under 10 CFR 2.802(e).

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These new and amended information collection requirements were submitted to the Office of Management and Budget for review and approval. The existing requirements were approved by the Office of Management and Budget, approval numbers 3150-0044, 3150-0014, 3150-0146, 3150-0018, 3150-0132, 3150-0002, 3150-0055, 3150-0047, and 3150-0039.

This supplement would reduce the proposed rule burden by eliminating the requirement to obtain NRC permission to engage in site preparation activities that do not have a direct impact on radiological health and safety or common defense and security at sites where new nuclear power plants are to be constructed. Specifically, the burden associated with the preparation of applications for permission to engage in these activities, as well as the burden of responding to requests for additional information associated with these applications, would be eliminated by the supplement. The burden reduction for information collections contained in 10 CFR Part 52 (OMB approval number 3150-0151), is estimated to be 50 hours per application. The burden reduction associated with this proposed rule supplement will be included in the revised OMB clearance package prepared for the final rule.

This supplement also contains a new information collection requirement in § 51.49, however this new information collection is not expected to result in a net increase in the burden for LWA applicants because the information to be submitted under this new requirement was formerly submitted by such applicants as part of a complete environmental report for the underlying construction permit or combined license under § 51.50, or for the ESP application (or amendment) under Part 52. The primary effect of the new information collection requirement in Part 51 of the supplemental proposed rule would be to delay submission of most of the environmental information to the time that the underlying construction permit or combined license application and environmental report is submitted. Thus, changes in burden for

information collections contained in 10 CFR Part 51 (OMB approval number 3150-0021) are expected to be minimal.

The U. S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule supplement and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed information collection, including suggestions for reducing the burden and on the above issues, by [INSERT DATE] to the Records and FOIA/Privacy Services Branch (T-5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail to INFOCOLLECTS@NRC.GOV and to the Desk Officer, John A. Asalone, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0021, 3150-0151), Office of Management and Budget, Washington, DC 20503. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. You may also e-mail comments to John_A._Asalone@omb.eop.gov or comment by telephone at (202) 395-4650.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XI. Regulatory Analysis.

The commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The Commission requests public comment on the draft regulatory analysis. Availability of the regulatory analysis is provided in Section V. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

XII. Regulatory Flexibility Act Certification.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing of nuclear power plants. The companies that will apply for an approval, certification, permit, site report, or license in accordance with the regulations affected by this proposed rule do not fall within the scope of the definition of “small entities” set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XIII. Backfit Analysis.

The NRC has determined that the backfit rule does not apply to this proposed rule and, therefore, a backfit analysis is not required, because the proposed rule does not contain any provisions that would impose backfitting as defined in the backfit rule, 10 CFR 50.109.

There are no current holders of early site permits, construction permits, or combined licenses for nuclear power plants that would be protected by the backfitting restrictions in § 50.109. To the extent that the proposed rule would revise the requirements for future early

site permits, construction permits, or combined licenses for nuclear power plants, these revisions would not constitute backfits because they are prospective in nature and the backfit rule was not intended to apply to every NRC action which substantially changes the expectations of future applicants.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 2, 50, 51 and 52.

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

1) The authority citation for part 2 continues to read as follows:

AUTHORITY: Secs.161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97--425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)), sec. 102, Pub. L. 91--190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200--2.206 also issued under secs. 161 b, I, o, 182, 186, 234, 68 Stat. 948-951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (I), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101-410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104-134, 110 Stat. 1321-373 (28 U.S.C. 2461 note).

Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554.Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557.Section 2.764 also issued under secs. 135, 141, Pub. L. 97--425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133), and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135).

2) In § 2.101, paragraphs (a)(1) and (a)(2) are revised, the introductory text of paragraph (a)(3) is revised, paragraph (a)(3)(ii) is revised, paragraph (a)(4) is revised, paragraphs (a)(6) through (a)(8) are added and reserved, and a paragraph (a)(9) is added to read as follows:

§ 2.101 Filing of application.

(a)(1) An application for a permit, a license, a license transfer, a license amendment, a license renewal, and a standard design approval, shall be filed with the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as prescribed by the applicable provisions of this chapter. A prospective applicant may confer informally with the NRC staff before filing an application.

(2) Each application for a license for a facility or for receipt of waste radioactive material

from other persons for the purpose of commercial disposal by the waste disposal licensee will be assigned a docket number. However, to allow a determination as to whether an application for a construction permit, operating license, early site permit, standard design approval, combined license, or manufacturing license for a production or utilization facility is complete and acceptable for docketing, it will be initially treated as a tendered application. A copy of the tendered application will be available for public inspection at the NRC Web site, *http://www.nrc.gov,* and/or at the NRC Public Document Room. Generally, the determination on acceptability for docketing will be made within a period of 30 days. However, in selected applications, the Commission may decide to determine acceptability based on the technical adequacy of the application as well as its completeness. In these cases, the Commission, under § 2.104(a), will direct that the notice of hearing be issued as soon as practicable after the application has been tendered, and the determination of acceptability will be made generally within a period of 60 days. For docketing and other requirements for applications under part 61 of this chapter, see paragraph (g) of this section.

(3) If the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, determines that a tendered application for a construction permit, operating license, early site permit, standard design approval, combined license, or manufacturing license for a production or utilization facility, and/or any environmental report required under subpart A of part 51 of this chapter, or part thereof as provided in paragraphs (a)(5) or (a-1) of this section are complete and acceptable for docketing, a docket number will be assigned to the application or part thereof, and the applicant will be notified of the determination. With respect to the tendered application and/or environmental report or part thereof that is acceptable for docketing, the applicant will be requested to:

* * * * *

(ii) Serve a copy on the chief executive of the municipality in which the facility or site which is the subject of an early site permit is to be located or, if the facility or site which is the subject of an early site permit is not to be located within a municipality, on the chief executive of the county, and serve a notice of availability of the application or environmental report on the chief executives of the municipalities or counties which have been identified in the application or environmental report as the location of all or part of the alternative sites, containing the following information, as applicable: Docket number of the application, a brief description of the proposed site and facility; the location of the site and facility as primarily proposed and alternatively listed; the name, address, telephone number, and e-mail address (if available) of the applicant's representative who may be contacted for further information; notification that a draft environmental impact statement will be issued by the Commission and will be made available upon request to the Commission; and notification that if a request is received from the appropriate chief executive, the applicant will transmit a copy of the application and environmental report, and any changes to these documents which affect the alternative site location, to the executive who makes the request. In complying with the requirements of this paragraph, the applicant should not make public distribution of those parts of the application subject to § 2.390(d). The applicant shall submit to the Director of Nuclear Reactor Regulation an affidavit that service of the notice of availability of the application or environmental report has been completed along with a list of names and addresses of those executives upon whom the notice was served; and

* * * * *

(4) The tendered application for a construction permit, operating license, early site permit, standard design approval, combined license, or manufacturing license will be formally docketed upon receipt by the Director of Nuclear Reactor Regulation or Director of Nuclear

Material Safety and Safeguards, as appropriate, of the required additional copies. Distribution of the additional copies shall be deemed to be complete as of the time the copies are deposited in the mail or with a carrier prepaid for delivery to the designated addresses. The date of docketing shall be the date when the required copies are received by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate. Within 10 days after docketing, the applicant shall submit to the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, an affidavit that distribution of the additional copies to Federal, State, and local officials has been completed in accordance with the requirements of this chapter and written instructions furnished to the applicant by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate. Amendments to the application and environmental report shall be filed and distributed and an affidavit shall be furnished to the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, in the same manner as for the initial application and environmental report. If it is determined that all or any part of the tendered application and/or environmental report is incomplete and therefore not acceptable for processing, the applicant will be informed of this determination, and the respects in which the document is deficient.

* * * * *

(6) - (8) RESERVED.

(9) *Limited work authorization*. An applicant for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in § 50.21(b)(2) or (3) or § 50.22 of this chapter, an applicant for or holder of an early site permit under part 52 of this chapter, or an applicant for a combined license under part 52 of this chapter, who seeks to conduct the activities authorized under § 50.10(c) of this chapter may submit a complete

application under paragraphs (a)(1)-(4) of this section which includes the information required by § 50.10(c) of this chapter. Alternatively, the applicant (other than a holder of an early site permit) may submit its application in two parts:

(i) Part one must include the information required by § 50.33(a) through (f) of this chapter, and the information required by § 50.10(c)(2) and (3) of this chapter.

(ii) Part two must include the remaining information required by the Commission's regulations in this chapter which was not submitted in part one, *provided, however*, that this information may be submitted in accordance with the applicable provisions of paragraph (a-1) of this section.

(iii) Part two of the application must be submitted no later than twelve (12) months after submission of part one.

* * * * *

3) In § 2.104, the introductory text of paragraph (a) is revised, current paragraphs (d) and (e) are redesignated as paragraphs (l) and (m), respectively, and revised, new paragraphs (d), (e), and (f) are added, and paragraphs (g) through (k) are added and reserved, and footnote 1 is revised to read as follows:

§ 2.104 Notice of hearing.

(a) In the case of an application on which a hearing is required by the Act or this chapter, or in which the Commission finds that a hearing is required in the public interest, the Secretary will issue a notice of hearing to be published in the *Federal Register* as required by law at least 15 days, and in the case of an application concerning a construction permit, early site permit, or combined license for a facility of the type described in § 50.21(b) or § 50.22 of

this chapter or a testing facility, at least 30 days, before the date set for hearing in the notice.[1] In addition, in the case of an application for an early site permit, construction permit or combined license for a facility of the type described in § 50.22 of this chapter, or a testing facility, the notice (other than a notice under paragraph (d) of this section) must be issued as soon as practicable after the application has been docketed. However, if the Commission, under § 2.101(a)(2), decides to determine the acceptability of the application based on its technical adequacy as well as completeness, the notice must be issued as soon as practicable after the application has been tendered. The notice will state:

* * * * *

(d) In the case of an application for an early site permit under subpart A of part 52 of this chapter, the notice of hearing will state, in implementation of paragraph (a)(3) of this section:

(1) If the proceeding is a contested proceeding, the presiding officer will consider the following issues:

(i) Whether applicable standards and requirements of the Act and the Commission's regulations have been met;

(ii) Whether any required notifications to other agencies or bodies have been duly made;

(iii) If the applicant requests, under § 52.17(c) of this chapter, a limited work authorization under § 50.10 of this chapter, whether there is reasonable assurance that the

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[1]If the notice of hearing concerning an application for a construction permit, early site permit, or combined license for a facility of the type described in §50.21(b) or §50.22 of this chapter or a testing facility does not specify the time and place of initial hearing, a subsequent notice will be published in the *Federal Register* which will provide at least 30 days notice of the time and place of that hearing. After this notice is given the presiding officer may reschedule the commencement of the initial hearing for a later date or reconvene a recessed hearing without again providing at least 30 days notice.

proposed site is a suitable location for a reactor of the general size and type described in the application from the standpoint of radiological health and safety considerations under the Act and regulations issued by the Commission.

(iv) Whether there is reasonable assurance that the site is in conformity with the provisions of the Act, and the Commission's regulations;

(v) Whether the applicant is technically qualified to engage in any activities authorized;

(vi) Whether the proposed inspections, tests, analyses and acceptance criteria, including any on emergency planning, are necessary and sufficient within the scope of the early site permit to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Act, and the Commission's regulations;

(vii) Whether issuance of the early site permit will be inimical to the common defense and security or to the health and safety of the public; and

(viii) Whether, in accordance with the requirements of subpart A of part 52 of this chapter and subpart A of part 51 of this chapter, the early site permit should be issued as proposed.

(2) If the proceeding is not a contested proceeding, the presiding officer will determine, without conducting a *de novo* evaluation of the application, whether:

(i) The application and the record of the proceeding contain sufficient information, and the review of the application by the NRC staff has been adequate to support affirmative findings on paragraphs (d)(1)(i) through (v) and (viii) of this section, and a negative finding on paragraph (d)(1)(vii) of this section; and

(ii) The review conducted under part 51 of this chapter under the National Environmental Policy Act (NEPA) has been adequate.

(3) Regardless of whether the proceeding is contested or uncontested, the presiding officer will, in accordance with subpart A of part 51 of this chapter:

(i) Determine whether the requirements of section 102(2) (A), (C), and (E) of the NEPA and subpart A of part 51 of this chapter have been complied with in the proceeding;

(ii) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determine the appropriate action to be taken; and

(iii) If the applicant requests authorization to perform the activities under § 52.17(c) of this chapter, whether there is reasonable assurance that the proposed site is a suitable location for a reactor of the general size and type described in the application from the standpoint of radiological health and safety considerations under the Act and regulations issued by the Commission.

(iv) Determine whether the combined license should be issued, denied or appropriately conditioned to protect environmental values.

(e) In the case of an application for a combined license under subpart C of part 52 of this chapter, the notice of hearing will state, in implementation of paragraph (a)(3) of this section:

(1) If the proceeding is a contested proceeding, the presiding officer will consider the following issues:

(i) Whether applicable standards and requirements of the Act and the Commission's regulations have been met;

(ii) Whether any required notifications to other agencies or bodies have been duly made;

(iii) Whether there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of the Act, and the Commission's

regulations.

(iv) Whether the applicant is technically and financially qualified to engage in the activities authorized;

(v) Whether the proposed inspections, tests, analyses, and acceptance criteria, including those applicable to emergency planning, are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Act, and the Commission's regulations;

(vi) Whether any inspections, tests, or analyses have been successfully completed and the acceptance criteria in a referenced early site permit, standard design certification or for a manufactured reactor have been met, but only to the extent that the combined license application represents that those inspections, tests and analyses have been successfully completed and the acceptance criteria have been met;

(vii) Whether the issuance of the combined license will be inimical to the common defense and security or to the health and safety of the public; and

(viii) Whether, in accordance with the requirements of subpart C of part 52 of this chapter and subpart A of part 51 of this chapter, the combined license should be issued as proposed.

(2) If the proceeding is not a contested proceeding, the presiding officer will determine, without conducting a *de novo* evaluation of the application, if:

(i) The application and the record of the proceeding contain sufficient information, and the review of the application by the NRC staff has been adequate to support affirmative findings on paragraphs (e)(1)(i) through (vii) and (e)(1)(ix) of this section, and a negative finding on paragraph (e)(1)(viii) of this section; and

(ii) The review conducted under part 51 of this chapter under NEPA has been

adequate.

(3) Regardless of whether the proceeding is contested or uncontested, the presiding officer will, in accordance with subpart A of part 51 of this chapter:

(i) Determine whether the requirements of section 102(2) (A), (C), and (E) of the NEPA and subpart A of part 51 of this chapter have been complied with in the proceeding;

(ii) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determine the appropriate action to be taken; and

(iii) Determine whether the combined license should be issued, denied or appropriately conditioned to protect environmental values.

(f) In the case of an application for a manufacturing license under subpart F of part 52 of this chapter, the issues stated in the notice of hearing under paragraph (a)(3) of this section will not involve consideration of the particular sites at which any of the nuclear power reactors to be manufactured may be located and operated. Unless the Commission determines otherwise, the notice of hearing will state:

(1) If the proceeding is a contested proceeding, the presiding officer will consider the following issues:

(i) Whether applicable standards and requirements of the Act and the Commission's regulations have been met;

(ii) Whether there is reasonable assurance that the reactor(s) will be manufactured, and can be transported, incorporated into a nuclear power plant, and operated in conformity with the manufacturing license, the provisions of the Act, and the Commission's regulations;

(iii) Whether the proposed reactor(s) to be manufactured can be incorporated into a nuclear power plant at sites having characteristics that fall within the site parameters postulated for the design of the manufactured reactor(s) without undue risk to the health and safety of the

public;

(iv) Whether the applicant is technically qualified to design and manufacture the proposed nuclear power reactor(s);

(v) Whether the proposed inspections, tests, analyses, and acceptance criteria are necessary and sufficient, within the scope of the manufacturing license, to provide reasonable assurance that the reactor has been manufactured and will be operated in conformity with the license, the provisions of the Act, and the Commission's regulations;

(vi) Whether the issuance of a license for manufacture of the reactor(s) will be inimical to the common defense and security or to the health and safety of the public; and

(vii) Whether, in accordance with the requirements of subpart F of part 52 and subpart A of part 51of this chapter, the license should be issued as proposed.

(2) If the proceeding is not a contested proceeding, the presiding officer will determine, without conducting a *de novo* evaluation of the application, whether:

(i) The application and the record of the proceeding contain sufficient information, and the review of the application by the NRC staff has been adequate to support affirmative findings on paragraphs (f)(1)(i) through (v) and (f)(1)(vii) of this section proposed to be made and a negative finding on paragraph (f)(1)(vi) of this section; and

(ii) The review conducted under part 51 of this chapter under NEPA has been adequate.

(3) Regardless of whether the proceeding is contested or uncontested, the presiding officer will, in accordance with subpart A of part 51 of this chapter:

(i) Determine whether the requirements of section 102(2) (A), (C), and (E) of the National Environmental Policy Act and subpart A of part 51 of this chapter have been complied with in the proceeding;

(ii) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determine the appropriate action to be taken; and

(iii) Determine whether the manufacturing license should be issued, denied or appropriately conditioned to protect environmental values.

(4) The place of hearing on an application for a manufacturing license will be Rockville, Maryland, or such other location as the Commission deems appropriate.

(g)-(k) **RESERVED**

(l) In an application for a construction permit or an operating license for a facility on which a hearing is required by the Act or this chapter, the notice of hearing will, unless the Commission determines otherwise, state:

(1) A time of the hearing, which will be as soon as practicable after compliance with section 189a of the Act and this part;

(2) The presiding officer for the hearing who shall be either an administrative law judge or an atomic safety and licensing board established by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel; and

(3) That matters of radiological health and safety and common defense and security, and matters raised under NEPA, will be considered at another hearing if otherwise required or ordered to be held, for which a notice will be published under paragraphs (a) and (b) of this section, unless otherwise authorized by the Commission.

(m)(1) The Secretary will transmit a notice of hearing on an application for a license for a production or utilization facility including an early site permit, combined license (but not for a manufacturing license), for a license for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee, for a license under part 61 of this chapter, for a construction authorization for a HLW repository at a geologic

repository operations area under parts 60 or 63 of this chapter, for a license to receive and possess high-level radioactive waste at a geologic repository operations area under parts 60 or 63 of this chapter, and for a license under part 72 of this chapter to acquire, receive or possess spent fuel for the purpose of storage in an independent spent fuel storage installation (ISFSI) to the governor or other appropriate official of the State and to the chief executive of the municipality in which the facility is to be located or the activity is to be conducted or, if the facility is not to be located or the activity conducted within a municipality, to the chief executive of the county (or to the Tribal organization, if it is to be located or conducted within an Indian reservation).

(2) The Secretary will transmit a notice of opportunity for hearing under § 52.103 of this chapter on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria in the combined license, except for those ITAAC that the Commission found were met under § 52.97 of this chapter, to the governor or other appropriate official of the State and to the chief executive of the municipality in which the facility is to be located or the activity is to be conducted or, if the facility is not to be located or the activity conducted within a municipality, to the chief executive of the county (or to the Tribal organization, if it is to be located or conducted within an Indian reservation).

(3) The Secretary will transmit a notice of hearing on an application for a license under part 72 of this chapter to acquire, receive or possess spent fuel, high-level radioactive waste or radioactive material associated with high-level radioactive waste for the purpose of storage in a monitored retrievable storage installation (MRS) to the same persons who received the notice of docketing under § 72.16(e) of this chapter.

4) The heading of subpart F is revised to read as follows:

Subpart F-Additional Procedures Applicable to Early Partial Decisions on Site Suitability Issues in Connection with an Application for a Construction Permit or Combined License to Construct Certain Utilization Facilities; and Advance Issuance of Limited Work Authorizations

5) Section 2.600 is revised to read as follows:

§ 2.600 Scope of Subpart.

This subpart prescribes procedures applicable to licensing proceedings which involve an early submittal of site suitability information in accordance with § 2.101(a - 1), and a hearing and early partial decision on issues of site suitability, in connection with an application for a permit to construct a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in § 50.21(b) (2) or (3) or § 50.22 of this chapter or is a testing facility. This subpart also prescribes procedures applicable to proceedings for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in § 50.21(b)(2) or (3) or § 50.22 of this chapter, or an applicant for a combined license under part 52 of this chapter, who seeks to conduct the activities authorized under § 50.10(c) of part 50 of this chapter in advance of issuance of the construction permit or combined license, and submits an application in accordance with § 2.101(a)(9).

6) Section 2.601 is revised to read as follows:

§ 2.601 Applicability of other sections.

The provisions of subparts A, C, G, L and N of this part relating to applications for

construction permits and proceedings thereon apply, respectively, to applications and proceedings in accordance with this subpart, except as specifically provided otherwise by the provisions of this subpart.

7) Preceding § 2.602, an undesignated center heading is added to read as follows:

Early Partial Decisions on Site Suitability

8) In § 2.606, paragraph (a) is revised to read as follows:

§ 2.606 Partial decision on site suitability issues.

(a) The provisions of §§ 2.331, 2.339, 2.340(b), 2.343, 2.712, and 2.713 apply to any partial initial decision rendered in accordance with this subpart. Section 2.340(c) does not apply to any partial initial decision rendered in accordance with this subpart. No construction permit may be issued without completion of the full review required by section 102(2) of the National Environmental Policy Act of 1969, as amended, and subpart A of part 51 of this chapter. The authority of the Commission to review such a partial initial decision *sua sponte*, or to raise sua sponte an issue that has not been raised by the parties, will be exercised within the same time period as in the case of a full decision relating to the issuance of a construction permit.

* * * * *

9) Following § 2.606, an undesignated center heading and §§ 2.641 through 2.649 are added to read as follows:

Phased Applications Involving Limited Work Authorizations

Sec.

2.641 Filing Fees.

2.643 Acceptance and docketing of applications for limited work authorization.

2.645 Notice of hearing.

2.647 [Reserved]

2.649 Partial decisions on limited work authorization.

§ 2.641 Filing fees.

Each application which contains a request for limited work authorization under the procedures of § 2.101(a)(9) and this subpart shall be accompanied by any fee required by § 50.30(e) and part 170 of this chapter.

§ 2.643 Acceptance and docketing of application for limited work authorization.

(a) Each part of an application submitted in accordance with § 2.101(a)(9) will be initially treated as a tendered application. If it is determined that any one of the parts as described in § 2.101(a)(9) is incomplete and not acceptable for processing, the Director of Nuclear Reactor Regulation will inform the applicant of this determination and the respects in which the document is deficient. A determination of completeness will generally be made within a period of thirty (30) days.

(b) The Director will accept for docketing part one of an application for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in § 50.21(b) (2) or (3) or § 50.22 of this chapter or an application for a combined license where part one of the application as described in § 2.101(a)(9) is complete. Part one will not be considered complete unless it contains the information required by § 50.10(c) of this

chapter. Upon assignment of a docket number, the procedures in § 2.101(a)(3) and (4) relating to formal docketing and the submission and distribution of additional copies of the application must be followed.

(c) If part one of the application is docketed, the Director will cause to be published in the Federal Register and send to the Governor or other appropriate official of the State in which the site is located, a notice of docketing of the application which states the purpose of the application, states the location of the proposed site, states that a notice of hearing will be published, and requests comments on the limited work authorization from Federal, State, and local agencies and interested persons. The notice will state that comments must be submitted to the NRC within 60 days or such other time as may be specified in the notice.

(d) Part two of the application will be docketed upon a determination by the Director that it is complete.

(e) If part two of the application is docketed, the Director will cause to be published in the Federal Register and sent to the Governor or other appropriate official of the State in which the site is located, a notice of docketing of part two of the application which states the purpose of the application, states that a notice of hearing will be published, and requests comments on the construction permit or combined license application, as applicable, from Federal, State, and local agencies and interested persons. The notice will state that comments must be submitted to the NRC within 60 days or such other time as may be specified in the notice..

§ 2.645 Notice of hearing.

(a) The notice of hearing on part one of the application must set forth the matters of fact and law to be considered, as required by § 2.104, which will be modified to state that the hearing will relate only to the matters related to § 50.33(a) through (f) of this chapter, and the

limited work authorization.

(b) After docketing of part two of the application, as provided in §§ 2.101(a)(9) and 2.643(d), a supplementary notice of hearing will be published under § 2.104 with respect to the remaining unresolved issues in the proceeding within the scope of § 2.104. The supplementary notice of hearing will provide that any person whose interest may be affected by the proceeding and who desires to participate as a party in the resolution of the remaining issues shall file a petition for leave to intervene within the time prescribed in the notice. The petition to intervene must meet the applicable requirements in subpart C of part 2 of this chapter, including § 2.309. This supplementary notice will also provide appropriate opportunities for participation by a representative of an interested State under § 2.315(c) and for limited appearances under § 2.315(a).

(c) Any person who was permitted to intervene under the initial notice of hearing on the limited work authorization and who was not dismissed or did not withdraw as a party, may continue to participate as a party with respect to the remaining unresolved issues only if, within the time prescribed for filing of petitions for leave to intervene in the supplementary notice of hearing, that person files a petition for intervention which meets the applicable requirements in subpart C of part 2, including § 2.309, *provided, however*, that the petition need not address § 2.309(d). However, a person who was granted discretionary intervention under § 2.309(e) must address in its petition the factors in § 2.309(e) as they apply to the supplementary hearing.

(d) A party who files a non-timely petition for intervention under subsection (c) of this section to continue as a party may be dismissed from the proceeding, absent a determination that the party has made a substantial showing of good cause for failure to file on time, and with particular reference to the factors specified in §§ 2.309(c)(1)(i) through (iv) and 2.309(d). The

notice will be ruled upon by the Commission or presiding officer designated to rule on petitions for leave to intervene.

(e) To the maximum extent practicable, the membership of the atomic safety and licensing board, or the individual presiding officer, as applicable, designated to preside in the proceeding on the remaining unresolved issues pursuant to the supplemental notice of hearing will be the same as the membership or individual designated to preside in the initial notice of hearing.

§ 2.647 [Reserved].

§ 2.649 Partial decisions on limited work authorization.

The provisions of §§ 2.331, 2.339, 2.340(b), 2.343, 2.712, and 2.713 apply to any partial initial decision rendered in accordance with this subpart. Section 2.340(c) does not apply to any partial initial decision rendered in accordance with this subpart. A limited work authorization may not be issued under 10 CFR 50.10(c) without completion of the review for limited work authorizations required by subpart A of part 51 of this chapter. The authority of the Commission to review such a partial initial decision *sua sponte*, or to raise sua sponte an issue that has not been raised by the parties, will be exercised within the same time period as in the case of a full decision relating to the issuance of a construction permit or combined license.

PART 50 -- DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

10) The authority citation for Part 50 continues to read as follows:

AUTHORITY: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937,

938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 - 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

11) Section 50.10 is revised to read as follows:

§ 50.10 License required; limited work authorization.

(a) *Requirement for license.* Except as provided in § 50.11, no person within the United States shall transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, or use any production or utilization facility except as authorized by a license issued by the Commission.

(b) *Requirement for construction permit, early site permit, combined license, or limited work authorization*. No person may begin the construction of a production or utilization facility on a site on which the facility is to be operated until that person has been issued either a construction permit under this part or a combined license under part 52 of this chapter, or a limited work authorization under paragraph (c) of this section. As used in this paragraph, the term "construction" includes excavation, subsurface preparation, including the driving of piles, installation of the foundation, including the placement of concrete, and on-site, in-place fabrication, erection, integration or testing, for any structure, system or component of a facility required by the Commission's rules and regulations to be described in the site safety analysis report or preliminary or final safety analysis report. The term "construction" excludes:

(1) Changes for the temporary use of the land for public recreational purposes;

(2) Site exploration, including: necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;

(3) Preparation of the site for construction of a facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(4) Construction of fencing and other access control measures;

(5) Construction of temporary construction support buildings (such as construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and construction support buildings and offices) for use in connection with the construction of the facility;

(6) Construction of permanent service facilities, such as paved roads, parking lots,

railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, transmission lines, support buildings, and office buildings;

(7) Procurement or manufacture of the components of the proposed facility, or the manufacture of a nuclear power reactor under a manufacturing license under subpart F of this part to be installed at the proposed site and be part of the proposed facility; and

(8) With respect to production or utilization facilities, other than testing facilities and nuclear power plants, required to be licensed pursuant to section 104.a or section 104.c of the Act, the construction of buildings which will be used for activities other than operation of a facility and which may also be used to house a facility (for example, the construction of a college laboratory building with space for installation of a training reactor).

(c) *Request for limited work authorization*. (1) Any person to whom the Commission may otherwise issue either a license or permit under Sections 103, 104.b, or 185 of the Act for a facility of the type specified in § 50.21(b)(2) or (3), § 50.22, or a testing facility, may request a limited work authorization allowing that person to perform excavation, subsurface preparation, including the driving of piles, and installation of the foundation, including placement of concrete, for any structure, system or component of the facility.

(2) An application for a limited work authorization may be submitted as part of a complete application for a construction permit or combined license in accordance with 10 CFR 2.101(a)(1) through (4), or as a partial application in accordance with 10 CFR 2.101(a)(9). An application for a limited work authorization must be submitted by an applicant for or holder of an early site permit as a complete application in accordance with 10 CFR 2.101(a)(1) through (4).

(3) The application must include:

(i) A safety analysis report required by 10 CFR 50.34, 10 CFR 52.17 or 10 CFR 52.79,

as applicable, a description of the activities requested to be performed, and the design and construction information otherwise required by the Commission's rules and regulations to be submitted for a construction permit or combined license, but limited to those portions of the facility that are within the scope of the limited work authorization. The safety analysis report must demonstrate that activities conducted under the limited work authorization will be conducted in compliance with the technically-relevant Commission requirements in 10 CFR Chapter I applicable to the design of those portions of the facility within the scope of the limited work authorization;

(ii) An environmental report in accordance with § 51.49 of this chapter; and

(iii) A plan for redress of the site to achieve an environmentally stable and aesthetically acceptable site suitable for whatever non-nuclear use may conform with local zoning laws, should limited work activities be terminated by the holder, the limited work authorization is revoked by the NRC, or upon effectiveness of the Commission's final decision denying the associated construction permit or combined license application, as applicable.

(d) *Issuance of limited work authorization*. (1) The Director of the Office of Nuclear Reactor Regulation may issue a limited work authorization only after:

(i) The NRC staff issues the final environmental impact statement for the limited work authorization in accordance with subpart A of part 51 of this chapter;

(ii) The presiding officer makes the finding in § 51.105(c) or § 51.107(d) of this chapter, as applicable;

(iii) The Director determines that the applicable standards and requirements of the Act and the Commission's regulations applicable to the activities to be conducted under the limited work authorization have been met; the applicant is technically qualified to engage in the activities authorized; and issuance of the limited work authorization will provide reasonable

assurance of adequate protection to public health and safety and will not be inimical to the common defense and security; and

(iv) The presiding officer finds that there are no unresolved safety issues relating to the activities to be conducted under the limited work authorization that would constitute good cause for withholding the authorization.

(2) Each limited work authorization will specify the activities that the holder is authorized to perform. The limited work authorization will include a condition requiring the holder to redress the site in accordance with the redress plan required by § 52.17(c) of this chapter, if construction is terminated by the holder, the LWA is revoked by the NRC, or upon effectiveness of the Commission's final decision denying the associated operating license application or the underlying combined license application, as applicable.

(e) *Effect of limited work authorization*. Any activities undertaken under a limited work authorization are entirely at the risk of the applicant and, except as to the matters determined under paragraph (d)(1) of this section, the issuance of the limited work authorization has no bearing on the issuance of a construction permit or combined license with respect to the requirements of the Act, and rules, regulations, or orders promulgated pursuant thereto. The environmental impact statement for a construction permit or combined license application for which a limited work authorization was previously issued will not address, and the presiding officer will not consider, the sunk costs of the holder of limited work authorization in determining the proposed action (*i.e.*, issuance of the construction permit or combined license).

(f) *Implementation of redress plan*. If construction is terminated by the holder, the underlying application is withdrawn by the applicant or denied by the NRC, or the LWA is revoked by the NRC, then the holder must begin implementation of the redress plan in a reasonable time, and complete the redress of the site no later than eighteen (18) months after

termination of construction, revocation of the LWA, upon effectiveness of the Commission's final decision denying the associated operating license application or the underlying combined license application, as applicable.

PART 51 - ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

12. The authority citation for Part 51 continues to read as follows:

AUTHORITY: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853-854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95-604, Title II, 92 Stat. 3033-3041; and sec. 193, Pub. L. 101-575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100-203, 101 Stat. 1330-223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036-3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

13. In § 51.4, a new definition of construction is added to read as follows:

§ 51.4 Definitions.

* * * * *

Construction includes excavation, subsurface preparation, including the driving of piles, installation of the foundation, including the placement of concrete, and on-site, in-place fabrication, erection, integration or testing, for any structure, system or component of a facility required by the Commission's rules and regulations to be described in the site safety analysis report or preliminary or final safety analysis report. The term "construction" excludes:

(1) Changes for the temporary use of the land for public recreational purposes;

(2) Site exploration, including: necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;

(3) Preparation of the site for construction of a facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(4) Construction of fencing and other access control measures;

(5) Construction of temporary construction support buildings (such as construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and construction support buildings and offices) for use in connection with the construction of the facility;

(6) Construction of permanent service facilities, such as paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, transmission lines, support buildings, and office buildings;

(7) Procurement or manufacture of the components of the proposed facility, or the manufacture of a nuclear power reactor under a manufacturing license under subpart F of this

part to be installed at the proposed site and be part of the proposed facility; and

(8) With respect to production or utilization facilities, other than testing facilities and nuclear power plants, required to be licensed pursuant to section 104.a or section 104.c of the Act, the construction of buildings which will be used for activities other than operation of a facility and which may also be used to house a facility (for example, the construction of a college laboratory building with space for installation of a training reactor).

14. In § 51.17, paragraph (b) is revised to read as follows:

§ 51.17 Information collection requirements; OMB approval.

* * * * *

(b) The approved information collection requirements in this part appear in §§ 51.6, 51.16, 51.41, 51.45, 51.49, 51.50, 51.51, 51.52, 51.53, 51.54, 51.58, 51.60, 51.61, 51.62, 51.66, 51.68, and 51.69.

15. In § 51.20, the introductory text of paragraph (b) is republished and a new paragraph (b)(6) is added to read as follows:

§ 51.20 Criteria for and identification of licensing and regulatory actions requiring environmental impact statements.

* * * * *

(b) The following types of actions require an environmental impact statement or a supplement to an environmental impact statement:

* * * * *

(6) Issuance of a limited work authorization under 10 CFR 50.10 of the chapter.

* * * * *

16. A new § 51.49 is added under the heading Environmental Reports-Production and Utilization Facilities to read as follows:

§ 51.49 Environmental report-limited work authorization.

(a) *Limited work authorization submitted as part of complete construction permit or combined license application*. Each applicant for construction permit or combined license who applies for a limited work authorization under § 50.10(c) of part 50 of this chapter in a complete application under 10 CFR 2.101(a)(1) through (4), shall submit with its application a separate document, entitled, “Applicant’s Environmental Report-Limited Work Authorization Stage,” which is in addition to the Environmental Report required by § 51.50 of this section. The Applicant’s Environmental Report-Limited Work Authorization Stage must contain the following information:

(1) A description of the activities proposed to be conducted under the limited work authorization;

(2) A statement of the need for the activities; and

(3) A description of the environmental impacts that may reasonably be expected to result from the activities, the mitigation measures that the applicant proposes to implement in order to achieve the level of environmental impacts described, and a discussion of the reasons for rejecting mitigation measures that could be employed by the applicant to further reduce environmental impacts.

(b) *Phased application for limited work authorization and construction permit or combined license*. If the construction permit or combined license application is filed in accordance with § 2.101(a)(9) of this chapter, then the environmental report for part one of the application may be limited to a discussion of the activities proposed to be conducted under the limited work authorization, and the proposed redress plan. If the scope of the environmental report for part one is so limited, then part two of the application must include the information required by § 51.50, as applicable.

(c) *Limited work authorization submitted as part of early site permit application*. Each applicant for an early site permit under subpart A of part 51 who is requesting a limited work authorization shall submit with its application the environmental report required by § 51.50(b), provided, however, that the report must also contain the following information:

(1) A description of the activities proposed to be conducted under the limited work authorization;

(2) A statement of the need for the activities; and

(3) A description of the environmental impacts that may reasonably be expected to result from the activities, the mitigation measures that the applicant proposes to implement in order to achieve the level of environmental impacts described, and a discussion of the reasons for rejecting mitigation measures that could be employed by the applicant to further reduce environmental impacts.

(d) *Limited work authorization request submitted by early site permit holder*. Each holder of an early site permit who requests a limited work authorization shall submit with its application the environmental report containing the following information:

(1) A description of the activities proposed to be conducted under the limited work authorization;

(2) A statement of the need for the activities;

(3) A description of the environmental impacts that may reasonably be expected to result from the activities, the mitigation measures that the applicant proposes to implement in order to achieve the level of environmental impacts described, and a discussion of the reasons for rejecting mitigation measures that could be employed by the applicant to further reduce environmental impacts; and

(4) A discussion of any new and significant information on the environmental impacts of construction as determined in the environmental impact statement for the early site permit, which may materially affect the conclusions of the early site permit with respect to the environmental impacts of the activities to be conducted under the limited work authorization.

(e) *Limited work authorization for site where EIS was prepared, but the facility was not constructed*. If the limited work authorization is for activities to be conducted at a site for which the Commission has previously prepared an environmental impact statement for the construction and operation of a nuclear power plant, and a construction permit was issued but construction of the plant was never completed, then the applicant's environmental report may reference the earlier environmental impact statement. In the event of such referencing, the environmental report must identify whether there is new and significant information material to the matters required to be addressed in paragraph (a) of this section.

(f) *Environmental Report*. An environmental report submitted in accordance with this section must separately evaluate the environmental impacts and proposed alternatives attributable to the activities proposed to be conducted under the limited work authorization. At the option of the applicant, the Applicant's Environmental Report - Limited Work Authorization Stage may contain the information required to be submitted in the environmental report required under § 51.50, which addresses the impacts of construction and operation for the

proposed facility (including the environmental impacts attributable to the limited work authorization), and discusses the overall costs and benefits balancing for the proposed action.

17) Section 51.50 is revised to read as follows:

§ 51.50 Environmental report-construction permit, early site permit, or combined license stage.

(a) *Construction permit stage*. Each applicant for a permit to construct a production or utilization facility covered by § 51.20 shall submit with its application a separate document, entitled "Applicant's Environmental Report–Construction Permit Stage," which shall contain the information specified in §§ 51.45, 51.51 and 51.52. Each environmental report shall identify procedures for reporting and keeping records of environmental data, and any conditions and monitoring requirements for protecting the non-aquatic environment, proposed for possible inclusion in the license as environmental conditions in accordance with § 50.36b of this chapter.

(b) *Early site permit stage*. Each applicant for an early site permit shall submit with its application a separate document, entitled "Applicant's Environmental Report–Early Site Permit Stage," which shall contain the information specified in §§ 51.45, 51.51, and 51.52, as modified in this paragraph. Environmental reports need not include an assessment of the economic, technical, and other benefits and costs of the proposed action or an analysis of other energy alternatives. Environmental reports must focus on the environmental effects of construction and operation of a reactor, or reactors, which have characteristics that fall within the postulated site parameters. Environmental reports must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed. For other than light-water-cooled nuclear power reactors, the environmental report shall contain the basis

for evaluating the contribution of the environmental effects of fuel cycle activities for the nuclear power reactor. Each environmental report shall identify procedures for reporting and keeping records of environmental data, and any conditions and monitoring requirements for protecting the non-aquatic environment, proposed for possible inclusion in the license as environmental conditions in accordance with § 50.36b of this chapter.

(c) *Combined license stage*. Each applicant for a combined license shall submit with its application a separate document, entitled "Applicant's Environmental Report–Combined License Stage." Each environmental report shall contain the information specified in §§ 51.45, 51.51 and 51.52, for other than light-water-cooled nuclear power reactors, the environmental report shall contain the basis for evaluating the contribution of the environmental effects of fuel cycle activities for the nuclear power reactor. Each environmental report shall identify procedures for reporting and keeping records of environmental data, and any conditions and monitoring requirements for protecting the non-aquatic environment, proposed for possible inclusion in the license as environmental conditions in accordance with § 50.36b of this chapter. The combined license environmental report may reference information contained in a final environmental document previously prepared by the NRC staff.

(1) *Application referencing an early site permit*. The applicant must have a reasonable process for identifying any new and significant information regarding the NRC's conclusions in the early site permit environmental impact statement. If the combined license application references an early site permit, then the "Applicant's Environmental Report–Combined License Stage" need not contain information or analyses submitted to the Commission in "Applicant's Environmental Report–Early Site Permit Stage," but must contain, in addition to the environmental information and analyses otherwise required:

(i) Information to demonstrate that the design of the facility falls within the site

characteristics and design parameters specified in the early site permit;

(ii) Information to resolve any other significant environmental issue not considered in the early site permit proceeding, either for the site or design; and

(iii) 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.

(2) *Application referencing standard design certification*. If the combined license references a standard design certification, then the combined license environmental report may incorporate by reference the environmental assessment previously prepared by the NRC for the referenced design certification. If the design certification environmental assessment is referenced, then the combined license environmental report must contain information to demonstrate that the site characteristics for the combined license site fall within the site parameters in the design certification environmental assessment.

(3) *Application referencing a manufactured reactor*. If the combined license application proposes to use a manufactured reactor, then the combined license environmental report may incorporate by reference the environmental assessment previously prepared by the NRC for the underlying manufacturing license. If the manufacturing license environmental assessment is referenced, then the combined license environmental report must contain information to demonstrate that the site characteristics for the combined license site fall within the site parameters in the manufacturing license environmental assessment. The environmental report need not address the environmental impacts associated with manufacturing the reactor under the manufacturing license.

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18) In § 51.71, paragraph (d) and footnote 3 are revised, paragraph (e) is redesignated as paragraph (f), and a new paragraph (e) is added to read as follows:

§ 51.71 Draft environmental impact statement-contents.

* * * * *

(d) *Analysis*. (1) Unless excepted in this paragraph, the draft environmental impact statement will include a preliminary analysis that considers and weighs the environmental effects of the proposed action; the environmental impacts of alternatives to the proposed action; and alternatives available for reducing or avoiding adverse environmental effects and consideration of the economic, technical, and other benefits and costs of the proposed action and alternatives and indicate what other interests and considerations of Federal policy, including factors not related to environmental quality if applicable, are relevant to the consideration of environmental effects of the proposed action identified under paragraph (a) of this section.

(2) The draft environmental impact statement prepared at the early site permit stage must focus on the environmental effects of construction and operation of a reactor, or reactors, which have characteristics that fall within the postulated site parameters, and will not include an assessment of the benefits (for example, need for power) of the proposed action or an evaluation of other alternative energy sources unless considered by the applicant, but must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed.

(3) The draft supplemental environmental impact statement prepared at the combined license stage when an early site permit is referenced need not include detailed information or analyses that were resolved in the final environmental impact statement prepared by the Commission in connection with the early site permit, if;

(i) The design of the facility falls within the design parameters specified in the early site permit;

(ii) The site falls within the site characteristics specified within the early site permit; and

(iii) There is no significant new environmental issue or information not considered on the site or the design only to the extent that they differ from that discussed in the final environmental impact statement prepared by the Commission in connection with the early site permit.

(4) The draft supplemental environmental impact statement prepared at the license renewal stage under § 51.95(c) need not discuss the economic or technical benefits and costs of either the proposed action or alternatives except if benefits and costs are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. In addition, the supplemental environmental impact statement prepared at the license renewal stage need not discuss other issues not related to the environmental effects of the proposed action and associated alternatives. The draft supplemental environmental impact statement for license renewal prepared under § 51.95(c) will rely on conclusions as amplified by the supporting information in the GEIS for issues designated as Category 1 in appendix B to subpart A of this part. The draft supplemental environmental impact statement must contain an analysis of those issues identified as Category 2 in appendix B to subpart A of this part that are open for the proposed action.

(5) The analysis for all draft environmental impact statements will, to the fullest extent practicable, quantify the various factors considered. To the extent that there are important qualitative considerations or factors that cannot be quantified, these considerations or factors will be discussed in qualitative terms.

(6) Due consideration will be given to compliance with environmental quality standards and requirements that have been imposed by Federal, State, regional, and local agencies having responsibility for environmental protection, including applicable zoning and land-use

regulations and water pollution limitations or requirements issued or imposed under the Federal Water Pollution Control Act. The environmental impact of the proposed action will be considered in the analysis with respect to matters covered by environmental quality standards and requirements irrespective of whether a certification or license from the appropriate authority has been obtained.[1] While satisfaction of Commission standards and criteria pertaining to radiological effects will be necessary to meet the licensing requirements of the Atomic Energy Act, the analysis will, for the purposes of NEPA, consider the radiological effects of the proposed action and alternatives.

(e) *Effect of limited work authorization*. If a limited work authorization was issued either in connection with or subsequent to an early site permit, or in connection with a construction permit or combined license application, then the environmental impact statement for the construction permit or combined license application will not address or consider the sunk costs associated with the limited work authorization.

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[1]Compliance with the environmental quality standards and requirements of the Federal Water Pollution Control Act (imposed by EPA or designated permitting states) is not a substitute for, and does not negate the requirement for NRC to weigh all environmental effects of the proposed action, including the degradation, if any, of water quality, and to consider alternatives to the proposed action that are available for reducing adverse effects. Where an environmental assessment of aquatic impact from plant discharges is available from the permitting authority, the NRC will consider the assessment in its determination of the magnitude of environmental impacts for striking an overall cost-benefit balance at the construction permit and operating license and early site permit and combined license stages, and in its determination of whether the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decision-makers would be unreasonable at the license renewal stage. When the assessment of aquatic impacts is not available from the permitting authority, NRC will establish on its own, or in conjunction with the permitting authority and other agencies having relevant expertise, the magnitude of potential impacts for striking an overall cost-benefit balance for the facility at the construction permit and operating license and early site permit and combined license stages, and in its determination of whether the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decision-makers would be unreasonable at the license renewal stage.

* * * * *

19) Section 51.76 is revised to read as follows:

§ 51.76 Draft environmental impact statement-limited work authorization.

The NRC will prepare a draft environmental impact statement relating to issuance of a limited work authorization in accordance with the procedures and measures described in §§ 51.70, 51.71, and 51.73, as further supplemented or modified in the following paragraphs.

(a) *Limited work authorization submitted as part of complete construction permit or combined license application*. If the application for a limited work authorization is submitted as part of a complete construction permit or combined license application, then the NRC may prepare a partial draft environmental impact statement, *provided*, *however*, that the analysis called for by § 51.71(d) will be limited to the activities proposed to be conducted under the limited work authorization. Alternatively, the NRC may prepare a complete draft environmental impact statement prepared in accordance with § 51.75(a) or (c), as applicable.

(b) *Phased application for limited work authorization under § 2.101(a)(9) of this chapter*. If the application for a limited work authorization is submitted in accordance with § 2.101(a)(9) of this chapter, then the draft environmental impact statement for part one of the application may be limited to consideration of the activities proposed to be conducted under the limited work authorization, and the proposed redress plan. However, if the environmental report contains the full set of information required to be submitted under § 51.50(a) or (c), then the draft environmental impact statement will be prepared in accordance with § 51.75(a) or (c), as applicable. Siting issues, including whether there is an obviously superior alternative site, or issues related to operation of the proposed nuclear power plant at the site, including need for

power may not be considered. After part two of the application is docketed, the NRC will prepare a draft supplement to the final environmental impact statement for part two of the application under § 51.72. No updating of the information contained in the final environmental statement prepared for part one is necessary in preparation of the supplemental environmental impact statement. The draft supplement must consider all environmental impacts associated with the prior issuance of the limited work authorization, but may not address or consider the sunk costs associated with the limited work authorization.

(c) *Limited work authorization submitted as part of an early site permit application*. If the application for a limited work authorization is submitted as part of an application for an early site permit, then the NRC will prepare an environmental impact statement in accordance with § 51.75(b). However, the analysis called for by § 51.71(d) must also address the activities proposed to be conducted under the limited work authorization.

(d) *Limited work authorization request submitted by early site permit holder*. If the application for a limited work authorization is submitted by a holder of an early site permit, then the NRC will prepare a prepare a draft supplement to the environmental impact statement for the early site permit. The supplement is limited to consideration of the activities proposed to be conducted under the limited work authorization, the adequacy of the proposed redress plan, and whether there is significant new information on the impacts of construction which materially affect the conclusions of the early site permit with respect to the environmental impacts of the activities to be conducted under the limited work authorization. No other updating of the information contained in the final environmental statement prepared for the early site permit is required.

(e) *Limited work authorization for site where EIS was prepared, but the facility was not constructed*. If the limited work authorization is for activities to be conducted at a site for which

the Commission has previously prepared an environmental impact statement for the construction and operation of a nuclear power plant, a construction permit was issued but construction of the plant (as defined in § 50.10 of this chapter) was never commenced, the draft environmental impact statement shall incorporate by reference the earlier environmental impact statement. The draft environmental impact statement will be limited to a consideration of whether there is significant new information with respect to the environmental impacts of construction, relevant to the activities to be conducted under the limited work authority, such that the conclusion of the referenced environmental impact statement on the impacts of construction would, when analyzed in accordance with § 51.71, lead to the conclusion that the limited work authorization should not be issued or should be issued with appropriate conditions.

(f) A draft environmental impact statement prepared under this section must separately evaluate the environmental impacts and proposed alternatives attributable to the activities proposed to be conducted under the limited work authorization. However, if the Applicant's Environmental Report - Limited Work Authorization Stage also contains the information required to be submitted in the environmental report required under § 51.50, then the environmental impact statement must address the impacts of construction and operation for the proposed facility (including the environmental impacts attributable to the limited work authorization), and discuss the overall costs and benefits balancing for the underlying proposed action, in accordance with § 51.71, and § 51.75(a) or (c), as applicable.

21) In § 51.103, a new paragraph (a)(6) is added to read as follows:

§ 51.103 Record of decision--general.

(a) * * *

(6) In a construction permit or the combined license proceeding, where a limited work

authorization under 10 CFR 50.10 was issued, the Commission's decision on the construction permit or combined license application will not address or consider the sunk costs associated with the limited work authorization in determining the proposed action.

* * * * *

22) In § 51.104, a new paragraph (c) is added to read as follows:

§ 51.104 NRC proceedings using public hearings; consideration of environmental impact statement.

* * * * *

(c) *Limited work authorization*. In any proceeding in which a limited work authorization is requested, unless the Commission orders otherwise, a party to the proceeding may take a position and offer evidence only on the aspects of the proposed action within the scope of NEPA and this subpart which are within the scope of that party's admitted contention, in accordance with the provisions of part 2 of this chapter applicable to the limited work authorization or in accordance with the terms of any notice of hearing applicable to the limited work authorization. In the proceeding, the presiding officer will decide any such matters in controversy among the parties.

23) Section 51.105, is revised to read as follows:

§ 51.105 Public hearings in proceedings for issuance of construction permits or early site permits; limited work authorizations.

(a) In addition to complying with applicable requirements of § 51.104, in a proceeding

for the issuance of a construction permit or early site permit for a nuclear power reactor, testing facility, fuel reprocessing plant or isotopic enrichment plant, the presiding officer will:

(1) Determine whether the requirements of section 102(2) (A), (C), and (E) of NEPA and the regulations in this subpart have been met;

(2) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken;

(3) Determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the construction permit or early site permit should be issued, denied, or appropriately conditioned to protect environmental values;

(4) Determine, in an uncontested proceeding, whether the NEPA review conducted by the NRC staff has been adequate; and

(5) Determine, in a contested proceeding, whether in accordance with the regulations in this subpart, the construction permit or early site permit should be issued as proposed.

(b) The presiding officer in an early site permit hearing shall not admit contentions proffered by any party concerning the benefits assessment (e.g., need for power) or alternative energy sources if those issues were not addressed by the applicant in the early site permit application.

(c)(1) In addition to complying with the applicable provisions of § 51.104, in any proceeding for the issuance of a construction permit for a nuclear power plant or an early site permit under part 52 of this chapter where the applicant requests a limited work authorization under § 50.10(c) of this chapter, the presiding officer shall - -

(i) Determine whether the requirements of section 102(2)(A), (C) and (E) of NEPA and the regulations in the subpart have been met, with respect to the activities to be conducted

under the limited work authorization;

(ii) Independently consider the balance among conflicting factors with respect to the limited work authorization which is contained in the record of the proceeding, with a view to determining the appropriate action to be taken;

(iii) In an uncontested proceeding, determine whether the NEPA review conducted by the NRC staff for the limited work authorization has been adequate; and

(iv) In a contested proceeding, determine whether in accordance with the regulations in this subpart, the limited work authorization should be issued as proposed.

(2) If the limited work authorization is for activities to be conducted at a site for which the Commission has previously prepared an environmental impact statement for the construction and operation of a nuclear power plant, and a construction permit was issued but construction of the plant was never completed, then in making the determinations in paragraph (c)(1) of this section, the presiding officer shall be limited to a consideration whether there is, with respect to construction activities encompassed by the environmental impact statement which are analogous to the activities to be conducted under the limited work authorization, significant new information on the environmental impacts of those activities, such that the limited work authorization should not be issued as proposed.

(3) The presiding officer's determination in this paragraph shall be made in a partial initial decision to be issued separately from, and in advance of, the presiding officer's decision in paragraph (a) of this section.

24) Section 51.107 is added to read as follows:

§ 51.107 Public hearings in proceedings for issuance of combined licenses; limited work authorizations.

(a) In addition to complying with applicable requirements of § 51.104, in a proceeding for the issuance of a combined license for a nuclear power reactor, the presiding officer will:

(1) Determine whether the requirements of section 102(2) (A), (C), and (E) of NEPA and the regulations in this subpart have been met;

(2) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken;

(3) Determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the combined license should be issued, denied, or appropriately conditioned to protect environmental values;

(4) Determine, in an uncontested proceeding, whether the NEPA review conducted by the NRC staff has been adequate; and

(5) Determine, in a contested proceeding, whether in accordance with the regulations in this subpart, the combined license should be issued as proposed by the NRC's Director of Nuclear Reactor Regulation.

(b) If the combined license application references an early site permit, then the presiding officer in a combined license hearing shall not admit contentions proffered by any party on environmental issues which have been accorded finality under § 52.39 of this chapter, unless this contention- -

(1) Demonstrates that the design of the facility falls outside the design parameters specified in the early site permit;

(2) Demonstrates that the site no longer falls within the site characteristics specified in

the early site permit; or

(3) Raises any other significant environmental issue not considered which is material to the site or the design only to the extent that it differs from those discussed or it reflects significant new information in addition to that discussed in the final environmental impact statement prepared by the Commission in connection with the early site permit.

(c) If the combined license application references a standard design certification, or proposes to use a manufactured reactor, then the presiding officer in a combined license hearing may not admit contentions proffered by any party concerning severe accident mitigation design alternatives unless the contention demonstrates that the site characteristics fall outside of the site parameters in the standard design certification or underlying manufacturing license for the manufactured reactor.

(d)(1) In addition to complying with the applicable provisions of § 51.104, in any proceeding for the issuance of a combined license where the applicant requests a limited work authorization under § 50.10(c) of this chapter, the presiding officer shall - -

(i) Determine whether the requirements of section 102(2)(A), (C) and (E) of NEPA and the regulations in the subpart have been met, with respect to the activities to be conducted under the limited work authorization;

(ii) Independently consider the balance among conflicting factors with respect to the limited work authorization which is contained in the record of the proceeding, with a view to determining the appropriate action to be taken;

(iii) In an uncontested proceeding, determine whether the NEPA review conducted by the NRC staff for the limited work authorization has been adequate; and

(iv) In a contested proceeding, determine whether in accordance with the regulations in this subpart, the limited work authorization should be issued as proposed by the NRC's Director

of Nuclear Reactor Regulation.

(2) If the limited work authorization is for activities to be conducted at a site for which the Commission has previously prepared an environmental impact statement for the construction and operation of a nuclear power plant, and a construction permit was issued but construction of the plant was never completed, then in making the determinations in paragraph (c)(1) of this section, the presiding officer shall be limited to a consideration whether there is, with respect to construction activities encompassed by the environmental impact statement which are analogous to the activities to be conducted under the limited work authorization, significant new information on the environmental impacts of those activities, such that the limited work authorization should not be issued as proposed by the Director of Nuclear Reactor Regulation.

(3) In making the determination required by this section, the presiding officer may not address or consider the sunk costs associated with the limited work authorization.

(4) The presiding officer's determination in this paragraph shall be made in a partial initial decision to be issued separately from, and in advance of, the presiding officer's decision in paragraph (a) of this section on the combined license.

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

25) The authority citation for part 52 continues to read as follows:

AUTHORITY: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

26) Section 52.1 is revised to read as follows:

§ 52.1 Definitions.

(a) As used in this part - -

Combined license means a combined construction permit and operating license with conditions for a nuclear power facility issued under subpart C of this part.

Decommission means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits - -

(i) Release of the property for unrestricted use and termination of the license; or

(ii) Release of the property under restricted conditions and termination of the license.

Design characteristics are the actual features of a reactor or reactors. Design characteristics are specified in a standard design approval, a standard design certification, or a combined license application.

Design parameters are the postulated features of a reactor or reactors that could be built at a proposed site. Design parameters are specified in an early site permit.

Early site permit means a Commission approval, issued under subpart A of this part, for a site or sites for one or more nuclear power facilities.

License means a license, including an early site permit, combined license or manufacturing license under this part or a renewed license issued by the Commission under this part or part 54 of this chapter.

Licensee means a person who is authorized to conduct activities under a license issued by the Commission.

Limited work authorization means the authorization provided by the Director of Nuclear Reactor Regulation under § 50.10 of this chapter.

Manufacturing license means a license, issued under subpart F of this part, authorizing

the manufacture of nuclear power reactors but not their construction, installation, or operation at the sites on which the reactors are to be operated.

Modular design means a nuclear power station that consists of two or more essentially identical nuclear reactors (modules) and each module is a separate nuclear reactor capable of being operated independent of the state of completion or operating condition of any other module co-located on the same site, even though the nuclear power station may have some shared or common systems.

Prototype plant means a nuclear power plant that is used to test new safety features, such as the testing required under 10 CFR 50.43(e). The prototype plant is similar to a first-of-a-kind or standard plant design in all features and size, but may include additional safety features to protect the public and the plant staff from the possible consequences of accidents during the testing period.

Site characteristics are the actual physical, environmental and demographic features of a site. Site characteristics are specified in an early site permit or in a final safety analysis report for a combined license.

Site parameters are the postulated physical, environmental and demographic features of an assumed site. Site parameters are specified in a standard design approval, standard design certification, or a manufacturing license.

Standard design means a design which is sufficiently detailed and complete to support certification in accordance with subpart B or E of this part, and which is usable for a multiple number of units or at a multiple number of sites without reopening or repeating the review.

Standard design approval or design approval means an NRC staff approval, issued under subpart E of this part, of a final standard design for a nuclear power reactor of the type described in 10 CFR 50.22. The approval may be for either the final design for the entire

reactor facility or the final design of major portions thereof.

Standard design certification or design certification means a Commission approval, issued under subpart B of this part, of a final standard design for a nuclear power facility. This design may be referred to as a *certified standard design*.

(b) All other terms in this part have the meaning set out in 10 CFR 50.2, or Section 11 of the Atomic Energy Act, as applicable.

27) Section 52.17 is revised to read as follows:

§ 52.17 Contents of applications; technical information.

(a) The application must contain:

(1) A site safety analysis report. The site safety analysis report must include the following:

(i) The specific number, type, and thermal power level of the facilities, or range of possible facilities, for which the site may be used;

(ii) The anticipated maximum levels of radiological and thermal effluents each facility will produce;

(iii) The type of cooling systems, intakes, and outflows that may be associated with each facility;

(iv) The boundaries of the site;

(v) The proposed general location of each facility on the site;

(vi) The seismic, meteorological, hydrologic, and geologic characteristics of the proposed site with appropriate consideration of the most severe of the natural phenomena that have been historically reported for the site and surrounding area and with sufficient margin for

the limited accuracy, quantity, and period of time in which the historical data have been accumulated;

(vii) The location and description of any nearby industrial, military, or transportation facilities and routes;

(viii) The existing and projected future population profile of the area surrounding the site;

(ix) A description and safety assessment of the site on which a facility is to be located. The assessment must contain an analysis and evaluation of the major structures, systems, and components of the facility that bear significantly on the acceptability of the site under the radiological consequence evaluation factors identified in paragraphs (a)(1)(ix)(A) and (a)(1)(ix)(B) of this section. In performing this assessment, an applicant shall assume a fission product release[1] from the core into the containment assuming that the facility is operated at the ultimate power level contemplated. The applicant shall perform an evaluation and analysis of the postulated fission product release, using the expected demonstrable containment leak rate and any fission product cleanup systems intended to mitigate the consequences of the accidents, together with applicable site characteristics, including site meteorology, to evaluate the offsite radiological consequences. Site characteristics must comply with part 100 of this chapter. The evaluation must determine that:

(A) An individual located at any point on the boundary of the exclusion area for any 2 hour period following the onset of the postulated fission product release, would not receive a

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[1]The fission product release assumed for this evaluation should be based upon a major accident, hypothesized for purposes of site analysis or postulated from considerations of possible accidental events. Such accidents have generally been assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products.

radiation dose in excess of 25 rem[2] total effective dose equivalent (TEDE).

(B) An individual located at any point on the outer boundary of the low population zone, who is exposed to the radioactive cloud resulting from the postulated fission product release (during the entire period of its passage) would not receive a radiation dose in excess of 25 rem TEDE;

(x) For nuclear power facilities to be sited on multi-unit sites, an evaluation of the potential hazards to the structures, systems, and components important to safety of operating units resulting from construction activities, as well as a description of the managerial and administrative controls to be used to provide assurance that the limiting conditions for operation are not exceeded as a result of construction activities at the multi-unit sites;

(xi) Information demonstrating that site characteristics are such that adequate security plans and measures can be developed;

(xii) For applications submitted after [**effective date of final rule**], a description of the quality assurance program applied to site-related activities for the future design, fabrication, construction, and testing of the structures, systems, and components of a facility or facilities that may be constructed on the site. Appendix B to 10 CFR Part 50 contains requirements for quality assurance programs for nuclear power plants. The description of the quality assurance program for a nuclear power plant site must include a discussion of how the applicable

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[2]A whole body dose of 25 rem has been stated to correspond numerically to the once in a lifetime accidental or emergency dose for radiation workers which, according to NCRP recommendations at the time could be disregarded in the determination of their radiation exposure status (see NBS Handbook 69 dated June 5, 1959). However, its use is not intended to imply that this number constitutes an acceptable limit for an emergency dose to the public under accident conditions. Rather, this dose value has been set forth in this section as a reference value, which can be used in the evaluation of plant design features with respect to postulated reactor accidents, to assure that these designs provide assurance of low risk of public exposure to radiation, in the event of an accidents.

requirements of appendix B to 10 CFR Part 50 will be satisfied; and

(xiii) An evaluation of the site against applicable sections of the Standard Review Plan (SRP) revision in effect 6 months before the docket date of the application. The evaluation required by this section must include an identification and description of all differences in analytical techniques and procedural measures proposed for a site and those corresponding techniques and measures given in the SRP acceptance criteria. Where such a difference exists, the evaluation must discuss how the proposed alternative provides an acceptable method of complying with the Commission's regulations, or portions thereof, that underlie the corresponding SRP acceptance criteria. The SRP was issued to establish criteria that the NRC staff intends to use in evaluating whether an applicant/licensee meets the Commission's regulations. The SRP is not a substitute for the regulations, and compliance is not a requirement.

(2) A complete environmental report as required by 10 CFR 51.50(b).

(b)(1) The application must identify physical characteristics of the proposed site, such as egress limitations from the area surrounding the site, that could pose a significant impediment to the development of emergency plans. If physical characteristics are identified that could pose a significant impediment to the development of emergency plans, the application must identify measures that would, when implemented, mitigate or eliminate the significant impediment.

(2) The application may also:

(i) Propose major features of the emergency plans in the site safety analysis report, in accordance with the pertinent standards of 10 CFR 50.47, and the requirements of appendix E to 10 CFR part 50, such as the exact size and configuration of the emergency planning zones, that can be reviewed and approved by NRC in consultation with the Federal Emergency

Management Agency (FEMA) in the absence of complete and integrated emergency plans; or

(ii) Propose complete and integrated emergency plans in the site safety analysis report for review and approval by the NRC, in consultation with FEMA, in accordance with the applicable standards of 10 CFR 50.47, and the requirements of appendix E to 10 CFR part 50. To the extent approval of emergency plans is sought, the application must contain the information required by §§ 50.33(g) and (j) of this chapter.

(3) Emergency plans, and each major feature of an emergency plan, submitted under paragraph (b)(2) of this section must include the proposed inspections, tests, and analyses that the holder of a combined license referencing the early site permit shall perform, and the acceptance criteria that are necessary and sufficient to provide reasonable assurance that, if the inspections, tests, and analyses are performed and the acceptance criteria met, the facility has been constructed and will operate in conformity with the license, the provisions of the Atomic Energy Act, and the NRC's regulations.

(4) Under paragraphs (b)(1) and (b)(2)(i) of this section, the application must include a description of contacts and arrangements made with Federal, State, and local governmental agencies with emergency planning responsibilities. The application must contain any certifications that have been obtained. If these certifications cannot be obtained, the application must contain information, including a utility plan, sufficient to show that the proposed plans provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the site. Under the option set forth in paragraph (b)(2)(ii) of this section, the applicant shall make good faith efforts to obtain from the same governmental agencies certifications that:

(i) The proposed emergency plans are practicable;

(ii) These agencies are committed to participating in any further development of the

plans, including any required field demonstrations; and

(iii) That these agencies are committed to executing their responsibilities under the plans in the event of an emergency.

(c) An applicant may request that a limited work authorization under 10 CFR 50.10 be issued in conjunction with the early site permit. The application must include the information otherwise required by 10 CFR 50.10.

(d) The NRC staff will advise the applicant on whether any information beyond that required by this section must be submitted.

28) Section 52.24 is revised to read as follows:

§ 52.24 Issuance of early site permit.

(a) After conducting a hearing under § 52.21 and receiving the report to be submitted by the ACRS under § 52.23, the Commission may issue an early site permit, in the form the Commission deems appropriate, if the Commission finds that:

(1) An application for an early site permit meets the applicable standards and requirements of the Act and the Commission's regulations;

(2) Notifications, if any, to other agencies or bodies have been duly made;

(3) There is reasonable assurance that the site is in conformity with the provisions of the Act, and the Commission's regulations;

(4) The applicant is technically qualified to engage in any activities authorized;

(5) The proposed inspections, tests, analyses and acceptance criteria, including any on emergency planning, are necessary and sufficient, within the scope of the early site permit, to provide reasonable assurance that the facility has been constructed and will be operated in

conformity with the license, the provisions of the Act, and the Commission's regulations;

(6) Issuance of the permit will not be inimical to the common defense and security or to the health and safety of the public;

(7) Any significant adverse environmental impact resulting from activities requested under § 52.17(c) can be redressed; and

(8) The findings required by subpart A of 10 CFR part 51 have been made.

(b) The early site permit must specify the site characteristics, design parameters, and terms and conditions of the early site permit the Commission deems appropriate. Before issuance of either a construction permit or combined license referencing an early site permit, the Commission shall find that any relevant terms and conditions of the early site permit have been met.

29) Section 52.25 is revised to read as follows:

§ 52.25 Limited work authorization after issuance of early site permit.

A holder of an early site permit may request a limited work authorization in accordance with 10 CFR 50.10 of this chapter.

30) Section 52.79 is revised to read as follows:.

§ 52.79 Contents of applications; technical information in final safety analysis report.

(a) The application must contain a final safety analysis report that describes the facility, presents the design bases and the limits on its operation, and presents a safety analysis of the structures, systems, and components of the facility as a whole. The final safety analysis report

must include the following information, at a level of information sufficient to enable the Commission to reach a final conclusion on all safety matters that must be resolved by the Commission before issuance of a combined license:

(1)(i) The boundaries of the site;

(ii) The proposed general location of each facility on the site;

(iii) The seismic, meteorological, hydrologic, and geologic characteristics of the proposed site with appropriate consideration of the most severe of the natural phenomena that have been historically reported for the site and surrounding area and with sufficient margin for the limited accuracy, quantity, and time in which the historical data have been accumulated;

(iv) The location and description of any nearby industrial, military, or transportation facilities and routes;

(v) The existing and projected future population profile of the area surrounding the site;

(vi) A description and safety assessment of the site on which the facility is to be located. The assessment must contain an analysis and evaluation of the major structures, systems, and components of the facility that bear significantly on the acceptability of the site under the radiological consequence evaluation factors identified in paragraphs (a)(1)(vi)(A) and (a)(1)(vi)(B) of this section. In performing this assessment, an applicant shall assume a fission product release[3] from the core into the containment assuming that the facility is operated at the ultimate power level contemplated. The applicant shall perform an evaluation and analysis of the postulated fission product release, using the expected demonstrable containment leak rate

[3]The fission product release assumed for this evaluation should be based upon a major accident, hypothesized for purposes of site analysis or postulated from considerations of possible accidental events. These accidents have generally been assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products.

and any fission product cleanup systems intended to mitigate the consequences of the accidents, together with applicable site characteristics, including site meteorology, to evaluate the offsite radiological consequences. Site characteristics must comply with part 100 of this chapter. The evaluation must determine that:

(A) An individual located at any point on the boundary of the exclusion area for any 2 hour period following the onset of the postulated fission product release, would not receive a radiation dose in excess of 25 rem[4] total effective dose equivalent (TEDE).

(B) An individual located at any point on the outer boundary of the low population zone, who is exposed to the radioactive cloud resulting from the postulated fission product release (during the entire period of its passage) would not receive a radiation dose in excess of 25 rem TEDE; and

(2) A description and analysis of the structures, systems, and components of the facility with emphasis upon performance requirements, the bases, with technical justification, upon which these requirements have been established, and the evaluations required to show that safety functions will be accomplished. It is expected that reactors will reflect through their design, construction and operation an extremely low probability for accidents that could result in the release of significant quantities of radioactive fission products. The descriptions must be sufficient to permit understanding of the system designs and their relationship to safety

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[4]A whole body dose of 25 rem has been stated to correspond numerically to the once in a lifetime accidental or emergency dose for radiation workers which, according to NCRP recommendations at the time could be disregarded in the determination of their radiation exposure status (see NBS Handbook 69 dated June 5, 1959). However, its use is not intended to imply that this number constitutes an acceptable limit for an emergency dose to the public under accident conditions. Rather, this dose value has been set forth in this section as a reference value, which can be used in the evaluation of plant design features with respect to postulated reactor accidents, to assure that these designs provide assurance of low risk of public exposure to radiation, in the event of an accident.

evaluations. Items as the reactor core, reactor coolant system, instrumentation and control systems, electrical systems, containment system, other engineered safety features, auxiliary and emergency systems, power conversion systems, radioactive waste handling systems, and fuel handling systems must be discussed insofar as they are pertinent. The following power reactor design characteristics and proposed operation will be taken into consideration by the Commission:

(i) Intended use of the reactor including the proposed maximum power level and the nature and inventory of contained radioactive materials;

(ii) The extent to which generally accepted engineering standards are applied to the design of the reactor;

(iii) The extent to which the reactor incorporates unique, unusual or enhanced safety features having a significant bearing on the probability or consequences of accidental release of radioactive materials;

(iv) The safety features that are to be engineered into the facility and those barriers that must be breached as a result of an accident before a release of radioactive material to the environment can occur. Special attention must be directed to plant design features intended to mitigate the radiological consequences of accidents. In performing this assessment, an applicant shall assume a fission product release[5] from the core into the containment assuming that the facility is operated at the ultimate power level contemplated;

(3) The kinds and quantities of radioactive materials expected to be produced in the

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[5]The fission product release assumed for this evaluation should be based upon a major accident, hypothesized for purposes of site analysis or postulated from considerations of possible accidental events. These accidents have generally been assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products.

operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in part 20 of this chapter;

(4) The design of the facility including:

(i) The principal design criteria for the facility. Appendix A to part 50 of this chapter, "General Design Criteria for Nuclear Power Plants," establishes minimum requirements for the principal design criteria for water-cooled nuclear power plants similar in design and location to plants for which construction permits have previously been issued by the Commission and provides guidance to applicants in establishing principal design criteria for other types of nuclear power units;

(ii) The design bases and the relation of the design bases to the principal design criteria;

(iii) Information relative to materials of construction, arrangement, and dimensions, sufficient to provide reasonable assurance that the design will conform to the design bases with adequate margin for safety.

(5) An analysis and evaluation of the design and performance of structures, systems, and components with the objective of assessing the risk to public health and safety resulting from operation of the facility and including determination of the margins of safety during normal operations and transient conditions anticipated during the life of the facility, and the adequacy of structures, systems, and components provided for the prevention of accidents and the mitigation of the consequences of accidents. Analysis and evaluation of ECCS cooling performance and the need for high-point vents following postulated loss-of-coolant accidents must be performed in accordance with the requirements of §§ 50.46 and 50.46a of this chapter;

(6) A description and analysis of the fire protection design features for the reactor necessary to comply with 10 CFR part 50, appendix A, GDC 3, and § 50.48 of this chapter;

(7) A description of protection provided against pressurized thermal shock events, including projected values of the reference temperature for reactor vessel beltline materials as defined in §§ 50.60, and 50.61(b)(1) and (b)(2) of this chapter;

(8) The analyses and the descriptions of the equipment and systems required by § 50.44 of this chapter for combustible gas control;

(9) The coping analyses required, and any necessary design features necessary to address station blackout, as described in § 50.63 of this chapter;

(10) A description of the program required by § 50.49(a) of this chapter for the environmental qualification of electric equipment important to safety and the list of electric equipment important to safety that is required by 10 CFR 50.49(d);

(11) A description of the program(s) necessary to ensure that the systems and components meet the requirements of the ASME Boiler and Pressure Vessel Code in accordance with § 50.55a of this chapter;

(12) A description of the primary containment leakage rate testing program necessary to ensure that the containment meets the requirements of Appendix J to 10 CFR part 50;

(13) A description of the reactor vessel material surveillance program required by Appendix H to 10 CFR Part 50;

(14) A description of the operator training program necessary to meet the requirements of 10 CFR part 55;

(15) A description of the program for monitoring the effectiveness of maintenance necessary to meet the requirements of § 50.65 of this chapter;

(16) The information with respect to the design of equipment to maintain control over radioactive materials in gaseous and liquid effluents produced during normal reactor operations, as described in § 50.34a(d) of this chapter;

(17) The information with respect to compliance with technically relevant positions of the Three Mile Island requirements in § 50.34(f) of this chapter, with the exception of §§ 50.34(f)(1)(xii), (f)(2)(ix), and (f)(3)(v);

(18) If the applicant seeks to use risk-informed treatment of SSCs in accordance with § 50.69 of this chapter, the information required by § 50.69(b)(2) of this chapter;

(19) Information necessary to demonstrate that the SSCs important to safety comply with the earthquake engineering criteria in 10 CFR part 50, appendix S;

(20) Proposed technical resolutions of those unresolved safety issues and medium- and high-priority generic safety issues that are identified in the version of NUREG-0933 current on the date 6 months before application and that are technically relevant to the design;

(21) Emergency plans complying with the requirements of § 50.47 of this chapter, and 10 CFR part 50, appendix E;

(22)(i) All emergency plan certifications that have been obtained from the State and local governmental agencies with emergency planning responsibilities must state that:

(A) The proposed emergency plans are practicable;

(B) These agencies are committed to participating in any further development of the plans, including any required field demonstrations; and

(C) These agencies are committed to executing their responsibilities under the plans in the event of an emergency;

(ii) If certifications cannot be obtained after sustained, good faith efforts by the applicant, then the application must contain information, including a utility plan, sufficient to show that the proposed plans provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the site.

(23) An applicant may request that a limited work authorization under 10 CFR 50.10 be

issued in advance of issuance of the combined license. The application must include the information otherwise required by 10 CFR 50.10, in accordance with either 10 CFR 2.101(a)(1) through (4), or 10 CFR 2.101(a)(9).

(24) If the application is for a nuclear power reactor design which differs significantly from light-water reactor designs that were licensed before 1997 or use simplified, inherent, passive, or other innovative means to accomplish their safety functions, the application must describe how the design meets the requirements in § 50.43(e) of this chapter;

(25) A description of the quality assurance program to be applied to the design, fabrication, construction, and testing of the structures, systems, and components of the facility. Appendix B to 10 CFR part 50 sets forth the requirements for quality assurance programs for nuclear power plants. The description of the quality assurance program for a nuclear power plant shall include a discussion of how the applicable requirements of appendix B to 10 CFR part 50 will be satisfied;

(26) The applicant's organizational structure, allocations or responsibilities and authorities, and personnel qualifications requirements for operation;

(27) Managerial and administrative controls to be used to assure safe operation. Appendix B to 10 CFR part 50 sets forth the requirements for these controls for nuclear power plants. The information on the controls to be used for a nuclear power plant shall include a discussion of how the applicable requirements of appendix B to 10 CFR part 50 will be satisfied;

(28) Plans for preoperational testing and initial operations;

(29) Plans for conduct of normal operations, including maintenance, surveillance, and periodic testing of structures, systems, and components;

(30) Proposed technical specifications prepared in accordance with the requirements of §§ 50.36 and 50.36a of this chapter;

(31) For nuclear power plants to be operated on multi-unit sites, an evaluation of the potential hazards to the structures, systems, and components important to safety of operating units resulting from construction activities, as well as a description of the managerial and administrative controls to be used to provide assurance that the limiting conditions for operation are not exceeded as a result of construction activities at the multi-unit sites;

(32) The technical qualifications of the applicant to engage in the proposed activities in accordance with the regulations in this chapter;

(33) A description of the training program required by § 50.120 of this chapter;

(34) A description and plans for implementation of an operator requalification program. The operator requalification program must as a minimum, meet the requirements for those programs contained in § 55.59 of this chapter;

(35) A physical security plan, describing how the applicant will meet the requirements of 10 CFR part 73 (and 10 CFR part 11, if applicable, including the identification and description of jobs as required by § 11.11(a) of this chapter, at the proposed facility). The plan must list tests, inspections, audits, and other means to be used to demonstrate compliance with the requirements of 10 CFR parts 11 and 73, if applicable;

(36)(i) A safeguards contingency plan in accordance with the criteria set forth in appendix C to 10 CFR part 73. The safeguards contingency plan shall include plans for dealing with threats, thefts, and radiological sabotage, as defined in part 73 of this chapter, relating to the special nuclear material and nuclear facilities licensed under this chapter and in the applicant's possession and control. Each application for this type of license shall include the information contained in the applicant's safeguards contingency plan.[6] (Implementing

[6]A physical security plan that contains all the information required in both §§ 73.55 of this chapter and appendix C to 10 CFR part 73 satisfies the requirement for a contingency plan.

procedures required for this plan need not be submitted for approval.)

(ii) Each applicant who prepares a physical security plan, a safeguards contingency plan, or a guard qualification and training plan, shall protect the plans and other related Safeguards Information against unauthorized disclosure in accordance with the requirements of § 73.21 of this chapter, as appropriate.

(37) The information which demonstrates how operating experience insights from generic letters and bulletins issued up to 6 months before the docket date of the application, or comparable international operating experience, have been incorporated into the plant design;

(38) A description and analysis of design features for the prevention and mitigation of severe accidents (core-melt accidents), including challenges to containment integrity caused by core-concrete interaction, steam explosion, high-pressure core melt ejection, hydrogen detonation, and containment bypass;

(39) The earliest and latest dates for completion of the construction;

(40) **[RESERVED]**

(41) For applications for light-water cooled nuclear power plant combined licenses, an evaluation of the facility against the Standard Review Plan (SRP) in effect 6 months before the docket date of the application. The evaluation required by this section must include an identification and description of all differences in design features, analytical techniques and procedural measures proposed for a facility and those corresponding features, techniques and measures given in the SRP acceptance criteria. Where a difference exists, the evaluation must discuss how the proposed alternative provides an acceptable method of complying with the Commission's regulations, or portions thereof, that underlie the corresponding SRP acceptance criteria. The SRP was issued to establish criteria that the NRC staff intends to use in evaluating whether an applicant/licensee meets the Commission's regulations. The SRP is not a

substitute for the regulations, and compliance is not a requirement;

(42) Information demonstrating how the applicant will comply with requirements for reduction of risk from anticipated transients without scram (ATWS) events in § 50.62 of this chapter;

(43) Information demonstrating how the applicant will comply with requirements for criticality accidents in § 50.68 of this chapter;

(44) The NRC staff will advise the applicant on whether any information beyond that required by this section must be submitted.

(b) If the application for a final safety analysis report references an early site permit, then the following requirements apply:

(1) The final safety analysis report need not contain information or analyses submitted to the Commission in connection with the early site permit, but must contain, in addition to the information and analyses otherwise required, information sufficient to demonstrate that the design of the facility falls within the site characteristics and design parameters specified in the early site permit.

(2) If the final safety analysis report does not demonstrate that design of the facility falls within the site characteristics and design parameters, the application must include a request for a variance that complies with the requirements of §§ 52.39 and 52.93.

(3) The final safety analysis report must demonstrate that all terms and conditions that have been included in the early site permit will be satisfied by the date of issuance of the combined license.

(4) If the early site permit approves complete and integrated emergency plans, or major features of emergency plans, then the final safety analysis report must include any new or additional information that updates and corrects the information that was provided under

§ 52.17(b), and discuss whether the new or additional information materially changes the bases for compliance with the applicable requirements. If the proposed facility emergency plans incorporate existing emergency plans or major features of emergency plans, the application must identify changes to the emergency plans or major features of emergency plans that have been incorporated into the proposed facility emergency plans and that constitute a decrease in effectiveness under § 50.54(q) of this chapter.

(5) If complete and integrated emergency plans are approved as part of the early site permit, new certifications meeting the requirements of paragraph (a)(22) of this section are not required.

(c) If the combined license application references a standard design approval, then the following requirements apply:

(1) The final safety analysis report need not contain information or analyses submitted to the Commission in connection with the design approval, but must contain, in addition to the information and analyses otherwise required, information sufficient to demonstrate that the characteristics of the site fall within the site parameters specified in the design approval.

(2) The final safety analysis report must demonstrate that the interface requirements established for the design under § 52.137 have been met.

(3) The final safety analysis report must demonstrate that all terms and conditions that have been included in the final design approval will be satisfied by the date of issuance of the combined license.

(d) If the combined license application references a standard design certification, then the following requirements apply:

(1) The final safety analysis report need not contain information or analyses submitted to the Commission in connection with the design certification, but must contain, in addition to

the information and analyses otherwise required, information sufficient to demonstrate that the characteristics of the site fall within the site parameters specified in the design certification.

(2) The final safety analysis report must demonstrate that the interface requirements established for the design under § 52.47 have been met.

(3) The final safety analysis report must demonstrate that all requirements and restrictions set forth in the referenced design certification rule must be satisfied by the date of issuance of the combined license.

(e) If the combined license application references the use of one or more manufactured nuclear power reactors licensed under subpart F of this part, then the following requirements apply:

(1) The final safety analysis report need not contain information or analyses submitted to the Commission in connection with the manufacturing license, but must contain, in addition to the information and analyses otherwise required, information sufficient to demonstrate that the site parameters for the manufactured reactor are bounded by the site where the manufactured reactor is to be installed and used.

(2) The final safety analysis report must demonstrate that the interface requirements established for the design have been met.

(3) The final safety analysis report must demonstrate that all terms and conditions that have been included in the manufacturing license will be satisfied by the date of issuance of the combined license.

31) Section 52.80 is revised to read as follows:

§ 52.80 Contents of applications; additional technical information.

The application must contain:

(a) A plant-specific probabilistic risk assessment (PRA). If the application references a standard design certification or standard design approval, or if the application proposes to use a nuclear power reactor manufactured under a manufacturing license under subpart F of this part, the plant-specific PRA must use the PRA for the design certification, design approval, or manufactured reactor, as applicable, and must be updated to account for site-specific design information and any design changes, departures, or variances.

(b) The proposed inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and the acceptance criteria which are necessary and sufficient to provide reasonable assurance that, if the inspections, tests, and analyses are performed and the acceptance criteria met, the facility has been constructed and will operate in conformity with the combined license, the provisions of the Atomic Energy Act, and the NRC's regulations.

(1) If the application references an early site permit with ITAAC, the early site permit ITAAC must apply to those aspects of the combined license which are approved in the early site permit.

(2) If the application references a standard design certification, the ITAAC contained in the certified design must apply to those portions of the facility design which are approved in the design certification.

(3) If the application references an early site permit with ITAAC or a standard design certification or both, the application may include a notification that a required inspection, test, or analysis in the ITAAC has been successfully completed and that the corresponding acceptance criterion has been met. The *Federal Register* notification required by § 52.85 must indicate that the application includes this notification.

(c) An environmental report, in accordance with 10 CFR 51.50(c) if a limited work authorization under 10 CFR 50.10 is not requested in conjunction with the combined license application, or in accordance with §§ 51.49 and 51.50(c) of this chapter if a limited work authorization is requested in conjunction with the combined license application.

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Dated at Rockville, MD this _____ day of _____ 2006.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission