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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 56 and 57

[Docket No. PY–05–003]

RIN 0581–AC47

Update and Clarify a Shell Egg Grading Definition

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is amending the regulations governing the voluntary shell egg grading program and the regulations governing the inspection of eggs. The revision will revise the definition of washed ungraded eggs in each of the regulations. From time to time, sections in the regulations are affected by changes in egg production and processing technology. This rule updates the regulations to reflect these changes.

DATES: *Effective Date:* April 12, 2006.

FOR FURTHER INFORMATION CONTACT: Charles L. Johnson, Chief, Grading Branch, (202) 720–3271.

SUPPLEMENTARY INFORMATION:

Background and Proposed Changes

AMS administers a voluntary grading program for shell eggs under the Agricultural Marketing Act of 1946, as amended (AMA) (7 U.S.C. 1621 *et seq.*). Any interested party that applies for service must comply with the terms and conditions of the regulations and must pay for the services rendered. AMS graders monitor processing operations and verify the grade and size of eggs packed into packages bearing the USDA grademark. Regulations governing this program are contained in 7 CFR part 56.

AMS also administers a mandatory inspection program for shell eggs under the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*). This inspection program ensures that shell eggs sold to consumers contain no more restricted eggs than are permitted in the standards for consumer grades. Regulations governing this program are contained in 7 CFR part 57.

The Agency routinely reviews its regulations to ensure that they are current and up-to-date. The latest review of 7 CFR part 56 and 7 CFR part 57 identified the following changes that are needed to bring the regulations up-to-date with current egg production and processing technology.

Washed Ungraded Eggs

The Agency will clarify the definition of *washed ungraded eggs* that appears in both regulations. The definitions currently state that washed ungraded eggs mean ''* * * eggs which have been washed but not sized or segregated for quality.'' The revised definitions will state that washed ungraded eggs mean ''eggs which have been washed and that are either sized or unsized, but not segregated for quality.''

Proposed Rule and Comments

The proposed rule was published in **Federal Register** on September 26, 2005 (70 FR 56139). The comment period ended November 25, 2005.

We received two comments: one from a shell egg producer and one from an unidentified commenter. The shell egg producer supported the proposed amendment. The Agency did not address the second comment because it was outside the scope of this rulemaking.

Executive Order 12866 and Effect on Small Entities

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB). In addition, pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of the rule on small entities and has determined that its provisions would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Small Business Administration (SBA) (13 CFR 121.201) defines small entities that produce and process chicken eggs as those whose annual receipts are less than $9,000,000. Approximately 625,000 egg laying hens are needed to produce enough eggs to gross $9,000,000.

Currently, the AMA authorizes a voluntary grading program for shell eggs. Shell egg processors that apply for service must pay for the services rendered. Shell egg processors are entitled to pack their eggs in packages bearing the USDA grade shield when AMS graders are present to certify that the eggs meet the grade requirements as labeled. Plants in which these grading services are performed are called official plants. Shell egg processors who do not use USDA's grading service may not use the USDA grademark. There are about 540 shell egg processors registered with the Department that have 3,000 or more laying hens. Of these, 161 are official plants that use USDA's grading service and would be subject to this proposed rule. Of these 161 official plants, 38 meet the small business definition.

The EPIA authorizes the mandatory inspection of egg products operations and the mandatory surveillance of the disposition of shell eggs that are undesirable for human consumption, with implementing regulations in 7 CFR part 57. All of the approximate 540 shell egg processors registered with the Department are required to comply with the labeling provisions of the EPIA and would be subject to this proposed rule. Of these 540 shell egg processors, 313 meet the small business definition.

This amendment will not have an adverse economic impact on processors. It will revise the AMA and the EPIA regulations by up-dating the definition of washed ungraded eggs to reflect current egg production and processing technology.

For the above reasons, the Agency has certified that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they

present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Office of Management and Budget (OMB) has approved the information collection and recordkeeping requirements included in this proposed rule, and there are no new requirements. The assigned OMB control number is 0581–0128.

AMS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects

7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 57

Eggs and egg products, Exports, Food grades and standards, Food labeling, Imports, Reporting and recordkeeping requirements.

■ For reasons set forth in the preamble, 7 CFR parts 56 and 57 are amended as follows:

PART 56—VOLUNTARY GRADING OF SHELL EGGS

■ 1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 2. In § 56.1, revise the term *Washed ungraded eggs* to read as follows:

§ 56.1 Meaning of words and terms defined.

* * * * *

Washed ungraded eggs means eggs which have been washed and that are either sized or unsized, but not segregated for quality.

PART 57—INSPECTION OF EGGS (EGGS PRODUCTS INSPECTION ACT)

■ 3. The authority citation for part 57 continues to read as follows:

Authority: 21 U.S.C. 1031–1056.

■ 4. In § 57.1, revise the term Washed ungraded eggs to read as follows:

§ 57.1 Definitions.

* * * * *

Washed ungraded eggs means eggs which have been washed and that are either sized or unsized, but not segregated for quality.

Dated: March 8, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–2366 Filed 3–10–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV06–932–1 IFR]

Olives Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the California Olive Committee (committee) for the 2006 and subsequent fiscal years from $15.68 to $11.03 per assessable ton of olives handled. The committee locally administers the marketing order which regulates the handling of olives grown in California. Assessments upon olive handlers are used by the committee to fund reasonable and necessary expenses of the program. The fiscal year began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective March 14, 2006. Comments received by May 12, 2006, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Laurel May, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, CA 93721; Telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California olive handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be effective beginning on January 1, 2006, apply to all assessable olives from the current crop year, and will continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an

inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the committee for the 2005 and subsequent fiscal years from $15.68 to $11.03 per ton of assessable olives from the applicable crop years.

The California olive marketing order provides authority for the committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The fiscal year, which is the 12-month period between January 1 and December 31, begins after the corresponding crop year, which is the 12-month period beginning August 1 and ending July 31 of the subsequent year. Fiscal year budget and assessment recommendations are made after the corresponding crop year olive tonnage is reported. The members of the committee are producers and handlers of California olives. They are familiar with the committee's needs and with costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2005 and subsequent fiscal years, the committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The committee met on December 13, 2005, and made recommendations regarding their fiscal year 2006 expenditures and assessment rate. Subsequently, the committee revised its budget recommendation because it anticipated higher administrative expenses than it had estimated earlier. In a mail vote completed on January 27, 2006, the committee unanimously recommended 2006 fiscal year expenditures of $1,301,121 and an assessment rate of $11.03 per ton of assessable olives. In comparison, the budgeted expenditures for fiscal year 2005 were $1,217,014. The assessment rate of $11.03 is $4.65 lower than the rate currently in effect.

The major expenditures recommended by the committee for the 2006 fiscal year include $800,700 for marketing activities, $290,421 for administration, and $210,000 for research. Budgeted expenditures for these items in 2005 were $680,000, $337,014, and $200,000, respectively.

The assessment rate recommended by the committee was derived by considering anticipated fiscal year expenses, actual olive tonnage received by handlers during the 2005–06 crop year, and additional pertinent factors. The California Agricultural Statistics Service (CASS) reported assessable olive receipts for the 2005–06 crop year at 114,761 tons, compared to 85,862 tons for the 2004–05 crop year. The increased production of assessable olives for the 2005–06 crop year is due in part to the alternate-bearing nature of olives, with heavy production in one year followed by light production the next. Although the committee's budgeted expenses for fiscal year 2006 are higher than those for 2005, the increased production would yield increased total assessment funds, even at the lower rate, covering the increased expenditures. Additionally, actual administrative expenditures in 2005 were less than the amount budgeted, enabling the committee to carry excess funds into the 2006 fiscal year and offset the assessments needed to cover budgeted expenses.

Income derived from handler assessments, along with interest income and funds from the committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order of approximately one fiscal year's expenses (§ 932.40).

The assessable tonnage for the 2006 fiscal year is expected to be slightly less than the 2005–06 crop receipts of 114,761 tons reported by CASS because some olives may be diverted by handlers to uses that are exempt from marketing order requirements.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other available information.

Although this assessment rate is effective for an indefinite period, the committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of committee meetings are available from the committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The committee's 2006 budget and those for subsequent fiscal years will be reviewed and, as appropriate, approved by USDA.

Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 850 producers of olives in the production area and 2 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,000,000.

Based upon information from the committee, the majority of olive producers may be classified as small entities. Both of the handlers may be classified as large entities.

This rule decreases the assessment rate established for the committee and collected from handlers for the 2006 and subsequent fiscal years from $15.68 to $11.03 per ton of assessable olives. The committee unanimously recommended 2006 expenditures of $1,301,121 and an assessment rate of $11.03 per ton. The recommended assessment rate is $4.65 lower than the current rate.

The quantity of assessable olive receipts for the 2005–06 crop year was reported by CASS to be 114,761 tons, but the actual assessable tonnage for the 2006 fiscal year is expected to be slightly lower. This is because some of the receipts are expected to be diverted by handlers to exempt outlets on which assessments are not paid.

The $11.03 per ton assessment rate should be adequate to meet this year's expenses when combined with funds from the authorized reserve and interest income. Funds in the reserve will be kept within the maximum permitted by

the order of about one fiscal year's expenses (§ 932.40).

Expenditures recommended by the committee for the 2006 fiscal year include $800,700 for marketing development, $290,421 for administration, and $210,000 for research. Budgeted expenses for these items in 2005 were $680,000, $337,014, and $200,000, respectively.

Assessable olive receipts for the 2005–06 crop year were 114,761 tons, compared to 85,862 tons for the 2004–05 crop year. The increased production of assessable olives will yield increased assessment funds, even at the lower rate. These funds, along with unused assessments from the 2005 fiscal year that have been carried into 2006, and interest income, cover the increased expenditures.

The committee reviewed and unanimously recommended 2006 expenditures of $1,301,121. This reflects increases in the committee's research and market development budgets and a decrease in the administrative budget. The committee recommended a larger research budget intended to further the study of olive fly management and development of a mechanical olive harvesting method. The 2006 marketing program recommendation includes participation in media activities in conjunction with the release of a new diet plan book, translation of some of the committee's education and nutrition materials into Spanish, and continuation of several outreach activities including cookbook contributions, Web site development, and educational programs for school children. Recommended decreases in the administrative budget are due mainly to personnel changes in the committee's staff.

Prior to arriving at this budget, the committee considered information from various sources, such as the committee's Executive, Market Development, and Research Subcommittees. Alternate spending levels were discussed by these groups, based upon the relative value of various research and marketing projects to the olive industry and the anticipated olive production. The assessment rate of $11.03 per ton of assessable olives was derived by considering anticipated expenses, the volume of assessable olives, and additional pertinent factors.

A review of historical and preliminary information pertaining to the upcoming fiscal year indicates that the grower price for the 2005–06 crop year is estimated to be approximately $714 per ton for canning fruit and $314 per ton for limited-use sizes, leaving the balance as unusable cull fruit. Approximately 76 percent of a ton of olives are canning fruit sizes and 17 percent are limited use sizes, leaving the balance as unusable cull fruit. Total grower revenue on 114,761 tons would then be $73,485,966, given the percentage of canning and limited-use sizes and current grower prices for those sizes. Therefore, with an assessment rate decreased from $15.68 to $11.03, the estimated assessment revenue is expected to be approximately 1.72 percent of grower revenue.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the committee's meeting was widely publicized throughout the California olive industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the December 13, 2005, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large California olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab/html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2006 fiscal year began on January 1, 2006, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable olives handled during such fiscal year; (2) the committee needs sufficient funds to pay its expenses, which are incurred on a continuous basis; and (3) handlers are aware of this action, which was discussed by the committee at a public meeting and unanimously recommended by a mail vote, and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 932.230 is revised to read as follows:

§ 932.230 Assessment rate.

On and after January 1, 2006, an assessment rate of $11.03 per ton is established for California olives.

Dated: March 7, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–2367 Filed 3–10–06; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23159; Directorate Identifier 2005–SW–10–AD; Amendment 39–14510; AD 2006–06–02]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–365N, SA–365N1, AS–365N2, and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) that currently applies to Eurocopter

France (ECF) Model SA 365N, N1, and AS 365N2 helicopters. That AD currently requires inspecting the main gearbox (MGB) suspension diagonal cross-member (diagonal cross-member) for cracks and replacing it with an airworthy part if any crack is found. This amendment requires more frequent inspections of the diagonal cross-member and adding the Model SA–366G1 helicopters to the applicability. This amendment is prompted by several reports of cracks in the diagonal cross-member. The actions specified by this AD are intended to prevent failure of the diagonal cross-member, pivoting of the MGB, severe vibrations, and a subsequent forced landing.

DATES: Effective April 17, 2006.

ADDRESSES: You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

Examining the Docket

You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://dms.dot.gov,* or at the Docket Management System (DMS), U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5130, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 by superseding AD 98–08–14, Amendment 39–10463 (63 FR 17676, April 10, 1998), for the specified ECF model helicopters was published in the **Federal Register** on December 5, 2005 (70 FR 72409). The action proposed to require adding the Model SA–366G1 helicopter to the applicability because this model may contain an affected diagonal cross-member, part number (P/N) 365A38–3023–22, –23 or –24. Also, the action proposed more frequent inspections of the diagonal cross-member.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model AS–365N, N1, N2, and SA 366 G1 helicopters. The DGAC advises of the discovery of a crack in a diagonal cross-member of the ECF Model SA 366 G1 helicopter.

ECF has issued Service Bulletin (SB) No. 05.00.37, dated May 29, 1997, for Model AS–365N, N1, and N2 helicopters. The SB specifies a periodic inspection for a crack or failure of a central branch of the MGB suspension strut pre-MOD 0763B80. ECF has also issued Alert Service Bulletin (ASB) No. 05.25, dated June 19, 2002. The ASB specifies checking the center portion of the MGB suspension cross-bar for Model AS–366G1 helicopters, with a crossbar, P/N 365A38–3023–22, –23, or –24, installed. The DGAC classified these service bulletins as mandatory and issued ADs 2003–241(A) and 1997–093–041(A) R2, both dated June 25, 2003, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require adopting the rule as proposed except we have expanded the contact address in paragraph (b) in the body of the AD to provide more information to the public. This change will neither increase the economic burden on any operator nor increase the scope of this AD.

We estimate that this AD will affect 133 helicopters of U.S. registry, and will:

- Take about 1 work hour to inspect the diagonal cross-member,
- Take about 10 work hours to replace the diagonal cross-member, if necessary, at an average labor rate of $65 per work hour, and
- Cost about $6,600 to replace the part.

Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $139,990, assuming 12 inspections per year per helicopter, and assuming 5 helicopters require replacing the diagonal cross-member.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this AD. See the DMS to examine the economic evaluation.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39–10463 (63 FR

17676, April 10, 1998), and by adding a new airworthiness directive (AD), Amendment 39–14510, to read as follows:

2006–06–02 Eurocopter France: Amendment 39–14510. Docket No. FAA–2005–23159; Directorate Identifier 2005–SW–10–AD. Supersedes AD 98–08–14, Amendment 39–10463, Docket No. 97–SW–21–AD.

Applicability: Model SA–365N, SA365N1, AS–365N2, and SA–366G1 helicopters with a main gearbox (MGB) suspension diagonal cross-member (diagonal cross-member), part number (P/N) 365A38–3023–20, –21, –22, –23, or –24, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the diagonal cross-member, pivoting of the MGB, severe vibrations, and subsequent forced landing, do the following:

(a) For Model SA–365N and SA–365N1 helicopters, before accumulating 15,000 operating cycles; and for Model AS–365N2 and SA–366G1 helicopters, before accumulating 11,000 operating cycles:

(1) Inspect the diagonal cross-member for a crack in the area of the center borehole. Use a borescope with a 90-degree drive, a video assembly with optical fiber illumination, or any other appropriate device that allows you to visually inspect the center area of the part.

(2) Repeat the inspection required by paragraph (a)(1) of this AD at intervals not to exceed 250 operating cycles or 50 hours time-in-service, whichever occurs first.

Note 1: ''Operating cycles'' are defined in the Airworthiness Limitations Section of the Master Servicing Recommendations.

(b) If a crack is found as a result of the inspections required by this AD, before further flight, replace the diagonal cross-member with an airworthy diagonal cross-member.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Rotorcraft Directorate, FAA, ATTN: Gary Roach, Aviation Safety Engineer, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5130, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(d) This amendment becomes effective on April 17, 2006.

Note 2: The subject of this AD is addressed in Direction Generale De L-Aviation Civile (France) AD 1997–093–041(A) R2, dated June 25, 2003, and 2003–241(A), dated June 25, 2003.

Issued in Fort Worth, Texas, on March 1, 2006.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 06–2358 Filed 3–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 1991F–0457] (formerly Docket No. 91F–0457)

Food Additives Permitted For Direct Addition to Food for Human Consumption; Glycerides and Polyglycides

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a mixture of glycerides and polyethylene glycol mono- and di-esters of fatty acids of hydrogenated vegetable oils as an excipient in dietary supplement tablets, capsules, and liquid formulations that are intended for ingestion in daily quantities measured in drops or similar small units of measure. This action is in response to a petition filed by Gattefosse Corp.

DATES: This rule is effective March 13, 2006. Submit written or electronic objections and requests for a hearing by April 12, 2006. See section VII of this document for information on the filing of objections. The Director of the Office of the Federal Register approves the incorporation by reference of certain publications in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of March 13, 2006.

ADDRESSES: You may submit comments, identified by Docket No. 1991F–0457, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Objections'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Raphael A. Davy, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1272.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of December 19, 1991 (56 FR 65907), FDA announced that a food additive petition (FAP 9A4155) had been filed by Parexel International Corp., One Alewife Place, Cambridge, MA 02140 on behalf of Gattefosse S.A., Saint-Priest, France. The petition proposed to amend the food additive regulations to provide for the safe use of a mixture of glycerides and polyethylene glycol esters of fatty acids of vegetable origin as an excipient in vitamin tablets and liquid formulations. Subsequently, in a letter dated January 7, 1998, the petitioner informed the agency that the petition was being amended by narrowing the polyethylene glycol esters (commonly known as polyglycides) to one class of compounds, namely, the polyethylene glycol esters of fatty acids from hydrogenated vegetable oils. Further, under an e-mail dated October 5, 2005, the petitioner later clarified that the additive was intended for use as an excipient in all dietary supplement tablets, capsules, and liquid formulations that are intended for

ingestion in daily quantities measured in drops or similar small units of measure.

In evaluating the safety of the petitioned substance, FDA has reviewed the safety of the additive (glycerides and polyglycides mixture) and the chemical impurities that may be present in the additive as a result of the manufacturing process. The mono-, di-, and tri-glycerides component of the additive are commonly found in food. In addition, mono-, and di-glycerides are affirmed as generally recognized as safe (GRAS) for use in food (§ 184.1505 (21 CFR 184.1505)). The ''polyglycides,'' consist of mono- and di-esters of polyethylene glycol, made using fatty acids derived from hydrogenated oils of vegetable origin. Although the additive itself (glycerides and polyglycides mixture) has not been shown to cause cancer, it may contain minute amounts of carcinogenic residues resulting from the manufacture of the polyethylene glycol. In particular, the additive may contain traces of 1,4-dioxane and ethylene oxide, which have been shown to cause cancer in test animals.

II. Determination of Safety

Under the general safety standard in section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as ''a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.''

The food additives anticancer, or Delaney, clause of the act (section 409(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal, or if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is evaluated properly under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive (*Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984)).

III. Safety of the Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive as an excipient in dietary supplement tablets, capsules, and liquid formulations that are intended for ingestion in daily quantities measured in drops or similar small units of measure will result in an estimated average daily intake of no more than 720 milligrams per person per day (mg/p/d) of polyglycides, based on the consumption of 2 dietary supplement doses per day and assuming that the polyglycide portion comprises 75 percent of the total excipient in the dose (Ref. 1). Although the filing notice specifically referenced vitamin tablets and liquid formulations only, this estimate considered use of the additive in all dietary supplement tablets, capsules, and liquid formulations that are intended for ingestion in daily quantities measured in drops or similar small units of measure, due to the petitioner's clarification of the additive's intended use. The estimate is conservative as it assumes that all dietary supplements would be formulated with the additive. This estimate does not include the daily intake of the glycerides because glycerides are GRAS for use with no limit other than current good manufacturing practice (§ 184.1505).

Based on the available toxicological data on this new food additive mixture, and considering the cumulative exposure of the components of the mixture from the use of other ingredients, the agency concludes that the estimated dietary exposure to polyglycides resulting from the petitioned use of this additive is well within an acceptable margin of safety.

FDA has evaluated the safety of this additive under the general safety standard, considering all available toxicological data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by 1,4-dioxane and ethylene oxide, the carcinogenic chemicals that may be present as impurities in the additive. The risk evaluation of 1,4-dioxane and ethylene oxide has two aspects: (1) Assessment of exposure to the impurities from the petitioned use of the additive and (2) extrapolation of the risk observed in the animal bioassays to the conditions of exposure to humans.

A. 1,4-Dioxane

FDA has estimated the exposure to 1,4-dioxane from the petitioned use of the additive as an excipient in dietary supplement tablets, capsules, and liquid formulations that are intended for ingestion in daily quantities measured in drops or similar small units of measure to be 800 nanograms per person per day (ng/p/d) (Ref. 1). This estimate is conservative as it was based on the assumptions that the additive (glycerides and polyglycides mixture) would be the sole excipient in all dietary supplement tablets, capsules, and liquid formulations that are intended for ingestion in daily quantities measured in drops or similar small units of measure, and that the additive would be used in all dietary supplement tablets, capsules, and liquid formulations that are intended for ingestion in daily quantities measured in drops or similar small units of measure at a maximum practical 80 percent use level.

The agency used data from a carcinogenesis bioassay on 1,4-dioxane, conducted by the National Cancer Institute, to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The results of the bioassay on 1,4-dioxane demonstrated that the material was carcinogenic for female rats under the conditions of the study. The authors reported that the test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

Based on the agency's estimate that exposure to 1,4-dioxane will not exceed 800 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from exposure to 1,4-dioxane resulting from the petitioned use of the subject additive is 2.8×10^{-8} or 28 in 1 billion. Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to 1,4-dioxane is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk is also likely to be substantially less than the estimated upper-bound limit of lifetime human risk. Thus, the agency concludes that there is a reasonable certainty that no harm from exposure to 1,4-dioxane would result from the petitioned use of the additive.

B. Ethylene Oxide

FDA has estimated the exposure to ethylene oxide from the petitioned use of the additive as an excipient in dietary supplement tablets, capsules, and liquid formulations that are intended for ingestion in daily quantities measured in drops or similar small units of measure to be 80 ng/p/d, using the same

additive exposure assumptions described above for 1,4-dioxane (Ref. 1).

The agency used data from a carcinogenesis bioassay on ethylene oxide conducted by the Institute of Hygiene, University of Mainz, Germany, to estimate the upper-bound limit of lifetime human risk from exposure to ethylene oxide resulting from the petitioned use of the additive. The authors reported that the test material caused significantly increased incidence of squamous cell carcinomas of the forestomach and carcinomas in situ of the glandular stomach in female rats.

Based on the agency's estimate that exposure to ethylene oxide will not exceed 80 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from exposure to ethylene oxide resulting from the petitioned use of the subject additive is 15×10^{-8} or 150 in 1 billion. Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to ethylene oxide is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk is also likely to be substantially less than the estimated upper-bound limit of lifetime human risk. Therefore, FDA concludes that there is reasonable certainty that no harm from exposure to ethylene oxide would result from the petitioned use of the additive.

C. Need for Specifications

Because 1,4-dioxane and ethylene oxide are animal carcinogens and because the additive is intended to be ingested in its entirety, the agency has concluded that specifications are necessary to ensure that safe levels of 1,4-dioxane and ethylene oxide impurities in the petitioned food additive are maintained in future batches. Thus, the agency is including in this regulation a specification limit of not greater than 10 parts per million (ppm) for 1,4-dioxane and not greater than 1 ppm for ethylene oxide. We are also including in this regulation specifications for total ester content, acid value, hydroxyl value, and lead in order to ensure that the product in the marketplace reflects the identity and purity of the material evaluated (Ref. 2).

IV. Conclusion

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the food additive as an excipient in dietary supplement tablets, capsules, and liquid formulations that are intended for ingestion in daily quantities measured in drops or similar small units of measure is safe. Therefore, the regulations in 21 CFR part 172 should be amended as set forth in this document.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

V. Environmental Impact

The agency has carefully considered the potential environmental effects of this final rule. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

VI. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Objections

Any person who will be adversely affected by this regulation may file with the Division of Dockets Management (see **ADDRESSES**) written or electronic objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VIII. References

The following references have been placed on display in the Division of Dockets Management and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum dated January 22, 2004, from the Division of Biotech and GRAS Notice Review to Division of Petition Review, ''FAP 9A4155: Gattefosse Corp. Polyglycides From Hydrogenated Vegetable Oils. Revised Estimate of Exposure for 1,4-Dioxane and Ethylene Oxide.''

2. Memorandum dated October 30, 1998, from Chemistry Review Branch to the Division of Product Policy, ''FAP 9A4155: (MATS Milestone 2.3) American Clinical Research Consultants, Inc., on behalf of Gattefosse S.A. Polyglycides for use as Tablet Excipients. Submission of 1–7–98.''

List of Subjects in 21 CFR Part 172

Food additives, Incorporation by reference, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

■ 1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

■ 2. Section 172.736 is added to subpart H to read as follows:

§ 172.736 Glycerides and polyglycides of hydrogenated vegetable oils.

The food additive glycerides and polyglycides of hydrogenated vegetable oils may be safely used in food in accordance with the following prescribed conditions:

(a) The additive is manufactured by heating a mixture of hydrogenated oils of vegetable origin and polyethylene glycol in the presence of an alkaline catalyst followed by neutralization with any acid that is approved or is generally recognized as safe for this use to yield the finished product.

(b) The additive consists of a mixture of mono-, di- and tri-glycerides and polyethylene glycol mono- and di-esters of fatty acids (polyglycides) of hydrogenated vegetable oils and meets the following specifications:

(1) Total ester content, greater than 90 percent as determined by a method entitled ''Determination of Esterified Glycerides and Polyoxyethylene Glycols,'' approved November 16, 2001, printed by Gattefosse S.A.S., and incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the Office of Food Additive Safety, 5100 Paint Branch Pkwy., College Park, MD 20740 or you may examine a copy at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(2) Acid value, not greater than 2, and hydroxyl value, not greater than 56 as determined by the methods entitled ''Acid Value,'' p. 934 and ''Hydroxyl Value,'' p. 936, respectively, in the Food Chemicals Codex, 5th ed., effective January 1, 2004, and incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academies Press, 500 Fifth St. NW., Washington, DC 20055 (Internet address *http://www.nap.edu*), or may be examined at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(3) Lead, not greater than 0.1 mg/kg as determined by the American Oil Chemists' Society (A.O.C.S.) method Ca 18c–91, ''Determination of Lead by Direct Graphite Furnace Atomic Absorption Spectrophotometry,'' updated 1995, and incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from American Oil Chemists' Society, P. O. Box 3489, Champaign, IL 61826–3489, or may be examined in the library at the Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD 20740, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(4) 1,4-Dioxane, not greater than 10 milligrams per kilogram (mg/kg), and ethylene oxide, not greater than 1 mg/kg, as determined by a gas chromatographic method entitled ''Determination of Ethylene Oxide and 1,4-Dioxane by Headspace Gas Chromatography,'' approved November 5, 1998, printed by Gattefosse S.A.S., and incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51; see paragraph (b)(1) of this section for availability of the incorporation by reference.

(c) The additive is used or intended for use as an excipient in dietary supplement tablets, capsules, and liquid formulations that are intended for ingestion in daily quantities measured in drops or similar small units of measure.

Dated: March 2, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 06–2354 Filed 3–10–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–06–006]

RIN 1625–AA09

Drawbridge Operation Regulations; Jamaica Bay and Connecting Waterways, New York City, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard has temporarily changed the regulation governing the operation of the New York City Highway Bridge (Belt Parkway), at mile 0.8, across Mill Basin, at New York City, New York. This temporary final rule allows the bridge owner to open only one of the two moveable spans for the passage of vessel traffic from March 8, 2006 through September 7, 2006. This rule is necessary to facilitate bridge deck replacement.

DATES: This temporary rule is effective from March 8, 2006 through September 7, 2006.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD01–06–006] and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, (212) 668–7195.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 30, 2006, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations''; Jamaica Bay and Connecting Waterways, New York, in the **Federal Register** (71 FR 4852). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Making this rule effective in less than 30 days after publication in the **Federal Register** will allow this rule to become effective in time for the March 8, 2006, deck replacement construction start date.

The deck replacement for the New York City Highway Bridge is vital necessary work that must be performed without delay as a result of deterioration of the existing bridge deck which could fail if not replaced with all due speed. In order to assure the continued safe and reliable operation of the bridge, construction work should begin on schedule on March 8, 2006.

Background and Purpose

The New York City Highway Bridge (Belt Parkway), has a vertical clearance of 34 feet at mean high water and 39 feet at mean low water in the closed position. The existing regulations are listed at 33 CFR 117.795(b).

The owner of the bridge, New York City Department of Transportation (NYCDOT), requested a temporary change to the drawbridge operation regulations to facilitate the replacement of the bridge roadway deck.

This temporary rule is necessary because the rehabilitation construction of the bridge deck requires the moveable bridge span undergoing repairs to remain in the closed position. As a result, the bridge owner requested that only one of the two opening spans open for the passage of vessel traffic from March 8, 2006 through September 7, 2006.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking. The notice of proposed rulemaking was published on January 30, 2006. The effective date for this temporary final rule was changed from March 1, 2006, to March 8, 2006, in order to provide sufficient time for public comment.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This conclusion is based on the fact that the vessel traffic that normally transits this bridge should not be precluded from transiting due to single span bridge openings.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

This notice of proposed rulemaking would not have a significant economic impact on a substantial number of small entities for the following reason: Mill Basin is navigated predominantly by recreational vessels.

The single span bridge openings should not preclude vessel traffic from transiting the bridge because the recreational vessels that normally use this waterway should be able to transit through the bridge with the reduced horizontal clearance of 67.5 feet due to their relative small size.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

No small entities requested Coast Guard assistance and none was given.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or

adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation considering that it relates to the promulgation of operating regulations or procedures for drawbridges. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From March 8, 2006 through September 7, 2006, § 117.795 is amended by suspending paragraph (b) and adding a temporary paragraph (d), to read as follows:

117.795 Jamaica Bay and Connecting Waterways.

* * * * *

(d) The New York City Highway Bridge (Belt Parkway), mile 0.8, across Mill Basin, need only open one moveable span for the passage of vessel traffic from March 8, 2006 through September 7, 2006. The draw need not be opened for the passage of vessel traffic from 12 p.m. to 9 p.m. on Sundays from May 15 through September 30, and on Memorial Day, Independence Day, and Labor Day. However, on these days the draw shall open on signal from the time two hours before to one hour after the predicted high tide(s).

For the purpose of this section, predicted high tide(s) occur 15 minutes later than that predicted for Sandy Hook, as documented in the tidal current data, which is updated, generated and published by the National Oceanic and Atmospheric Administration/National Ocean Service.

Dated: March 2, 2006.

David P. Pekoske,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 06–2393 Filed 3–10–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 62

[EPA–R07–OAR–2005–MO–0006; FRL–8044–5]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is announcing the partial approval and partial disapproval of revisions to the Restriction of Emission of Sulfur Compounds rule in the Missouri State Implementation Plan (SIP). This Missouri rule establishes general requirements for emissions of sulfur compounds from various source categories and establishes specific emissions requirements for certain named sources.

EPA is approving most of the revisions to the rule because the changes involve clarifications, updates, and other improvements to the current rule. This action does not include a portion of the rule that regulates ambient concentrations of sulfur compounds, because this provision is not in the current SIP, and EPA does not directly enforce Missouri's Air Quality Standards.

EPA is disapproving Missouri's request to include in the SIP a revision to two source-specific references because the state has not demonstrated that the revisions are protective of the short-term SO_2 National Ambient Air Quality Standard (NAAQS).

DATES: This rule is effective on April 12, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2005–MO–0006. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, KS. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m. excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Amy Algoe-Eakin at (913) 551–7942 or by e-mail at *algoe-eakin.amy@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we'', ''us'', or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is a SIP?
What Is the Federal Approval Process for a SIP?
What Does Federal Approval or Disapproval of a State Regulation Mean to Me?
What Is Being Addressed in This Document?
Have the Requirements for Approval of a SIP Revision Been Met?
What Action Is EPA Taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA or Act) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories,

monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval or Disapproval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA. If a state regulation is disapproved, it is not incorporated into the Federally-approved SIP, and is not enforceable by EPA or by citizens under section 304. In the case of a revision to a Federally-approved state regulation, disapproval of the revision means that the underlying state regulation prior to the state's revision remains as the Federally enforceable requirement.

What Is Being Addressed in This Document?

We are taking final action to partially approve and partially disapprove Missouri Department of Natural Resources' (MDNR) request to include, as a revision to Missouri's SIP, amendments to rule 10 CSR 10–6.260, Restriction of Emission of Sulfur Compounds. We are also approving certain changes to this rule as an amendment to the 111(d) plan which will replace the current rule for sulfuric acid mist production. This rule was adopted by the Missouri Air Conservation Commission on February 3, 2004, and became effective under state law on May 30, 2004. This rule was submitted to EPA on June 14, 2004, and included comments on the rule during the state's adoption process, the state's response to comments and other information necessary to meet EPA's completeness criteria.

The revisions to Missouri rule, 10 CSR 10–6.260, Restriction of Emission of Sulfur Compounds, update the rule to correct inaccurate source information, provide an exemption for natural gas fueled combustion, and clarify the exemption for source categories subject to a new source performance standard to assure that such sources are subject to sulfur limits. Missouri also revised provisions relating to sulfuric acid mist production, previously approved by EPA under section 111(d). These provisions were renumbered but not otherwise changed. By renumbering the rule, Missouri will have given the 111(d) plan a new effective date that will be reflected in the description of the section 111(d) plan in 40 CFR part 62. EPA is approving revisions to Section (3)(A)1,2,3 and 4 into the 111(d) plan.

However, we are not acting on renumbered Section (3)(B), titled Restriction of Concentration of Sulfur Compounds in Ambient Air, as EPA does not directly enforce Missouri's air quality standards, and this section is not found in the approved SIP.

We are also partially disapproving revisions to Missouri rule, 10 CSR 10–6.260, Restriction of Emission of Sulfur Compounds. Revisions to Section (3), Table 1, regarding the emission rate for the Kansas City Power & Light's Hawthorn and Montrose Station facilities are not consistent with the requirements of the CAA. Section 110(a)(2)(A) of the CAA requires, in part, that the plan include emission limitations to meet the requirements of the Act, including the requirement in Section 110(a)(1) that the plan must be adequate to attain and maintain ambient air quality standards. In addition, 40 CFR 51.112 requires that the plan demonstrate that rules contained in the SIP are adequate to attain the ambient air quality standards. We believe that these requirements have not been met with respect to the Hawthorn and Montrose Station limits. We note that the Hawthorn unit is subject to a Federally-enforceable state permit which limits sulfur emissions to .12 pounds per million BTU heat input on a thirty-day rolling average basis. Although the facility must comply with this more stringent limit (and all other units listed in the rule must comply with more stringent limits established in permits), the SIP must reflect requirements that ensure attainment and maintenance of the NAAQS. The state rule, with respect to the Hawthorn and Montrose Station facilities, does not reflect such requirements.

We believe that the revisions, contained in Section (3), Table 1, regarding sulfur dioxide emission rates for these plants are not protective of the short-term sulfur dioxide NAAQS. Although the emission rates for both facilities have been lowered, the averaging time for the rates has been dramatically increased, from a three-hour average to an annual average. Missouri has not provided a demonstration, as required by the CAA and EPA regulations, that the standards, particularly, the three-hour and the twenty-four hour standards, can be protected by an annual emission limit.

Have the Requirements for Approval of a SIP Revision Been Met?

With respect to the portions of the submittal which EPA is approving, the state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document that is part of this document and in the October 3, 2005, proposed rule, the approved portions of the revision meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are taking final action to partially approve and partially disapprove portions of the Restriction of Emission of Sulfur Compounds rule into the Missouri State Implementation Plan (SIP). The approved and disapproved portions are described above. We are incorporating rule changes to subparagraph (3)(A)1,2,3, and 4, into Missouri's 111(d) plan. We are not acting on a portion of this rule that regulates ambient concentrations of sulfur compounds, because this provision is not in the current SIP, and

EPA does not directly enforce Missouri's Air Quality Standards.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The partial disapproval will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, the Administrator certifies that this disapproval action does not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action approves and disapproves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 12, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides, Sulfuric acid plants, Waste treatment and disposal.

Dated: March 6, 2006.

James B. Gulliford,

Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

■ 2. In § 52.1320(c) the table is amended under Chapter 6 by revising the entry for ''10–6.260'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA–APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				

EPA–APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
*	*	*	*	*
10–6.260	Restriction of Emission of Sulfur Compounds.	05/30/04	03/13/06 [*insert FR page number where the document begins*].	Section (3)(B) is not SIP approved. The revision to the averaging time and emission rate per unit for Kansas City Power & Light, Hawthorn Plant and Montrose Station in Table 1 of (3)(C)2.B. is not approved.
*	*	*	*	*

* * * * *

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

■ 2. Section 62.6350 is amended by adding paragraph (b)(4) to read as follows:

§ 62.6350 Identification of plan.

* * * * *

(b) * * *

(4) A revision to Missouri's 111(d) plan for sulfuric acid mist production was state effective on May 30, 2004. This revision approves the renumbering of the rule. The effective date of the amended plan is April 12, 2006.

* * * * *

[FR Doc. 06–2378 Filed 3–10–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 051116304–6035–02; I.D. 110805A]

RIN 0648–AT92

Fisheries of the Exclusive Economic Zone Off Alaska; Total Allowable Catch Amount for ''Other Species'' in the Groundfish Fisheries of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule that implements Amendment 69 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). Amendment 69 amends the manner in which the total allowable catch (TAC) for the ''other species'' complex is annually determined in the Gulf of Alaska (GOA). The amendment allows the TAC amount for the ''other species'' complex to be set less than or equal to 5 percent of the sum of groundfish targets species in the GOA. This final rule also raises the maximum retainable amount (MRA) of ''other species'' in the directed arrowtooth flounder fishery from 0 percent to 20 percent. This action is necessary to reduce the potential for overfishing those species in the ''other species'' complex in the GOA and to reduce the amount of ''other species'' required to be discarded in the arrowtooth flounder fishery. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

DATES: Effective April 12, 2006.

ADDRESSES: Copies of Amendment 69, the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and EA/RIR/Final Regulatory Flexibility Analysis (FRFA) prepared for this action may be obtained from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Records Officer or from the Alaska Region website at *www.fakr.noaa.gov*. The FMP is available from *www.fakr.noaa.gov/npfmc/fmp/goa/goa.htm*.

FOR FURTHER INFORMATION CONTACT: Tom Pearson, 907–481–1780 or *tom.pearson@noaa.gov*.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone of the GOA are managed under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The Council submitted Amendment 69 for review by the Secretary of Commerce. A notice of availability of the amendment was published in the **Federal Register** on November 16, 2005 (70 FR 69505), with comments invited through January 17, 2006. The proposed rule for Amendment 69 was published in the **Federal Register** on November 29, 2005 (70 FR 71450), with comments invited through January 13, 2006. No comments were received on the notice of availability or the proposed rule. The final rule is unchanged from the proposed rule. Amendment 69 was approved by the Secretary of Commerce on February 13, 2006.

Background

In June 2005, the Council recommended Amendment 69 as an interim measure to prevent overfishing of species in the ''other species'' complex until a more comprehensive management plan could be developed. Designation and management of the ''other species'' complex have evolved through a series of amendments to the GOA FMP. The proposed rule (70 FR 71451, November 29, 2005) provides an overview of how the ''other species'' complex management has changed by amendments to the FMP. The proposed rule also provides a description of the effects of changing the setting of TAC for ''other species'' and of changing the ''other species'' MRA for the arrowtooth flounder fishery.

Final Regulatory Amendment

To manage the incidental harvest of the ''other species'' complex, this action revises Table 10 of 50 CFR part 679 to raise the MRA for the ''other species'' complex from 0 percent to 20 percent in the arrowtooth flounder fishery in the GOA. This revision is necessary to properly manage the retention of ''other species'' in the arrowtooth flounder fishery and to potentially reduce the amount of discards of otherwise marketable fish in the ''other species'' complex.

This action is intended to meet the conservation objectives of the Magnuson-Stevens Act to reduce the potential for overfishing the species groups in the ''other species'' complex and to efficiently use fishery resources by reducing potential discards. This action is intended to be an interim step toward the Council's development of a more comprehensive approach for the management of ''other species.''

In December 2005, pending Secretarial approval of Amendment 69, the Council recommended a TAC for the ''other species'' complex in 2006 and 2007 of 4,500 metric tons (mt). This recommendation was based on an estimate of 4,000 mt needed as incidental catch in the other groundfish and halibut fisheries and public testimony in support of a modest directed fishery for approximately 500 mt of ''other species.'' The 2006 TAC for ''other species'' is 13,525 mt (70 FR 8958, February 24, 2005). In early 2006, NMFS will publish in the **Federal Register** proposed specifications notice to solicit public comment on revising the 2006 and 2007 TACs for ''other species'' to 4,500 mt.

Classification

The Regional Administrator determined that Amendment 69 is necessary for the conservation and management of the GOA groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

NMFS prepared an IRFA and a FRFA which describe any adverse impacts this final rule would have on directly regulated small entities (see **ADDRESSES**). The IRFA analyzes two FMP alternatives to revise the manner in which the annual TAC for the ''other species'' in the GOA is established, along with the status quo or no action alternative. In addition, two suboptions to revise the MRAs for ''other species'' in the groundfish fisheries in the GOA are analyzed along with the status quo, or no action suboption. A summary of the FRFA for this action follows.

Amendment 69 revises the manner in which the annual TAC for the ''other species'' complex in the GOA is established and raises the MRA for ''other species'' from 0 percent to 20 percent in the arrowtooth flounder fishery. As part of its annual groundfish harvest specification process, the Council will recommend a TAC amount for the ''other species'' complex at less than or equal to 5 percent of the sum of the directed groundfish fisheries TAC amounts. The objective of this action is to give the Council greater flexibility in recommending a TAC amount for ''other species'' to better protect individual species in the ''other species'' complex from overfishing and to make a sustainable fishery for the ''other species'' complex more likely.

The legal basis for this action is found in the Magnuson-Stevens Act and in the GOA groundfish FMP promulgated pursuant to that Act.

Based on 2003 data, 782 small catcher vessels and 18 small catcher processors would be directly regulated by this action. Most of these (640 catcher vessels and 14 small catcher processors) were hook-and-line vessels. In addition, 133 catcher vessels and 1 catcher processor used pot gear, and 89 small catcher vessels and 3 small catcher processors used trawl gear. All these vessels are considered ''small entities'' as defined by the Regulatory Flexibility Act. In 2003, each of these vessels had average revenues of $200,000 from the federally managed groundfish fisheries. Average revenues were $160,000 for each catcher vessel and $2,350,000 for each catcher processor.

By setting TAC for ''other species'' at less than 5 percent of the sum of other groundfish TACs, potential future harvests of ''other species'' and gross revenues from these harvests are limited in the short run. In the long run, however, the biomass of ''other species'' would be given additional protection. Actual impacts to small entities would depend on the actual TAC amount recommended for ''other species'' by the Council and approved by NMFS. These impacts would be assessed in the initial regulatory flexibility analysis for the TAC specification action.

Nothing in the proposed action would result in changes in reporting or recordkeeping requirements.

The analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

No comments were received on the IRFA or the economic impacts of the rule.

The FRFA evaluated a no-action alternative, the preferred alternative and an alternative that would allow for only incidental catch of ''other species.'' Under the no-action alternative, the TAC for the ''other species'' complex would remain at 5 percent of the sum of the other groundfish TACs. The 2006 TAC for the ''other species'' complex is 13,525 mt (70 FR 8958, February 24, 2005). If this amount were harvested by targeting a single species in the ''other species'' complex it could drive down that species biomass and reduce its reproductive potential. While revenues from the fishery would be higher in the short run, they would be lower in the longer run. Thus, while this alternative may have imposed fewer short run restrictions on small fishing operations, it did not meet the objectives of providing protection to individual species within the ''other species'' complex in the GOA. This protection is necessary to a sustainable fishery. The alternative that would allow only incidental catch of ''other species'' did not allow a directed fishery for ''other species.'' This alternative would have prevented the Council's use of the best available information in determining the appropriate management for ''other species.'' For example, if the best available information indicated that a directed fishery for ''other species'' could occur without harming its future sustainability, then achieving its optimum yield would be prevented by this alternative. The preferred alternative, however, would allow the Council to decide whether to allow for a target fishery or for only incidental catch based on the latest stock assessment information.

The FRFA evaluated the preferred option to set the MRA for ''other species'' in the arrowtooth flounder fishery to 20 percent. The MRA for ''other species'' would be 20 percent in all of the GOA groundfish fisheries with this action. Setting the MRA at 20 percent in the arrowtooth flounder fishery would allow fishermen to retain and sell a limited amount of ''other species.'' Allowing fishermen to retain and sell ''other species'' would reduce discards and would allow for revenue from ''other species'' harvest that would otherwise be discarded without this action. A higher MRA might result in fishermen topping-off their harvest up to the MRA for ''other species'' if a developing market increases the price of ''other species.'' The MRA for ''other species'' at 20 percent is a compromise that addresses fluctuating ''other species'' incidental catch in the groundfish fisheries, preventing discards, and allowing for some revenue without encouraging topping-off behavior.

The FRFA also considered two additional MRA options that could be applied to each of the TAC alternatives. One was a status quo option that would leave the ''other species'' MRA in the directed arrowtooth flounder fishery at 0 percent. This option could cause greater regulatory discards in the arrowtooth flounder fishery and reduce revenues to fishermen compared to the preferred alternative Another MRA option set the ''other species'' MRA in each target fishery (not just arrowtooth

flounder) equal to the overall average incidental catch of ''other species'' in the groundfish fisheries. Incidental catch of ''other species'' in other directed fisheries rarely exceeded 2 percent of the targeted species catch. For many target fisheries, the ''other species'' MRA under this option would be less than the current 20 percent. This alternative would have increased the MRA in the arrowtooth flounder fishery, but not as much as the preferred alternative. With an ''other species'' MRA equal to the historical average incidental catch, fishermen who incidentally catch ''other species'' above the historical average would have to discard the excess. This may result in reduced revenues if the fishermen would otherwise have been able to sell the ''other species.'' Because of the fluctuation in incidental catch of ''other species'' among years, this option has a greater potential adverse impact on directly regulated small entities than the option implemented by this final rule.

The TAC alternative and MRA option chosen for this action minimize the economic impacts on small entities. The IRFA found that the preferred alternative for the ''other species'' TAC has no adverse impact on directly regulated small entities. The preferred MRA option has the smallest economic impacts on small entities compared to status quo and the other MRA option analyzed.

Small Entity Compliance Guide

This action revises Table 10 to 50 CFR part 679 which lists the MRAs for groundfish fisheries. This action requires small entities in the groundfish fisheries to comply with the amended MRA for ''other species'' in the arrowtooth flounder directed fishery. This action does not require any additional compliance from small entities. To facilitate compliance with the MRAs in Table 10, NMFS provides a link to Table 10 at the following Web site: *http://www.fakr.noaa.gov/rr/tables.htm*. Copies of this final rule are available from NMFS (see **ADDRESSES**) and at the following Web site: *http://www.fakr.noaa.gov*.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: March 7, 2006.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*; 1851 note; 3631 *et seq.*

■ 2. Table 10 to part 679 is revised to read as follows:

BILLING CODE 3510–22–S

Table 10 to Part 679—Gulf of Alaska Retainable Percentages

BASIS SPECIES		INCIDENTAL CATCH SPECIES (for DSR caught on catcher vessels in the SEO, see § 679.20 (j)[6])														
Code	Species	Pollock	Pacific cod	DW flat (2)	Rex sole	Flathead sole	SW flat (3)	Arrow tooth	Sablefish	Aggregated rockfish[8]	SR/RE ERA (1)	DSR SEO (C/Ps only): (6)	Atka mackerel	Aggregated forage fish (10)	Skates[11]	Other species (7)
110	Pacific cod	20	na[9]	20	20	20	20	35	1	5	(1)	10	20	2	20	20
121	Arrowtooth	5	5	0	0	0	0	na[9]	0	0	0	0	0	2	0	20
122	Flathead sole	20	20	20	20	na[9]	20	35	7	15	7	1	20	2	20	20
125	Rex sole	20	20	20	na[9]	20	20	35	7	15	7	1	20	2	20	20
136	Northern rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
141	Pacific ocean perch	20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
143	Thornyhead	20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
152/151	Shortraker/rougheye (1)	20	20	20	20	20	20	35	7	15	na[9]	1	20	2	20	20
193	Atka mackerel	20	20	20	20	20	20	35	1	5	(1)	10	na[9]	2	20	20
270	Pollock	na[9]	20	20	20	20	20	35	1	5	(1)	10	20	2	20	20
710	Sablefish	20	20	20	20	20	20	35	na[9]	15	7	1	20	2	20	20
Flatfish, deep water (2)		20	20	na[9]	20	20	20	35	7	15	7	1	20	2	20	20
Flatfish, shallow water (3)		20	20	20	20	20	na[9]	35	1	5	(1)	10	20	2	20	20
Rockfish, other (4)		20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
Rockfish, pelagic (5)		20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
Rockfish, DSR-SEO (6)		20	20	20	20	20	20	35	7	15	7	na[9]	20	2	20	20
Skates[11]		20	20	20	20	20	20	35	1	5	(1)	10	20	2	na[9]	20

BASIS SPECIES		INCIDENTAL CATCH SPECIES (for DSR caught on catcher vessels in the SEO, see § 679.20 (j)[6])														
Code	Species	Pollock	Pacific cod	DW flat (2)	Rex sole	Flathead sole	SW flat (3)	Arrow tooth	Sablefish	Aggregated rockfish[8]	SR/RE ERA (1)	DSR SEO (C/Ps only): (6)	Atka mackerel	Aggregated forage fish (10)	Skates[11]	Other species (7)
Other species (7)		20	20	20	20	20	20	35	1	5	(1)	10	20	2	20	na[9]
Aggregated amount of non-groundfish species		20	20	20	20	20	20	35	1	5	(1)	10	20	2	20	20

Notes to Table 10 to Part 679				
1	Shortraker/rougheye rockfish			
		SR/RE	shortraker/rougheye rockfish (171)	
			shortraker rockfish (152)	
			rougheye rockfish (151)	
		SR/RE ERA	shortraker/rougheye rockfish in the Eastern Regulatory Area.	
	Where numerical percentage is not indicated, the retainable percentage of SR/RE is included under Aggregated Rockfish			
2	Deep-water flatfish	Dover sole, Greenland turbot, and deep-sea sole		
3	Shallow water flatfish	Flatfish not including deep water flatfish, flathead sole, rex sole, or arrowtooth flounder		
4	Other rockfish	Western Regulatory Area	means slope rockfish and demersal shelf rockfish	
		Central Regulatory Area		
		West Yakutat District		
		Southeast Outside District	means slope rockfish	
		Slope rockfish		
		S. aurora (aurora)	S. variegatus (harlequin)	S. brevispinis (silvergrey)
		S. melanostomus (blackgill)	S. wilsoni (pygmy)	S. diploproa (splitnose)
		S. paucispinis (bocaccio)	S. babcocki (redbanded)	S. saxicola (stripetail)
		S. goodei (chilipepper)	S. proriger (redstripe)	S. miniatus (vermilion)
		S. crameri (darkblotch)	S. zacentrus (sharpchin)	S. reedi (yellowmouth)
		S. elongatus (greenstriped)	S. jordani (shortbelly)	
		In the Eastern GOA only, Slope rockfish also includes S. polyspinous. (Northern)		
5	Pelagic shelf rockfish	S. ciliatus (dusky)	S. entomelas (widow)	S. flavidus (yellowtail)
6	Demersal shelf rockfish (DSR)	S. pinniger (canary)	S. maliger (quillback)	S. ruberrimus (yelloweye)
		S. nebulosus (china)	S. helvomaculatus (rosethorn)	
		S. caurinus (copper)	S. nigrocinctus (tiger)	

Notes to Table 10 to Part 679					
		DSR-SEO = Demersal shelf rockfish in the Southeast Outside District The operator of a catcher vessel that is required to have a Federal fisheries permit, or that harvests IFQ halibut with hook and line or jig gear, must retain and land all DSR that is caught while fishing for groundfish or IFQ halibut in the SEO. Limits on sale and requirements for disposal of DSR are set out at § 679.20 (j).			
7	Other species	sculpins	octopus	squid	sharks
8	Aggregated rockfish	means rockfish of the genera Sebastes and Sebastolobus defined at § 679.2 except in:			
		Southeast Outside District (SEO)	where DSR is a separate category for those species marked with a numerical percentage		
		Eastern Regulatory Area (ERA)	where SR/RE is a separate category for those species marked with a numerical percentage		
9	N/A	not applicable			
10	Aggregated forage fish (all species of the following families)				
		Bristlemouths, lightfishes, and anglemouths (family Gonostomatidae)			209
		Capelin smelt (family Osmeridae)			516
		Deep-sea smelts (family Bathylagidae)			773
		Eulachon smelt (family Osmeridae)			511
		Gunnels (family Pholidae)			207
		Krill (order Euphausiacea)			800
		Laternfishes (family Myctophidae)			772
		Pacific herring (family Clupeidae)			235
		Pacific Sand fish (family Trichodontidae)			206
		Pacific Sand lance (family Ammodytidae)			774
		Pricklebacks, war-bonnets, eelblennys, cockscombs and Shannys (family Stichaeidae)			208
		Surf smelt (family Osmeridae)			515
11	Skates Species and Groups				
		Big Skates (702)			

Notes to Table 10 to Part 679	
	Longnose Skates (701)
	Other Skates (700)

[FR Doc. 06–2388 Filed 3–10–06; 8:45 am]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 71, No. 48
Monday, March 13, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket Nos. EE–RM/STD–03–100, EE–RM/STD–03–200, and EE–RM/STD–03–300]

RIN Nos. 1904–AB16, 1904–AB17, and 1904–AB44

Energy Efficiency Program for Commercial and Industrial Equipment: Efficiency Standards for Commercial Heating, Air-Conditioning and Water Heating Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of document availability and request for comments.

SUMMARY: The Energy Policy and Conservation Act (EPCA), as amended, establishes energy efficiency standards for various commercial equipment. The Department of Energy (the Department or DOE) is assessing whether to adopt, as uniform national standards, efficiency standards contained in amendments to the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) and Illuminating Engineering Society of North America (IESNA) Standard 90.1 for certain types of commercial equipment. Such commercial equipment includes gas-fired instantaneous water heaters, packaged terminal air conditioners and heat pumps, commercial packaged boilers, three-phase air conditioners and heat pumps <65,000 Btu/h, and single-package vertical air conditioners and heat pumps <65,000 Btu/h, collectively known as single-package vertical units, covered by EPCA. This notice announces the availability of a technical support document (TSD) the Department is using in making this assessment. The Department invites written comments on the TSD and on DOE's preliminary conclusions, which are set forth in this notice.

DATES: The Department will accept written comments, data, and information in response to this notice, but no later than April 27, 2006. See section III, ''Public Participation,'' of this notice for details.

ADDRESSES: Please submit comments, identified by docket numbers EE–RM/STD–03–100, EE–RM/STD–03–200, and EE–RM/STD–03–300 and/or RIN numbers 1904–AB16, 1904–AB17, and 1904–AB44, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: ASHRAE.Product.Rule@ee.doe.gov.* Include EE–RM/STD–03–100, EE–RM/STD–03–200, and EE–RM/STD–03–300 and/or RIN 1904–AB16, 1904–AB17, and 1904–AB44 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, ASHRAE Commercial Five-Products Standards, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- Hand Delivery/Courier: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this proceeding. For detailed instructions on submitting comments and additional information on the proceeding, see section III of this document (Public Participation).

Docket: For access to the docket to read background documents and the TSD, or comments received, go to the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room. Please note: The Department's Freedom of Information Reading Room (formerly Room 1E–190 at the Forrestal Building) is no longer housing rulemaking materials. The docket will also be posted to the Federal Docket Management System through the Federal eRulemaking Portal (*http://www.regulations.gov*) after the comment period closes.

You can also obtain the report of DOE's screening analysis (discussed below) and the TSD electronically from DOE's Building Technologies Program's Web site at the following URL address: *http://www.eere.energy.gov/buildings/appliance_standards/.*

This notice refers to industry standards established by ASHRAE and IESNA in ASHRAE/IESNA Standard 90.1, Energy Standard for Buildings Except Low-Rise Residential Buildings (Standard 90.1). The revisions of Standard 90.1 are referred to by year of publication. For example, the 1999 revision is referred to below as Standard 90.1–1999. This standard is available at the Resource Room of the Building Technologies Program at the address stated above. Copies are also available by mail from the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1971 Tullie Circle, NE., Atlanta, GA 30329, or electronically from ASHRAE's Web site, *http://www.ashrae.org/book/bookshop.htm.*

FOR FURTHER INFORMATION CONTACT:

Maureen Murphy, Project Manager, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9127, or e-mail: *Maureen.Murphy@ee.doe.gov.*

Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–9507, or electronic mail: *Francine.Pinto@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction
  A. Authority
  B. Background
  1. ASHRAE Amendment of Standard 90.1 and DOE Response
  2. Subsequent Action by the Department
  3. The Energy Policy Act of 2005
II. Discussion
  A. Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps

B. Small Commercial Packaged Boilers
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1. Background
2. Analysis of Proposed Efficiency Levels
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III. Public Participation
A. Submission of Comments
B. Issues on Which DOE Seeks Comment
IV. Approval by the Secretary

I. Introduction

A. Authority

Part C of Title III of the Energy Policy and Conservation Act (EPCA) addresses the energy efficiency of certain types of commercial and industrial equipment, such as electric motors, air conditioners, and furnaces. (42 U.S.C. 6311–6317) It contains, for example, definitions, test procedures, labeling provisions, and energy conservation standards, including specific mandatory energy conservation standards for certain tankless, gas-fired instantaneous water heaters (IWHs), packaged terminal air conditioners (PTACs) and packaged terminal heat pumps (PTHPs), commercial packaged boilers, and commercial package air-conditioning and heating equipment (including three-phase air conditioners (ACs) and heat pumps (HPs) <65,000 Btu/h and single-package vertical air conditioners (SPVACs) and single-package vertical heat pumps (SPVHPs) <65,000 Btu/h). (42 U.S.C. 6313(a)(1)–(5))

The energy conservation standards set in EPCA for commercial and industrial equipment generally correspond to the levels in Standard 90.1, as in effect on October 24, 1992 (Standard 90.1–1989). The statute provides that if Standard 90.1 is amended after that date for any of this equipment (and for certain other equipment), the Secretary of Energy must establish an amended uniform national standard at the new minimum level for each effective date specified in Standard 90.1, unless the Secretary determines, through a rulemaking supported by clear and convincing evidence, that a more stringent standard is technologically feasible and economically justified and would result in significant additional energy conservation. (42 U.S.C. 6313(a)(6)(A))

In any such rulemaking, the rule must contain the amended standard, and the Secretary must determine whether the economic benefits of the standard exceed its burdens, considering factors specified by the statute and other factors the Secretary considers relevant. (42 U.S.C. 6313(a)(6)(B)(i)) The Secretary may not prescribe an amended standard if the Secretary finds (and publishes the finding) that interested persons have established by a preponderance of evidence that the amended standard is likely to result in unavailability in the United States of products with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. (42 U.S.C. 6313(a)(6)(B)(ii)) Also, the Secretary may not prescribe any amended standard which increases maximum allowable energy use, or decreases the minimum required energy efficiency, of a covered product. (42 U.S.C. 6313(a)(6)(B)(ii))

Finally, Federal energy efficiency requirements for commercial equipment generally preempt State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316 (a)–(b)) The Department can, however, grant waivers of preemption for particular State laws or regulations, in accordance with the procedures and other provisions of section 327(d) of the Act. (42 U.S.C. 6297(d) and 6316(b)(2)(D))

B. Background

1. ASHRAE Amendment of Standard 90.1 and DOE Response

On October 29, 1999, ASHRAE's Board of Directors gave final approval to Standard 90.1–1999, which addressed efficiency levels for 34 categories of commercial heating, ventilating and air-conditioning (HVAC) and water heating equipment covered by EPCA. The new Standard 90.1 (Standard 90.1–1999) revised the efficiency levels of the existing Standard 90.1–1989 for certain equipment. For the remaining equipment, ASHRAE left the preexisting levels in place, after considering revision of the levels for some equipment and deferring consideration of others.

Following the publication of Standard 90.1–1999, the Department performed a screening analysis that covered 24 of the categories of equipment to help decide what action it would take with respect to the new efficiency levels. The Department did not specifically analyze the other 10 categories of equipment because there was insufficient data describing baseline energy consumption, a small market for these products, a lack of product shipment data, or an absence of a suitable methodology to distinguish its heating function. For each of these types of equipment that was included in the screening analysis, the Department examined a range of efficiency levels that included the levels specified in EPCA and Standard 90.1–1999, as well as the levels associated with the lowest life-cycle cost (LCC). For each potential efficiency level above the EPCA standard, the Department estimated the incremental national energy and carbon emission savings and the net nationwide direct economic benefit (national net present value (NPV)) resulting for the period 2004 to 2030 from setting a standard at that level. The baselines for the comparison were the corresponding levels specified in Standard 90.1–1999 and EPCA.

Following completion of the screening analysis, the Department published a notice that described the screening analysis and announced its public availability. For each equipment category for which ASHRAE adopted or considered a revised standard level, the notice stated whether the Department was inclined to immediately adopt the standard level in Standard 90.1–1999, or to undertake a more thorough analysis to determine if a more stringent level was warranted. For the equipment categories that ASHRAE did not address in revising Standard 90.1—namely, three-phase air conditioners and heat pumps with capacities under 65,000 Btu per hour—DOE stated that it had tentatively decided to take no action until ASHRAE had amended Standard 90.1's efficiency levels for these types of equipment. Finally, the notice published on May 15, 2000, announced a public meeting and invited written comment on the screening analysis and DOE's planned actions. 65 FR 30929 (May 15, 2000).

Following the public meeting on July 11, 2000, the Department adopted the efficiency levels in Standard 90.1–1999 as Federal standards to replace existing EPCA levels for 18 equipment categories of commercial air conditioners, heat pumps, furnaces, water heaters, and hot water storage tanks. For electric water heaters, DOE rejected the Standard 90.1–1999 level, leaving the EPCA level in place. 66 FR 3335, 3336–37, 3349–52 (January 12, 2001) (the ''January 2001 final rule'').

For 11 of the 24 other categories of commercial equipment analyzed in the screening analysis, the Department stated it would evaluate whether to adopt more stringent standards than those contained in Standard 90.1–1999. 66 FR 3336–38, 3349–52. The Department selected these categories of equipment for further evaluation

because the screening analysis indicated at least a reasonable possibility of finding that more stringent standards ''would be technologically feasible and economically justified and would result in significant additional conservation of energy.'' 66 FR 3349. These are the criteria EPCA prescribes for the adoption of standards more stringent than those in Standard 90.1. (42 U.S.C. 6313(a)(6)(A)) The Department stated that it could discontinue its evaluation of any of these types of equipment, however, and adopt the Standard 90.1–1999 efficiency level, whenever it concluded that these criteria are not likely to be satisfied. 66 FR 3348. However, DOE had previously indicated that it would take such action only after seeking public comment. 65 FR 30932. For the four categories of three-phase air-conditioning equipment that ASHRAE had not addressed in Standard 90.1–1999, the Department encouraged ASHRAE to amend its efficiency levels for this equipment in conjunction with the then-pending DOE standards rulemaking for similar, single-phase residential products, and stated that DOE would act once ASHRAE had adopted such amendments. The standard levels prescribed in EPCA and Standard 90.1–1999 for these 15 equipment categories appear in Tables I.1 and I.2. In addition, the Energy Policy Act of 2005 (EPACT 2005) included energy efficiency standards for some of this commercial equipment, and those new standards also appear in the tables.

TABLE I.1.—STANDARD EFFICIENCY LEVELS FOR AIR CONDITIONERS AND HEAT PUMPS

Type of product	Capacity/characteristics	Standard efficiency level*		
		EPCA	ASHRAE 90.1–1999	EPACT 2005
Small Commercial Package Air-Conditioning and Heating Equipment.	<65 kBtu/h Air-Cooled, 3 Phase, Central Split-System AC, HP.	SEER: 10.0, HSPF: 6.8.	SEER: 10.0, HSPF: 6.8.	None.
	<65 kBtu/h Air-Cooled, 3 Phase, Central Single-Package AC, HP.	SEER: 9.7, HSPF: 6.6.	SEER: 9.7, HSPF: 6.6.	None.
	≥65 kBtu/h and <135 kBtu/h Air-Cooled, Central AC.	EER: 8.9**	EER: 10.3**	EER: 11.2**††.
	≥65 kBtu/h and <135 kBtu/h Air-Cooled, Central HP.	EER: 8.9**, COP: 3.0†.	EER: 10.3**, COP: 3.2†.	EER: 11.0**, COP: 3.3†.
Large Commercial Package Air-Conditioning and Heating Equipment.	≥135 kBtu/h and <240 kBtu/h Air-Cooled, Central AC.	EER: 8.5**	EER: 9.7**	EER: 11.0**††.
	≥135 kBtu/h and <240 kBtu/h Air-Cooled, Central HP.	EER: 8.5**, COP: 2.9†.	EER: 9.3**, COP: 3.1†.	EER: 10.6**, COP: 3.2†.
Packaged Terminal Air Conditioners and Heat Pumps.	Air-Cooled	EER, COP COP vary by capacity according to formulas for each.	EER, COP vary by capacity according to formulas for each (different formulas for new construction and replacement products).	None.

* Heating efficiency levels do not apply to cooling-only air conditioners.
** At 95 °F dry-bulb temperature.
† At 47 °F dry-bulb temperature.
†† This EER level applies to equipment that has electric resistance heat or no heating. For units with all other heating-system types that are integrated into the unitary equipment, deduct 0.2 EER.

TABLE I.2.—STANDARD EFFICIENCY LEVELS FOR BOILERS AND WATER HEATERS

Type of equipment	Capacity	Standard efficiency level		
		EPCA	ASHRAE 90.1–1999	EPACT 2005
Packaged Boilers	>300 kBtu/h	Combustion Efficiency*: 80% Gas, 83% Oil.	Thermal Efficiency*: 75% Gas, 78% Oil.	None.
	≤ 2,500 kBtu/h			
	>2,500 kBtu/h	Combustion Efficiency*: 80% Gas, 83% Oil.	Combustion Efficiency*: 80% Gas, 83% Oil.	None.
Tankless, Gas-Fired Instantaneous Water Heaters.	V<10 gal	Thermal Efficiency: 80%.	Thermal Efficiency: 80%.	None.

* At maximum rated capacity.

EPACT 2005 prescribed more stringent standards than those contained in Standard 90.1–1999 for commercial package air-conditioning and heating equipment between 65,000 and 240,000 Btu per hour covered in Table I.1.[1] The Department has not initiated individual rulemakings for the remaining equipment covered in Tables I.1 and I.2,

[1] SPVACs and SPVHPs, collectively referred to as SPVUs, are types of small and large commercial package air-conditioning and heating equipment. ASHRAE did not recognize and evaluate them as separate equipment categories in Standard 90.1–1999, nor did EPCA recognize them as separate equipment categories.

which is the subject of this notice and which the screening analysis categorized as follows:

- Three-Phase Split-System, Air-Cooled Air Conditioners <65,000 Btu/h
- Three-Phase Single-Package, Air-Cooled Air Conditioners <65,000 Btu/h
- Three-Phase Split-System, Air-Cooled Heat Pumps <65,000 Btu/h
- Three-Phase Single-Package, Air-Cooled Heat Pumps <65,000 Btu/h
- Packaged Terminal Air Conditioners
- Packaged Terminal Heat Pumps
- Small, Gas-fired Boilers 0.3–2.5 Million Btu/h (MMBtu/h)
- Small, Oil-fired Boilers 0.3–2.5 MMBtu/h
- Large, Gas-fired Boilers ≥2.5 MMBtu/h
- Large, Oil-fired Boilers ≥2.5 MMBtu/h
- Tankless, Gas-Fired Instantaneous Water Heaters
- Single-Package Vertical Air Conditioners [2]
- Single-Package Vertical Heat Pumps [3]

The screening analysis results for these equipment categories are shown in Table I.3, except for the oil-fired packaged boilers and SPVUs, which DOE did not study in the screening analysis. For each equipment category, Table I.3 shows the efficiency level corresponding to the lowest average LCC and highest NPV, taking into account both the costs of efficiency improvements and the savings from reduced energy consumption. Each efficiency level is above the level specified in Standard 90.1–1999. Table I.3 also shows the following potential benefits, which the screening analysis estimates for the period from 2004 to 2030, from setting a standard at the higher level:

- The estimated nationwide energy savings, expressed in trillions of British thermal units (Tbtu);
- The estimated net nationwide direct economic benefit, represented by the NPV; and
- The estimated reductions in atmospheric carbon emissions, in millions of tons.

TABLE I.3.—ENERGY SAVINGS, NET PRESENT VALUE AND CARBON EMISSION REDUCTIONS FROM 2004 TO 2030 AT ENERGY EFFICIENCY LEVELS CORRESPONDING TO LOWEST LIFE-CYCLE COST

[Source: screening analysis]

Equipment category	Efficiency level at minimum life-cylce cost	Relative to ASHRAE standard 90.1–1999		
		National energy savings (TBtu)	National total NPV (millions of 1998 $'s)	National carbon emission reductions (million tons)
3-Phase, Single-Package Air-Source Air Conditioners, <65 kBtu/h.	12.0 SEER	1412.7	897.7	21
3-Phase, Split-System Air-Source Air Conditioners, <65 kBtu/h.	11.0 SEER	278.6	109.1	4
3-Phase, Single-Package Air-Source Heat Pumps, <65 kBtu/h.	12.0 SEER	183.6	91.3	3
3-Phase, Split-System Air-Source Heat Pumps, <65 kBtu/h	12.0 SEER	66.4	47.0	1
Packaged Terminal Air Conditioners**	10.5 EER	311.7	274.7	5
Packaged Terminal Heat Pumps**	9.9 EER	249.0	241.9	4
Small, Gas-fired Commercial Packaged Boilers, ≤2.5 MMBtu/h.	78.7%	200.0	146.0	3
Large, Gas-fired Commercial Packaged Boilers, ≥2.5 MMBtu/h.	85.3%*	79.0	86.6	1
Tankless, Gas-Fired Instantaneous Water Heaters	81.5%	102.0	45.3	2

* Efficiency shown is shipment-weighted averaged value of Large, Steam Commercial Packaged Boilers (76–81 percent), and Large, Hot Water Commercial Packaged Boilers (78–88 percent).
** PTAC/PTHP minimum LCC EER values are based on capacity-weighted shipments.

2. Subsequent Action by the Department

The Department has further reviewed the energy savings potential and the efficiency levels in Standard 90.1–1999 for four out of the five types of equipment, as set forth in the TSD. Table I.4 summarizes the Department's actions for each product in today's notice.

TABLE I.4.—SUMMARY OF DOE'S ACTIONS BY PRODUCT

Product	DOE's action
PTACs and PTHPs	Seek a more stringent standard.
Small, Commercial Packaged Boilers	Reject Standard 90.1–1999 efficiency levels.
Tankless, Gas-Fired IWHs	The Department does not have authority to pursue a standard level higher than those specified in Standard 90.1–1999.
Large, Commercial Packaged Boilers	The Department does not have authority to pursue a standard level higher than those specified in Standard 90.1–1999.
Three-phase ACs and HPs <65,000 Btu/h	Inclined to adopt Addendum f to Standard 90.1–2004 once ASHRAE formally adopts this addendum.

[2] Because of the circumstances described in footnote 1, DOE did not address SPVACs in the screening analysis it originally conducted.

[3] Because of the circumstances described in footnote 1, DOE did not address SPVACs in the screening analysis it originally conducted.

TABLE I.4.—SUMMARY OF DOE'S ACTIONS BY PRODUCT—Continued

Product	DOE's action
SPVUs <65,000 Btu/h	Seeking stakeholder comment on the potential energy savings analysis and the appropriateness of the levels contained in Addendum b to Standard 90.1–2004.

Based on the review, the Department is now inclined to reject the Standard 90.1–1999 levels and leave the EPCA levels in place for small, commercial packaged boilers due to backsliding as further discussed in Section II.B. The Department has also reconsidered its authority to take action to pursue standard levels higher than those specified in Standard 90.1–1999 for tankless, gas-fired IWHs and large, commercial packaged boilers, and has determined that the Department lacks such authority as discussed in Section II.C. The Department is also inclined to seek a more stringent standard level than that in Standard 90.1–1999 for PTACs and PTHPs. The Department is also inclined to adopt the levels in Addendum f of Standard 90.1–2004 for three-phase ACs and HPs <65,000 Btu/h if ASHRAE formally adopts this addendum as an amendment to Standard 90.1. Finally, the Department is deferring a final decision on SPVUs <65,000 Btu/h until ASHRAE takes final action on Addendum b to Standard 90.1–2004. At this time, the Department is seeking stakeholder comments on the potential energy savings analysis and the appropriateness of the standard levels incorporated in Addendum b to Standard 90.1–2004. After considering comments submitted in response to this notice, the Department expects to issue a final rule detailing the Department's final actions for these products.

3. The Energy Policy Act of 2005

On August 8, 2005, EPACT 2005 (Pub. L. 109–58) was signed into law by the President. Section 136(b) of EPACT 2005 amended section 342(a) of EPCA (42 U.S.C. 6313(a)) by inserting energy conservation standards for small (≥65,000 Btu/h to <135,000 Btu/h), large (≥135,000 Btu/h to <240,000 Btu/h), and very large (≥240,00 Btu/h to <760,000 Btu/h) commercial package air conditioners and heat pumps. The standards for small, large and very large commercial package air conditioners and heat pumps in Section 136(b) of EPACT 2005, which amended section 342 of EPCA (42 U.S.C. 6313), implicitly cover SPVUs. However, since the energy conservation standards contained in EPACT 2005 cover SPVUs ≥65,000 Btu/h to <760,000 Btu/h, this notice addresses SPVUs that are <65,000 Btu/h only.

II. Discussion

A Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps

Section 342(a)(3) of EPCA (42 U.S.C. 6313(a)(3)), and Standard 90.1–1999 set forth energy efficiency standards for PTACs and PTHPs (collectively referred to as PTAC/HPs). The standards vary based on the capacity of the equipment, as set forth in Table II.1.

TABLE II.1.—COMPARISON OF ENERGY EFFICIENCY STANDARDS FOR PTACS AND PTHPS–EPCA AND ASHRAE 90.1–1999

Category	Efficiency levels		
	EPCA	ASHRAE 90.1–1999	
		New construction	Replacement*
Packaged Terminal AC, Cooling Mode	10.0 − (0.16 × EER) Cap/1000) EER**.	12.5 − (0.213 × Cap/1000) EER**.	10.9 − (0.213 × Cap/1000) EER**.
Packaged Terminal HP, Cooling Mode	10.0 − (0.16 × Cap/1000) EER**.	12.3 − (0.213 × Cap/1000) EER**.	10.8 − (0.213 × Cap/1000) EER**.
Packaged Terminal HP, Heating Mode	1.3 + (0.16 × EER) COP†	3.2 − (0.026 × Cap/1000) COP**††.	2.9 − (0.026 × Cap/1000) COP**††.

* Replacement efficiencies apply only to units (1) factory labeled as follows: "Manufactured for replacement applications only; Not to be installed in new construction projects"; and (2) with existing sleeves less than 16 inches high and less than 42 inches wide.
** Cap means the rated cooling capacity of the equipment in Btu/h. If the unit's capacity is less than 7,000 Btu/h, use 7,000 Btu/h in the calculation. If the unit's capacity is greater than 15,000 Btu/h, use 15,000 Btu/h in the calculation.
† EER is the minimum cooling EER.
†† COP is minimum heating COP.

As shown in Table II.1, EPCA prescribes a single formula for computing the minimum cooling efficiency of all PTAC/HPs, and a single formula for computing the minimum heating efficiency of all PTHPs. By contrast, the minimum efficiency levels in Standard 90.1–1999 consist of two sets of formulas. One set is for PTAC/HPs that have sleeves less than 16 inches high and less than 42 inches wide and a specified label indicating they are for replacement use, which Standard 90.1–1999 classifies as ''replacement'' units. The other set is for all other PTAC/HPs, which Standard 90.1–1999 classifies as ''new construction'' units. The formulas result in minimum efficiency levels slightly higher than EPCA levels for ''replacement'' units, and substantially higher for ''new construction'' units. Standard 90.1–1999 also differs from EPCA in that it has slightly different formulas for the cooling modes of PTACs and PTHPs, whereas EPCA prescribes a single formula for both.

The screening analysis estimated the potential energy savings from higher standards for PTAC/HPs operating in the cooling mode. The Department subsequently used these energy savings values in developing the summary chart of potential energy savings in the January 2001 final rule. 66 FR 3343. The potential energy savings from DOE adoption of a PTAC/HP standard at the maximum NPV levels, over and above

savings that would be achieved by the Standard 90.1–1999 levels, totaled 0.561 quads. 66 FR 3343. These values represent the potential savings for all packaged terminal equipment by moving from the ASHRAE ''replacement'' efficiency level to the maximum NPV efficiency level. The Department now believes that these savings are overstated because they implicitly assume that DOE would adopt only a single, minimum standard equal to the ASHRAE ''replacement'' levels for all PTAC/HPs. Since the Department used the ASHRAE ''replacement'' efficiency levels (the lowest minimum levels ASHRAE specified in Standard 90.1–1999 for PTAC/HPs) and not the efficiency levels actually prescribed in Standard 90.1–1999 by product class (i.e., the replacement levels *and* the much higher new construction levels), these potential energy savings are not entirely representative of those that would result from adoption of a higher standard. In other words, the Department believes that adjusting the base case would more accurately reflect the potential energy savings of adopting higher standards than those contained in Standard 90.1–1999.

In the TSD, the Department improved its energy savings estimate for PTAC/HPs by using both product class efficiency levels contained in Standard 90.1. The Department used these levels as a departure point for its revised calculations, along with an estimate of shipments as shown in Chapter 2, Section 2, of the TSD. Consequently, DOE assumed 85 percent of the packaged terminal equipment sold annually would be at the ''new construction'' levels and 15 percent would be at the ''replacement'' levels. Using this assumption, the Department estimated the revised potential cooling-mode energy savings would be 0.103 quads if DOE adopted a standard above Standard 90.1–1999, which is much lower than the estimate of 0.561 in the screening analysis as shown in Section 2.2 of the TSD. The difference in potential energy savings between the revised analysis and the screening analysis can be attributed to using different shipment assumptions, only analyzing the space cooling load for the lodging building category, changing the analysis period to 2008–2030, and calculating the savings based on market weighted shipments as further explained in Section 2.2 of the TSD. The Department also estimated, in its revised calculations, the potential heating-mode energy savings of 0.037 quads that would result from a standard above the levels in Standard 90.1–1999 as shown in Chapter 2 of the TSD. The Department did not account for the potential heating energy savings in the Screening Analysis. Furthermore, the new calculations indicate that the total potential energy savings (both heating mode and cooling mode) resulting from adopting the Standard 90.1–1999 efficiency levels for the two product classes (replacement and new construction), when compared to the current EPCA efficiency levels, would be 0.499 quads. (In effect, much of the energy savings that the screening analysis attributed to moving from the Standard 90.1–1999 levels to the maximum NPV levels, is now attributed in DOE's revised estimate of moving from the EPCA to the Standard 90.1–1999 levels. This occurs because the revised estimate uses as the Standard 90.1–1999 levels, the dual levels in Standard 90.1–1999, whereas the screening analysis used as the Standard 90.1–1999 levels only the relatively low ''replacement'' levels.)

Since the market has changed, in the absence of Federal standards, to efficiency levels at or above the levels in Standard 90.1–1999 for PTACs and PTHPs, the Department is inclined to seek a more stringent standard level for these products. An examination of the January 2003 Air-Conditioning and Refrigeration Institute (ARI) Directory for PTAC/HPs reveals that 52 percent of the listed PTACs are at, or above, the Standard 90.1–1999 efficiency level for new construction equipment, and 98 percent of the listed PTACs are at or above the Standard 90.1–1999 efficiency level for replacement equipment. Furthermore, 72 percent of the listed PTHPs are at or above the Standard 90.1–1999 efficiency level for new construction equipment and 99 percent of the listed PTHPs are at or above the Standard 90.1–1999 efficiency level for replacement equipment. Even though the potential energy savings in the revised analysis has been reduced, the Department believes there is a possibility of clear and convincing evidence, which would warrant further evaluation of more stringent standard levels for PTACs and PTHPs. Therefore, the Department is inclined to seek a more stringent standard level than Standard 90.1–1999 for PTACs and PTHPs through the rulemaking process.

B. Small Commercial Packaged Boilers

EPCA prescribes a minimum combustion efficiency of 80 percent for gas-fired commercial packaged boilers and 83 percent for oil-fired commercial packaged boilers, regardless of capacity, as detailed in Table I.2 in section I.B.1 of this document. Standard 90.1–1999 prescribes for small boilers (≤2.5 million Btu/hr) thermal efficiency levels of 75 percent for gas-fired equipment and 78 percent for oil-fired equipment. In January 2001, when it adopted as Federal standards certain of the efficiency levels in Standard 90.1–1999, the Department stated that it would evaluate whether standard levels higher than those in Standard 90.1–1999 are justified for small commercial packaged boilers. 66 FR at 3336–38, 3349–52. The Department has tentatively concluded that the Standard 90.1–1999 efficiency levels for small commercial packaged boilers are lower than EPCA's existing standards for this equipment. Therefore, the Department is inclined to reject the Standard 90.1–1999 levels for small commercial packaged boilers and leave in place the existing EPCA standards.

The ''combustion efficiency'' descriptor used in EPCA for the efficiency levels for small commercial boilers differs from the ''thermal efficiency'' descriptor used in Standard 90.1–1999. In general, the energy efficiency of a product is a function of the relationship between the product's output of services and its energy input. A boiler's output is measured in large part by the energy content of its output (steam or hot water). Consequently, its efficiency is often viewed as the ratio between its energy output and energy input, with the energy output being calculated as the energy input minus the energy lost in producing the output. A boiler's energy losses consist of energy that escapes through its flue (commonly referred to as flue losses), and of energy that escapes into the area surrounding the boiler (commonly referred to as jacket losses). The ''combustion efficiency'' descriptor in EPCA takes into account only flue losses, and typically is defined as ''100 percent minus percent flue loss.'' The ''thermal efficiency'' descriptor in Standard 90.1–1999 takes into account jacket losses as well as flue losses, and can be considered as combustion efficiency minus jacket loss. Since all boilers will have at least some jacket losses (even if small) and because thermal efficiency takes these losses into account, the thermal efficiency for a particular boiler will always be lower than its combustion efficiency.

It is understood within the industry that there is not a direct mathematical correlation between these two measures of efficiency. The factors that contribute to jacket loss (e.g., the boiler's design and materials) have little or no direct bearing on combustion efficiency. This lack of correlation between combustion efficiency and thermal efficiency

presents some difficulties here. EPCA provides that the Department may not prescribe any amended standard that ''increases the maximum allowable energy use, or decreases the minimum required energy efficiency'' of a product covered under Section 342(a) of the statute, such as packaged boilers. (42 U.S.C. 6313(a)(6)(B)(ii)). Therefore, in evaluating whether to adopt Standard 90.1–1999's thermal efficiency levels of 75 and 78 percent for small gas and oil boilers, respectively, the Department needed to determine whether they decrease the 80 and 83 percent combustion efficiencies required by EPCA for these products. If the percentages for the minimum thermal efficiency levels specified by Standard 90.1–1999 were numerically at, or above, the percentages in EPCA for the corresponding combustion efficiency levels, then clearly the Standard 90.1–1999 levels would not be lower than the EPCA levels. If Standard 90.1–1999's thermal efficiency levels for small commercial boilers were only slightly lower numerically than EPCA's combustion efficiency standards for such equipment, the Standard 90–1–1999 levels probably would also not represent a reduction in minimum efficiency levels. However, because the Standard 90.1–1999 thermal efficiency levels are five percentage points below EPCA's combustion efficiency levels, DOE must address whether the Department's adoption of the Standard 90.1–1999 levels would represent a reduction of existing standards.

To address this issue, the Department reviewed the Institute of Boiler and Radiation Manufacturers (I=B=R) ratings directories for 2005. The I=B=R directory provides efficiency ratings for a majority of the commercial packaged boilers manufactured in the United States. For approximately 62.6 percent of the boilers it listed in 2005, the directory provided both the thermal efficiency and combustion efficiency levels. For a small portion of these boilers (3.2 percent), the ratings appear to be erroneous because the directory lists a thermal efficiency rating that is equal to or greater than its combustion efficiency rating, which is physically impossible.[4] As explained above, thermal efficiency includes the effects of jacket losses whereas combustion efficiency does not. Excluding these boilers, the Department reviewed the thermal and combustion efficiency ratings for the remaining 59.4 percent of the boilers where both ratings are listed in the 2005 I=B=R directory. Among this equipment, small, gas-fired boilers and small, oil-fired boilers had an average thermal efficiency approximately 2.6 percent lower than their combustion efficiency. For small, gas-fired boilers with combustion efficiencies between 80 and 81 percent, the 2005 directory showed an average thermal efficiency of approximately 76.7 percent. For small, oil-fired boilers with a combustion efficiency between 83 and 84 percent, the 2005 directory showed an average thermal efficiency of approximately 81 percent. The Department believes it is reasonable to assume that these relationships between combustion and thermal efficiency exist for small boilers that have combustion efficiencies that minimally comply with EPCA (80 percent and 83 percent for small gas and oil boilers, respectively). Therefore, minimally complying, small, gas-fired boilers would have an average thermal efficiency of about 76.8 percent, and minimally complying, small, oil-fired boilers would have an average thermal efficiency of about 82.1 percent. Standard 90.1–1999's thermal efficiencies of 75 percent for small, gas-fired boilers and 78 percent for small, oil-fired boilers are approximately 1.8 percent and 3.1 percent lower, respectively, than the average thermal efficiencies of boilers that minimally comply with the EPCA energy efficiency standards.

This analysis does not establish directly that the small boiler efficiency levels in Standard 90.1–1999 are lower than those in EPCA. EPCA's combustion efficiency standards for this equipment set maximum amounts of flue losses, but do not regulate jacket losses. As stated earlier, thermal efficiency is a function of both flue losses (i.e., combustion efficiency) and jacket losses. Since these two losses can be independent of one another, in theory, a small boiler could meet or exceed EPCA's applicable combustion efficiency standard, but have sufficiently large jacket losses that cause the thermal efficiency to be lower than the 75 percent (for small, gas-fired boilers) or 78 percent (for small oil-fired boilers) specified in Standard 90.1–1999. Thus, DOE's adoption of Standard 90.1–1999 thermal efficiency levels would not directly decrease the minimum combustion efficiencies required in EPCA for small boilers. However, the Department believes the adoption of the Standard 90.1–1999 thermal efficiency levels for small boilers would have the effect of lowering minimum combustion efficiency levels required by EPCA by allowing increased energy consumption.

At present, the thermal efficiency of a small commercial boiler is a function of (1) the manufacturer's compliance with the applicable EPCA combustion efficiency standard and (2) decisions it makes independent of EPCA concerning the boiler's design, materials, and other features that affect jacket losses. For the small boilers for which the I=B=R directory lists both thermal and combustion efficiencies, these decisions by manufacturers have resulted in production of (1) no gas-fired boiler with a thermal efficiency below 75.4 percent, (2) gas boilers with a combustion efficiency between 80 and 81 percent that have thermal efficiencies averaging approximately 76.7 percent, (3) no oil-fired boiler with a thermal efficiency below 75.6, and (4) oil boilers with a combustion efficiency between 83 and 84 percent that have thermal efficiencies averaging approximately 81 percent. Although EPCA does not regulate jacket losses, for both small, gas- and oil-fired commercial packaged boilers with relatively low combustion efficiencies, manufacturers have restricted jacket losses to levels that have kept thermal efficiencies within an average of 2.6 percentage points below their combustion efficiencies. The Department does not believe its adoption of Standard 90.1–1999's thermal efficiency levels for small commercial boilers would result in manufacturers' increasing the amount of jacket losses for this equipment. No reason is readily apparent as to why manufacturers would alter their current practices, and make equipment that has greater jacket losses, even if mandatory thermal efficiency levels were set below the levels that equipment currently achieves. However, setting thermal efficiency standards at levels lower than the thermal efficiencies of existing equipment could result in equipment with lower combustion efficiencies. This allows for the possibility of equipment having lower efficiencies than permitted by EPCA, meaning that the current minimum (required) efficiency would be decreased.

For these reasons, it appears to the Department that EPCA precludes it from prescribing as amended Federal standards the Standard 90.1–1999's thermal efficiency levels (one for gas-fired and the other for oil-fired equipment) for small commercial packaged boilers, because each would decrease the minimum required efficiency of this equipment. (42 U.S.C. 6313(a)(6)(B)(ii))

[4] These anomalous ratings are likely due to Hydronics Institutes's (HI) de-rating procedures, manufacturers' interpolation of results, varying test chambers and instrument calibration among manufacturers, or submittal of erroneous ratings. For more details, please see Chapter 3 of the TSD.

For small commercial gas-fired boilers, the screening analysis estimated that, in comparison with Standard 90.1–1999's minimum thermal efficiency level of 75 percent, 0.2 quads of energy would be saved by requiring a thermal efficiency of at least 78.7 percent, the standard level that corresponds to the lowest average life-cycle cost and highest NPV for this equipment as shown in Chapter 3 of the TSD. The estimate of 0.2 quads of energy savings assumes that the thermal efficiency of all small, gas-fired boilers shipped would increase from the Standard 90.1–1999 minimum of 75 percent to 78.7 percent. The Department's review of the I=B=R directories for 2005, however, indicates that a number of small, gas-fired commercial boilers with thermal efficiencies above 75 percent are already on the market. For example, among small, gas-fired boilers for which the directory included both thermal and combustion efficiency ratings, the lowest thermal efficiency is 75.4 percent, and the average thermal efficiency is 79.7 percent. Thus, since many small, gas-fired boilers are being sold with thermal efficiencies greater than 75 percent, less than 0.2 quads of energy would be saved if DOE adopted a standard of 78.7 percent thermal efficiency instead of 75 percent. The Department cannot estimate precisely how much energy a new standard would save, since it does not know the quantities of boilers being sold at particular efficiency levels. Clearly, however, the savings would be less than the potential savings shown in the screening analysis.

For small, oil-fired commercial boilers, the screening analysis did not evaluate potential energy savings from a Federal standard in excess of Standard 90.1–1999's minimum thermal efficiency level of 78 percent. As explained in Chapter 3 of the TSD, certain equipment (e.g., oil-fired commercial boilers) was not specifically analyzed because there was insufficient data describing baseline energy consumption, a small market for these products, a lack of product shipment data, or an absence of a suitable methodology to distinguish its heating function. However, the Department's review of the I=B=R directory for 2005 indicates that a number of small, oil-fired commercial boilers already on the market have thermal efficiencies above 78 percent. For small, oil-fired commercial boilers, for which the directory included both thermal and combustion efficiency ratings, the lowest thermal efficiency in 2005 is 75.6 percent and the average thermal efficiency is 82.3 percent. For models with a combustion efficiency between 83 and 84 percent, which slightly exceeds the EPCA standard, the average thermal efficiency in 2005 was 81.0 percent. The screening analysis did not evaluate small, oil-fired commercial boilers, but the Department understands that their market share is much smaller than the market share for the small, gas-fired commercial boilers. Consequently, the Department believes that the potential energy savings from a standard higher than that specified in EPCA and Standard 90.1–1999 is much smaller for small, oil-fired commercial boilers than the potential 0.2 quads of energy savings for the small, gas-fired commercial boilers.

Nonetheless, the Department believes the thermal efficiency metric provides a sound method for measuring the efficiency of commercial boilers because it is more inclusive and better reflects the total energy losses in the equipment than the combustion efficiency metric prescribed by EPCA, and is more consistent with the Act's definition of ''energy efficiency'' for commercial equipment.[5] If ASHRAE were to adopt for small boilers new thermal efficiency levels that maintain or increase EPCA's existing standard levels, the Department would give them careful consideration, and would be favorably inclined toward adopting levels, such as those indicated in the screening analysis, that would represent the lowest LCC and highest NPV for this equipment. See Chapter 3 of the TSD. However, the Department cannot adopt any amended thermal efficiency standard for commercial packaged boilers that would entail lowering the minimum required efficiency level for this equipment. The Department is inclined to leave in place the existing EPCA standards for the small commercial packaged boilers.

C. Large Commercial Packaged Boilers and Tankless, Gas-Fired Instantaneous Water Heaters

EPCA specifies minimum energy efficiency levels for certain categories of commercial equipment including tankless, gas-fired instantaneous water heaters (IWHs) and large commercial packaged boilers. (42 U.S.C. 6313(a)(1)-(5)) These types of equipment are also covered by ASHRAE/IES Standard 90.1, and the efficiency requirements in EPCA correspond with the Standard 90.1 levels in effect on October 24, 1992.

EPCA provides that, ''If ASHRAE/IES Standard 90.1, as in effect on October 24, 1992, is amended with respect to any * * * packaged boilers, storage water heaters, instantaneous water heaters, or unfired hot water storage tanks, the Secretary shall establish an amended uniform national standard for that product at the minimum level for each effective date specified in the amended ASHRAE/IES Standard 90.1, unless the Secretary determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that adoption of a uniform national standard more stringent than such amended ASHRAE/IES Standard 90.1 for such product would result in significant additional conservation of energy and is technologically feasible and economically justified.'' (42 U.S.C. 6313(a)(6)(A))

ASHRAE revised Standard 90.1 on October 29, 1999. It changed Standard 90.1's minimum efficiency levels for some products but not for others. Of the equipment for which if left levels at their preexisting values, ASHRAE evaluated whether to increase some of the levels, while deferring consideration of other levels. For tankless IWHs and large, commercial packaged boilers, ASHRAE left the pre-existing levels in place after considering whether to change them. Thus, Standard 90.1–1999 values for this equipment are the same as the EPCA standards.

In response to ASHRAE's actions, the Department issued a notice of preliminary screening analysis on March 1, 2000. 65 FR 10984. In this document the Department stated that it expected to pursue, one of four courses of action for each commercial equipment category covered by Standard 90.1–1999:

1. Adopt the Standard 90.1–1999 efficiency level as a uniform national standard;
2. Reject the Standard 90.1–1999 efficiency level if it increases maximum allowable energy use or decreases minimum required efficiency;
3. Propose consideration of an addendum to Standard 90.1–1999 if ASHRAE did not consider a more efficient level, and a more efficient level appears warranted; or
4. Propose consideration of an addendum to Standard 90.1–1999 and undertake a more thorough evaluation to determine whether a rulemaking is justified, if ASHRAE considered amending or amended the standard, and a more efficient level appears warranted than is contained in ASHRAE/IES Standard 90.1–1999.

On May 15, 2000, the Department issued a notice of document availability

[5] For commercial equipment, '' 'energy efficiency' means the ratio of the useful output of services from an article of industrial equipment to the energy use by such article, determined in accordance with test procedures under section 6314 of this title.'' (42 U.S.C. 6311(3))

and public workshop announcing the preliminary conclusions of the screening analysis. 65 FR 30934. The Department announced in this notice its inclination to propose that ASHRAE consider an addendum to Standard 90.1–1999, based on the screening analysis, and to undertake a more thorough evaluation to determine whether a rulemaking was justified under the terms of EPCA. On January 12, 2001, the Department published a final rule adopting Standard 90.1–1999 standard levels for certain commercial equipment, and stated it was considering whether more stringent standards are justified for other equipment, including IWHs and large commercial packaged boilers. 66 FR 3336.

In these three notices, the Department indicated its belief that it had the authority to consider more stringent standard levels for tankless IWHs and large, commercial packaged boilers because ASHRAE had considered adopting more stringent levels for these types of equipment, even though ASHRAE had not changed the Standard 90.1 levels for such equipment. The Department did not receive any comments in response to either the May 15, 2000, notice or the January 12, 2001, final rule concerning its view that it had this authority. However, in preparing today's notice, DOE reexamined its authority under EPCA to amend standards for tankless IWHs and large commercial boilers and has concluded its earlier view was in error. As quoted at greater length above, EPCA states that, if an efficiency level in Standard 90.1 ''is amended,'' then DOE may (under certain circumstances) adopt a standard more stringent than the ''amended'' level in Standard 90.1. The Department now believes that this language authorizes it to adopt a more stringent standard than the level(s) in Standard 90.1 only in response to a change in such level(s) by ASHRAE. Thus, DOE believes ASHRAE must change the Standard 90.1 efficiency level(s) for a type of equipment to trigger DOE authority to pursue a rulemaking to consider more stringent standards for that equipment. Since ASHRAE did not change the existing efficiency levels in Standard 90.1 for tankless, gas-fired IWHs and large commercial packaged boilers when it adopted Standard 90.1–1999, the adoption of Standard 90.1–1999 appears not to authorize DOE to pursue higher standards for these types of equipment. The Department now believes that ASHRAE must, instead, take further action and adopt new standard levels for such equipment in order for DOE to consider more stringent levels for these products. In consideration of the above, if ASHRAE considers an addendum to Standard 90.1 for these products, DOE will encourage it to consider the details of the screening analysis.

D. Three-Phase Air Conditioners and Heat Pumps <65,000 Btu/h

Energy-efficiency levels for single-package three-phase ACs and HPs <65,000 Btu/h are set forth in EPCA at a seasonal energy efficiency ratio (SEER) level of 9.7 for cooling (42 U.S.C. 6313(a)(1)(B)) and a heating seasonal performance factor (HSPF) level of 6.6 for heating (42 U.S.C. 6313(a)(1)(E)) (see Table II.2). Energy-efficiency levels for split-system three-phase HPs <65,000 Btu/h are 10.0 SEER for cooling (42 U.S.C. 6313(a)(1)(A)) and 6.8 HSPF for heating (42 U.S.C. 6313(a)(1)(D)). These efficiency levels are the same as those in Standard 90.1–1989. During the development of Standard 90.1–1999, ASHRAE explicitly chose not to revise standards for air-cooled three-phase ACs and HPs <65,000 Btu/h. This decision was based on the close relationship the design of this equipment has to residential, single-phase air-cooled ACs and HPs <65,000 Btu/h, whose efficiency is regulated under section 325 of EPCA (42 U.S.C. 6295), and which at that time were the subject of a pending DOE rulemaking for the development of new efficiency standards.[6] Subsequently, in the January 12, 2001, final rule (66 FR 3336), DOE indicated that it would take no action on three-phase ACs and HPs since ASHRAE took no action. As a result, the EPCA energy-efficiency levels for this equipment remained unchanged.

On January 22, 2001, the Department published a final rule setting a 13 SEER and 7.7 HSPF standard for residential central air conditioners and heat pumps, both single-package and split-system (the ''13 SEER rule''). 66 FR 71799. ARI requested judicial review of this rule by the U.S. Court of Appeals for the 4th Circuit. Subsequently, on May 23, 2002, DOE withdrew the 13 SEER rule, and set the efficiency standards for residential, single-phase air-cooled air conditioners and heat pumps at a SEER rating of 12.0 and an HSPF rating of 7.4 (the ''12 SEER rule''). 67 FR 36368. In June of 2002, ARI proposed to ASHRAE an addendum to Standard 90.1, Addendum i to Standard 90.1–2001, which contained minimum efficiency levels of 12 SEER/7.4 HSPF for the three-phase commercial air-conditioning equipment <65,000 Btu/h, and an effective date in 2006. ASHRAE adopted Addendum i on July 3, 2003, to align the efficiency standards for this equipment with DOE's standards for residential central air conditioners and heat pumps <65,000 Btu/h. ANSI approved Addendum i on August 6, 2003.

In the meantime, the Natural Resources Defense Council had requested judicial review of the 12 SEER rule in the U.S. Court of Appeals for the 2nd Circuit. *Natural Resources Defense Council, et al.* v. *Abraham,* 355 F.3d 179 (2nd Cir. 2004). On January 13, 2004, the court ruled that DOE, in adopting the 12 SEER rule, had failed to effect a valid amendment of the original standard (13 SEER) effective date, and was prohibited from amending these standards downward. 355 F.3d 179. Shortly after this ruling, ARI withdrew its appeal of the 13 SEER rule. On August 17, 2004, DOE published a technical amendment in the **Federal Register** to re-publish the 13 SEER standard for residential central air conditioners and heat pumps. 69 FR 50997.

Nevertheless, even though the 13 SEER standard now clearly applies to residential ACs and HPs <65,000 Btu/h, for three-phase equipment of this type the 12 SEER efficiency level in Addendum i to Standard 90.1–2001 requires action. EPCA states that DOE must adopt as a Federal standard any efficiency level specified in an amendment to Standard 90.1 unless it shows through clear and convincing evidence that a more stringent standard, that is technologically feasible and economically justified, would produce significant additional energy savings. (42 U.S.C. 6313(a)(6)(A)) EPCA also bars DOE from adopting any standard that would increase the maximum allowable energy use or decrease the minimum required efficiency for a product. (42 U.S.C. 6313(a)(6)(B)(ii)) Therefore, at this point, EPCA requires that DOE either adopt the efficiency levels in Addendum i to Standard 90.1–2001, to increase the minimum energy efficiency level for three-phase air-conditioning units from the 10 SEER level established by EPCA to a 12 SEER level, or pursue a rulemaking to explore adoption of a higher-energy efficiency level.

ASHRAE is now considering, however, adoption of the 13 SEER level for this equipment. Specifically, under its process for continuous maintenance of Standard 90.1, ASHRAE has completed public review of a proposed addendum to Standard 90.1 (Addendum f to Standard 90.1–2004) that would incorporate 13 SEER and 7.7 HSPF

[6] Addendum i to American National Standards Institute (ANSI)/ASHRAE/IESNA Standard 90.1–2001, Pg.2.

levels for three-phase ACs and HPs <65,000 Btu/h. Under ASHRAE's process, if the ASHRAE Standards Committee and ASHRAE Board approve this addendum during the 2006 ASHRAE winter meeting, it would then go to ANSI for approval, and its official adoption and publication would likely occur in the spring of 2006. Table II.2 summarizes the minimum energy-efficiency standards for three-phase air-conditioning units and heat pumps <65,000 Btu/h as specified by EPCA, Standard 90.1–1999, Addendum i to Standard 90.1–2001, and Addendum f to Standard 90.1–2004.

TABLE II.2.—COMPARISON OF ENERGY EFFICIENCY LEVELS FOR THREE-PHASE ACS AND HPS

Category	Efficiency levels (SEER and HSPF)							
	EPCA		Standard 90.1–1999		Addendum i to standard 90.1–2001		Addendum f to standard 90.1–2004	
	Cooling (SEER)	Heating (HSPF)	Cooling (SEER)	Heating (HSPF)	Cooling (SEER)	Heating (HSPF)	Cooling (SEER)	Heating (HSPF)
3-Phase Single-Package AC	9.7	NA	9.7	NA	12.0	NA	13.0	NA
3-Phase Single-Package HP	9.7	6.6	9.7	6.6	12.0	7.4	13.0	7.7
3-Phase Split-System AC	10.0	NA	10.0	NA	12.0	NA	13.0	NA
3-Phase Split-System HP	10.0	6.8	10.0	6.8	12.0	7.4	13.0	7.7

At this time the Department has decided to postpone action on ASHRAE's Addendum i to Standard 90.1–2001 because the Addendum f to Standard 90.1–2004 is currently pending before ASHRAE and its adoption by ASHRAE would supercede Addendum i. The Department intends to take action once ASHRAE has completed consideration of Addendum f. If ASHRAE approves this addendum, DOE anticipates that it will adopt as Federal standards the efficiency levels in the addendum (13 SEER/7.7 HSPF). The Department is following this approach largely to achieve the original intent of ASHRAE and DOE to align the energy-efficiency standards for the three-phase equipment with the standards for residential, single-phase, air-cooled ACs and HPs that currently have to meet a 13 SEER/7.7 HSPF federal energy efficiency standard as of January 23, 2006. In addition, the screening analysis estimated that 12 SEER was the efficiency level for three-phase ACs and HPs <65,000 Btu/h where the lowest LCC occurs. 65 FR 30929. Therefore, the Department considers it unlikely that clear and convincing evidence exists, as required by EPCA, 42 U.S.C. 6313(a)(6)(A), that a standard higher than the 13 SEER level in Addendum f would save significant additional amounts of energy, and also be economically justified and technologically feasible.

E. Single-Package Vertical Air Conditioners and Single-Package Vertical Heat Pumps <65,000 Btu/h

1. Background

In 2002, ASHRAE approved Addendum d to Standard 90.1–2001. Addendum d originated as an ARI continuous-maintenance proposal to ASHRAE, and was intended to establish SPVACs and SPVHPs as new categories of commercial HVAC equipment. It specified ARI Standard 390–2001 as the test procedure for SPVU products and provided minimum efficiency levels specifically for this equipment.[7] Prior to ASHRAE's approval of Addendum d, DOE had indicated that SPVUs were covered by EPCA as commercial equipment. 65 FR 59589, 59610 (October 5, 2000). Therefore, under EPCA, publication of Addendum d triggered a review by DOE to determine if it should adopt as Federal requirements the addendum's amendments to Standard 90.1. (42 U.S.C. 6313(a)(6))

The Department examined Addendum d and determined that it could not adopt as Federal requirements the standards and test procedures in the addendum for the following reasons: (1) Taking into account the ''Exclusions'' in the Scope section of ARI Standard 390–2001, the Addendum appears to prescribe requirements for few if any of the products covered by EPCA. Neither Addendum d nor any other provision of Standard 90.1 defines or describes SPVUs; (2) Assuming Addendum d did prescribe standards and test procedures for SPVUs covered by EPCA, the addendum did not clearly delineate SPVUs according to the statutory scheme set forth in EPCA, and disregarded EPCA's definitions and classifications for commercial air-conditioning equipment; and (3) To the extent it addressed equipment covered by EPCA, the addendum appeared to contain efficiency levels for some categories of equipment that are lower than the minimum efficiency standards currently required under EPCA (DOE, No. 7 at pp. 1–7).

In response to DOE's objections, ARI revised ARI Standard 390 and prepared and submitted to ASHRAE a new continuous-maintenance proposal to correct the deficiencies DOE had identified in Addendum d. ARI developed these documents in consultation with DOE. ASHRAE accepted the continuous-maintenance proposal, and largely incorporated its contents into proposed Addendum b to Standard 90.1–2004.[8] At this point, ASHRAE has completed its public review process of Addendum b and is in the final stages of considering whether to approve the addendum. The Department's understanding, based on discussions with ASHRAE staff, is that ASHRAE could approve Addendum b as an amendment to Standard 90.1 as early as the end of 2005.

In Addendum b, ARI redefined both SPVACs and SPVHPs as encased air-cooled small or large commercial package air-conditioning and heating equipment. Additionally, it created SPVU categories corresponding to the equipment categories in EPCA. As a result of revisions made to ARI Standard 390, any standards and test procedures ASHRAE prescribed for SPVU equipment would apply to equipment covered by EPCA, and not overlap with EPCA definitions of PTACs and PTHPs. To correct the efficiency level, ARI proposed a revised set of standards for

[7] Air-Conditioning and Refrigeration Institute, Performance Rating of Single-Package Vertical Air-Conditioners and Heat Pumps—Standard 390, 2001.

[8] Public Review Draft of Proposed Addendum b to Standard 90.1–2004, Energy Standard for Buildings Except Low-Rise Residential Buildings, Nov. 2004.

three categories of equipment size: <65,000 Btu/h, ≥65,000 but <135,000 Btu/h, and ≥135,000 but <240,000 Btu/h. These revised standards utilized energy efficiency ratio (EER) and coefficient of performance (COP) descriptors to provide SPVU efficiency levels in a manner consistent with other commercial equipment, eliminating the use of the common residential central ACs and HPs descriptors of SEER and HSPF for SPVUs.

The Department responded favorably to a majority of ARI's revisions, but continued to voice concern regarding the test procedures and minimum efficiency standards proposed for SPVUs <65,000 Btu/h (DOE, No. 11 at pp. 1–6). The SEER/HSPF metrics include additional performance factors such as the changes in performance associated with changes in various ambient conditions and cycling losses. Consequently, the SEER/HSPF metrics require more complicated test procedures than the EER/COP metrics and could potentially allow equipment rated with only the EER/COP metrics to be less efficient. Despite these differences, DOE agreed that ARI's EER standards provided roughly the same level of efficiency as the SEER standards for existing equipment (DOE, No. 11 at pp. 1–6). The Department's main concern revolved around ARI's COP level for three-phase SPVUs below 65,000 Btu/h. The Department recognized that one of the factors absent from the COP metric was an assessment of the energy used to provide electric resistance backup heat. Electric resistance backup heat is needed to meet the heating load at low temperatures and provides space heating during periods when the heat pump acts to defrost the outdoor coil. This would potentially allow a SPVHP subject to the ARI COP standard to have a lower overall efficiency (net space heating output over electrical input) than is currently required.

The Department provided a single comment to ASHRAE during the public review on Addendum b to Standard 90.1–2004, indicating that, while Addendum b addressed many of the issues the Department had identified, the Department continued to have concerns regarding the change in descriptors from SEER to EER and HSPF to COP (DOE, No. 16 at pp. 1–2).

Even though Addendum b contained recommended efficiency levels for SPVUs <65,000 Btu/h, EPACT 2005 supercedes Addendum b requirements for these products. The signing of EPACT 2005 by the President divided SPVUs into two categories: those products with capacities <65,000 Btu/h and those products with capacities ≥65,000 Btu/h but <760,000 Btu/h. The Department will continue its evaluation of products with capacities <65,000 Btu/h, which are the subject of this notice. However, the SPVUs with capacities ≥65,000 Btu/h but <760,000 Btu/h are covered under the standards specified by EPACT 2005 and are not included in today's notice.

2. Analysis of Proposed Efficiency Levels

Table II.3 shows the existing and proposed efficiency levels for SPVAC and SPVHP equipment. The statute requires that the Secretary may not prescribe any amended standard which increases maximum allowable energy use, or decreases the minimum required energy efficiency, of a covered product. (42 U.S.C. 6313(a)(6)(B)(ii)) The Department has therefore reviewed the ARI data for SPVAC and SPVHP with cooling capacity <65,000 Btu/h and believes that the EER levels provided in Addendum b are equivalent to or higher than the current SEER efficiencies in EPCA (ARI, No. 9 at pp. 1–4 and 10–26).

TABLE II.3.—EXISTING AND PROPOSED EFFICIENCY STANDARD LEVELS FOR SPVAC AND SPVHP WITH COOLING CAPACITY <65 KBTU/H

Category	EPCA	Addendum d to standard 90.1–2001	Addendum b to standard 90.1–2004
SPVAC (Cooling):			
Single Phase	None	None	9.0 EER.
Three Phase	9.7 SEER	8.9 EER	9.0 EER.
SPVHP (Cooling):			
Single Phase	None	None	9.0 EER.
Three Phase	9.7 SEER	8.9 EER	9.0 EER.
SPVHP (Heating):			
Single Phase	None	None	3.0 COP.
Three Phase	6.6 HSPF	2.7 COP	3.0 COP.

The Department examined existing efficiency data for SPVAC equipment with cooling capacity <65,000 Btu/hr where the SEER rating was used (ARI, No. 9 at pp. 1–4, 24, and 25). It identified only one minimally compliant (9.7 SEER) product. However, DOE examined 11 near-minimally compliant models at the next highest efficiency level, 10 SEER. From this analysis, the Department determined the average EER rating was 0.8 points below the SEER ratings for this near-minimally compliant equipment. Thus, DOE believes that an EER rating of 8.9, 0.8 points below the minimum SEER rating of 9.7 that EPCA currently requires for three-phase SPVUs with cooling capacity <65,000 Btu/h, is equivalent to that minimum rating.

As discussed in Chapter 5 of the TSD, the Department also carried out a separate analysis of the ratio between EER and SEER minimally compliant equipment, and the results were similar. Both the differential analysis and the ratio analysis reinforce the conclusion that a 9.7 SEER efficiency level is equivalent to an 8.9 EER level for SPVACs with cooling capacity <65,000 Btu/h. The Department believes, therefore, that the proposed 9.0 EER level in Addendum b exceeds the existing EPCA levels.

DOE identified no minimally compliant (9.7 SEER) SPVHP equipment with a cooling capacity <65,000 Btu/h. However, DOE identified 14 near-minimally compliant models at 10.0 SEER. The average EER for this equipment was 9.1, 0.9 points below the SEER ratings for the equipment as detailed in Chapter 5 of the TSD. Thus, an EER rating of 8.8, 0.9 below the EPCA minimum of 9.7 SEER for this equipment, appears to be equivalent to that minimum rating. The proposed level of 9.0 EER in ASHRAE's Addendum b is clearly above this.

The Department's analysis of HSPF data for SPVHP equipment with cooling capacity <65,000 Btu/h indicated that there were 26 products on the market with a minimally compliant HSPF of 6.6 as shown in Chapter 5 of the TSD. The

minimum COP for these products was 2.7 and the average COP was 2.9. The Department believes that there is a remaining issue concerning the COP metric, but also believes that there are reasons to suggest this issue may be outweighed by the adoption of the 3.0 COP efficiency level proposed in Addendum b, as detailed below and in Chapter 5 of the TSD.

3. Standard 90.1–2004 Addendum b

For SPVHP efficiencies, Addendum b still does not address DOE's remaining concern about the inability of the COP metric to account for backup electric heating and the energy used during the defrost cycle. The single, high-temperature COP rating at 47 °F is less comprehensive than the HSPF metric. COP does not provide an indication of the efficiency of operation at low temperatures (e.g., like the 17 °F COP that is used in the HSPF test procedure) and does not include electric resistance energy use. Electric resistance heating energy is used to augment the heat pump output during periods when the space heating load exceeds the ability of the heat pump compressor to provide heat during reverse-cycle operation. Electric resistance heating energy is also used to provide continued space heating to the building when the heat pump is in its defrost mode.

The HSPF test procedure provides a standard methodology for estimating the energy consumption for electric resistance heat. In practice, the electric resistance heat can use a significant portion of the total energy consumption of a heat pump. However, the amount of energy used by electric resistance heat is a function of the heating space load, the installed capacity of the heat pump, and the relative heating capacity at different outside air conditions. The heating space load and equipment sizing are effectively defined for the HSPF test conditions, making the electric backup estimate a function of the capacity at low temperature relative to nominal capacity. Changes in this ratio are reflected in the HSPF test procedure and rating, but not in the COP rating.

Another concern is that the estimated backup heat calculated and included in the HSPF metric was developed assuming a typical residential heat pump application. However, commercial building operations are often substantially different from residential building operations. A common application of an SPVHP is in a modular school classroom (similar to a manufactured home in construction, but with a different occupancy and use). In that application, the heat pump is typically scheduled to be off during the building's unoccupied hours or is left in a setback mode of operation similar to that in a residential home during early morning hours. During the daytime, occupied period of the modular school classroom, the space is actively ventilated (increasing the heating load) and subject to increased internal gains (decreasing the heating load) as compared to the space in a residence. Since the heating load profiles used in the HSPF calculations are more representative of residential applications, these heating load profiles are not reflective of typical SPVHP applications.

Furthermore, the accuracy of the HSPF metric in measuring the energy consumption of equipment in commercial applications is a concern because the method used in sizing the SPVHP for commercial applications is significantly different than the method for residential applications. The amount of backup electric resistance heat provided to the conditioned space is a function of the reverse-cycle heating capacity of the heat pump (relative to the space load) at different operating temperatures. The reverse-cycle heating capacity of a heat pump is strongly correlated with the cooling capacity of the heat pump. However, in a commercial application, the internal thermal loads and ventilation loads during the day make sizing a heat pump for cooling a given area of floor space significantly different compared to a residential application. Furthermore, the ratio of cooling capacity to heating capacity from a properly sized unit in a commercial application can be quite different than that in a residential application.

While the Department mentions these issues as concerns, there are also reasons to believe that they may be outweighed by the adoption of the 3.0 COP being proposed by ARI for SPVHP equipment <65,000 Btu/h. With regard to the operation of defrost mode, there is no evidence to suggest that, in comparison with the operation of existing baseline equipment, the energy consumed by equipment that complies with ARI's proposal during defrost operation would be substantially greater. Manufacturers have designed and adopted standard defrost strategies, and there is no evidence that they would adopt less efficient defrost strategies in the future under ARI's proposal. Therefore, the Department does not believe there will be an increase in energy consumption from the impact of these strategies not being accounted for in the COP test procedure. See Chapter 5 of the TSD for more details. Therefore, the Department believes the 3.0 COP being proposed by ARI for SPVHP equipment <65,000 Btu/h does not constitute a lowering of the standard nor does it allow an increase in energy consumption.

With regard to backup electric resistance heating in current equipment, the control of backup resistance heat is primarily a function of the thermostat control design for the conditioned space. Sometimes the amount of backup electric heat is not controlled by the heat pump itself, but by the wiring of the thermostat. In practical application, it is possible to wire a thermostat to the heat pump controller on most heat pumps such that the ''backup'' heat operates as a primary heat source or in parallel with the reverse-cycle heating at all times. While the previous scenario is possible, in most, typical applications, a two-stage heating thermostat is used, where the second stage, controlling the electric resistance heating, does not engage if the heat pump capacity is sufficient to meet the space load. The HSPF metric, as measured using the DOE test procedure does not measure backup heat, but estimates it based on a theoretically calculated residential space heating load and assumes that such heating only augments the reverse-cycle heating. In light of the reasons above, the Department believes that COP is a more appropriate metric for SPVHPs.

The Department notes that the final definitions for SPVHP in Addendum b of Standard 90.1–2004 did not precisely match the referenced test procedure (ARI Standard 390–2003) included in that addendum.[9] The definitions section of Addendum b defined a SPVHP as ''a single-package vertical air conditioner capable of using the refrigeration system in a reverse cycle or heat pump mode to provide heat.'' Section 3 of ARI Standard 390–2003 defined a SPVHP as a ''SPVAC that utilizes reverse cycle refrigeration as its primary heat source, with secondary supplemental heating by means of electrical resistance, steam, hot water or gas.'' While the Addendum b definition does not make it clear that reverse-cycle refrigeration is the primary heat source, DOE believes this is necessary in order to maintain the efficiency of these products. However, as the referenced test procedure requires a SPVHP to use reverse-cycle refrigeration as the primary heat source (and as section 6.4.3.4 of Standard 90.1–2004 effectively provides for this by not allowing the use of supplemental

[9] Air-Conditioning and Refrigeration Institute, Performance Rating of Single-Package Vertical Air-Conditioners and Heat Pumps—Standard 390, 2003.

electric resistance heaters for these products when the heat pump alone can meet the load), DOE considers the definition in the ARI Standard 390 test procedure as the operative definition for this rulemaking.

The Department also notes that current model building codes used in the United States (Standard 90.1–1999 and later versions as well as the International Energy Conservation Code), contain language that requires heat pumps to have controls that prevent the use of supplementary resistance heating (except during defrost cycles). Standard 90.1–1999 allows an exception to this requirement for equipment where the rating includes resistance heat in the product's overall efficiency rating (such as HSPF). The Department does not see evidence of a market for commercial heat pump equipment designed to utilize electric resistance heat in parallel with reverse-cycle heating.

4. Potential Energy Savings and Conclusions

Even though SPVUs were not part of the original screening analysis, the Department examined the potential energy savings for efficiency levels higher than those in Addendum b to Standard 90.1–4 for SPVU equipment. The Department developed an estimate of the unit energy savings for SPVUs based on the analysis of energy consumption performed for the commercial unitary air-conditioning equipment. The Department approximated the load patterns by assuming SPVUs are used solely in education building applications (e.g., mobile classrooms) and the relative operating hours of a fan and condenser in an SPVU are similar to a commercial unitary air conditioner used for the same application. However, the Department also recognizes that the fan in an SPVU is smaller than the typical fan in a rooftop unit on a horsepower-per-ton-cooling-capacity basis. To account for these differences, the Department approximated the fan power consumption for a baseline SPVU by assuming a one-third horsepower blower and a 65 percent motor efficiency, which in turn corresponds to a power draw of 0.38 kW. After accounting for the change in fan energy consumption, DOE estimated the resulting total cooling and fan energy consumption for SPVUs used in mobile classroom buildings in terms of annual kWh/ton at each EER level analyzed.

The Department based the calculation of national energy consumption for a standard level on the annual energy consumption for all the products shipped for each year being studied. The number of shipments was based on data collected by the Department in 2005 from ARI. The resulting cooling and fan energy consumption estimates for all SPVACs and SPVHPs for the study period from 2010 to 2037 are displayed in Chapter 5 of the TSD. Chapter 5 of the TSD also provides details of the potential energy savings estimates. The Department estimates the potential energy savings in going from a minimum standard of 9.0 EER to a 10.9 EER standard to be 0.161 quads for cooling and fan energy consumption. The Department did not make a separate, detailed calculation for the potential energy savings from improving heating COP for SPVHP products. The Department expects the additional potential energy savings for heat pumps would be unlikely to increase the energy savings estimate shown above by more than 20 percent, due to the relatively small market volume for SPVHP equipment (31 percent of total shipments of SPVUs) and smaller potential improvement in heating COP compared with cooling EER.

As stated previously, the Department recognizes there is work being done by ASHRAE to finalize Addendum b to Standard 90.1–2004. The Department has determined that it is not able to take action on Addendum b to Standard 90.1–2004 for SPVAC and SPVHP equipment <65,000 Btu/h and has deferred a decision at this time. However, the Department invites stakeholder comments on the potential energy savings estimates for SPVU products <65,000 Btu/h. In addition, the Department also invites comments on the appropriateness of the efficiency levels for SPVUs <65,000 Btu/h contained in Addendum b of Standard 90.1–2004 for adoption by the Department as federal standards.

III. Public Participation

A. Submission of Comments

The Department will accept comments, data, and information regarding this notice no later than the date provided at the beginning of the notice. Please submit comments, data, and information electronically. Send them to the following e-mail address: *Brenda.Edwards-Jones@ee.doe.gov.* Submit electronic comments in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format and avoid the use of special characters or any form of encryption. Comments in electronic format should be identified by the docket numbers EE–RM/STD–03–100, EE–RM/STD–03–200, and EE–RM/STD–03–300, and/or RIN numbers 1904–AB16, 1904–AB17, and 1904–AB44 and wherever possible carry the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting the signed original paper document. No telefacsimiles (faxes) will be accepted.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. The Department of Energy will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to the Department when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

B. Issues on Which DOE Seeks Comment

The Department is interested in receiving comments on all aspects of this notice. The Department especially invites comments and views of interested parties concerning (1) the analysis contained in the TSD announced in this notice and (2) any information or evidence as to the suitability for adoption as Federal standards the pending amendments to Standard 90.1 as discussed above for SPVUs <65,000 Btu/h and three-phase Acs and HPs <65,000 Btu/h. For example, comments might include additional evidence, not discussed in the TSD or above, bearing on whether uniform national standards more stringent than the ones in the Standard 90.1 amendments for this equipment would be technologically feasible and economically justified, would result in significant energy conservation, or would be likely to result in the unavailability of products with

characteristics substantially the same as those generally available in the United States now. The Department also seeks comments on its initial conclusions for small commercial packaged boilers and PTACs and PTHPs. Finally, the Department seeks specific comments on the potential energy savings analysis presented for SPVUs<65,000 Btu/h. After the period for written comments, the Department will consider the views submitted.

IV. Approval by the Secretary

The Secretary of Energy has approved publication of this notice.

Issued in Washington, DC, on March 7, 2006.

Douglas L. Faulkner,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 06–2381 Filed 3–10–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23710; Airspace Docket No. 06–AAL–03]

Proposed Revision of Class E Airspace; Atqasuk Edward Burnell Sr. Memorial, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Atqasuk Edward Burnell Sr. Memorial Airport, AK., referred to as Atqasuk Airport. Four Standard Instrument Approach Procedures (SIAPs) are being revised for the Atqasuk Airport. Adoption of this proposal would result in establishment of Class E airspace upward from 1,200 feet (ft.) above the surface at Atqasuk, AK.

DATES: Comments must be received on or before April 27, 2006.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2006–23710/ Airspace Docket No. 06–AAL–03, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–23710/Airspace Docket No. 06–AAL–03.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemakings (NPRMs)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would create additional Class E airspace at Atqasuk, AK. The intended effect of this proposal is to create Class E airspace upward from 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Atqasuk, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has amended four SIAPs for the Atqasuk Airport. The approaches are (1) Non Directional Beacon (NDB) Runway (RWY) 06, Amendment (Amdt) 1; (2) NDB RWY 24, Amdt 1; (3) Area Navigation (Global Positioning System) (RNAV (GPS)) RWY 06, Amdt 1; and (4) RNAV (GPS) RWY 24, Amdt 1. New Class E controlled airspace extending upward from 1,200 ft. above the surface within the Atqasuk Airport area would be established by this action. The existing 700 ft. Class E5 airspace remains unchanged. The 1,200 ft. airspace is required as a result of two approaches becoming Terminal Arrival Area (TAA) procedures. These procedures require more than the typical amount of controlled airspace near the associated airport. The proposed airspace is sufficient in size to contain aircraft executing instrument procedures at the Atqasuk Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9N, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 15,

2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at Atqasuk Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Atqasuk, AK [Revised]

Atqasuk Edward Burnell Sr Memorial Airport, AK
(Lat. 70°28′02″ N., long. 157°26′09″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Atqasuk Airport, and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Atqasuk Airport.

* * * * *

Issued in Anchorage, AK, on February 7, 2006.

Anthony M. Wylie,

Manager, Safety, Area Flight Service Operations.

[FR Doc. E6–3480 Filed 3–10–06; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 422

RIN 0960–AE89

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income; Collection of Overdue Program and Administrative Debts Using Federal Salary Offset

AGENCY: Social Security Administration.

ACTION: Proposed rule.

SUMMARY: We propose to modify our regulations dealing with the recovery of benefit overpayments under titles II and XVI of the Social Security Act (the Act), as well as recovery of administrative debts owed to us. Specifically, we propose to modify our regulations to implement statutory authority for the use of Federal Salary Offset (FSO). FSO is a process whereby the salary-paying agency withholds and pays to us up to 15 percent of the debtor's disposable pay until the debt has been repaid. In the case of title II program overpayment debts, we would apply FSO to collect only overpayments made to a person after he or she attained age 18, and we would pursue FSO after that person ceases to be a beneficiary and we determine that the overpayment is otherwise unrecoverable under section 204 of the Act. In the case of title XVI program overpayment debts, these same restrictions apply, but we must determine the overpayment to be otherwise unrecoverable under section 1631(b) of the Act, rather than section 204 of the Act. FSO is only applicable if the debtor is a Federal employee.

DATES: To be sure your comments are considered, we must receive them no later than May 12, 2006.

ADDRESSES: You may give us your comments by: using our Internet facility (i.e., Social Security Online) at *http://policy.ssa.gov/erm/rules.nsf/Rules+Open+To+Comment* or the Federal rulemaking portal at *http://www.regulations.gov*; email to *regulations@ssa.gov*; telefax to (410) 966–2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, Room 107, Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site or you may inspect them physically by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Suzanne DiMarino, Social Insurance Specialist, Office of Regulations, Social Security Administration, Room 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–0020 or TTY (410) 965–1769. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778 or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov/.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office, *http://www.gpoaccess.gov/fr/index.html.*

Background

Section 204 of the Act prescribes many of the methods that we may use to recover Social Security benefits overpaid under title II of the Act (title II program overpayments), as distinguished from the methods that we may use to collect administrative debts owed the agency that are recoverable

under other statutory authority. Until 1994, we were authorized to recover title II program overpayments only by adjusting future title II benefits payable to the overpaid individual or to others on the earnings record on which the overpayment was made, by direct recovery from the overpaid person (or the overpaid person's estate, if deceased), or by offset against Federal income tax refunds due from the Department of the Treasury. Amendments to section 204 of the Act and other statutes by section 5 of Public Law 103–387 (1994) and section 31001(z)(2) of Public Law 104–134 (1996) permit us to use several debt collection procedures that have been available to other Federal agencies by statute since 1982, but that we had been precluded from using to recover title II program overpayments. Among other things, these procedures include recovering debts by FSO under 5 U.S.C. 5514 and by offset under 31 U.S.C. 3716 against other Federal payments to which the debtor is entitled. Under section 204(f) of the Act (42 U.S.C. 404(f)), these additional debt collection procedures may be used to recover title II program overpayments only if the overpayment was made to a person after he or she attained age 18 and the overpayment has been determined to be otherwise unrecoverable under section 204 of the Act after the overpaid person ceases to be a beneficiary under title II of the Act.

Section 1631(b) of the Act prescribes many of the methods we may use to recover supplemental security income (SSI) overpayments that occur under title XVI of the Act. Until enactment of Public Law 106–169 on December 14, 1999, we were not authorized to use certain methods found in 31 U.S.C. Chapter 37 and 5 U.S.C. 5514 to recover SSI overpayments. Section 203 of Public Law 106–169 amended section 1631(b) of the Act to permit recovery of SSI overpayments using several of the debt management practices that have been available for the recovery of title II program overpayments. Among other things, these practices include using FSO to recover debts. Under section 1631(b)(4)(B) of the Act, these additional methods may be used only if the SSI overpayment was made to a person after he or she attained age 18 and the overpayment has been determined to be otherwise unrecoverable under section 1631(b) of the Act after the overpaid person ceases to be a beneficiary under title XVI of the Act.

For both title II and title XVI program overpayments, FSO is only applicable if the debtor is a Federal employee.

Before we can begin to use FSO to recover debts, we must issue regulations that comply with standards prescribed in the regulations of the Office of Personnel Management (OPM). See 5 U.S.C. 5514(b) and 5 CFR 550.1104. The Department of the Treasury administers FSO as part of the Treasury Offset Program, the Government-wide process for offsetting Federal payments to collect delinquent debts owed by debtors to the Federal government. (See 31 CFR 285.7). Our current regulations at 20 CFR part 422, subpart D, address the procedures required for participation in the Treasury Offset Program. We propose to amend appropriate sections of those regulations to comply with the standards prescribed in the OPM regulations and make other changes.

Explanation of Changes to the Regulations

Subject to certain exceptions, 5 U.S.C. 5514(a) requires us to do the following before initiating FSO to collect a debt that a Federal employee owes:

- Send written notice to the debtor at least 30 days before taking FSO action explaining the nature and amount of the debt, our intention to collect by deduction from Federal pay, and the debtor's rights described below;
- Give the debtor an opportunity to inspect and copy our records relating to the debt;
- Give the debtor an opportunity to enter into a written agreement with us establishing a repayment schedule; and
- Give the debtor the opportunity for a hearing on the existence and amount of the debt and any payment schedule mentioned in the notice. According to 5 U.S.C. 5514(a)(2), the hearing must be conducted by a person who is not under the supervision or control of the Commissioner of Social Security or by an administrative law judge.

The OPM regulations on FSO impose these and several additional requirements. Our current regulations on administrative offset against Federal payments due the debtor already reflect many of the requirements of 5 U.S.C. 5514 and the OPM regulations. We propose to revise 20 CFR 422.301, 422.310 and 422.317 so that our regulations permit the use of FSO and meet the requirements of the statute and OPM standards and to make other changes as set forth below. In addition, we propose to add new section 20 CFR 422.303 to meet OPM standards.

Clarifying the Scope of 20 CFR Part 422, Subpart D

We would revise § 422.301(a) and (b), add new paragraph (c) and delete information from § 422.306(b) to clarify that subpart D of part 422 does not apply to administrative debts incurred by our employees, including overpayments of pay and allowances. As authorized by section 106(b) of Public Law 103–296, we have applied the rules of the Department of Health and Human Services in 45 CFR part 30 that were in effect immediately before March 31, 1995. The rules in 45 CFR part 30 allow us to collect administrative debts owed by our employees by withholding money payable to our employees by the U.S. Government. Amounts available for such withholding include the Federal salaries of our employee/debtors. For this reason, the current provisions in subpart D of 20 CFR part 404 on Treasury offset and the FSO provisions described in this proposed rule do not apply to administrative debts owed by our employees.

Restrictions on the Use of FSO

In § 422.301(c), we explain that we will not use FSO to recover an employee's debt while:

- The employee's title II disability benefits are stopped during the reentitlement period, under 20 CFR 404.1592a(a)(2) of this chapter;
- The employee's Medicare entitlement is continued because the individual is deemed to be entitled to title II disability benefits under section 226(b) of the Social Security Act; or
- The employee is participating in the Ticket to Work and Self-Sufficiency Program and the ticket is in use as described in 20 CFR 411.170 through 411.225.

Charging Interest, Late Payment Penalties, and Administrative Costs When Authorized by SSA Regulations

OPM regulations require that our regulations on FSO contain a provision about charging the debtor with interest, late payment penalties, and administrative costs of collection on the delinquent debt pursuant to 31 U.S.C. 3717. See 5 CFR 550.1104(n). We are authorized, but are not required, to impose these charges on a debtor. See 42 U.S.C. 404(f) and 1383(b)(4). In order to comply with 5 CFR 550.1104(n), we propose to add § 422.303 to subpart D. The new section would provide that we will impose these charges when authorized by specific regulations that we would issue in accordance with the Federal Claims Collection Standards (FCCS) at 31 CFR 901.9.

Notice and Procedures for Initiating FSO

In § 422.310, we describe generally the procedures we use to initiate recovery of debts under the Treasury Offset Program and the notice required before we initiate recovery. Proposed paragraph (a)(1) would state that, if the debtor is a Federal employee, we would recover overdue debts through this program by reducing the debtor's Federal ''disposable pay,'' defined in 5 CFR 550.1103, and that such action is called ''Federal salary offset'' in part 422, subpart D. Proposed paragraph (a)(2) would state that we would use FSO to collect overdue program debts from our employees and overdue program and administrative debts from employees of other Federal agencies.

We propose to delete the specific dollar amount in current § 422.310(b) to allow more flexibility in the regulation to accommodate changes in the dollar threshold amount as required by the Treasury. Currently, the minimum dollar threshold amount for FSO is $100.

Paragraph (c) of § 422.310 describes the written notice requirements for initiating recovery under the Treasury Offset Program. We would revise the paragraph to include provisions required for FSO. The notice would explain the nature and amount of the debt, our determination that the debt is overdue, our intention to refer the debt for administrative offset (including FSO if the debtor is a Federal employee), and the frequency and amount of any FSO deduction. The notice would also explain that the debtor has the following rights:

- To inspect and copy our records relating to the debt;
- To request review of the existence or amount of the debt or our right to collect it and any payment schedule for FSO stated in the notice; and
- To request an installment payment plan.

The notice would also inform the debtor that we will refer the debt to the Department of the Treasury for administrative offset at the expiration of 60 calendar days after the date of the notice unless, within that period, the debtor pays the full amount of the debt, requests review of the debt or the FSO payment schedule stated in the notice, or requests an installment payment plan. Finally, the notice would advise that, if the debtor furnishes false or frivolous statements, representations, or evidence, the debtor may be subject to civil or criminal penalties and (if the debtor is a Federal employee) appropriate disciplinary actions.

We would add proposed paragraph (c)(9), explaining that we will refer the debt for FSO at the expiration of not less than 30 calendar days after the date of the notice in accordance with 5 U.S.C. 5514(a), unless the debtor takes the action described above within that period.

We would add proposed paragraph (d) to § 422.310 to address the amount, frequency and duration of FSO deductions and hearing request timeframes. The new paragraph would explain that deductions from a debtor's Federal salary will not exceed 15% of the debtor's disposable pay every payday. FSO would begin no sooner than the first payday following 30 calendar days after the date of the notice to the debtor and would continue until we recover the full amount of the debt, the debt is otherwise resolved, or the debtor ceases to be a Federal employee, whichever occurs first.

We would add proposed paragraph (e) to § 422.310 regarding refunds. Paragraph (e) would explain that we will promptly refund to the debtor any amounts collected that the debtor does not owe. Such refunds would not bear interest unless required or permitted by law or contract.

Procedures for Conducting the Review (Hearing) on the Validity and Amount of the Debt and the Repayment Schedule for FSO

Section 422.317 addresses our procedures for reviewing the debt when requested by the debtor. Under new paragraph (a), a debtor who receives the notice under §§ 422.305(b), 422.306(b), or 422.310(c) has the right to have a review (a hearing) on the validity and amount of the debt described in the notice and the payment schedule for FSO stated in the notice. The debtor must notify us that he or she wants such review and give us evidence that he or she does not owe all or part of the debt, or that we do not have the right to collect it.

We would explain in new paragraph (a)(1) that, if the debtor requests review and gives us evidence within 60 calendar days from the date of our notice (except as provided in new paragraph (a)(3) for FSO), we would not take any action described in our notice until we consider all of the evidence and send the debtor our findings that all or part of the debt is overdue and legally enforceable. A similar explanation would be deleted from current paragraph (b) of § 422.317.

Under new paragraph (a)(2), if the debtor does not notify us and give us evidence within 60 calendar days from the date of our notice (except as provided in new paragraph (a)(4) for FSO), we would conduct the review, but we may take the action described in the notice (refer information on the debt for offset against Federal payments or refer information about the debt to consumer reporting agencies or credit reporting agencies).

New paragraph (a)(3) would explain that, if the debtor is a Federal employee who requests review and gives us evidence within 30 calendar days from the date of our notice, we will not take any FSO action described in our notice until we consider all of the evidence and send the debtor our findings that all or part of the debt is overdue and legally enforceable and (when appropriate) our findings on the FSO payment schedule.

Under new paragraph (a)(4), if the debtor does not notify us and give us evidence within 30 calendar days from the date of our notice regarding FSO, the review will occur, but we may take the FSO action described in the notice.

We propose to revise paragraphs (a) and (b) of § 422.317 to allow an exception when the debtor has good cause for failing to request review within the 60-day period described in proposed paragraph (a)(1) or the 30-day period described in proposed paragraph (a)(3). If the debtor has good cause for making the request late, we would treat the request as received within the prescribed period. Thus, if the debtor requests review late, but has good cause, we would not take any action (or we would stop any action we had initiated) while our decision on the request is pending. New paragraphs (a)(2) and (a)(4) would provide that if the debtor does not notify us and give us evidence within the prescribed period and does not have good cause for failing to request review on time, we would conduct the review, but we may initiate any action described in our notice without further delay.

Under proposed § 422.317(b), we would determine good cause under the rules in § 422.410(b)(1) and (2) of subpart E, part 422, the regulations on administrative wage garnishment. In determining whether the debtor had good cause, we would consider: Any circumstances that kept the debtor from making the request on time; whether our action misled the debtor; whether the debtor had any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) that prevented the debtor from making a request on time or from understanding the need to make a request on time.

As revised by these proposed rules, paragraph (c) of § 422.317 would generally describe our review (hearing)

process. The review would cover our records pertaining to the debt and all of the evidence and statements presented by the debtor.

We propose to add a new paragraph (d) to § 422.317 that would provide special rules on the conduct of the review when we would use FSO. The review available to the debtor under revised § 422.317 would satisfy the requirement in 5 U.S.C. 5514(a)(2) that, before we would begin to collect a debt by FSO, we must provide the debtor with the opportunity for a hearing concerning the existence and amount of the debt and the terms of the repayment schedule stated in the notice. The following special rules apply to the conduct of the review:

- An official designated in accordance with 5 U.S.C. 5514(a)(2) would conduct the review requested by a Federal employee who is subject to FSO.
- The Federal employee's request for review must be written and be signed by that employee, must explain with reasonable specificity the facts and evidence that support the employee's position, and must identify any witnesses.
- When reviewing the payment schedule for FSO, the reviewing official would apply the rules regarding financial hardship in § 422.415 (b), (c), and (d) of subpart E, part 422, the regulations on administrative wage garnishment.
- The reviewing official would review our records on the debt and any evidence and written statements submitted by the debtor and would issue the final decision.
- The reviewing official would complete the review within 60 calendar days from the date on which we receive the request for review and the debtor's evidence. If the reviewing official does not make a decision on the request within that 60-day period and the debt was referred to the Department of the Treasury for FSO (*e.g.*, when the request was received late), we would notify the Department of the Treasury to suspend FSO. Offset would not begin or resume before we send the debtor the findings that all or part of the debt is overdue and legally enforceable or (if appropriate) the findings on the payment schedule.

The OPM regulations provide that the proper content and form of the hearing required by 5 U.S.C. 5514(a)(2) depend on the nature of the matter under which the debt arose and that we must consult the Federal Claims Collection Standards (FCCS) for guidance. 5 CFR 550.1104(g)(2). Our current regulations provide an administrative appeal process for the debtor on our original determination of indebtedness, including the opportunity for an oral hearing conducted by an administrative law judge. (See 20 CFR part 404, subpart J & part 416, subpart N). This appeal process would be available to the debtor before we would initiate the process for using FSO, described in proposed § 422.310, or any other action described in 20 CFR part 422, subpart D. The appeal process for the determination of indebtedness is available to resolve any issue pertaining to that determination, including credibility or veracity, for which an oral hearing would be appropriate.

The review process for FSO described in proposed § 422.317 would afford the debtor a ''paper hearing'' on issues pertaining to the current status of the debt and the terms of repayment stated in the notice described in proposed § 422.310. We believe that review of written evidence and statements would be adequate and appropriate to resolve those issues. We have determined that the combination of the administrative appeal process available on the original determination of indebtedness and the hearing afforded by the review of documents and written statements described in our proposed regulations meet the requirements of the applicable provisions in the FCCS. (See 31 CFR 901.3(b)(4)(iv), (e)).

The provisions regarding the review findings, currently in paragraph (c) of § 422.317, would appear in proposed new paragraph (e). Issuing the review findings would be our final action on the debtor's request for review. We would revise the current provisions to clarify the actions we would take based on the findings, particularly where FSO is involved. If the debtor requested review of the payment schedule for FSO, the written findings would cover that matter. If the reviewing official would find that the payment schedule would cause financial hardship, we would notify the debtor and the Department of the Treasury of the revised payment schedule. If we already initiated FSO, but the reviewing official finds that the individual does not owe the debt, the debt is not overdue, or we do not have the right to collect it, we would cancel that action and refund any amounts collected that the debtor does not owe or that we do not have the right to collect.

Clarity of These Proposed Rules

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these final rules, we invite your comments on how to make them easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, OMB reviewed them.

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules contain information collection activities at 422.310 and 422.317. However, the activities are exempt from the Paperwork Reduction Act as administrative actions under 44 U.S.C. 3518(c)(1)(B)(ii) and from the clearance requirements of 44 U.S.C. 3507 as amended by section 2 of Public Law 104–13 (May 22, 1995), the Paperwork Reduction Act of 1995.

(Catalog of Federal Domestic Assistance Programs No. 96.001, Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.003 Social Security—Special Benefits for Persons Aged 72 and Over; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 422

Administrative practice and procedure, Organization and functions (Government agencies), Social Security.

Dated: November 29, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set forth in the preamble, we are proposing to amend

subpart D of part 422 of Chapter III of Title 20 of the Code of Federal Regulations as follows:

PART 422—[AMENDED]

1. The authority citation for subpart D of part 422 is revised to read as follows:

Authority: Secs. 204(f), 205(a), 702(a)(5), and 1631(b) of the Social Security Act (42 U.S.C. 404(f), 405(a), 902(a)(5), and 1383(b)); 5 U.S.C. 5514; 31 U.S.C. 3711(e); 31 U.S.C. 3716.

2. Section 422.301 is revised to read as follows:

§ 422.301 Scope of this subpart.

(a) Except as provided in paragraphs (b) and (c) of this section, this subpart describes the procedures relating to collection of:

(1) Overdue administrative debts, and

(2) Overdue program overpayments described in §§ 404.527 and 416.590 of this chapter.

(b) This subpart does not apply to administrative debts owed by employees of the Social Security Administration, including, but not limited to, overpayment of pay and allowances.

(c) The following exceptions apply only to Federal salary offset as described in § 422.310(a)(1).

(1) We will not use this subpart to collect a debt while the debtor's disability benefits are stopped during the reentitlement period, under § 404.1592a(a)(2) of this chapter, because the debtor is engaging in substantial gainful activity.

(2) We will not use this subpart to collect a debt while the debtor's Medicare entitlement is continued because the debtor is deemed to be entitled to disability benefits under section 226(b) of the Social Security Act (42 U.S.C. 426(b)).

(3) We will not use this subpart to collect a debt if the debtor has decided to participate in the Ticket to Work and Self-Sufficiency Program and the debtor's ticket is in use as described in §§ 411.170 through 411.225 of this chapter.

3. Section 422.303 is added to read as follows:

§ 422.303 Interest, late payment penalties, and administrative costs of collection.

We may charge the debtor with interest, late payment penalties, and our costs of collection on delinquent debts covered by this subpart when authorized by our regulations issued in accordance with the Federal Claims Collection Standards (31 CFR 901.9).

4. Paragraph (a) of § 422.306 is amended by removing ''overpayments of pay and allowances paid to employees,'' from the second sentence.

5. Section 422.310 is revised to read as follows:

§ 422.310 Collection of overdue debts by administrative offset.

(a) *Referral to the Department of the Treasury for offset.*

(1) We will recover overdue debts by offsetting Federal payments due the debtor through the Treasury Offset Program (TOP). TOP is a Government-wide delinquent debt matching and payment offset process operated by the Department of the Treasury, whereby debts owed to the Federal Government are collected by offsetting them against Federal payments owed the debtor. Federal payments owed the debtor include current ''disposable pay,'' defined in 5 CFR 550.1103, owed by the Federal Government to a debtor who is an employee of the Federal Government. Deducting from such disposable pay to collect an overdue debt owed by the employee is called ''Federal salary offset'' in this subpart.

(2) Except as provided in paragraphs (b) and (c) of § 422.301, we will use Federal salary offset to collect overdue debts from Federal employees, including employees of the Social Security Administration. A Federal employee's involuntary payment of all or part of a debt collected by Federal salary offset does not amount to a waiver of any rights which the employee may have under any statute or contract, unless a statute or contract provides for waiver of such rights.

(b) *Debts we will refer.* We will refer for administrative offset all qualifying debts that meet or exceed the threshold amounts used by the Department of the Treasury for collection from Federal payments, including Federal salaries.

(c) *Notice to debtor.* Before we refer any debt for collection by administrative offset, we will send the debtor written notice that explains all of the following:

(1) The nature and amount of the debt.

(2) We have determined that payment of the debt is overdue.

(3) We will refer the debt for administrative offset (except as provided in paragraph (c)(9) of this section) at the expiration of not less than 60 calendar days after the date of the notice unless, within that 60-day period:

(i) The debtor pays the full amount of the debt, or

(ii) The debtor takes any of the actions described in paragraph (c)(6) or (c)(7) of this section.

(4) The frequency and amount of any Federal salary offset deduction (the payment schedule) expressed as a fixed dollar amount or percentage of disposable pay.

(5) The debtor may inspect or copy our records relating to the debt. If the debtor or his or her representative cannot personally inspect the records, the debtor may request and receive a copy of such records.

(6) The debtor may request a review of the debt by giving us evidence showing that the debtor does not owe all or part of the amount of the debt or that we do not have the right to collect it. The debtor may also request review of any payment schedule for Federal salary offset stated in the notice. If the debtor is an employee of the Federal Government and Federal salary offset is proposed, an official designated in accordance with 5 U.S.C. 5514(a)(2) will conduct the review.

(7) The debtor may request to repay the debt voluntarily through an installment payment plan.

(8) If the debtor knowingly furnishes any false or frivolous statements, representations, or evidence, the debtor may be subject to:

(i) Civil or criminal penalties under applicable statutes;

(ii) Appropriate disciplinary procedures under applicable statutes or regulations, when the debtor is a Federal employee.

(9) We will refer the debt for Federal salary offset at the expiration of not less than 30 calendar days after the date of the notice unless, within that 30 day period the debtor takes any actions described in paragraph (c)(3)(i), (c)(6), or (c)(7) of this section.

(d) *Federal salary offset: amount, frequency, and duration of deductions.* (1) We may collect the overdue debt from an employee of the Federal Government through the deduction of an amount not to exceed 15% of the debtor's current disposable pay each payday.

(2) Federal salary offset will begin no sooner than the first payday following 30 calendar days after the date of the notice to the debtor described in paragraph (c) of this section.

(3) Once begun, Federal salary offset will continue until we recover the full amount of the debt, the debt is otherwise resolved, or the debtor's Federal employment ceases, whichever occurs first.

(4) After Federal salary offset begins, the debtor may request a reduction in the amount deducted from disposable pay each payday. When we determine that the amount deducted causes financial harm under the rules in § 422.415(b), (c), and (d) of this chapter, we will reduce that amount.

(e) *Refunds.* We will promptly refund to the debtor any amounts collected that the debtor does not owe. Refunds do not bear interest unless required or permitted by law or contract.

5. Section 422.317 is revised to read as follows:

§ 422.317 Review of the debt.

(a) *Notification and presentation of evidence by the debtor.* A debtor who receives a notice described in § 422.305(b), § 422.306(b), or § 422.310(c) has a right to have a review of the debt and the payment schedule for Federal salary offset stated in the notice. To exercise this right, the debtor must notify us and give us evidence that he or she does not owe all or part of the debt, or that we do not have the right to collect it, or that the payment schedule for Federal salary offset stated in the notice would cause financial hardship.

(1) If the debtor notifies us and presents evidence within 60 calendar days from the date of our notice (except as provided for Federal salary offset in paragraph (a)(3) of this section), we will not take the action described in our notice unless and until review of all of the evidence is complete and we send the debtor the findings that all or part of the debt is overdue and legally enforceable.

(2) If the debtor notifies us and presents evidence after that 60 calendar-day period expires (except as provided for Federal salary offset in paragraph (a)(4) of this section) and paragraph (b) of this section does not apply, the review will occur, but we may take the actions described in our notice without further delay.

(3) If the debtor notifies us and presents evidence within 30 calendar days from the date of our notice, we will not refer the debt for Federal salary offset unless and until review of all of the evidence is complete and we send the debtor the findings that all or part of the debt is overdue and legally enforceable and (if appropriate) the findings on the payment schedule for Federal salary offset.

(4) If the debtor notifies us and presents evidence after that 30 calendar-day period expires and paragraph (b) of this section does not apply, the review will occur, but we may refer the debt for Federal salary offset without further delay.

(b) *Good cause for failure to timely request review.* (1) If we decide that the debtor has good cause for failing to request review within the applicable period mentioned in paragraphs (a)(1) and (a)(3) of this section, we will treat the request for review as if we received it within the applicable period.

(2) We will determine good cause under the rules in § 422.410(b)(1) and (2) of this chapter.

(c) *Review of the evidence.* The review will cover our records and any evidence and statements presented by the debtor.

(d) *Special rules regarding Federal salary offset.* (1) When we use Federal salary offset to collect a debt owed by an employee of the Federal Government, an official designated in accordance with 5 U.S.C. 5514(a)(2) will conduct the review described in this section and will issue the findings.

(2) In addition to the requirements in paragraphs (a) and (b) of this section, the Federal employee must submit the request for review in writing. The request must:

(i) Be signed by the employee,

(ii) Explain with reasonable specificity the facts and evidence that support the employee's position, and

(iii) Include the names of any witnesses.

(3) In reviewing the payment schedule described in the notice to the Federal employee, the reviewing official must apply the rules in § 422.415(b), (c), and (d) of this chapter regarding financial hardship.

(4) The reviewing official will review our records and any documents, written statements, or other evidence submitted by the debtor and issue written findings.

(5) The reviewing official will complete the review within 60 calendar days from the date on which the request for review and the debtor's evidence are received. If the reviewing official does not complete the review within that 60-day period and the debt was referred to the Department of the Treasury for Federal salary offset, we will notify the Department of the Treasury to suspend Federal salary offset. Offset will not begin or resume before we send the debtor findings that all or part of the debt is overdue and legally enforceable or (if appropriate) findings on the payment schedule.

(e) *The findings.* (1) Following the review described in paragraphs (c) or (d) of this section, we will send the written findings to the debtor. The findings will state the nature and origin of the debt, the analysis, findings and conclusions regarding the amount and validity of the debt, and, when appropriate, the repayment schedule for Federal salary offset. Issuance of these findings will be the final action on the debtor's request for review.

(2) If the findings state that an individual does not owe the debt, or the debt is not overdue, or we do not have the right to collect it, we will not send information about the debt to consumer or other credit reporting agencies or refer the debt to the Department of the Treasury for administrative offset. If we had referred the debt to the Department of the Treasury for administrative offset, we will cancel that action. If we had informed consumer or credit reporting agencies about the debt, we will inform them of the findings.

(3) If the findings state that the payment schedule for Federal salary offset would cause financial hardship, we will notify the debtor and the Department of the Treasury of the new payment schedule.

[FR Doc. E6–3509 Filed 3–10–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. 2005N–0471]

Immunology and Microbiology Devices; Reclassification of Herpes Simplex Virus (Types 1 and/or 2) Serological Assays; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration is correcting a proposed rule that appeared in the **Federal Register** of January 9, 2006 (71 FR 1399). That document proposed the reclassification of herpes simplex virus (types 1 and/or 2) serological assays from class III (premarket approval) to class II (special controls). That document inadvertently included a list of references related to a draft guidance that also was announced in the **Federal Register** of January 9, 2006 (71 FR 1432). The draft guidance contains the correct list of references. This document corrects the error.

FOR FURTHER INFORMATION CONTACT: Sally Hojvat, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0496, ext. 114.

SUPPLEMENTARY INFORMATION: In FR Doc. 06–173, appearing on page 1399, in the **Federal Register** of Monday, January 9, 2006, the following correction is made:

1. On pages 1402–1403, section XII. References is removed.

Dated: March 3, 2006.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E6–3522 Filed 3–10–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–06–001]

RIN 1625–AA11

Regulated Navigation Area; Middle Waterway EPA Superfund Cleanup Site, Commencement Bay, Tacoma, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to create a permanent regulated navigation area on a portion of Commencement Bay, Tacoma, Washington. This regulated navigation area would be used to preserve the integrity of a clean sediment cap placed over certain areas of the Middle Waterway as part of the remediation process at the Commencement Bay, Nearshore/Tideflats Environmental Protection Agency (EPA) superfund cleanup site. This regulated navigation area would prohibit activities that would disturb the seabed, such as anchoring, dragging, trawling, or other activities that involve disrupting the integrity of the cap. It would not affect transit or navigation of the area.

DATES: Comments and related material must reach the Coast Guard on or before April 12, 2006.

ADDRESSES: You may mail comments and related material to Sector Commander, Sector Seattle, 1519 Alaskan Way South, Seattle, Washington 98134. Sector Seattle maintains the public docket [CGD13–06–001] for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Sector Seattle between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Jes Hagen, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134, (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD13–06–001), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Sector Seattle at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Middle Waterway is part of the Commencement Bay Nearshore/Tideflats Superfund Cleanup Site and is located between the Thea Foss Waterway and the St. Paul Waterway in Commencement Bay, Washington. The site includes property owned by Foss Maritime Company, Simpson Timber Company, and the Washington State Department of Natural Resources (DNR), as well as property leased by Marine Industries Northwest, Inc. (MINI).

Part of the remediation process for the site consists of covering the contaminated sediments with a thick-layer cap. The thick-layer caps consist of approximately three feet of sand, gravel, and light-loose riprap and were placed in various locations within the waterway to contain contaminated sediments. The thick-layer cap areas cover approximately two acres of sediment in the waterway.

Discussion of Proposed Rule

This is to be a permanent regulation restricting activities such as anchoring, dragging, trawling, or other activities that involve disrupting the integrity of the cap. Activities common in the proposed regulated areas include tugboat and log-rafting activities, tugboat moorage, removal and launching of boats for repair and other boat repair and maintenance activities. The thick-layer cap areas were designed to be compatible with the activities described above that are associated with a working waterfront. The material used for the cap was chosen to be able to contain underlying sediments without altering the main activities of the working waterway.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that the regulated areas established by the rule would encompass a small area that should not impact commercial or recreational traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which may be small entities: The owners or operators of vessels intending to anchor, dredge, spud, lay cable or disturb the seabed in any fashion when this rule is in effect. The zone would not have a significant economic impact due to its small area.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small

business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1322 to read as follows:

§ 165.1322 Middle Waterway, Commencement Bay, Tacoma, WA.

(a) *Regulated Areas.* The following areas are regulated navigation areas:

(1) All waters of the Middle Waterway bounded by a line connecting the following points:

Point 1: 47°15′49.337″ N, 122°25′55.056″ W;

Point 2: 47°15′43.600″ N, 122°25′51.453″ W;

Point 3: 47°15′43.296″ N, 122°25′51.948″ W;

Point 4: 47°15′49.159″ N, 122°25′55.630″ W.

[Datum: NAD 1983].

(2) All waters of the Middle Waterway bounded by a line connecting the following points:

Point 1: 47°15′47.774″ N, 122°25′58.517″ W;

Point 2: 47°15′45.138″ N, 122°25′56.894″ W;

Point 3: 47°15′45.113″ N, 122°25′57.863″ W;

Point 4: 47°15′47.430″ N, 122°25′59.644″ W.

[Datum: NAD 1983].

(3) All waters of the Middle Waterway bounded by a line connecting the following points:

Point 1: 47°15′43.548″ N, 122°25′54.498″ W;
Point 2: 47°15′42.288″ N, 122°25′53.354″ W;
Point 3: 47°15′43.245″ N, 122°25′55.476″ W;
Point 4: 47°15′42.040″ N, 122°25′54.653″ W.
[Datum: NAD 1983].

(4) All waters of the Middle Waterway bounded by a line connecting the following points:
Point 1: 47°15′42.288″ N, 122°25′55.130″ W;
Point 2: 47°15′39.162″ N, 122°25′53.835″ W;
Point 3: 47°15′39.035″ N, 122°25′54.458″ W;
Point 4: 47°15′41.738″ N, 122°25′55.599″ W;
Point 5: 47°15′41.259″ N, 122°25′57.162″ W;
Point 6: 47°15′41.559″ N, 122°25′57.362″ W.
[Datum: NAD 1983].

(5) All waters of the Middle Waterway bounded by a line connecting the following points:
Point 1: 47°15′32.879″ N, 122°25′49.223″ W;
Point 2: 47°15′28.149″ N, 122°25′46.088″ W;
Point 3: 47°15′28.067″ N, 122°25′46.351″ W;
Point 4: 47°15′32.129″ N, 122°25′49.155″ W.
[Datum: NAD 1983].

(b) *Regulations.* All vessels and persons are prohibited from anchoring, dredging, laying cable, dragging, seining, bottom fishing, conducting salvage operations, or any other activity which could potentially disturb the seabed in the designated regulated navigation area. Vessels may otherwise transit or navigate within this area without reservation.

(c) *Waiver.* The Captain of the Port, Puget Sound, upon advice from the U.S. EPA Project Manager and the Washington State Department of Natural Resources, may, upon written request, authorize a waiver from this section if it is determined that the proposed operation supports USEPA remedial objectives, or can be performed in a manner that ensures the integrity of the sediment cap. A written request must describe the intended operation, state the need, and describe the proposed precautionary measures. Requests should be submitted in triplicate, to facilitate review by U.S. EPA, Coast Guard, and Washington State Agencies. USEPA managed remedial design, remedial action, habitat mitigation, or monitoring activities associated with the Middle Waterway Superfund Site are excluded from the waiver requirement. USEPA is required, however, to alert the Coast Guard in advance concerning any of the above-mentioned activities that may, or will, take place in the Regulated Area.

Dated: February 28, 2006.

Richard R. Houck,

Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. E6–3534 Filed 3–10–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 228

RIN 0596–AC20

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[W0–610–411H12–24 1A]

RIN 1004–AD59

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order Number 1, Approval of Operations

AGENCIES: U.S. Forest Service, Agriculture; Bureau of Land Management, Interior.

ACTION: Further proposed rule; Reopening of comment period.

SUMMARY: This further proposed rule amends the proposed rule published in the **Federal Register** on July 27, 2005 (70 FR 43349). The proposed rule would revise existing Onshore Oil and Gas Order Number 1 (see 48 FR 48916 as amended at 48 FR 56226 (1983)). The Order provides the requirements necessary for the approval of all proposed oil and gas exploratory, development, or service wells on all Federal and Indian (except Osage Tribe) onshore oil and gas leases, including leases where the surface is managed by the U.S. Forest Service (FS). It also covers approvals necessary for subsequent well operations, including abandonment. This further proposed rule amends the proposed rule by making the provisions on the Application for Permits to Drill or Deepen (APD) package processing consistent with the Energy Policy Act of 2005. In addition, this further proposed rule amends a provision in the proposed rule having to do with proposed operations on lands with Indian surface and Federal minerals. This notice also reopens the comment period for the proposed rule for 30 days.

DATES: Send your comments on this further proposed rule and the proposed rule to the BLM on or before April 12, 2006. The BLM and the FS will not necessarily consider any comments received after the above date during its decision on the rule.

ADDRESSES: Mail: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153.

Hand Delivery: 1620 L Street, NW., Suite 401, Washington, DC 20036.

E-mail: comments_washington@blm.gov.

Federal eRulemaking Portal: http://www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: James Burd at (202) 452–5017 or Ian Senio at (202) 452–5049 at the BLM or Barry Burkhardt at (801) 625–5157 at the FS. Persons who use a telecommunications device for the deaf (TDD) may contact these persons through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background and Discussion of Further Proposed Rule
III. Procedural Matters

I. Public Comment Procedures

You may submit your comments by any one of several methods:

You may mail your comments to: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attention: RIN 1004–AD59.

You may deliver comments to: 1620 L Street NW., Suite 401, Washington, DC 20036. You may e-mail your comment to: *comments_washington@blm.gov.* (Include ''Attention: AD59'' in the subject line).

You may submit your comments via the Federal eRulemaking Portal at *http://www.regulations.gov.*

Please make your comments on the rule as specific as possible, confine them to issues pertinent to the proposed rule or the further proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

The Department of the Interior and the FS may not necessarily consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see **DATES**) or comments

delivered to an address other than those listed above (see **ADDRESSES**).

Individual respondents may request confidentiality. If you wish to request that the Bureau of Land Management (BLM) consider withholding your name, street address, and other contact information (such as: Internet address, fax or phone number) from public review or disclosure under the Freedom of Information Act, do not submit your comment electronically. You should prominently state at the beginning of your comment that you wish to request confidentiality.

You do not need to re-submit comments you submitted on the first proposal. Those comments are part of the administrative record of this rulemaking and will be considered in the final rule.

II. Background and Discussion of Further Proposed Rule

On August 26, 2005 (70 FR 50262) the BLM and the FS extended the comment period on the proposed rule that was published in the **Federal Register** on July 27, 2005 (70 FR 43349). On August 8, 2005, the President signed the Energy Policy Act of 2005 (Act). Provisions in the Act impact the timing of approval of APD provisions addressed in the original proposed rule. This further proposed rule would make the provisions in the Onshore Order (specifically Sections III.C.2. and III.G. of the Order) dealing with APD processing consistent with the provisions in the Act. This further proposed rule also modifies a provision in the proposed rule regarding proposed operations on lands with Indian surface and Federal minerals.

Definition of ''Complete APD''

This further proposed rule amends the definition of ''Complete APD'' (see Section II., Definitions, of the Order) by requiring that an onsite inspection conducted jointly by the BLM, the FS if appropriate, and the operator be completed prior to the BLM designating the APD package as complete. Currently, in all circumstances, the BLM, and the FS if appropriate, conducts on-site inspections to determine if an APD package is complete. The BLM and FS intend to continue this practice under the amended Order since examination of existing on-the-ground circumstances is the only way to ensure that the information in the APD package is consistent with conditions at the proposed drill site and along the proposed access route. The proposed changes will make it clear that the BLM and FS intend to continue requiring on-site inspections as part of the APD approval process.

APD Processing

This further proposed rule amends Section III.C.2. of the Order dealing with APD processing because the APD process described in the Order is inconsistent with the process required by the Act.

Section 366 of the Act amends the Mineral Leasing Act (30 U.S.C. 226(p)(1)) to add a requirement that the Secretary notify an applicant within 10 days of receiving an APD either that the APD is complete or what additional information is required to make the application complete. While a 10-day notice provision was included in the Order proposed on July 27, 2005, it is now a statutory requirement.

Section 366 of the Energy Policy Act of 2005 contains other deadlines for processing APDs that were not addressed in the July 27, 2005 proposed Order. While the steps and requirements in the Act are similar to the proposed rule, the Act has two additional timing requirements that the Order must address.

First, the Act requires that the Secretary approve an APD 30 days after it is complete or notify the applicant of: (1) Any actions that the operator can take to get approval; (2) what steps, such as National Environmental Policy Act (NEPA) or other regulatory compliance, remain to be completed; and (3) the schedule for completion of these requirements. The proposed Order contained no specific time for making a final decision on the application.

Second, in those situations where the BLM delays the decision, the Act and this further proposed rule give the applicant two years to take whatever actions are identified in the 30-day notice. The Act amends 30 U.S.C. 226 by adding a new paragraph (p)(3)(B), and this further proposed rule also adds a new requirement, that the Secretary must make a final decision on the application within 10 days of the applicant's completion of these actions, if all other regulatory requirements are complete. The timeframes established in this section apply to both individual APDs and to the multiple APDs included in Master Development Plans. In addition, even though the time limits established in Section 366 of the Act are amendments to the Mineral Leasing Act and, therefore, do not apply to Indian leases, we are proposing to apply the same time limit procedures for both Federal and Indian leases.

The BLM does not approve Surface Use Plans of Operations for National Forest Service (NFS) lands. The FS notifies the BLM of its Surface Use Plan of Operations (SUPO) approval and the BLM proceeds with its APD review. For APDs on NFS lands, the decision to approve a Surface Use Plan of Operations or Master Development Plan may be subject to FS appeal procedures which may take up to 105 days from the date of the decision. Pursuant to the Mineral Leasing Act, as amended by the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (30 U.S.C. 226(g)), proposed section III.C.2.b. provides that BLM may not approve an APD until the FS has approved the SUPO. This condition is consistent with Section 366 of the Energy Policy Act which provides that the Secretary shall issue a permit within 30 days only if requirements of other applicable law have been completed within that timeframe (30 U.S.C. 226(p)(2)). Therefore, in situations where the SUPO is not approved, the BLM will provide notice within the 30 day period that action on the APD will be deferred until the FS completes action on the SUPO.

Operating on Split Estate Lands With Indian Surface Ownership

This further proposed rule would modify Section VI. of the proposed rule by replacing the last sentence of the first paragraph of that section to make it clear that the section applies to lands with Indian surface and Federal minerals. It also explains that the operator is required to address surface use issues with the Bureau of Indian Affairs.

The proposed rule had addressed conferring with surface owners in the case of privately owned surface and Federal/Indian leases, as well as Indian oil and gas leases where the surface is in different Indian ownership. This further proposed rule proposes to apply the policy applicable to privately owned surface to all Indian surface and Federal oil and gas lease situations. Section VI. would require a good faith effort to reach a surface use agreement, and provide for the posting of a bond to protect against damages to crops and tangible improvements in the absence of agreement. This change merely codifies existing policy.

We are aware that this further proposed rule may affect other provisions in the proposed Order. In the final rule we will conform the rest of the Order proposed on July 27, 2005, to be consistent with the amendments proposed in this notice as they pertain to the definition of ''Complete APD,'' the timeline for processing APDs, and the new provision on operating on split estate lands with Indian surface ownership. Furthermore, provisions in

the final Order will supersede any inconsistent provisions of existing regulations, inasmuch as they will constitute a later exercise of Administrative Procedure Act rulemaking. To the maximum extent practical, we will identify such inconsistencies and include conforming amendments to titles 36 or 43, or both, of the CFR in the final rule. For example, the time line in Section III. C. 2. of the proposed rule would supersede that portion of 43 CFR 3162.3–1 that discusses processing times.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

The provisions of the proposed rule (see 70 FR 43349), including the further proposed rule, are not a significant regulatory action and are not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866. The OMB makes the final determination under the Executive Order. The proposed rule and the further proposed rule will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. The proposed rule and the further proposed rule will not create serious inconsistencies or otherwise interfere with an action taken or planned by another agency. The proposed rule and further proposed rule do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues. The revision to the definition of ''Complete APD'' requiring onsite inspections would have no impact on operators since onsite inspections are currently required as part of the APD approval process. The provision on operating on split estate lands with Indian surface ownership is consistent with existing policy and practice and therefore would have no economic impact. The other revisions this rule would make to the Order primarily involve changes to the BLM's and the FS's administrative processes.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. For the purposes of this analysis, we will assume that all entities (all lessees and operators) that may be impacted by these regulations are small entities.

The proposed rule and the further proposed rule address the BLM's and the FS's administrative processes involved in processing APDs. These changes are not significantly different from the existing Order and would not significantly impact operators or lessees. As a result of more clear rules, operators will have a better understanding of the BLM processes, and the timelines will lead to a reduction in processing time and some administrative cost savings for the BLM, the FS, and operators. The provision on operating on split estate lands with Indian surface ownership merely codifies existing policy. Therefore, the BLM and the FS have determined that under the RFA the proposed rule and the further proposed rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

The provisions of the proposed rule and the further proposed rule are not a ''major rule'' as defined at 5 U.S.C. 804(2). For the reasons stated in the RFA discussion, the proposed rule and the further proposed rule would not have an annual effect on the economy greater than $100 million; would not result in major cost or price increases for consumers, industries, government agencies, or regions; and would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Please see the discussion of ''Executive Order 12866, Regulatory Planning and Review'' above.

Unfunded Mandates Reform Act

The proposed and the further proposed rule do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor do these proposed regulations have a significant or unique effect on state, local, or tribal governments or the private sector. The further proposed rule would codify decisions made by the Congress in the Energy Policy Act and the discretionary provisions would not have any significant effect monetarily, or otherwise, on the entities listed. Therefore, the BLM and the FS are not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed rule and the further proposed rule do not represent a government action capable of interfering with constitutionally protected property rights. The further proposed rule has no potential to affect property rights as the changes it would make reduce burdens on regulated parties. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed rule and the further proposed rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The proposed rule and the further proposed rule will not have any effect on any of the items listed. As stated above, the proposed rule and further proposed rule principally deal with the requirements necessary for the approval of all proposed oil and gas exploratory, development, or service wells on all Federal and Indian (except Osage tribe) onshore oil and gas leases. In other words, the rules affect the relationship between operators, lessees, and the BLM and the FS but would not impact states. Therefore, in accordance with Executive Order 13132, the BLM has determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a federalism assessment.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The BLM approves proposed operations on all Indian (except Osage) onshore oil and gas leases and agreements. The BLM has begun consultation on the proposed revisions to the Order and will continue to consult with tribes during the comment period on this further proposed rule. The provision on operating on split estate lands with Indian surface ownership merely codifies existing policy.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that the proposed rule and the further proposed rule would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order. We have reviewed these regulations to eliminate drafting errors and ambiguity. They have been written to minimize litigation, provide clear legal standards for affected conduct rather than general standards, and promote simplification. Drafting the regulations in clear language and working closely with legal counsel assisted in all of these areas.

Paperwork Reduction Act

This further proposed rule contains no new information collection requirements.

National Environmental Policy Act

The BLM and the FS have prepared an environmental assessment (EA) and have found that the proposed rule and the further proposed rule would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the NEPA, 42 U.S.C. 4332(2)(C). A detailed statement under NEPA is not required. The BLM has placed the EA and the Finding of No Significant Impact on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, the BLM has determined that the proposed rule and the further proposed rule will not have substantial direct effects on the energy supply, distribution or use, including a shortfall in supply or price increase. The rules would clarify the administrative processes involved in approving an APD and more clearly lay out the timeline for processing applications. It is not clear to what extent clarification of the rules will save the BLM, the FS, or operators administrative costs, but we anticipate that the cost savings will be minimal, as will any direct effects on the energy supply, distribution or use.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, BLM has determined that this rule primarily involves changes to the BLM and Forest Service administrative processes. This rule does not impede facilitating cooperative conservation; takes appropriate account of and considers the interests of persons with ownership or other legally recognized interests in land or other natural resources; has no effect on local participation in the Federal decision-making process; and provides that the programs, projects, and activities are consistent with protecting public health and safety.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

1. Are the requirements in the proposed regulations clearly stated?
2. Do the proposed regulations contain technical language or jargon that interferes with their clarity?
3. Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
4. Would the regulations be easier to understand if they were divided into more (but shorter) sections?
5. Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

Authors

The principal author of this further proposed rule is James Burd of the BLM, Washington Office Fluids Group assisted by the staff of the BLM's Regulatory Affairs Group and the Department of the Interior's Office of the Solicitor.

List of Subjects

36 CFR Part 228

Environmental protection; Mines; National forests; Oil and gas exploration; Public lands-mineral resources; Public lands-rights-of-way; Reporting and recordkeeping requirements; Surety bonds; Wilderness areas.

43 CFR Part 3160

Administrative practice and procedure; Government contracts; Indians-lands; Mineral royalties; Oil and gas exploration; Penalties; Public lands-mineral resources; Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Bureau of Land Management proposes to amend the Appendix following the regulatory text of the proposed rule published in the **Federal Register** at 70 FR 43349 as follows:

1. In the Appendix following the regulatory text of the proposed rule, further amend the definition of ''Complete APD'' in section II, on page 43357, by revising the first paragraph of the definition as follows:

Complete APD means that the information in the APD package is accurate and addresses all of the requirements identified in this Order. The onsite inspection verifies important information that is part of the APD package and is a critical step in determining if the package is complete. Therefore, the onsite inspection must be conducted before the APD package can be considered to be complete. The APD package must contain:

2. Further amend section III.C.2. of the Appendix following the regulatory text of proposed rule by revising paragraph III.C.2, on page 43357, to read as follows:

2. Processing.

The timeframes established in this subsection apply to both individual APDs and to the multiple APDs included in Master Development Plans and to leases of Indian minerals as well as leases of Federal minerals.

(a) Within 10 days of receiving an application, BLM (in consultation with the FS if the application concerns NFS lands) will notify the operator whether or not the application is complete. The BLM will request additional information and correction if necessary. If an onsite inspection has not been performed, the applicant will be notified that the application is not complete. Within 10 days of receiving the application, BLM or the FS if appropriate, in coordination with the operator and Surface Managing Entity, including the non-Federal surface owner in the case of split estate minerals, will schedule a date for the onsite inspection (unless the onsite inspection has already been conducted as part of a Notice of Staking). The onsite inspection will be held as soon as practicable based on schedules and weather conditions. If there is enough information to begin processing the application, BLM (and the FS if applicable) will process it up to the point that missing information or uncorrected deficiencies render further processing impractical or impossible. The operator has 45 days after receiving

notice from BLM to provide any additional information necessary to complete the APD, or the APD may be returned to the operator.

(b) Within 30 days after the operator has submitted a complete application, including incorporating any changes that resulted from the onsite inspection, the BLM will:

(1) Approve the application, subject to reasonable conditions of approval, if the requirements of the NEPA, NHPA, ESA, and other applicable law have been met and, if on FS lands, FS has approved the SUPO; or

(2) Notify the operator that it is deferring action on the permit.

(c) The notice of deferral in paragraph (b)(2) of this section must specify:

(1) Any action the operator could take that would enable BLM (in consultation with the FS if applicable) to issue a final decision on the application. The FS will notify the applicant of any action the applicant could take that would enable the FS to issue a final decision on the SUPO on NFS lands. Actions may include, but are not limited to, assistance with:

(A) Data gathering; and

(B) Preparing analyses and documents.

(2) If applicable, a list of actions that BLM or the FS need to take before making a final decision on the application, including analysis required by NEPA or other applicable law and a schedule for completing these actions.

(d) The operator has two years from the date of the notice under paragraph (c)(1) of this section to take the action specified in the notice. If all analyses required by NEPA, NHPA, ESA, and other applicable laws have been completed, BLM (and the FS if applicable), will make a decision on the permit and the SUPO within 10 days of receiving a report from the operator addressing all of the issues or actions specified in the notice under paragraph (c)(1) of this section and certifying that all required actions have been taken. If the operator has not completed the actions specified in the notice within two years from the operator's receipt of the paragraph (c)(1) notice, BLM will deny the permit.

(e) For APDs on NFS lands, the decision to approve a SUPO or Master Development Plan may be subject to FS appeal procedures. Under current FS appeal procedures, resolution of the appeal may take up to 105 days before that decision can be implemented. BLM cannot approve an APD until the appeal of the SUPO is resolved.

3. Further amend section VI. of the Appendix following the regulatory text of proposed rule by revising the last sentence of the first paragraph on page 43362 to read as follows:

This section also applies to lands with Indian surface and Federal minerals. The operator must address surface use issues with the Bureau of Indian Affairs.

Dated: March 2, 2006.

Dale N. Bosworth,

Chief, USDA—Forest Service.

Dated: February 24, 2006.

Johnnie Burton,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 06–2371 Filed 3–10–06; 8:45 am]

BILLING CODE 4310–84–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1532 and 1552

[FRL–8044–3]

EPAAR Prescription and Clause—Simplified Acquisition Procedures Financing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revise the EPA Acquisition Regulation (EPAAR) Subparts 1532 and 1552 to implement a procedure for simplified acquisition procedures financing. This proposed EPAAR revision will add a prescription and clause for contracting officers to use when approving advance or interim payments on simplified acquisitions. The proposed prescription and clause apply to commercial item orders at or below the simplified acquisition threshold. This action revises the EPAAR, but does not impose any new requirements on Agency contractors. The procedure will allow contractors to invoice for advance and interim payments in accordance with standard commercial practices when authorized by the contracting officer and identified in the clause payment schedule.

DATES: Interested parties should submit comments in writing on or before May 12, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. OARM–2006–0126, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *oei.docket@epa.gov.*
- Surface Mail: EPA Docket Center, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Attention Docket ID No. OARM–2006–0126.

Instructions: Direct your comments to Docket ID No. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the OEI Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday,

excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752).

FOR FURTHER INFORMATION CONTACT: Tiffany Schermerhorn, Policy, Training and Oversight Division, Office of Acquisition Management, Mail Code 3802R, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; e-mail address: *schermerhorn.tiffany@epa.gov,* telephone (202) 564–9902.

SUPPLEMENTARY INFORMATION:

I. General Information

The proposed EPAAR additions are necessary so that contracting officers may provide simplified acquisition procedures financing that is appropriate or customary in the commercial marketplace when purchasing commercial items at or below the simplified acquisition threshold. It does not impose any new requirements regarding submission of invoices or vouchers since Agency contractors currently submit invoices or vouchers for payment of orders. The EPAAR changes are consistent with the Federal Acquisition Regulation.

II. Statutory and Executive Order Reviews

A. Executive Order 12866

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule does not impose any new information collection or other requirements on Agency contractors.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any new requirements on small entities.

List of Subjects in 48 CFR Parts 1532 and 1552

Government procurement.

Dated: February 15, 2006.

Judy S. Davis,

Director, Office of Acquisition Management.

For the reasons set forth in the Preamble, Chapter 15 of Title 48 Code of Federal Regulations, parts 1532 and 1552 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 1532 and 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 as amended, 40 U.S.C. 486(c).

PART 1532—CONTRACT FINANCING

2. Add section 1532.003 to read as follows.

1532.003 Simplified acquisition procedures financing.

(a) *Scope.* This subpart provides for authorization of advance and interim payments on commercial item orders not exceeding the simplified acquisition threshold. Advance payments are payments that are made prior to performance. Interim payments are payments that are made during the order period according to a payment schedule.

(b) *Procedures for micropurchases.* Contracting officers may authorize advance and interim payments on orders for commercial items only at or below the micro-purchase threshold.

(c) *Procedures for purchases exceeding micropurchase threshold.* Contracting officers must secure approval at one level above the contracting officer, on a case-by-case basis, for advance and interim payments on orders for commercial items exceeding the micropurchase threshold and not exceeding the simplified acquisition threshold. The contracting officer shall submit a recommendation for approval of financing terms, along with the supporting rationale for the action, to one level above the contracting officer. Simplified acquisition contracting officers (SACO) shall forward recommendations through their OAM Advisors to one level above the contracting officer.

(d) *Supporting rationale.* Regardless of dollar value, the contracting officer shall document the file with supporting rationale demonstrating that the purchase meets the conditions of FAR 32.202–1(b)(1), (3) and (4).

(e) *Administration.* Regardless of dollar value, the contracting officer is responsible for ensuring that supplies or services have been delivered. The contracting officer shall document the file with evidence of receipt of supplies or services throughout the order period as appropriate to the acquisition.

(f) *Clause.* The contracting officer shall insert the clause at 1552.232–74, Payments—Simplified Acquisition Procedures Financing, in solicitations and orders that will provide simplified acquisition procedures financing.

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Add section 1552.232–74 to read as follows.

1552.232–74 Payments—Simplified Acquisition Procedures Financing.

As prescribed in 1532.003, insert the following clause in solicitations and orders that will provide simplified acquisition procedures financing.

PAYMENTS—SIMPLIFIED ACQUISITION PROCEDURES FINANCING (XXX 2006)

Simplified acquisition procedures financing in the form of _____ [contracting officer insert *advance* (prior to performance) and/or *interim* (according to payment schedule] payment(s) will be provided under this commercial item order in accordance with the payment schedule below. If both advance and interim payments are to be made, the payment schedule shown below will specify the type of payment provided for each line item.

The Government shall pay the contractor as follows upon the submission of invoices or vouchers approved by the project officer: _____[insert payment schedule].

[FR Doc. E6–3518 Filed 3–10–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 060216043–6043–01; I.D. 021306C]

RIN 0648–AS70

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Limited Access Program for Gulf Charter Vessels and Headboats

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 17 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Amendment 17) and Amendment 25 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Amendment 25) prepared by the Gulf of Mexico Fishery Management Council (Council). This proposed rule would establish a limited access system for charter vessel/headboat (for-hire) permits for the reef fish and coastal migratory pelagic fisheries in the exclusive economic zone (EEZ) of the Gulf of Mexico and would continue to cap participation at current levels. In addition, NMFS proposes a number of minor revisions to remove outdated regulatory text and to clarify regulatory text. The intended effect of this proposed rule is to provide for biological, social, and economic stability in these for-hire fisheries.

DATES: Comments must be received no later than 5 p.m., eastern time, on April 27, 2006.

ADDRESSES: You may submit comments on the proposed rule by any of the following methods:

- E-mail: *0648–AS70.Proposed@noaa.gov*. Include in the subject line the following document identifier: 0648–AS70.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Jason Rueter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Fax: 727–824–5308; Attention: Jason Rueter.

Copies of Amendments 17 and 25, which include a Regulatory Impact Review (RIR), an Initial Regulatory Flexibility Analysis (IRFA), and a Supplemental Environmental Impact Statement (SEIS), may be obtained from the Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: 813–348–1630; fax: 813–348–1711; e-mail: *gulfcouncil@gulfcouncil.org*. Copies of the amendments may also be downloaded from the Council's website at *www.gulfcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Jason Rueter, telephone: 727–570–5305; fax: 727–570–5583; e-mail: *Jason.Rueter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for reef fish is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) prepared by the Council. The fisheries for coastal migratory pelagic resources are managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Coastal Migratory Pelagics FMP) prepared jointly by the Council and the South Atlantic Fishery Management Council. These FMPs were approved by NMFS and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

The Council, in cooperation with the Gulf charter vessel/headboat industry, developed Amendment 14 to the Coastal Migratory Pelagics FMP and Amendment 20 to the Reef Fish FMP to address issues of increased fishing mortality and fishing effort in the for-hire sector of the recreational fishery in the Gulf of Mexico. These amendments required charter vessels and headboats operating in the fisheries for Gulf reef fish or Gulf coastal migratory pelagic fish to obtain a moratorium permit and also established a 3-year moratorium on issuance of additional permits for these for-hire fisheries. NMFS approved Amendments 14 and 20 and promulgated the charter vessel/headboat moratorium regulations (67 FR 43558, June 28, 2002) to implement the amendments. The moratorium, scheduled to expire on June 16, 2006, was intended to temporarily stabilize fishing effort in the for-hire sector of these fisheries while the Council evaluated a more comprehensive, long-term approach.

Limited Access System

This proposed rule would establish a limited access system in the for-hire reef fish and coastal migratory pelagic fisheries in the EEZ of the Gulf of Mexico that would continue to cap participation at the current level. This action is necessary to ensure the for-hire fishery does not revert to open access with resulting inappropriate increases in fishing mortality upon expiration of the moratorium. As was the case under the moratorium, no additional permits would be issued for these fisheries under the limited access system. Under the proposed limited access system, an owner of a vessel with a valid or renewable charter vessel/headboat permit for Gulf reef fish or Gulf coastal migratory pelagic fish on the date Amendments 17 and 25 are approved (assuming approval) would be issued the applicable permits under the limited access system. There would be no changes to the current procedures for application, qualification, issuance, renewal, or transferability of these permits. This limited access system would be of indefinite duration and would remain in place unless the Council subsequently amends the Coastal Migratory Pelagics and Reef Fish FMPs to revise, replace, or eliminate it. The Council would review the effectiveness of this limited access system every 10 years.

Changes Proposed by NMFS

In § 622.3, NMFS proposes to revise outdated regulatory citations regarding national marine sanctuaries.

In § 622.4(r), NMFS is proposing to remove outdated text related to the original permit moratorium that is no longer relevant. In § 622.4(r)(1), NMFS proposes a revision to clarify that the basis for determining authorized passenger capacity in relation to permit transfers is the authorized passenger capacity specified on the face of the permit being transferred, which is the authorized passenger capacity of the vessel for which the original permit was issued under the moratorium. In § 622.4(r)(2), NMFS is proposing to revise the language regarding permit renewal requirements to be more consistent with the Council's original intent as expressed in Reef Fish Amendment 20 and Coastal Migratory Pelagics Amendment 14. The revised language clarifies that a selected participant must provide information as requested in approved data surveys including, but not limited to, those listed in § 622.4(r)(2). The phrase ''but not limited to'' was inadvertently

omitted from the rule implementing the Corrected Amendment.

In § 622.42, NMFS proposes to remove paragraph (a)(3), which was inadvertently and inappropriately retained in a prior revision of § 622.42. Paragraph (a)(3) contains outdated text.

Classification

At this time, NMFS has not determined whether Amendments 17 and 25, which this rule would implement, are consistent with the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment periods on these amendments and on this proposed rule.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A copy of the full analysis is available from the Council office (see **ADDRESSES**). A summary of the analysis follows.

The Magnuson-Stevens Act provides the statutory basis for the proposed rule. The proposed rule would establish a limited access system for Gulf for-hire reef fish and coastal migratory pelagic fish permits. In effect, this rule will extend indefinitely the current moratorium on these permits that is set to expire on June 16, 2006.

The main objective of the proposed rule is to control increases in for-hire fishing vessels or passenger capacity while the Council determines the appropriate long-term management strategy for the for-hire fishery. Such strategy would be related to stabilizing or reducing for-hire fishing mortality for reef fish and coastal migratory pelagic fish stocks that have rebuilding plans or are overfished or undergoing overfishing.

Permitting of for-hire vessels has been required since 1987 for coastal migratory pelagic fish and 1996 for reef fish. When the current moratorium was established in 2003, NMFS issued for-hire moratorium permits to 1,857 vessels, but it is estimated that at the same time 510 to 899 vessels were excluded. Some of the excluded vessels left the fishery before the moratorium took effect. Some of the vessels that were still in operation but inadvertently excluded from the moratorium were allowed to re-enter the fishery through an emergency reopening of the application period. Both included and excluded vessels may be considered to comprise the universe of vessels affected by the proposed rule.

For-hire vessels with initial moratorium permits operate as charter vessels only, headboats only, or charter vessel/headboat combination. Some for-hire vessels also operate as commercial fishing vessels at certain times of the year. However, most (66.7 percent) operate as charter vessels only, and a great majority of these vessels (87.7 percent) operate in both the coastal migratory pelagic and reef fish fisheries. About 69 percent of these vessels are individually owned and operated, 27 percent have corporate ownership, and the rest are in some other form of ownership. Florida is the homeport state of most vessels, followed in order by Texas, Alabama, Louisiana, Mississippi, and other states. In the absence of relevant information, vessels excluded from the moratorium are deemed to have the same characteristics as those that obtained moratorium permits.

For-hire vessel costs and revenues are not routinely collected. For the purpose of these amendments, data from two previous 1999 studies were pooled to characterize the financial performance of for-hire vessels. Charter vessels charge their fees on a group basis while headboats do it on a per-person (head) basis. On average, a charter vessel generates $76,960 in annual revenues and $36,758 in annual operating profits. An average headboat, on the other hand, generates $404,172 in annual revenues and $338,209 in annual operating profits. Excluding fixed and other non-operating expenses, both types of for-hire operations generate positive profits. On average, both charter vessels and headboats operate at about 50 percent of their passenger capacity per trip.

The financial performance of charter vessels and headboats varies according to the size of operation (passenger capacity) and geographic areas. For headboats, revenues range from $298,812 ($263,062 profits) for 13 to 30 maximum passenger capacity to $570,376 ($460,760 profits) for 61 or greater maximum passenger capacity. For charterboats, revenues range from $70,491 ($34,949 profits) for the 6 and under maximum passenger capacity to $129,813 ($86,502 profits) for the 7–12 maximum passenger capacity vessels. Florida charter vessels generate annual revenues of $68,233 ($30,249 profits), while their counterparts in other areas earn $106,118 in annual revenues ($43,494 profits). Florida headboats generate annual revenues of $318,512 ($249,103 profits), while their counterparts in the other areas earn revenues of $630,046 ($542,425 profits). In general, larger for-hire vessels generate larger profits, and for-hire vessels in Florida earn lower profits than those in other areas.

A fishing business is considered a small entity if it is independently owned and operated and not dominant in its field of operation, and if it has annual receipts not in excess of $6 million in the case of for-hire entities. Given the data on revenues and profits, the for-hire vessels affected by the proposed rule are determined to be small business entities.

All the for-hire vessel operations affected by measures in these amendments are considered small entities, so the issue of disproportionality does not arise in the present case. In general, headboat operations are larger than charter vessel operations in terms of revenues and costs as well as vessel and crew sizes and passenger capacity. There are also variations in the size of operations within the charter vessel and headboat classes.

There are two types of effects on profitability depending on whether a vessel is included or excluded from operating in the EEZ for-hire fisheries. Those included are expected to either maintain or increase their returns from for-hire operations should angler demand increase and the number of permits remain capped. Those excluded would continue to forgo any potential profits from for-hire operations related to reef fish or coastal migratory pelagic fish in the EEZ, although they may still earn profits from their state water for-hire operations or commercial fishing operations. For those that previously depended mainly on fishing trips in the EEZ, their profits would continue to be substantially reduced absent purchase of a limited access permit. These entities, as well as new entrants into the fishery, would have to expend an additional fixed cost in the form of purchase cost of the charter permit. This cost would have to be explicitly considered by new entrants as an integral part of their decision to invest in the for-hire fishery.

Because the proposed rule would essentially extend the current moratorium on the issuance of new for-hire permits, it would not impose any additional record keeping or reporting requirements. Also, all the compliance requirements currently in place would remain the same. In the same vein, the proposed rule would not affect current permitting, certifications, and other

requirements by other Federal agencies, and thus it would not in any way conflict with or be duplicative of any relevant Federal rules.

The other alternatives considered in these amendments are the no action alternative, which would allow the moratorium to expire in 2006; extension of the moratorium by 5 years; and extension of the moratorium by 10 years. The alternatives that would extend the moratorium by 5 years or 10 years have similar effects as the proposed rule, although the magnitudes involved are lower because the moratorium would still be time limited. However, those alternatives would require additional administrative action and costs to subsequently extend the moratorium to meet the Council's objective of capping effort, and those alternatives would not provide the regulatory stability needed by the for-hire industry to make longer-term business decisions. For these reasons, those alternatives were not adopted. The no action alternative would benefit vessel operations re-entering the for-hire fishery as well as new entrants because they would not have the additional cost of purchasing permits. But their entrance into the for-hire fishery would impinge on the profitability of existing vessel operations as well as potentially increase the harvest and discards of certain species that are overfished or undergoing overfishing. A reversion to open access in the for-hire fishery would also complicate the management measures the Council might adopt for the fishery to address overfishing issues. Moreover, the no action alternative can only exacerbate the excess capacity problem in the for-hire fishery, especially given that for-hire vessels are currently operating at about half their capacity.

Certain measures have already been adopted to mitigate the adverse economic impacts of the moratorium. These include: (1) relatively liberal qualifying eligibility criteria for the moratorium permits, such as the inclusion of most historical participants, historical captains, and those who already committed money for the construction of vessels; (2) liberal provision for renewing for-hire permits; (3) transferability of for-hire permits, except historical captain permits; and, (4) an emergency action re-opening the moratorium permit application process to participants inadvertently excluded from the moratorium, which resulted in issuance of an additional 62 moratorium permits but did not alter the conclusions of this analysis. Additionally, re-entrants and new entrants can participate in the for-hire fishery by purchasing permits from current permit holders. These features are preserved under the proposed rule.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: March 7, 2006.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.3, paragraph (b) is revised to read as follows:

§ 622.3 Relation to other laws and regulations.

* * * * *

(b) Except for regulations on allowable octocoral, Gulf and South Atlantic prohibited coral, and live rock, this part is intended to apply within the EEZ portions of applicable National Marine Sanctuaries and National Parks, unless the regulations governing such Sanctuaries or Parks prohibit their application. Regulations on allowable octocoral, Gulf and South Atlantic prohibited coral, and live rock do not apply within the EEZ portions of the following Marine Sanctuaries and National Parks:

(1) Florida Keys National Marine Sanctuary (15 CFR part 922 subpart P).

(2) Gray's Reef National Marine Sanctuary (15 CFR part 922 subpart I).

(3) Monitor National Marine Sanctuary (15 CFR part 922 subpart F).

(4) Everglades National Park (36 CFR 7.45).

(5) Biscayne National Park (16 U.S.C. 410gg).

(6) Fort Jefferson National Monument (36 CFR 7.27).

* * * * *

3. In § 622.4, paragraphs (a)(1)(ii) and (r) are revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(1) * * *

(ii) See paragraph (r) of this section regarding a limited access system for charter vessel/headboat permits for Gulf reef fish and Gulf coastal migratory pelagic fish.

* * * * *

(r) *Limited access system for charter vessel/headboat permits for Gulf coastal migratory pelagic fish and Gulf reef fish.* No applications for additional charter vessel/headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish will be accepted. Existing permits may be renewed, are subject to the restrictions on transfer in paragraph (r)(1) of this section, and are subject to the renewal requirements in paragraph (r)(2) of this section.

(1) *Transfer of permits*—(i) *Permits without a historical captain endorsement.* A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that does not have a historical captain endorsement is fully transferable, with or without sale of the permitted vessel, except that no transfer is allowed to a vessel with a greater authorized passenger capacity than that of the vessel to which the moratorium permit was originally issued, as specified on the face of the permit being transferred. An application to transfer a permit to an inspected vessel must include a copy of that vessel's current USCG Certificate of Inspection (COI). A vessel without a valid COI will be considered an uninspected vessel with an authorized passenger capacity restricted to six or fewer passengers.

(ii) *Permits with a historical captain endorsement.* A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that has a historical captain endorsement may only be transferred to a vessel operated by the historical captain, cannot be transferred to a vessel with a greater authorized passenger capacity than that of the vessel to which the moratorium permit was originally issued, as specified on the face of the permit being transferred, and is not otherwise transferable.

(iii) *Procedure for permit transfer.* To request that the RA transfer a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, the owner of the vessel who is transferring the permit and the owner of the vessel that is to receive the transferred permit must complete the transfer information on the reverse side of the permit and return the permit and a completed application for transfer to the RA. See paragraph (g)(1) of this section for additional transfer-related requirements applicable to all permits issued under this section.

(2) *Renewal.* (i) Renewal of a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish is contingent upon the permitted vessel and/or captain, as appropriate, being included in an active survey frame for, and, if selected to report, providing the information required in one of the

approved fishing data surveys. Surveys include, but are not limited to—

(A) NMFS' Marine Recreational Fishing Vessel Directory Telephone Survey (conducted by the Gulf States Marine Fisheries Commission);

(B) NMFS' Southeast Headboat Survey (as required by § 622.5(b)(1);

(C) Texas Parks and Wildlife Marine Recreational Fishing Survey; or

(D) A data collection system that replaces one or more of the surveys in paragraph (r)(2)(i)(A),(B), or (C) of this section.

(ii) A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal, as required, is not received by the RA within 1 year of the expiration date of the permit.

(3) *Requirement to display a vessel decal.* Upon renewal or transfer of a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, the RA will issue the owner of the permitted vessel a vessel decal for the applicable permitted fishery or fisheries. The vessel decal must be displayed on the port side of the deckhouse or hull and must be maintained so that it is clearly visible.

§ 622.42 [Amended]

4. In § 622.42, paragraph (a)(3) is removed.

[FR Doc. 06–2389 Filed 3–10–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060301058–6058–01; I.D. 022306A]

RIN 0648–AU13

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Total Allowable Catches for the Northeast Multispecies Fishery for Fishing Year 2006

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes three types of 2006 fishing year (FY) Total Allowable Catches (TACs) for the Northeast (NE) Multispecies Fishery Management Plan (FMP). Hard TACs for Eastern Georges Bank (GB) cod, Eastern GB haddock, and GB yellowtail flounder in the U.S./Canada Management Area; target TACs for all NE regulated multispecies; and hard Incidental Catch TACs for groundfish stocks of concern. This action also provides notice that the hard TACs for Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder may be adjusted during FY 2006, if NMFS determines that the harvest of these stocks in FY 2005 exceeded the TACs specified for FY 2005. The intent of this action is to provide for the conservation and management of groundfish management under the FMP.

DATES: Comments must be received by April 12, 2006.

ADDRESSES: You may submit written comments by any of the following methods:

- E-mail: *USCATAC@NOAA.gov*. Include in the subject line the following: Comments on the proposed TACs for the U.S./Canada Management Area.
- Federal e-rulemaking Portal: *http://www.regulations.gov*.
- Mail: Paper, disk, or CD ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the proposed TACs for the U.S./Canada Management Area.''
- Fax: (978) 281–9135.

Copies of the Transboundary Management Guidance Committee's 2005 Guidance Document and copies of the Environmental Assessment of the 2006 TACs (including the Regulatory Impact Review and Initial Regulatory Flexibility Analysis (IRFA)) may be obtained from NMFS at the mailing address specified above; telephone (978) 281–9315. NMFS prepared a summary of the IRFA, which is contained in the Classification section of this proposed rule.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, (978) 281–9347, fax (978) 281–9135, e-mail *Thomas.Warren@NOAA.gov*.

SUPPLEMENTARY INFORMATION: The NE Multispecies FMP specifies a procedure for setting three types of TACs: (1) Annual hard (i.e., the fishery or area closes when a TAC is reached) TACs for Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder; (2) target TACs for all regulated groundfish stocks; and (3) hard Incidental Catch TACs for groundfish stocks of concern.

Hard TACs

The regulations governing the annual development of hard TACs for the U.S./Canada Management Area species (§ 648.85(a)(2)) were implemented by Amendment 13 to the FMP (69 FR 22906; April 27, 2004) in order to be consistent with the U.S./Canada Resource Sharing Understanding (Understanding), which is an informal understanding between the U.S. and Canada that outlines a process for the management of the shared GB groundfish resources. The Understanding specifies an allocation of TAC for these three stocks for each country, based on a formula that considers historical catch percentages and current resource distribution.

Annual TACs are determined through a process involving the New England Fishery Management Council (Council), the Transboundary Management Guidance Committee (TMGC), and the U.S./Canada Transboundary Resources Steering Committee (§ 648.85(a)(2)(i)). On September 7 and 8, 2005, the TMGC developed the guidance document for 2006 (Guidance Document 2005/01), and on September 9, 2005, the Steering Committee concurred with the TMGC recommendations. On September 15, 2005, the Council accepted the recommendations of the TMGC for the 2006 TACs for GB cod, GB haddock, and GB yellowtail flounder. The recommended 2006 TACs were based upon the most recent stock assessments (Transboundary Resource Assessment Committee (TRAC) Status Reports for 2005), and the fishing mortality strategy shared by both the U.S. and Canada. The strategy is to maintain a low to neutral risk of exceeding the fishing mortality limit reference (F_{ref} = 0.18, 0.26, and 0.25 for cod, haddock, and yellowtail flounder, respectively). That is, when stock conditions are poor, fishing mortality rates (F) should be further reduced to promote rebuilding.

For GB cod, the TMGC concluded that the most appropriate combined U.S./Canada TAC for FY 2006 is 1,700 mt. This corresponds to an F less than the F_{ref} of 0.18 in 2006 and represents a very low risk, less than 25–percent probability, of exceeding the F_{ref}. At this level of harvest there is also a greater than 75–percent probability that stock biomass will increase by at least 10 percent from 2006 to 2007. The annual allocation shares for FY 2006 between the U.S. and Canada are based on a combination of historical catches (30 percent weighting) and resource distribution based on trawl surveys (70 percent weighting). Combining these factors entitles the U.S. to 22 percent and Canada to 78 percent, resulting in a national quota of 374 mt for the U.S. and 1,326 mt for Canada.

For GB haddock, the TMGC concluded that the most appropriate combined U.S./Canada TAC for FY 2006 is 22,000 mt. This corresponds to an F of 0.26 in 2006 and represents a neutral risk, about 50–percent, of exceeding the F_{ref}. Adult biomass will increase substantially from 2006 to 2007 due to recruitment of the exceptional 2003 year class. The annual allocation shares for 2006 between countries are based on a combination of historical catches (30 percent weighting) and resource distribution based on trawl surveys (70 percent weighting). Combining these factors entitles the U.S. to 34 percent and Canada to 66 percent, resulting in a national quota of 7,480 mt for the U.S. and 14,520 mt for Canada.

For GB yellowtail flounder, the TMGC concluded that the most appropriate combined U.S./Canada TAC for FY 2005 is 3,000 mt. A catch of about 3,000 mt in 2006 corresponds to an F equal to the F_{ref} of 0.25 and represents a neutral risk, about 50 percent of exceeding the F_{ref} of 0.25. Two assessment approaches were used to evaluate stock status. Both indicated that biomass increased since the mid 1990s and recent recruitment has improved, but fishing mortality remained substantially above F_{ref}. The annual allocation shares for 2006 between countries are based on a combination of historical catches (30 percent weighting) and resource distribution based on trawl surveys (70 percent weighting). Combining these factors entitles the U.S. to 69 percent and Canada to 31 percent, resulting in a national quota of 2,070 mt for the U.S. and 930 mt for Canada.

The Council approved the following U.S. TACs recommended by the TMGC: 374 mt of GB cod, 7,480 mt of GB haddock, and 2,070 mt of GB yellowtail flounder. The 2006 haddock and yellowtail flounder TACs represent decreases from 2005 TAC levels (by 1 percent and 51 percent, respectively), and the 2006 cod TAC represents a 44 percent increase from the 2005 TAC (Tables 1 and 2).

TABLE 1: PROPOSED 2006 U.S./CANADA TACS (MT) AND PERCENTAGE SHARES (IN PARENTHESES)

	GB Cod	GB Haddock	GB Yellowtail flounder
Total Shared TAC	1,700	22,000	3,000
U.S. TAC	374 (22)	7,480 (34)	2,070 (69)
Canada TAC	1,326 (78)	14,520 (66)	930 (31)

TABLE 2: 2005 U.S./CANADA TACS (MT) AND PERCENTAGE SHARES (IN PARENTHESES)

	GB Cod	GB Haddock	GB Yellowtail flounder
Total Shared TAC	1,000	23,000	6,000
U.S. TAC	260 (26)	7,590 (33)	4,260 (71)
Canada TAC	740 (74)	15,410 (67)	1,740 (29)

The proposed TACs are consistent with the results of the TRAC and the TMGC's harvest strategy.

The regulations implemented by Amendment 13, at § 648.85(a)(2)(ii), state the following: ''Any overages of the [U.S./Canada] GB cod, haddock, or yellowtail flounder TACs that occur in a given fishing year will be subtracted from the respective TAC in the following fishing year.'' Therefore, should an analysis of the catch of the shared stocks by U.S. vessels indicate that an overage occurred during FY 2005, the pertinent TACs will be adjusted downward in order to be consistent with the FMP and the Understanding. Although it is very unlikely, it is possible that a very large overage could result in an adjusted TAC of zero. If an adjustment to one of the 2006 TACs for Eastern GB cod, Eastern GB haddock, or GB yellowtail flounder is necessary, the public will be notified through proposed rulemaking and through a letter to permit holders.

Target TACs

Target TACs for regulated groundfish species are proposed pursuant to the regulations at § 648.90(a)(2), which require the Council to develop target TACs as part of the process that periodically adjusts management measures as necessary, and develops new target TACs based upon the most recent scientific information. Although target TACs for 2006 were specified by Amendment 13, it is necessary to revise the values of the 2006 TACs, based upon more recent scientific information (Assessment of 19 Northeast Groundfish Stocks through 2004; Northeast Fisheries Science Center Reference Document 05–13 (GARM II, completed in August 2005)). The Council recently adopted a management action that would make necessary management measure adjustments (Framework Adjustment (FW) 42) to the FMP, including proposed target TACs for regulated species for 2006, 2007, and 2008 (with the exception of U.S./CA TACs). However, because the Council could not develop FW 42 in time to implement the management measures by May 1, 2006, the proposed target TACs for the 2006 fishing year, if approved, would not be implemented in time for the start of the fishing year. Although many of the target TACs are used only as an informal means of evaluating the effectiveness of the management measures of the FMP, a delay in the specification of target TACs would impact two aspects of the FMP in a substantive manner. The annual allocation of GB cod to the GB Cod Hook Sector (provided the Sector is approved for the 2006 fishing year) is calculated as a percentage of the GB cod target TAC. If specification of the GB cod target TAC were delayed past May 1, it would not be possible to specify a GB cod allocation for the Sector in a timely manner. Reliance upon the current 2005 fishing year GB cod target TAC to calculate the Sector's allocation would not be utilizing the best available information. The GB cod Hook Sector is dependent upon the timely and accurate specification of the GB cod target TAC in order for the Sector to operate and generate revenue. In addition, a delay in the specification of target TACs would impact the specification of hard Incidental Catch TACs because Incidental Catch TACs are calculated as a percentage of the target TAC for 10 groundfish stocks of concern (A ''hard'' TAC means that when the TAC is reached, the fishery is closed or severely restricted).

Although the FMP does not address the circumstance where no TACs are specified, there would be no basis for the Sector and the special management programs that include Incidental Catch

TACs to function consistent with the intent of the FMP and best scientific information available. As a result, the Sector program, if it could be authorized at all, would be allowed to fish at levels inconsistent with best scientific information available. More significantly, if incidental TACs cannot be established according to best scientific information available, special management programs that are dependent on these incidental TACs would operate, if they could be authorized at all, without adequate restrictions on the catch of stocks of concern. Several of the TACs would be smaller than appropriate, resulting in excessive harvest of stocks of concern under special management programs. The only way to avoid this management void is to implement a secretarial emergency measure as permitted under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act. As discussed above, this need for this emergency measure meets the requirements of the **Federal Register** notice specifying emergency criteria (62 FR 44421; August 21, 1997). This Emergency action arises from ''unforeseen events or recently discovered circumstances'' that would present ''serious conservation or management problems'' if the emergency action is not implemented. Specifically, as more fully discussed above, this emergency action is justified on ecological grounds in that fishing under TACs inconsistent with the best scientific information available would result in harvests that would likely jeopardize meeting conservation objectives of the FMP.

The proposed target TACs were developed by the Council's Groundfish Plan Development Team (PDT) and are consistent with those proposed in the FW 42 document. The target TACs (see Table 3) are calculated from projections of future catches, using recent assessment data, and the Amendment 13 target fishing mortality rates.

TABLE 3: PROPOSED TARGET TACS (MT) FOR 2006

Species	Stock	2006 Proposed Target TACs	TAC Composition
Cod	GB	7,458	E *.
	GOM	4,987	C *.
Haddock	GB	49,829	E.
	GOM	1,279	A.
Yellowtail flounder	GB	2,070	D *.
	SNE/MA	146	B *.
	CC/GOM	650	B *.
American plaice		3,666	B*.
Witch flounder		5,511	A *.
Winter flounder	GB	1,424	A*.
	GOM	**	C.
	SNE/MA	2,481	C*.
Redfish		1,946	A.
White hake		2,056	A*.
Pollock		12,005	A.
Windowpane flounder	North	389	A.
	South	173	A.
Ocean pout		38	A.
Atlantic halibut		NA	NA.

A Commercial Landings
B Commercial Landings and Discards
C Commercial Landings, Discards, and Recreational Harvest
D Commercial Landings and Discards (U.S. portion of U.S./Canada TAC)
E Commercial Landings (U.S. and Canada)
*Stock of Concern for Which an Incidental Catch TAC as a Subset of the Target TAC is also proposed (Table 4).
** GARM II did not develop a TAC for GOM winter flounder because of uncertainties in the assessment.
Note: Proposed TACs for GB cod and GB haddock include Canadian landings.

Incidental Catch TACs

Incidental Catch TACs are proposed pursuant to the regulations at § 648.85(b)(5). The regulations require that Incidental Catch TACs be developed as part of the process that periodically adjusts management measures based upon the most recent scientific information. FW 40–A (69 FR 67780; November 19, 2004) implemented Incidental Catch TACs in order to strictly limit the potential for the use of Category B DAS to cause excessive fishing mortality on groundfish stocks of concern. For the NE multispecies fishery, a stock of concern is defined as ''a stock that is in an overfished condition, or that is subject to overfishing.'' FW 40–A implemented Incidental Catch TACs for the following 8 stocks, based upon the stock status data that was used in the development of Amendment 13: Gulf of Maine (GOM) cod, GB cod, Cape Cod (CC)/GOM yellowtail flounder, American plaice, white hake, Southern New England (SNE)/Mid-Atlantic (MA) yellowtail flounder, SNE/MA winter flounder, and witch flounder. FW 40–A also implemented percentage allocations of the Incidental Catch TACs among special programs (for the Regular B DAS Pilot Program; Closed Area I Hook Gear Haddock Special Access Program (SAP); and the Eastern U.S./Canada Haddock SAP Pilot Program) and specified values for those Incidental Catch TACs for portions of the 2004 fishing year. FW 40–B (70 FR 31323; June 1, 2005) and FW 41 (70 FR 54302; September 14, 2005), further modified the percentage allocation of the Incidental Catch TACs among Category B DAS programs.

In addition to the proposed 2006 target TACs adopted in FW 42, the Council also adopted 2006 Incidental Catch TACs under this same action. However, as with the target TACs for all regulated species, because the Council could not develop FW 42 in time to implement the management measures by May 1, 2006, the proposed Incidental Catch TACs for the 2006 fishing year, if approved, would not be implemented in time for the start of the fishing year.

Implementation of Incidental Catch TACs in a timely manner is necessary to enable Category B DAS programs to operate based upon the best available science. NMFS proposes specifying the Incidental Catch TACs, as proposed in FW 42, under Secretarial emergency authority, consistent with the Emergency Criteria and Justification defined in 62 FR 44421 (August 21, 1997) due to recent, unforseen events, and the need to allow the Category B DAS programs to operate in a timely fashion according to best scientific information available.

In addition to specifying Incidental Catch TACs for the 8 stocks noted above (as implemented by FW 40–A), this action also proposes implementing additional Incidental Catch TACs for GB yellowtail flounder and GB winter flounder, based on new information from the GARM II report that overfishing is occurring on these stocks, and consistent with the Council's recommendations in FW 42. All 10 Incidental Catch TACs were developed by the PDT and are consistent with those proposed in the FW 42 document. These Incidental Catch TACs are derived from the target TACs, and are based upon percentages proposed by the Council in FW 42.

TABLE 4: PROPOSED INCIDENTAL CATCH TACS (MT) FOR 2006

Stock	Percentage of Total Target TAC	2006 Incidental Catch TAC
GB Cod	Two	122.6
GOM cod	One	49.9
GB yellowtail flounder	Two	41.4
CC/GOM yellowtail flounder	One	6.5
SNE/MA yellowtail flounder	One	1.5
American plaice	Five	183.3
Witch flounder	Five	275.6
SNE/MA winter flounder	One	24.8
GB winter flounder	Two	28.5
White hake	Two	41.1

Classification

This proposed rule is exempt from review under Executive Order 12866.

NMFS prepared an IRFA that describes the economic impact that this proposed rule, if adopted, would have on small entities.

The specification of hard TACs for the U.S./Canada shared stocks of Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder is necessary in order to ensure that the agreed upon U.S./Canada fishing mortality levels for these shared stocks are achieved in the U.S./Canada Management Area (the geographic area on GB defined to facilitate management of stocks of cod, haddock, and yellowtail flounder that are shared with Canada). A description of the objectives and legal basis for these proposed hard TACs is contained in the SUMMARY of this proposed rule.

Under the Small Business Administration (SBA) size standards for small fishing entities ($3.5 million), all permitted and participating vessels in the groundfish fishery are considered to be small entities. Gross sales by any one entity (vessel) do not exceed this threshold. Therefore, this proposed rule does not have a disproportionate impact between large and small entities. The maximum number of small entities that could be affected by the proposed TACs are approximately 1,000 vessels, i.e., those with limited access NE multispecies DAS permits, that have an allocation of Category A or B DAS. Realistically, however, the number of vessels that choose to fish in the U.S./Canada Management Area, and that therefore would be subject to the associated restrictions, including hard TACs, would be substantially less.

For the 2004 fishing year (May 2004 through April 2005), 155 individual vessels fished in the U.S./Canada Management Area. From May 2005 through February 9, 2006, 156 vessels fished in the U.S./Canada Area. Although it is difficult to predict the number that would fish in the U.S./Canada Area in 2006, the number of vessels is not likely to exceed the number of vessels that fished in the area during the 2004 or 2005 fishing years. Furthermore, additional fishing effort controls are proposed for the 2006 fishing year that are likely to decrease fishing effort.

The economic impacts of the proposed TACs are difficult to predict due to several factors that affect the amount of catch, as well as the price of the fish. Furthermore, the economic impacts are difficult to predict due to the newness of these regulations (May 2004; Amendment 13 to the FMP). Therefore, there is relatively little historic data, and limited information about the specific fishing patterns or market impacts that may be caused by this hard TAC management system. In general, the rate at which yellowtail flounder is caught in the Eastern and Western U.S./Canada Area and the rate at which cod is caught in the Eastern U.S./Canada Area will determine the length of time the Eastern U.S./Canada Area will remain open. The length of time the Eastern U.S./Canada Area is open will determine the amount of haddock that is caught.

The amount of GB cod, haddock, and yellowtail flounder landed and sold will not be equal to the sum of the TACs, but will be reduced as a result of discards (discards are counted against the hard TAC), and may be further reduced by limitations on access to stocks that may result from the associated rules. Fishing derby behavior may result in a reduction to the market value of fish. The overall economic impact of the proposed 2006 U.S./Canada TACs will likely be different from the economic impacts of the 2005 TACs due to the reduced yellowtail flounder TAC, and may result in reduced revenue. Although the 2006 cod TAC represents an increase from 2005, the 2006 haddock and yellowtail TACs represent decreases from 2005. For yellowtail flounder, the decrease is substantial. Based on the estimates in the Environmental Assessment, revenue from cod and haddock caught in the Eastern U.S./Canada Area may increase from 2005 to 2006 (up to 43 percent and 74 percent, respectively), and revenue from yellowtail flounder in the U.S./Canada Area may decline by 51 percent. According to the analysis, the overall change in revenue from 2005 to 2006 for the 3 species combined could amount to a 36 percent decline (or approximately $ 3.8 million), although it is difficult to predict future fishing patterns, and there are factors which may mitigate the decline in overall revenue. For example, there could be an increase in yellowtail flounder price, as well as the potential

for increased opportunity to harvest haddock from the Eastern U.S./Canada Area. If the larger GB cod TAC results in a longer period of time that the Eastern U.S./Canada Area is open, and if vessels attempt to, and are successful in avoidance of cod, the Eastern Area may be opened for a longer period of time in fishing year 2006 than it was in 2005, resulting in additional revenue from haddock.

Although unlikely, a downward adjustment to the hard TACs specified for FY 2006 could occur after the start of the fishing year, if it is determined that the U.S. catch of one or more of the shared stocks during the 2005 fishing year exceeded the relevant TACs specified for FY 2005.

Three alternatives for hard TACs were considered for FY 2006: The proposed TACs, the status quo TACs, and the no action alternative. No other TAC alternatives were considered. The process for establishing TACs is based on the best scientific information available designed to yield only one proposed set of TACs. The proposed TACs would have a similar economic impact as the status quo TACs. Adoption of the status quo TACs, however, would not be consistent with the FMP because the status quo TACs do not represent the best available scientific information. Although the no action alternative (no TACs) would not constrain catch in the U.S./Canada Management Area, and therefore would likely provide some additional fishing opportunity, the no action alternative is not a reasonable alternative because it is inconsistent with the FMP in both the short and long term. The FMP requires specification of hard TACs in order to limit catch of shared stocks to the appropriate level (i.e., consistent with the Understanding and the FMP). As such, the no action alternative would likely provide less economic benefits to the industry in the long term than the proposed alternative.

The proposed hard TACs do not modify any collection of information, reporting, or recordkeeping requirements. The proposed hard TACs do not duplicate, overlap, or conflict with any other Federal rules.

Three alternatives were considered for the target TACs for FY 2006: The proposed TACs, the status quo TACs, and the no action alternative (previously specified TACs, based on previous scientific information). No other target TAC alternatives were considered for the same reason that no other TAC alternatives were considered for the 2006 U.S./Canada Management Area TACs described above. The economic impacts of the target TACs are minimal. The most substantive impact on potential fishing effort would be to allow the possibility of a larger TAC allocated to the GB Cod Hook Sector than under the Status Quo Alternative. The amount of cod allocated to the GB Cod Hook Sector is directly affected by the size of the GB cod target TAC, and therefore has the potential for an economic impact on the Sector. Based on the amount of GB cod TAC caught by the Sector in 2004 and 2005 (less than the TAC), an increase in the amount of cod allocated to the Sector is not likely to impact the amount of cod landed by the Sector. Factors other than the size of the Sector's cod allocation appear to be limiting the amount of catch and revenue. In 2004, the Sector caught approximately 20 percent of their allocation. During the 2005 fishing year, through December, the Sector caught 25 percent of their allocation.

The economic impacts of the Incidental Catch TACs are more notable than the impact of the target TACs because the Incidental Catch TACs may cause the closure of a SAP or prohibition on the use of Regular B DAS in particular stock areas in the Regular B DAS Program. The harvest of Incidental Catch TACs curtail the opportunities to use Category B DAS. Six of the ten Incidental Catch TACs will decrease in 2006, compared to the 2005, Status Quo TACs. The small size of some of the Incidental Catch TACs may have a negative economic impact. Most of the Incidental Catch TACs under the Status Quo and No Action Alternatives would have less of a negative economic impact because they are larger and would be less constraining to the fishery. Based on the proposed 2006 Incidental Catch TACs and the 2004 catch (Quarter 1) in the Regular B DAS Pilot Program, it is likely that five of the quarterly Incidental Catch TACs will be reached, causing a closure of the program prior to the end of the quarter. During 2005, the catch under the Regular B DAS Pilot Program represented substantial percentages of the amount of cod, haddock, and yellowtail flounder caught in the U.S./Canada Area. It is difficult to determine whether the changes in Incidental Catch TACs will result in reduced revenue or whether vessels will be able to compensate for such changes by modifying their fishing strategies. It is possible that the proposed 2006 Incidental Catch TACs may result in a decline in revenue by reducing fishing opportunity. However, it is possible that vessels that participate in the Regular B DAS Pilot Program would make up for any losses in fishing opportunity in the Regular B DAS Pilot Program by instead fishing under a Category A DAS. Vessels that historically do not use their full allocation of Category A DAS could increase the relative percentage of DAS used, or lease additional DAS.

Dated: March 7, 2006.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 06–2387 Filed 3–10–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060209031–6031–01; I.D. 020606C]

RIN 0648–AU09

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Emergency Secretarial Action; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; emergency action; correction.

SUMMARY: On March 3, 2006, a proposed rule to implement an emergency action for the Northeast (NE) Multispecies Fishery Management Plan(FMP) was published in the **Federal Register**. The proposed rule was published with an incorrect end date for receipt of public comments. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Policy Analyst, (978) 281–9141, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: On March 3, 2006 (71 FR 11060), a proposed rule was published that would implement measures intended to immediately reduce the fishing mortality rate (F) on specific groundfish species, include differential days-at-sea (DAS) counting, reduce trip limits for specific species and recreational possession restrictions, continue two programs that would otherwise expire by the end of the 2005 fishing year on April 30, 2006, and implement other provisions. Due to confusion over the date the proposed rule was to be filed for public inspection at the Office of the Federal Register, the proposed rule was published with an incorrect comment period end date.

Correction

In the proposed rule FR Doc. 06-1911, in the issue of Friday, March 6, 2006 (71 FR 11060), make the following correction.

On page 11060, in column 2, the DATES section is corrected to read ''**DATES:** Comments must be received on or before March 9, 2006.''

Dated: March 7, 2006.

James W. Balsiger,

Acting Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E6–3524 Filed 3–10–06; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 71, No. 48
Monday, March 13, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 7, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Assignments of Payments and Joint Payment Authorization.

OMB Control Number: 0560–0183.

Summary of Collection: When the recipient of a Commodity Credit Corporation (CCC) or a Farm Service Agency (FSA) payment chooses to assign a payment to another party or have the payment made jointly with another party, the other party must be identified. This is a free service that is available upon request by the program payee. The regulations for assignment of payments are at 7 CFR part 1404. FSA will collect information using various forms.

Need and Use of the Information: The information collected on the forms will be used by FSA employee to record payment or contract being assigned, the amount of the assignment, the date, and the name and address of the assignee and the assignor. This is to enable FSA employee to pay the proper party when payments become due. FSA will also use the information to terminate joint payments at the request of both the producer and joint payee. If the information is not collected, there would be no payment to third party at the request of the respondents.

Description of Respondent: Farms; individuals or households.

Number of Respondents: 69,325.

Frequency of Responses: Reporting; on occasion.

Total Burden Hours: 11,778.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–3502 Filed 3–10–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Notice of Availability of Hurricane Disaster Assistance

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service and Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities programs are administered through USDA Rural Development. This Notice is intended to announce the availability of hurricane disaster assistance provided pursuant to chapter 1 of title I of Division B of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza Act, 2006 with respect to programs and activities of the Rural Development Mission Area of USDA.

DATES: Effective Date: March 13, 2006.

FOR FURTHER INFORMATION CONTACT: Information for the various USDA Rural Development programs as set forth in Section I., may be obtained by contacting your USDA Rural Development State Office as outlined in Section I. D.

Background: The Rural Development Mission Area agencies (Rural Housing Service, Rural Utilities Service, and Rural Business-Cooperative Service of the United States Department of Agriculture) provide a wide variety of grant, loan, and loan guarantee assistance to rural residents, rural communities, and rural utility systems. The eligibility criteria for each of the programs differ widely.

Chapter 1 of title I of Division B of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza Act, 2006 (Pub. L. 109–148) (Act) provides USDA Rural Development with additional authorities to waive certain program requirements and resources to address the damage caused by the Gulf Coast hurricanes and, in some instances, provides additional latitude in program administration for a six-month period beginning on the date of enactment.

Based upon the extensiveness and the magnitude of the damages to housing; community facilities such as schools, hospitals, first responder services; businesses; water and waste disposal services and other utilities, USDA Rural Development has determined that even with additional resources provided in the Act, it does not have the resources to fully implement all of the authorities provided within the Act within the six-month time frame provided. As a result,

in implementing the authorities provided in the Act, USDA Rural Development has determined that it is most efficient and effective to provide assistance to the areas and activities that are currently served by its programs. To the extent that USDA Rural Development has determined that there are resources available to expand areas and activities served by June 30, 2006, by implementing the waiver authorities of the Act, it has implemented such waiver authority.

The matching funds requirement for the community facilities program will be waived; however, the median family income requirements will remain the same as provided in current regulations. Further, the six-month limitation imposed by the Act precludes implementation of the waivers associated with the Value-Added Producer Grant Program, the Rural Cooperative Development Grant Program and the Renewable Energy Systems/Energy Efficiency Improvements Program due to the time required to prepare, review, and process applications on a competitive basis. Therefore, these provisions of the Act will not be implemented. Should the authority to waive certain requirements be extended, USDA Rural Development will review, on a program-by-program basis, its ability to implement each of the waiver provisions.

For programs for which USDA Rural Development has decided not to implement specific provisions of the Act, applicants located in both designated disaster areas and non-designated disaster areas may apply for funding under the already published statutory and regulatory provisions.

I. General Provisions

A. Rural Area

Section 105 of chapter 1 of title I of Division B of the Act (section 105) provides that the Secretary may ''waive the application of the rural area or similar limitations under any program funded through an appropriations act and administered by the Rural Development Mission Area.'' Based upon the limitations of resources and time, USDA Rural Development has selectively implemented this waiver authority and, therefore, has decided not to implement a general waiver for all of its programs. In the case of the housing programs, USDA Rural Development, with authority provided in section 541 of the Housing Act of 1949 (42 U.S.C. 1490q), has increased the population limitation for rural areas to 50,000 and for a limited number of communities to 75,000. With the additional funding provided for the water and waste disposal grant program, USDA Rural Development will consider waivers of the rural area definition on a project-by-project basis. Should additional funding become available in the future, USDA Rural Development will review, on a program-by-program basis, its ability to further implement the rural area definition waiver.

B. Designated Disaster Area

For the purposes of this Notice, the designated disaster area shall be those Presidentially-declared areas in the states of Alabama, Florida, Louisiana, Mississippi, and Texas in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*

C. Limitation of Grant Amounts

The Act enables the Secretary of Agriculture to make grants under the Renewable Energy Systems and Energy Efficiency Improvements Program, Value-Added Producer Grants Program, Rural Cooperative Development Grant Program, and the Community Facilities Grant Program without regard to any grant amount limitation. The Act did not, however, provide additional funding for these programs. Therefore, USDA Rural Development has determined that it is most efficient and effective to provide assistance through these programs without waiving the statutory or regulatory grant limitations. Should additional funding become available in the future, USDA Rural Development will review, on a program-by-program basis, its ability to increase the grant amount limitations.

D. Contacts for Additional Information

For questions about USDA Rural Development's programs and for application assistance, please contact your USDA Rural Development State Office. The contact information for your State Office can be found at: *http://www.rurdev.usda.gov.* You can also reach your State Office by calling (202) 720–4323 and pressing ''1''.

E. Programs Referenced in This Notice Are Subject to Applicable Civil Rights Laws

These laws include the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, as amended in 1988, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975.''

II. Assistance Available Through This Notice

A. Agricultural Producers

1. Description of Assistance

i. *Renewable Energy*—Section 105 enables USDA Rural Development to make Renewable Energy Systems/Energy Efficiency Improvements loans, grants and guaranteed loans in designated disaster areas with (a) a cost share requirement not to exceed 50 percent, (b) no limitation of the grant amount, and (c) the inclusion of businesses processing unsegregated solid waste and paper. However, because the authority is restricted to a six-month period following the enactment of the law and because the Notice of Funding Availability (NOFA) for this year's grant funding cycle has already been announced in the **Federal Register** on February 13, 2006 (71 FR 7509), the above cited provisions are not being implemented at this time. Should the authority to implement the above cited provisions be extended, USDA Rural Development will consider issuing a separate NOFA to address the provisions.

ii. *Value-Added*—Section 105 enables USDA Rural Development to make Value-Added Producer Grants in designated disaster areas without a matching fund requirement. However, because the authority is restricted to a six-month period following the enactment of the law and because USDA Rural Development does not anticipate announcing grant awards until August 31, 2006, the matching funds requirement is not being waived at this time. Should the authority to waive the matching funds requirement be extended, USDA Rural Development will contemplate reducing the matching funds requirement for successful applicants located in the designated disaster areas, as long as the proposed projects would still be viable with the reduced matching funds requirement.

2. Eligibility Criteria

i. *Renewable Energy*—Farmers, ranchers and rural small businesses located in rural areas are eligible to apply.

ii. *Value-Added*—Independent producers, agriculture producer groups, farmer- and rancher-cooperatives, and majority-controlled producer-based business ventures located in rural areas are eligible to apply.

3. Statutory or Regulatory Authority

i. *Renewable Energy:*

- 7 U.S.C. 8106; and

• 7 CFR Part 4280, Subpart B, Renewable Energy Systems and Energy Efficiency Improvements Program.

ii. *Value-Added:*

• 7 U.S.C. 1621 note;

• 7 CFR Part 4284, Subpart A, General Requirements for Cooperative Services Grant Programs; and

• 7 CFR Part 4284, Subpart J, Value-Added Producer Grants.

B. Community Programs

1. Description of Assistance

i. *Community Facilities*—Section 105 enables USDA Rural Development to make Community Facilities Grants in designated disaster areas without regard to graduated funding or matching fund requirements.

ii. *Water and Waste Disposal*—The Act provides an additional $45 million in grant funds to respond to damage caused by hurricanes by rebuilding, repairing, or otherwise improving water and waste disposal systems in designated disaster areas.

2. Eligibility Criteria

i. *Community Facilities*—Public entities such as municipalities, counties, and special-purpose districts, as well as non-profit corporations and tribal governments in designated disaster areas are eligible to apply.

ii. *Water and Waste Disposal*—Municipalities, counties, special purpose districts, Native American Tribes and non-profit corporations in designated disaster areas are eligible to apply. As stated in the preamble, these funds are available to systems serving populations of 10,000 or less. However, under the authority of the waiver of rural area definitions, the program officials will consider waivers of the population requirement on a project-by-project basis.

3. Applicable Statutory or Regulatory Authority

i. *Community Facilities:*

• Consolidated Farm and Rural Development Act, Section 306 (7 U.S.C. 1926(a)(1) and (19)); and

• 7 CFR, Part 3570, Subpart B, Community Facilities Grant Program.

ii. *Water and Waste Disposal:*

• 7 CFR Part 1780, Water and Waste Loans and Grants; and

• 7 CFR Part 1778, Emergency and Imminent Community Water Assistance Grants.

• 7 U.S.C. 1926a.

C. Housing

1. Description of Assistance

The Act provides the following monetary resources for USDA Rural Development's housing programs to respond to hurricane damage in designated disaster areas:

• $1,293,103,000 in deliverable Section 502 guaranteed homeownership funds;

• $175,593,000 in deliverable Section 502 direct homeownership funds;

• $34,188,000 in deliverable Section 504 direct repair/rehabilitation loans; and

• $20,000,000 in deliverable Section 504 direct repair/rehabilitation grants.

In addition, the Act provided the following assistance in designated disaster areas:

• Section 105 provided Rural Development the authority, for a six-month period, to provide Section 502 guaranteed homeownership funds to refinance any loan made to a single-family Resident who resided in an affected county at the time of the disaster and that was used to acquire or construct the single-family residence if the residence will be used as the borrower's principal residence and is located in an eligible rural area. Funds may also be used for essential repairs or rehabilitation. Based upon the limited time frame for enactment, Rural Development will be unable to implement these provisions during the permitted six-month time period authorized. Should the authority to implement the above cited provisions be extended, Rural Development will consider issuing a separate NOFA to address the provisions.

• Under the Rural Housing Assistance Grants account, the aforementioned funds for Section 504 direct repair/rehabilitation grants were appropriated without age restrictions. Funds for Section 504 grants are generally provided only to persons 62 years of age and older. USDA Rural Development intends to provide the $20 million in Section 504 grant funds provided under the Act to applicants regardless of age (provided the applicant has the legal authority to enter into such a transaction). There were no time restrictions on the use of these funds under the Act.

• The Act provides that housing vouchers may be made available to families and individuals whose residence became uninhabitable or inaccessible as a result of the hurricanes. USDA Rural Development is currently working with the United States Department of Housing and Urban Development (HUD) on a ''USDA Voucher Program'' that will serve these residents and tenants. If USDA Rural Development intends to implement this provision of the Act, a separate Implementation Notice will be published in the **Federal Register.**

2. Eligibility Criteria

i. *Section 502 programs*—Applicants that have an income below 80% of the area median income for a direct homeownership loan or below 115% of the area median income for a guaranteed homeownership loan for a home in designated disaster areas are eligible to apply. Applicants must have credit history that indicates reasonable ability and willingness to meet debt obligations.

ii. *Section 504 programs*—Existing homeowners in designated disaster areas that have an income that does not exceed 50% of the area median income are eligible to apply. Loans up to $20,000 are provided at a 1% interest rate. Grants are limited to $7,500 and only to those who cannot afford a 1% loan. Loan applicants must have a credit history that indicates reasonable ability and willingness to meet debt obligations.

iii. *Expanded Rural Area Definition:* USDA Rural Development's housing programs are governed by the Housing Act of 1949, as amended (42 U.S.C. 1471, *et seq.*). Section 541 of the Housing Act (42 U.S.C. 1490q), which only applies to USDA Rural Development's housing programs, provided the authority to waive population limits subsequent to a natural disaster. Further, the statute allowed the population limits to be waived for a period of three (3) years from the date of declaration. Based upon this statutory authority, USDA Rural Development immediately increased the population limits for its housing program to 50,000 in any county or parish declared for individual assistance as a result of Hurricanes Katrina and Rita. In addition, USDA Rural Development included the cities of Biloxi and Gulfport, Mississippi; Kenner, Louisiana; and the Quad cities, Hartselle and Decatur, Alabama, all of which had populations under 75,000 to be considered ''rural'' for housing assistance.

3. Statutory and Regulatory Authority

i. *Section 502 guaranteed homeownership funds:*

• 42 U.S.C. 1472(h); and

• 7 CFR Part 1980, Subpart D, Rural Housing Loans.

ii. *Section 502 direct homeownership funds:*

• 42 U.S.C. 1472; and

• 7 CFR Part 3550, Direct Single Family Housing Loans and Grants.

iii. *Section 504 direct repair/rehabilitation loans and grants:*

• 42 U.S.C. 1474; and
• 7 CFR Part 3550, Direct Single Family Housing Loans and Grants.

iv. *Vouchers:*
• 42 U.S.C. 1490(a) and 42 U.S.C. 1490(r); and
• 7 CFR Part 3560, Direct Multi-Family Housing Loans and Grants.

D. Non-Profit Institutions

1. Description of the Assistance

Section 105 enables USDA Rural Development to make Rural Cooperative Development Grants in designated disaster areas without a matching fund requirement. However, because the authority is restricted to a six-month period following the enactment of the law and because USDA Rural Development does not anticipate announcing grant awards until September 2006, the matching funds requirement is not being waived at this time. Should the authority to waive the matching funds requirement be extended, USDA Rural Development will contemplate reducing the matching funds requirement for successful applicants located in the designated disaster areas, as long as the proposed projects would still be viable with the reduced matching funds requirement.

2. Eligibility Criteria

Non-profit corporations and institutions of higher learning proposing cooperative development projects in rural areas are eligible to apply.

3. Statutory or Regulatory Authority

• 7 U.S.C. 1932(e);
• 7 CFR Part 4284, Subpart A, General Requirements for Cooperative Services Grant Programs; and
• 7 CFR Part 4284, Subpart F, Rural Cooperative Development Grants.

E. Electric and Telecommunications

1. Description of Assistance

i. *Electric*—The Act provides $8 million in funding to respond to damage caused by hurricanes by covering the cost of loan modifications such as deferring principal and interest payments on existing loans issued to rural electric cooperatives serving designated disaster areas.

ii. *Telecommunications*—The Act provides $50,000,000 in loan guarantees to be issued to the Federal Financing Bank to respond to damage of telecommunications service in designated disaster areas.

2. Eligibility Criteria

i. *Electric*—Existing borrowers located in designated disaster areas who are experiencing difficulty in meeting debt service obligations are eligible to apply.

ii. *Telecommunications*—Organizations providing or proposing to provide telephone service in designated disaster areas including cooperative, nonprofit, limited dividend, mutual, and commercial companies are eligible to apply.

3. Applicable Statutory or Regulatory Authority

i. *Electric:*
• Rural Electrification Act of 1936 (7 U.S.C. 1926 *et seq.*); and
• 7 CFR 1721, Subpart B, Extensions of Payments of Principal and Interest.

ii. *Telecommunications:*
• Rural Electrification Act of 1936 (7 U.S.C. 1926 *et seq.*);
• 7 CFR Part 1735, General Policies, Types of Loans, Loan Requirements—Telecommunications Program; and
• 7 CFR Part 1737, Pre-Loan Policies and Procedures Common to Insured and Guaranteed Telecommunications Loans.

III. Emergency Declaration

Consistent with Proclamation 7925 issued by President Bush, the USDA Rural Development Mission Area has determined that it would be impracticable, unnecessary, and contrary to public interest to delay the effective date of this Notice for any reason. The USDA Rural Development Agencies need to act promptly on hurricane related needs in the designated disaster areas. Delay is contrary to the public interest because the regulations of USDA Rural Development agencies prescribe policies and procedures for obtaining loans, grants, guarantees for rebuilding critical community facilities, buildings, housing and infrastructure such electricity, telecommunications and water and waste disposal systems.

IV. Non-Discrimination Statement

The U. S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). ''USDA is an equal opportunity provider, employer, and lender''.

Dated: March 7, 2006.

Thomas C. Dorr,

Under Secretary, Rural Development.

[FR Doc. E6–3546 Filed 3–10–06; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Notice of Intent To Prepare a Supplement to the Final Environmental Impact Statement for Gypsy Moth Management in the United States: A Cooperative Approach

AGENCIES: Forest Service and Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of Revision; request for comment.

SUMMARY: On April 29, 2004 (69 FR 23492), the Forest Service published in the **Federal Register** a Notice of Intent (NOI) to prepare a Supplement to the Final Environmental Impact Statement for Gypsy Moth Management in the United States: a Cooperative Approach. The Forest Service and the Animal and Plant Health Inspection Service are revising the expected dates for filing the Draft and Final Supplemental Environmental Impact Statement.

DATES: Comments concerning this revision should be received by May 26, 2006.

Individuals, groups, or other agencies who responded to previous scoping efforts for this Supplemental Environmental Impact Statement are not required to respond to this revised NOI. Those comments have already been incorporated into the analysis for the revised NOI. The draft Supplemental Environmental Impact Statement is expected to be filed in September of 2006; the final Supplemental Environmental Impact Statement is expected to be filed in August of 2007. Another formal opportunity to comment will be provided following completion of the Draft Supplemental Environmental Impact Statement.

ADDRESSES: Send written comments concerning this revision to Joseph L. Cook, Gypsy Moth Supplemental EIS Project Leader, Forest Service, Northeastern Area, State and Private Forestry, 180 Canfield Street, Morgantown, WV 26505. Fax number: (304) 285–1508.

FOR FURTHER INFORMATION CONTACT: Joseph L. Cook, Gypsy Moth Supplemental EIS Project Leader, at (304) 285–1523, or e-mail *jlcook@fs.fed.us*. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: Further information about the proposal can be found in the original NOI published in the **Federal Register**, Vol. 69, No. 83, pp. 23492–23493, on April 29, 2004.

Nature of Decision To Be Made

The responsible officials will decide whether or not to add the insecticide, tebufenozide (trade name Mimic), to their list of treatments for control of gypsy moth and whether or not to provide for the addition of other insecticides to their list of treatments for control of gypsy moth, if the other insecticides are within the range of effects and acceptable risks for the existing list of treatments.

Responsible Officials

The responsible official for the Forest Service is the Deputy Chief for State and Private Forestry. The responsible official for the Animal and Plant Health Inspection Service is the Deputy Administrator for Plant Protection and Quarantine.

Use of Comments

All comments received in response to this revised NOI, including the names and addresses when provided, will become a matter of public record and will be available for public inspection and copying. Comments will be summarized and included in the final Supplemental Environmental Impact Statement.

Dated: March 3, 2006.

Robin L. Thompson,

Associate Deputy Chief, S&PF.

[FR Doc. E6–3506 Filed 3–10–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, March 20, 2006. The meeting will include routine business, presentation on a completed project, and discussion and recommendation of previously submitted project proposals.

DATES: The meeting will be held March 20, 2006, from 4 p.m. until 6 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Bob Talley, RAC Coordinator, Klamath National Forest, (530) 841–4423 or electronically at *rtalley@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: March 6, 2006.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 06–2361 Filed 3–10–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[06–TX–A]

Opportunity for Designation to Provide Official Services in Texas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) has identified a need for domestic official inspection service in Clay, Montague, Cooke, Grayson, Fannin, Lamar, Red River, Young, Stephen, and Eastland Counties. GIPSA is asking persons interested in providing official services in these unassigned counties in Texas to submit an application for designation.

DATES: Applications must be received on or before April 12, 2006.

ADDRESSES: We invite you to submit applications and comments on this notice. You may submit applications and comments by any of the following methods:

- Hand Delivery or Courier: Deliver to Janet M. Hart, Deputy Director, Compliance Division, GIPSA, USDA, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250.
- Fax: Send by facsimile transmission to (202) 690–2755, attention: Janet M. Hart.
- E-mail: Send via electronic mail to *Janet.M.Hart@usda.gov*.
- Mail: Send hardcopy to Janet M. Hart, Deputy Director, Compliance Division, GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

Read Applications and Comments: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8262, e-mail *Janet.M.Hart@usda.gov*.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

GIPSA has determined that there is a need for domestic official inspection service in Clay, Montague, Cooke, Grayson, Fannin, Lamar, Red River, Young, Stephen, and Eastland counties. These counties are open for designation.

Section 7(f)(1) of the United States Grain Standards Act, as amended (USGSA), authorizes GIPSA's Administrator, after determining that there is sufficient need for official services, to designate a qualified applicant to provide official services in a specified area after determining that the applicant is qualified and is better able than any other applicant to provide such official services. GIPSA is asking persons interested in providing official services in Texas to submit an application for designation. The applicant selected for designation in Texas will be assigned by GIPSA's Administrator according to Section 7(f)(1) of the Act.

Interested persons are hereby given an opportunity to apply for designation to provide official services in the Texas area under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Applications and other available information will be considered in determining which applicant will be designated.

Designation in the Texas area will be for a period not to exceed 3 years as prescribed in section 7(g)(1) of the Act. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E6–3501 Filed 3–10–06; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket 8–2006)

Foreign-Trade Zone 202—Los Angeles, CA, Application for Subzone, Sharp Electronics Corporation, (Office and Consumer Electronics/Home Products/ Solar Panels Distribution), Huntington Beach, California

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Board of Harbor Commissioners of the City of Los Angeles, grantee of FTZ 202, requesting special–purpose subzone status for the office and consumer electronics/ home products/solar panels warehousing and distribution facility of Sharp Electronics Corporation (Sharp), in Huntington Beach, California. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 27, 2006.

The Sharp facility (939,800 sq. ft. of enclosed space on 23.4 acres) is located at 5901 Bolsa Avenue, Huntington Beach, California. The facility (97 employees) may be used under FTZ procedures for the testing, packaging, warehousing and distribution of consumer electronics/home products/ solar panels. Sharp's application indicates that 5 percent of the merchandise handled at the facility is domestically–sourced and includes products manufactured at and transferred from Subzone No. 77A, Sharp Manufacturing Company of America's manufacturing facility in Memphis, Tennessee.

Zone procedures would exempt Sharp from Customs duty payments on foreign products that are re–exported. On domestic sales, the company would be able to defer payments until merchandise is shipped from the plant. The company would be able to avoid duty on foreign merchandise which becomes scrap/waste. Sharp also anticipates realizing significant logistical/procedural benefits. The application indicates that all of the above–cited savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions Via Express/Package Delivery Services*: Foreign–Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building - Suite 4100W, 1099 14th St. NW, Washington, D.C. 20005; or
2. *Submissions Via the U.S. Postal Service*: Foreign–Trade-Zones Board, U.S. Department of Commerce, FCB - Suite 4100W, 1401 Constitution Ave. NW, Washington, D.C. 20230.

The closing period for their receipt is May 12, 2006. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15–day period (to May 30, 2006).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 3300 Irvine Avenue, Suite 305, Newport Beach, CA 92660.

Dated: March 3, 2006.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E6–3535 Filed 3–10–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Order No. 1439

Approval of Manufacturing Authority—Subzone 61I, Shell Chemicals Yabucoa, Inc., (Oil Refinery), Yabucoa, Puerto Rico

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Puerto Rico Trade and Exports Company, grantee of FTZ 61, has requested manufacturing authority on behalf of Shell Chemicals Yabucoa, Inc. (Shell), within Subzone 61I at the Shell refinery in Yabucoa, Puerto Rico (FTZ Docket 8–2005, filed 2/11/2005);

Whereas, notice inviting public comment has been given in the **Federal Register** (70 FR 9615, 2/28/2005);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby orders:

The application for manufacturing authority under zone procedures within Subzone 61I, is approved, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR § 146.41, 146.42) products consumed as fuel for the petrochemical complex shall be subject to the applicable duty rate.
2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non–privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.10, #2709.00.20, #2710.11.25, #2710.11.45, #2710.19.05, #2710.19.10, #2710.19.45, #2710.91.00, #2710.99.05, #2710.99.10, #2710.99.16, #2710.99.21 and #2710.99.45 which are used in the production of:

-petrochemical feedstocks (examiners report, Appendix ''C'');
-products for export;
-and, products eligible for entry under HTSUS # 9808.00.30 and # 9808.00.40 (U.S. Government purchases).

Signed at Washington, DC, this 28th day of February 2006.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E6–3536 Filed 3–10–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Oriental Trading Corporation

In the Matters of: Oriental Trading Corporation, 1st Floor, Masco Plaza, Blue

Area, P.O. Box 2879, Islamabad, Pakistan, Respondent; *Order Renewing Temporary Denial Order as to Oriental Trading Corporation.*

Pursuant to Section 766.24 of the Export Administration Regulations (''EAR''), the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested that I renew for 180 days an Order temporarily denying export privileges of Oriental Trading Corporation, 1st Floor, Masco Plaza, Blue Area, P.O. Box 2879, Islamabad, Pakistan.

On March 8, 2005, the Acting Assistant Secretary of Commerce for Export Enforcement found that the Respondent [1] had conspired to undertake acts that violated the EAR, that such violations had been deliberate and covert, and that there was a strong likelihood of future violations, particularly given the nature of the transactions and the elaborate steps that had been taken by the Respondent to avoid detection by the U.S. Government while knowing that its actions were in violation of the EAR. 70 FR 12442 (Mar. 14, 2005). This finding was based on evidence presented by BIS that indicated that the Respondent had conspired with others, known and unknown, to cause items subject to the EAR to be illegally exported to Pakistan, that it caused exports of items controlled for nuclear non-proliferation reasons to Pakistan with knowledge that violations of the EAR would occur, and that it took actions intending to violate the EAR.

BIS continues to investigate this matter and believes that all of the facts found in the original Order continue to justify the renewal of the Order, especially given the nature of the transactions and the steps that have been taken by the Respondent to avoid detection by the U.S. Government while knowing its actions were in violation of the EAR. BIS believes evidence described in the initial request for the Order supports this renewal.

Based on the evidence submitted by BIS, I find that renewal of the Order naming the Respondent is necessary, in the public interest, to prevent an imminent violation of the EAR. A copy of the request for renewal of this Order was served upon the Respondent in accordance with the requirements of 15 CFR 766.24 of the EAR, and no response was received in opposition to this request within the applicable time period described in that section.

It is therefore ordered:

First, that the Respondent, at the address listed above, and its successors and assigns and when acting on behalf of the Respondent, its officers, employees, agents or representatives, (collectively, the ''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Persons any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financial or other support activities related to a transaction whereby the Denied Persons acquire or attempt to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Persons of any item subject to the EAR that has been exported from the United States;

D. Obtain from the Denied Persons in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Persons, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Persons if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to the Respondent by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Section 766.24(e) of the EAR, the Respondent may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. The Respondent may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received no later than seven days before the expiration date of the Order.

A copy of this Order shall be served on the Respondent, and shall be published in the **Federal Register**.

This Order is effective on March 10, 2006 and shall remain in effect for 180 days.

[1] The original order applied to Gold Technology Limited, Flat 23C, 97 High Street, Hong Kong; Hero Peak Limited, Flat C, Block 4, 11/F Golden Bldg, 145 Fuk Wa Street, Sham Shui Po, Kowloon, Hong Kong and Room D, 11/F, Fui Nam Building, 48–51 Connaught Road West, Hong Kong; Joanna Liu, Flat 23C, 97 High Street, Hong Kong; Portson Trading Limited, Room D, 8/F, 217–223 Tung Choi Street, Mongkok, Kowloon, Hong Kong and Room 709 Wing Shan Tower, 173 Des Voeux Road Central, Hong Kong, and Room 2208, 22/F, 118 Connaught Road West, Hong Kong; Sunford Trading Limited, Room 2208 22/F, 118 Connaught Road West, Hong Kong; and Zhenke International Trading Co. Ltd. Tianjin Port Free Trade Zone, Room 801, Gold Beauty Building No. 88, Haibain 8 Road, TPFTZ, Tianjin, Peoples Republic of China. The Office of Export Enforcement is not seeking to renew this temporary denial order against any party other than Oriental Trading Corporation.

Entered this 3rd day of March, 2006.

Darryl W. Jackson,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 06–2359 Filed 3–10–06; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 051114299–5299–01]

Announcing Draft Federal Information Processing Standard (FIPS) 186–3, Digital Signature Standard (DSS), and Request for Comments

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for Comments.

SUMMARY: This notice announces Draft Federal Information Processing Standard 186–3, Digital Signature Standard, for public review and comment. The draft standard, designated ''Draft FIPS 186–3,'' is proposed to revise and supersede FIPS 186–2.

FIPS 186, first published in 1994, specifies a digital signature algorithm (DSA) to generate and verify digital signatures. Later revisions (FIPS 186–1 and FIPS 186–2, adopted in 1998 and 1999, respectively) adopt two additional algorithms specified in American National Standards (ANS) X9.31 (Digital Signatures Using Reversible Public Key Cryptography for the Financial Services Industry (rDSA)), and X9.62 (The Elliptic Curve Digital Signature Algorithm (ECDSA)).

The original DSA algorithm, as specified in FIPS 186, 186–1 and 186–2, allows key sizes of 512 to 1024 bits. With advances in technology, it is prudent to consider larger key sizes. Draft FIPS 186–3 allows the use of 1024, 2048 and 3072-bit keys. Other requirements have also been added concerning the use of ANS X9.31 and ANS X9.62. In addition, the use of the RSA algorithm as specified in Public Key Cryptography Standard (PKCS) #1 (RSA Cryptography Standard) is allowed.

Prior to the submission of this proposed standard to the Secretary of Commerce for review and approval, it is essential that consideration is given to the needs and views of the public, users, the information technology industry, and Federal, State and local government organizations. The purpose of this notice is to solicit such views.

DATES: Comments must be received on or before June 12, 2006.

ADDRESSES: Written comments may be sent to: Chief, Computer Security Division, Information Technology Laboratory, Attention: Comments on Draft FIPS 186–3, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930.

Electronic comments may also be sent to: *elaine.barker@nist.gov.*

The current FIPS 186–2 and its proposed replacement, Draft FIPS 186–3, are available electronically at *http://csrc.nist.gov/publications/fips/index.html* and *http://csrc.nist.gov/publications/drafts.html,* respectively. Comments received in response to this notice will be published electronically at *http://csrc.nist.gov/CryptoToolkit/tkdigsigs.html.*

FOR FURTHER INFORMATION CONTACT: Elaine Barker, Computer Security Division, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930, telephone (301) 975–2911.

SUPPLEMENTARY INFORMATION: FIPS 186, Digital Signature Standard (DSS), first issued in 1994, specified a single technique for the generation and verification of digital signatures. FIPS 186–1 adopted a second technique that was approved as ANS X9.31, Digital Signatures Using Reversible Public Key Cryptography for the Financial Services Industry (rDSA), by the American National Standards Institute (ANSI). FIPS 186–2 adopted a third technique that computed digital signatures using elliptic curve technology as specified in another ANSI standard, ANS X9.62, Elliptic Curve Digital Signature Algorithm (ECDSA).

Digital signature algorithms require keys to generate secure signatures. With advances in technology, the size of these keys must be increased to provide adequate security. rDSA and ECDSA have been specified with sufficient flexibility to use various key sizes. DSA was specified for key sizes between 512 and 1024 bits. Key sizes below 1024 bits are currently not considered adequate. Therefore, the requirements for key sizes for DSA, as specified in FIPS 186–3, have been revised to include key sizes of 2048 and 3072 bits, in addition to the previously allowed 1024-bit key size. These key sizes provide security that is equivalent to the 80, 112 and 128-bit key sizes of symmetric key encryption algorithms such as TDEA (Triple Data Encryption Algorithm), as specified in NIST Special Publication 800–67, and AES (Advanced Encryption Standard), as specified in FIPS 197.

ANS X9.31, published in 1998, specifies the generation of keys and digital signatures for only an 80-bit security level. Draft FIPS 186–3 specifies criteria for the generation of keys and digital signatures for additional security levels.

Many cryptographic applications use the RSA algorithm that was specified in PKCS #1 and that was developed by RSA Security. PKCS #1 is considered to provide adequate security for Federal Government applications. Therefore, in the interests of providing interoperability, Draft FIPS 186–3 allows implementations of PKCS #1 in addition to that of ANS X9.31 and specifies criteria for the generation of keys for PKCS #1 digital signature applications; no provision is currently provided in PKCS #1 for the generation of digital signature keys.

ANS X9.62 was published in 1998 and is currently under revision. Other requirements have been added in Draft FIPS 186–3 to address deficiencies present in the current ANS X9.62; these additional requirements are consistent with the proposed ANS X9.62 revision.

FIPS 186–2 included several methods for random number generation for the 80-bit security level. Draft FIPS 186–3 includes a new random number generator that can be used to provide random numbers at multiple security levels. This random number generator is based on the Approved hash functions specified in FIPS 180–2, Secure Hash Standard.

Draft FIPS186–3 includes methods for the generation of domain parameters and digital signature keys. These methods are referenced by NIST Special Publication 800–56, Recommendation for Pair-Wise Key Establishment Schemes Using Discrete Logarithm Cryptography, for the generation of domain parameters and keys for key establishment.

Draft FIPS 186–3 requires that parties have various assurances when generating and verifying digital signatures. Methods for obtaining these assurances will be specified in a future publication to be issued in the NIST Special Publication (SP) series, SP 800–89, Recommendation for Obtaining Assurances for Digital Signature Applications.

Authority: NIST's activities to develop computer security standards to protect Federal sensitive (unclassified) systems are undertaken pursuant to specific responsibilities assigned to NIST in Section 5131 of the Information Technology Management Reform Act of 1996 (Pub .L. 104–106) and the Federal Information Security Management Act of 2002 (Pub. L. 107–347).

E.O. 12866: This notice has been determined not to be significant for the purposes of E.O. 12866.

Dated: March 4, 2006.

William Jeffrey,

Director.

[FR Doc. E6–3521 Filed 3–10–06; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Tuesday, March 21, 2006, from 8:30 a.m. until 5 p.m., Wednesday, March 22, 2006, from 8:30 a.m. until 5 p.m. and Thursday, March 23, 2006 from 8:30 a.m. until 12 p.m.. All sessions will be open to the public. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) and amended by the Federal Information Security Management Act of 2002 (Pub. L. 107–347) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. Details regarding the Board's activities are available at *http://csrc.nist.gov/ispab/.*

DATES: The meeting will be held on March 21, 2006 and March 22, 2006, from 8:30 a.m. until 5 p.m. and March 23, 2006, from 8:30 a.m. until 12 p.m.

ADDRESSES: The meeting will take place at the Doubletree Hotel and Executive Meeting Center, 1750 Rockville Pike, Rockville, Maryland.

Agenda

—Welcome and Overview.
—Privacy Act Framework Effort.
—Briefing on Suite B Cryptography.
—IDA Report on NIAP.
—Briefing on Department of Homeland Security National Common Body of Knowledge Initiative.
—Briefing on Software Assurance.
—Briefing on Department of Transportation ''Real ID'' Project.
—Status Reports on ISPAB Work Plan Items.
—Agenda Development for June 2006 ISPAB Meeting.
—Wrap-Up.

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters.

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. It would be appreciated if 25 copies of written material were submitted for distribution to the Board and attendees no later than March 17, 2006. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Ms. Pauline Bowen, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–2938.

Dated: February 28, 2006.

William Jeffrey,

Director.

[FR Doc. E6–3520 Filed 3–10–06; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of the American Petroleum Institute's Standards Activities

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of intent to develop or revise standards and request for public comment and participation in standards development.

SUMMARY: The American Petroleum Institute (API), with the assistance of other interested parties, continues to develop standards, both national and international, in several areas. This notice lists the standardization efforts currently being conducted by API committees. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of API is being undertaken as a public service. NIST does not necessarily endorse, approve, or recommend the standards referenced.

ADDRESSES: American Petroleum Institute, 1220 L Street, NW., Washington, DC 20005; telephone (202) 682–8000, *http://www.api.org.*

FOR FURTHER INFORMATION CONTACT: All contact individuals listed in the **SUPPLEMENTARY INFORMATION** section of this notice may be reached at the American Petroleum Institute.

SUPPLEMENTARY INFORMATION:

Background

The American Petroleum Institute develops and publishes voluntary standards for equipment, materials, operations, and processes for the petroleum and natural gas industry. These standards are used by both private industry and by governmental agencies. All interested persons should contact the appropriate source as listed for further information.

Pipeline Committee

1165, 1st Edition: SCADA Display Standard.

1110, 5th Edition: Pressure Testing of Liquid Petroleum Pipelines.

1113, 4th Edition: Developing a Pipeline Supervisory Control Center.

FOR FURTHER INFORMATION CONTACT: Andrea Johnson, Standards Department, e-mail: *johnsona@api.org.*

Committee on Marketing

1631, 6th Edition: Interior Lining and Periodic Inspection of Underground Storage Tanks.

1637, 3rd Edition: Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations and Distribution Terminals.

1646, 1st Edition: Safety Practices for Service Station Contractors.

16xx, 1st Edition: Recommended Practice for Tank Truck Handling of ULSD.

FOR FURTHER INFORMATION CONTACT: David Soffrin, Standards Department, e-mail: *soffrind@api.org.*

Committee on Refining

Inspection

510, 9th Edition: Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration.

Pressure Vessel and Tanks

650, 11th Edition: Welded Steel Tanks for Oil Storage.

653, 4th Edition: Tank Inspection, Repair, Alteration, and Reconstruction.

Electrical Equipment

500, 3rd Edition: Recommended Practice for Classification of Locations

for Electrical Installations at Petroleum Facilities as Classified as Class I, Division 1 and Division 2.

505, 2nd Edition: Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Zone 0, Zone 1 and Zone 2.

Mechanical Equipment

618, 5th Edition: Reciprocating Compressors for Petroleum, Chemical and Gas Industry Services.

674, 3rd Edition: Positive Displacement Pumps—Reciprocating.

677, 3rd Edition: General-purpose Gear Units for Petroleum, Chemical and Gas Industry Services.

Heat Transfer Equipment

535, 2nd Edition: Burners for Fired Heaters in General Refinery Services.

537, 2nd Edition: Flare details for General Refinery and Petrochemical Service.

Piping & Valves

622, 1st Edition: Type Testing of Process Valve Packing for Fugitive Emissions.

Pressure Relieving Systems

521, 5th Edition: Guide for Pressure-relieving and Depressuring Systems.

Instrument & Control Systems

554, 2nd Edition: Process Instrumentation and Control.

557, 2nd Edition: Guide to Advanced Control Systems.

FOR FURTHER INFORMATON CONTACT: David Soffrin, Standards Department, e-mail: *soffrind@api.org*.

Meetings/Conferences: The Spring Refining Meeting will be held in Dallas, Texas, May 1–3, 2006. The Fall Refining Meeting will be held in San Francisco, California, October 30–November 1, 2006. Interested parties may visit the API Web site at *http://www.api.org/events* for more information regarding participation in these meetings.

Committee on Safety and Fire Protection

2203, 7th Edition: Protection Against Ignitions Arising Out of Static, Lightning, and Stray Currents 2026, 3rd Edition: Safe Access/Egress Involving Floating Roofs of Storage Tanks in Petroleum Service.

2207, 6th Edition: Preparing Tank Bottoms for Hot Work.

2510A, 3rd Edition: Fire Protection Considerations for the Design and Operation of Liquefied Petroleum Gas (LPG) Storage Facilities.

2021, 5th Edition: Management of Atmospheric Storage Tank Fires.

Potential Safety and Fire Protection Reaffirmations

2023, 3rd Edition: Guide for Safe Storage and Handling of Heated Petroleum-Derived Asphalt Products and Crude-Oil Residua.

2210, 4th Edition: Flame Arresters for Vents of Tanks Storing Petroleum Products.

2218, 3rd Edition: Fireproofing Practices in Petroleum and Petrochemical Processing Plants.

2015, 7th Edition: Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks.

FOR FURTHER INFORMATION CONTACT: For further information contact: David Soffrin, Standards Department, e-mail: *soffrind@api.org.*

Committee on Petroleum Measurement

Manual of Petroleum Measurement Standards

Liquid Measurement

Chapter 2.2E (ISO 12917–1:2000), 2nd Edition: Calibration of Horizontal Cylindrical Tanks—Part 1: Manual Methods

Chapter 2.2F (ISO 12917–2:2000), 2nd Edition: Calibration of Horizontal Cylindrical Tanks—Part 2: Internal Electro-Optical Distance-Ranging Method

Chapter 4.5, 3rd Edition: Master-meter Provers

Chapter 4.7, 3rd Edition: Field-Standard Test Measures

Chapter 4.8, 2nd Edition: Operation of Proving Systems

Chapter 4.9.4, 1st Edition: Determination of the Volume of Displacement and Tank Provers by the Gravimetric Method of Calibration

Chapter 5.1, 4th Edition: General Consideration for Measurement by Meters

Chapter 6.1, 3rd Edition: Lease Automatic Custody Transfer (LACT) Systems

Chapter 6.4, 2nd Edition: Metering Systems for Aviation Fueling Facilities

Measurement Quality

Chapter 10.7/D4377, 3rd Edition: Standard Test method for Water in Crude Oils by Potentiometric Karl Fischer Titration

Chapter 11.2.4/GPA TP–27, 1st Edition: Temperature Correction for NGL & LPG—Tables 23E, 24E, 53E, 54E, 59E, 60E

Chapter 11.2.5/GPA TP–15, 1st Edition: A Simplified Vapor Pressure Correlation for Commercial NGLs

Gas Fluids Measurement

Chapter 5.9, 1st Edition: Vortex Shedding Flowmeters for Custody Transfer—Joint with Liquid Measurement

Chapter 14.1, 6th Edition: Collecting and Handling of Natural Gas Samples for Custody Transfer

Chapter 14.10, 1st Edition: Flare Gas Meter

Measurement Accountability

Chapter 17.10, 1st Edition: Measurement of Refrigerated and Pressurized Cargo on Marine Tank Vessels

Spanish Translations of Measurement Accountability Standards

Chapter 17.2 Measurement of Cargoes on Board Tank Vessels

Evaporative Loss Estimation

Publication 2514A, 3rd Edition: Atmospheric Hydrocarbon Emissions from Marine Vessel Transfer Operations

Potential Reaffirmations of Committee on Petroleum Measurement Standards

Gas Fluids Measurement

Chapter 14.3.2/AGA Report No. 3/GPA 8185–00 Part 2, 4th Edition: Specification and Installation Requirement—Concentric—Square-edged Orifice Meters

Chapter 14.3.4/GPA 8173–91, 3rd Edition: Background, Development, Implementation Procedures and Subroutine Documentation—need errata in relation to the updated 14.3.1

Chapter 14.2/AGA Report NO. 8/GPA 8185–90, 2nd Edition: Compressibility Factors of Natural Gas and Other Related Hydrocarbon Gases

Chapter 14.4/GPA 8173–91, 1st Edition: Converting Mass of Natural Gas Liquids and Vapors to Equivalent Liquid Volumes

Chapter 14.6, 2nd Edition: Continuous Density Measurement

Chapter 14.7/GPA 8182–95, 2nd Edition: Mass Measurement of Natural Gas Liquids

Chapter 14.8, 2nd Edition: Liquefied Petroleum Gas Measurement—with errata

Liquid Measurement

Standard 2552, 1st Edition: Measurement and Calibration of Spheres and Spheroids

Chapter 3.2, 1st Edition: Tank Gauging—Gauging Petroleum and Petroleum Products in Tank Cars

Chapter 3.4, 1st Edition: Standard Practice for Level Measurement of

Liquid Hydrocarbons on Marine Vessels by Automatic Tank Gauging
Chapter 12.3, 1st Edition: Calculation of Volumetric Shrinkage from Blending Light Hydrocarbons with Crude Oil
Chapter 13.1, 1st Edition: Statistical Concepts and Procedures in Measurement
Chapter 13.2, 1st Edition: Statistical Methods of Evaluating Meter Proving Data
Chapter 21.2A—Addendum 1 to Flow Measurement—Electronic Liquid Measurement—will be incorporated into 21.1 when that standard is revised

Measurement Quality

Chapter 8.1, 3rd Edition: Manual Sampling of Petroleum and Petroleum Products

Evaporative Loss Estimation

Chapter 19.1A: Evaporation loss from Low-pressure Tanks (Previously Bulletin 2516)

FOR FURTHER INFORMATION CONTACT: Andrea Johnson, Standards Department, e-mail: *johnsona@api.org.*

Meetings/Conferences: The Spring Committee on Petroleum Measurement meeting will be held in Dallas, Texas, March 20–24, 2006. The Fall Committee on Petroleum Measurement meeting will be held in Denver, Colorado, October 9–12, 2006. Interested parties may visit the API Web site at *http://www.api.org/events* for more information regarding participation in these meetings.

Committee on Exploration and Production

Production Equipment

RP 6DR, 1st Edition: Repair and Remanufacture of Pipeline Valves.

Spec 6DSS, 1st Edition (National Adoption of ISO 14723): Subsea Pipeline Valves. SC6 Technical Report Metallic material limits for wellhead equipment used in high temperature applications for API 6A and 17D applications.

Spec 14H, 5th Edition: Installation Maintenance and Repair of Surface Safety Valves and Underwater Safety Valves Offshore, 5th Ed.

Oil Country Tubular Goods

RP 5C8 1st Edition: Inspection, Care, and Maintenance of Coiled Tubular Product.

5LCP 2nd Edition: Specification on Coiled Line Pipe.

7–1 1st Edition (National Adoption of 10424–1): Rotary drilling equipment—Part 1: Rotary drill stem elements (spec 7)
7NRV 1st Edition Spec on Non-return Valves
RP 15S, 1st Edition: Qualification of Spoolable Reinforced Plastic Line Pipe

Offshore Structures, Drill Through Equipment, and Subsea Production Equipment

2FB, 1st Edition: Design of Offshore Facilities against Fire and Blast Loading
2H, 9th Edition: Spec 2H, Carbon Manganese Steel Plate for Offshore Platform Tubular Joints
2SK, Addendum/Bulletin on MODU Mooring Design
2T, 3rd Edition: Planning, Designing and Constructing Tension Leg Platforms

2W, 5th Edition: Steel Plates for Offshore Structures, Produced by Thermo-Mechanical Control Processing (TMCP).

2Y, 5th Edition: Steel Plates, Quenched-and-Tempered, for Offshore Structures.

RP 17A (National Adoption of ISO 13628–1), 4th Edition: Design and Operation of Subsea Production Systems.

Spec 17F (National Adoption of ISO 13628–6), 2nd Edition: Subsea Production Control Systems (ISO FDIS expected by Jan 2006).

RP 17G (National Adoption of ISO 13628–7), 2nd Edition: Design & Operation of Completion/Workover Riser Systems (API ballot closes Jan '06).

Drilling Operations and Equipment

4F, 3rd Edition (National Adoption of 13626): Drilling and production equipment—Drilling and well-servicing structures.

Spec 11AX: Subsurface Sucker Rod Pumps and Fittings.

May be a new edition or just an addendum.

13D, 5th Edition: Recommended Practice on Drilling Fluids Processing Systems Evaluation.

13N 1st Edition (National Adoption of 13504–4): Procedures for measuring gravelpack leakoff under static conditions.

16C, 2nd Edition: Choke and Kill Systems.

19B, 2nd Edition: Evaluation of Well Perforators.

Potential Reaffirmations of Committee on Exploration & Production Standards

Spec 2MT1, As-Rolled Carbon Manganese Steel Plate With Improved Toughness for Offshore Structures, Second Edition, September 2001.

RP 2N, Planning, Designing, and Constructing Structures and Pipelines for Arctic Conditions, Second Edition, December 1995, Reaffirmed: January 2001.

Bull 2S, Design of Windlass Wildcats for Floating Offshore Structures, Second Edition, November 1995, Reaffirmed: January 2001.

RP 2SM, Recommended Practice for Design, Manufacture, Installation, and maintenance of Synthetic Fiber Ropes for Offshore Mooring, First Edition, March 2001.

Spec 5D, Specification for Drill Pipe, 5th edition, October 2001.

TR 6AF1, Temperature Derating of API Flanges Under Combination of Load, 2nd edition, Nov. 1998.

TR 6AF2, Capabilities of API Integral Flanges Under Combination of Load, 2nd edition, Apr. 1999.

Spec 6H, End Closures, Connectors, and Swivels, 2nd edition, May 1998.

TR (Bull) 6J, Testing of Oilfield Elastomers (A Tutorial), 2nd edition, Reaffirmed Jan. 2000.

TR 6J1, Elastomer Life Estimation Testing Procedures, 1st edition, Aug. 2000.

TR 6F1, Performance of API and ANSI End Connectors in a Fire Test According to API. Specification 6FA, 3rd edition, Apr. 1999.

TR 6F2, Fire Resistance Improvements for API Flanges, 3rd edition, Apr. 1999.

Spec 6FA, Fire Test for Valves, 3rd edition, Apr. 1999.

Spec 6FB, Fire Test for End Connectors, 3rd edition, May 1998.

Spec 6FC, Fire Test for Valves with Automatic Backseats, 3rd edition, Apr. 1999.

RP 13K, Chemical Analysis of Barite, 2nd Edition, February 1996, Reaffirmed November 2001.

FOR FURTHER INFORMATION CONTACT: Andy Radford, Standards Department, e-mail: *radforda@api.org.*

Meetings/Conferences: The 2006 Summer Standardization Conference on Oilfield Equipment & Materials will take place in Atlanta, Georgia, June 12–16, 2006. Interested parties may visit the API Web site at *http://www.api.org/events* for more information regarding participation in this meeting.

Executive Committee on Drilling and Production Operations

RP 65—Part 2, 1st Edition: Isolating Potential Flow Zones in Well Drilling and Cementing Operations.

RP 67, 2nd Edition: Oilfield Explosive Safety.

RP 90, 1st Edition: Annular Casing Pressure Management for Offshore Wells.

FOR FURTHER INFORMATION CONTACT: Tim Sampson, Upstream Department, e-mail: *sampson@api.org.*

For additional information on the overall API standards program, contact: David Miller, Standards Department, e-mail: *miller@api.org.*

Dated: March 3, 2006.

William Jeffrey,

Director.

[FR Doc. E6–3519 Filed 3–10–06; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.030706B]

Joint State Fish and Game Department Directors and Saltwater Sportfishing Community Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of open public meeting.

SUMMARY: Notice is hereby given of a meeting of NMFS with the state fish and game department directors and saltwater sportfishing community. This 3-day meeting is held to solicit stakeholder and constituent input on NOAA's recreational fishing data collection program. Agenda topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice. All sessions will be open to the public.

DATES: The meeting will be held March 28, 2006, from 12 noon to 5 p.m., March 29, 2006, from 8:30 a.m. to 5 p.m., and March 30, 2006, from 9:30 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Double Tree Hotel, 300 Army-Navy Drive, Arlington, Virginia 22202; Phone: (703) 416–4100.

Requests for special accommodations may be directed to Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Steve Meyers, State/Federal Liaison; telephone: (301) 713–2334.

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given of meetings between NOAA and members of the public.

Matters to be Considered

March 28, 2006

The meeting will begin with remarks from Dr. William T. Hogarth, Assistant Administrator for Fisheries. The group will be briefed on the Magnuson-Stevens Fishery Conservation and Management Act reauthorization, offshore aquaculture, and the NOAA budget.

March 29, 2006

In the morning, the group will be given a briefing on the National Research Council's independent review of NOAA's recreational fishing data collection program. In the afternoon, the group will be updated on a proposal to create a saltwater angler registry.

March 30, 2006

The group will reconvene to receive an update on progress made on the implementation of NOAA's recreational fisheries strategic plan.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Steve Meyers, State/Federal Liaison; telephone: (301) 713–2334.

Dated: March 7, 2006.

Alan Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E6–3527 Filed 3–10–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Rules for Patent Maintenance Fees.

Form Number(s): PTO/SB/45/47/65/66.

Agency Approval Number: 0651–0016.

Type of Request: Revision of a currently approved collection.

Burden: 30,362 hours annually.

Number of Respondents: 374,706 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 20 seconds (0.006 hours) to eight hours to complete this information, depending on the form or petition. This includes time to gather the necessary information, prepare the form or petition, and submit the completed request.

Needs and Uses: Under 35 U.S.C. 41 and 37 CFR 1.20(e)–(i) and 1.362–1.378, the USPTO charges maintenance fees for keeping utility patents in force. Maintenance fee payments are due at 3½, 7½, and 11½ years after the date the patent was granted. If the payment of the appropriate maintenance fee is not received within a grace period of six months following each of the above intervals, the patent will expire and no longer be enforceable. The public uses this collection to submit patent maintenance fee payments, to file petitions regarding delayed or refused payments, and to designate an address to be used for fee-related correspondence. The USPTO uses this information to process and record maintenance fee payments, to consider related petitions, and to send fee correspondence to the correct address. This information collection includes forms for submitting a maintenance fee payment, filing a petition to accept an unavoidably or unintentionally delayed maintenance fee payment, and designating a separate address for fee correspondence with the USPTO. The USPTO does not provide an official form for petitions to review refusals to accept payments of maintenance fees prior to patent expiration or for petitions to review refusals to accept delayed payments of maintenance fees in expired patents.

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, farms, the Federal Government, and state, local or tribal governments.

Frequency: On occasion and three times at four-year intervals following the grant of the patent.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following methods:

- E-mail: *Susan.Brown@uspto.gov.* Include ''0651–0016 copy request'' in the subject line of the message.
- Fax: 571–273–0112, marked to the attention of Susan Brown.
- Mail: Susan K. Brown, Records Officer, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before April 12, 2006, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: March 3, 2006.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division.

[FR Doc. E6–3503 Filed 3–10–06; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–OS–0043]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by April 12, 2006.

Title and OMB Number: TRIWEST/TRICARE Provider Satisfaction Survey; OMB Number Control 0720–TBD.

Type of Request: New.

Number of Respondents: 850.

Responses Per Respondent: 1.

Annual Responses: 850.

Average Burden Per Response: 6 minutes.

Annual Burden Hours: 85.

Needs and Uses: This survey data will be used to improve services and relationship between providers and TriWest to ensure that TriWest is delivering upon the commitment to provide beneficiary satisfaction at the highest possible level.

Affected Public: Business or other for-profit.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer, for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/EDS/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: March 6, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–2368 Filed 3–10–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of 16 Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, as amended (5 U.S.C. Appendix), the Department of Defense gives notice that the following Federal Advisory Committees, which are determined to be in the public interest, are hereby renewed on the dates indicated:

February 28, 2006—
- Board of Visitors National Defense University
- Defense Science Board

March 2, 2006—
- Armed Forces Epidemiological Board
- Department of Defense Wage Committee
- Naval Research Advisory Committee
- U.S. Strategic Command Strategic Advisory Group

March 3, 2006—
- Army Educational Advisory Committee
- Board of Advisors to the President, Naval Postgraduate School
- Board of Advisors to the President, Naval War College
- Scientific Advisory Board of the Armed Forces Institute of Pathology
- U.S. Air Force Scientific Advisory Board

March 6, 2006—
- Air University Board of Visitors
- Chief of Engineers Environmental Advisory Board
- Chief of Naval Operations Executive Panel
- Defense Advisory Committee on Military Personnel Testing
- U.S. Army Science Board

These committees provide necessary and valuable independent advice to the Secretary of Defense and other senior Defense officials in their respective areas of expertise. They make important contributions to DoD efforts in research and development, education, and training, and various technical program areas. Some of them are authorized by statue.

It is a continuing DoD policy to make every effort to achieve a balanced membership on all DoD advisory committees. Each committee is evaluated in terms of the functional disciplines, levels of experience, professional diversity, public and private association, and similar characteristics required to ensure a high degree of balance is obtained.

FOR FURTHER INFORMATION CONTACT: Frank Wilson, DoD Committee Management Officer, 703–601–2554.

Dated: March 7, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–2373 Filed 3–10–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Missile Defense Advisory Committee (MDAC)

AGENCY: Missile Defense Agency (MDA), Department of Defense DoD.

ACTION: Notice of closed meeting.

SUMMARY: The Missile Defense Advisory Committee will meet in closed session on April 4–5, 2006, in Washington, DC.

The mission of the Missile Defense Advisory Committee is to provide the Department of Defense advice on all matters relating to missile defense, including system development, technology, program maturity and readiness of configurations of the Ballistic Missile Defense System (BMDS) to enter the acquisition process. At this meeting, the Committee will receive classified status reports on capability-based acquisition and international cooperation strategy.

FOR FURTHER INFORMATION CONTACT: Col. David R. Wolf, Designated Federal Official (DFO) at *david.wolf@mds.mil*, phone/voice mail (703) 695–6438, or mail at 7100 Defense Pentagon, Washington, DC 20301–7100.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that this Missile Defense Advisory Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: March 7, 2006.

L.M. Bynum,

OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 06–2372 Filed 3–10–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on VTOL/STOL will meet in closed session on March 21–22, 2006; at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. This meeting continues the task force's work and will consist of classified and proprietary briefings on current technologies and programs.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: assess the features and capabilities VTOL/STOL aircraft should have in order to support the nation's defense needs through at least the first half of the 21st century.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: LCDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *clifton.phillips@osd.mil,* or via phone at (703) 571–0083.

Dated: March 7, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–2374 Filed 3–10–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Software Assurance will meet in closed session on *March 22, 2006*; at Science Applications International Corporation (SAIC), 4001 N. Fairfax Drive, Arlington, VA. This meeting is to chart the direction of the study and begin assessing the current capabilities and vulnerabilities of DoD software.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Assess the risk that DoD runs as a result of foreign influence on its software and to suggest technology and other measures to mitigate the risk.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: LCDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *clifton.phillips@osd.mil*, or via phone at (703) 571–0083.

Dated: March 7, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–2375 Filed 3–10–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Technology Vectors will meet in closed session on March 13 and 14, 2006; at Strategic Analysis, Inc. (SAI), 3601 Wilson Boulevard, Suite 500, Arlington, VA. This meeting will be a plenary meeting used to map the study's direction and begin discussion on what will be the Technology Vectors DoD will need for the 21st century.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Review previous attempts by DoD to identify critical technologies in order to derive lessons that would help illuminate the current challenge; identify the National Security objectives for the 21st century and the operational missions that U.S. military will be called upon to support these objectives; identify new operational capabilities needed for the proposed missions; identify the critical science technology, and other related enablers of the desired capabilities; assess current S&T investment plans' relevance to the needed operational capabilities and enablers and recommend needed changes to the plans; identify mechanisms to accelerate and assure the transition into U.S. military capabilities; and review and recommend changes as needed, the current processes by which national security objectives and needed operational capabilities are used to develop and prioritize science, technology, and other related enablers, and how those enablers are then developed.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: LCDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at

clifton.phillips@osd.mil, or via phone at (703) 571–0083.

Due to scheduling and work burden difficulties, there is insufficient time to provide timely notice required by section 10(a) of the Federal Advisory Committee Act and subsection 102–3.150(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR 102–3.150(b), which further requires publication at least 15 calendar days prior to the meeting.

Dated: March 7, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–2376 Filed 3–10–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

[No. USAF–2006–0003]

Proposed Collection; Comment Request

AGENCY: DoD Commercial Airlift Division.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, DoD Commercial Airlift Division announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 12, 2006.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the DoD Commercial Airlift Division (A34B), ATTN: Ms. Patricia Stout, 402 Scott Drive, Unit 3A1, Scott AFB, IL 62225–5302, or call HQ AMC/A34B, DoD Commercial Airlift Division, at 618–229–4801.

Title; Associated Form; and OMB Number: Dod Statement of Intent, AMC Form 207; OMB Number 0701–0137.

Needs and Uses: The Department of Defense Commercial Airlift Division (HQ AMC/A34B) is responsible for the assessment of a commercial air carrier's ability to provide quality, safe, and reliable airlift to the Department of Defense. HQ AMC/A34B uses Air Mobility Command (AMC) Form 207 to acquire information needed to make a determination if the commercial carriers can support the Department of Defense. Information is evaluated and used in the approval process. Failure to respond renders the commercial air carrier ineligible for contracts to provide air carriers service to the Department of Defense.

Affected Public: Business or other for profit; not-for-profit institutions.

Annual Burden Hours: 300.

Number of Respondents: 15.

Responses per Respondent: 1.

Average Burden per Response: 20 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are commercial air carriers desiring to supply airlift services to DOD. AMC Form 207 provides vital information form the carriers needed to determine their eligibility to participate in the DOD Air Transportation Program.

Dated: March 6, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–2369 Filed 3–10–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

[No. USAF–2006–0004]

Proposed Collection; Comment Request

AGENCY: Office of Admissions, Headquarters United States Air Force Academy, Department of the Air Force, Department of Defense.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Admissions, Headquarters United States Air Force Academy announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 12, 2006.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of Admissions, 2304 Cadet Drive, Suite 236, USAF Academy, CO 80840. Point of Contact is

Ms. Shawn Hordemann, telephone 719–333–7291.

Title; Associated Form; and OMB Number: United States Air Force Academy Writing Sample; United States Air Force Academy Form 0–878; OMB Number 0701–0147.

Needs and Uses: The information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals and households.

Annual Burden Hours: 4100.

Number of Respondents: 4100.

Responses per Respondent: 1.

Average Burden per Response: 60 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

Dated: March 6, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–2370 Filed 3–10–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DOD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The meeting will include discussions of personnel issues at the Naval Academy, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on Monday, March 6, 2006, from 8 a.m. to 10 a.m. The closed Executive Session will be held on Monday, March 6, 2006, from 10 a.m. to 1 p.m.

ADDRESSES: The meeting will be held in the U.S. Naval Academy in the Midshipmen Common Area of Mitscher Hall, Annapolis, Maryland.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Marc D. Boran, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410–293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The Executive Session of the meeting will consist of discussions of personnel issues at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Secretary of the Navy has determined in writing that the meeting shall be partially closed to the public because it will be concerned with matters listed in section 552b(c)(2), (5), (6), (7) and (9) of title 5, United States Code.

Dated: March 2, 2006.

Eric McDonald,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E6–3504 Filed 3–10–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.358A]

Small, Rural School Achievement Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice announcing application deadline.

SUMMARY: Under the Small, Rural School Achievement (SRSA) Program, the Assistant Secretary for Elementary and Secondary Education awards grants on a formula basis to eligible local educational agencies (LEAs) to address the unique needs of rural school districts. In this notice, we establish the deadline for submission of fiscal year (FY) 2006 SRSA grant applications.

If an eligible LEA submitted an application for SRSA grant funds in a prior year, it is considered to have met the application requirement based on its previously submitted application and does not have to submit a new application to the Department to receive its FY 2006 SRSA grant award.

An eligible LEA that is required to submit an application (in other words, an LEA that did not submit an application in a prior year) must do so by the deadline in this notice in order to receive its grant award by September 30, 2006. An eligible LEA that is required to submit an application and does not do so by the deadline in this notice might not receive its grant award until after September 30, 2006.

Application Deadline: June 2, 2006, 4:30 p.m. Eastern time.

SUPPLEMENTARY INFORMATION:

Which LEAs Are Eligible for an Award Under the SRSA Program?

An LEA is eligible for an award under the SRSA program if—

(a) The total number of students in average daily attendance at all of the schools served by the LEA is fewer than 600, or each county in which a school served by the LEA is located has a total population density of fewer than 10 persons per square mile; and

(b) All of the schools served by the LEA are designated with a school locale code of 7 or 8 by the Department's National Center for Education Statistics, or the Secretary has determined, based on a demonstration by the LEA and concurrence of the SEA, that the LEA is located in an area defined as rural by a governmental agency of the State.

Which Eligible LEAs Need Not Submit an Additional Application To Receive a FY 2006 SRSA Grant Award?

Under the regulations in 34 CFR 75.104(a), the Secretary makes grants only to an eligible party that submits an application. Given the limited purpose served by an application under this program, the Secretary considers this requirement to be met if the LEA submitted an SRSA application for a prior year. In this circumstance, unless the LEA advises the Secretary by the application deadline that it is withdrawing its application, the Secretary deems the application that the LEA previously submitted to remain in effect for FY 2006 funding, and the LEA does not have to submit an additional application. All other eligible LEAs must submit a new application to receive a FY 2006 grant award.

We intend to provide, by May 1, 2006, a list of LEAs eligible for FY 2006 funds on the Department's Web site at *http://www.ed.gov/programs/reapsrsa/index.html* . The Web site will also indicate which of these eligible LEAs must submit a new application to the

Department to receive their FY 2006 SRSA grant award, and which eligible LEAs are considered already to have met the application requirement.

Eligible LEAs that must submit a new application in order to receive FY 2006 SRSA funding must do so electronically by the deadline established in this notice in order to receive their grant by September 30, 2006.

Electronic Submission of Applications: Unless it is listed on the Department's Web site as not required to submit a new application, an eligible LEA that seeks FY 2006 SRSA funding must submit an electronic application by June 2, 2006, 4:30 p.m. Eastern time in order to receive its grant award by September 30, 2006. Submission of an electronic application involves the use of the Department's Electronic Grant Application System (e-Application) available through the Department's e-GRANTS system.

You can access the electronic application for the SRSA Program at: *http://e-grants.ed.gov.*

Once you access this site, you will receive specific instructions regarding the information to include in your application.

The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight, Saturday (Washington, DC time). Please note that the system is unavailable on Sundays, Federal holidays, and after 7 p.m. on Wednesdays for maintenance (Washington, DC time).

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hitchcock, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E243, Washington, DC 20202. Telephone: (202) 401–0039 or via Internet: *reap@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: You may view this document, as well as other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll-free, at 1–888–293–6498; or in the Washington DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official version of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Program Authority: 20 U.S.C. 7345–7345b.

Dated: February 28, 2006.

Henry L. Johnson,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E6–3507 Filed 3–10–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Alaska Native Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA)

Number: 84.356A

Dates: Applications Available: March 13, 2006.

Deadline for Transmittal of Applications: April 27, 2006.

Eligible Applicants: (a) Alaska Native organizations;

(b) Educational entities with experience in developing or operating Alaska Native programs or programs of instruction conducted in Alaska Native languages;

(c) Cultural and community-based organizations with experience in developing or operating programs to benefit Alaska Natives; and

(d) Consortia of organizations and entities described in this paragraph to carry out activities that meet the purposes of this program.

Note: A State educational agency or local educational agency may apply for an award under this program only as part of a consortium involving an Alaska Native organization. The consortium may include other eligible applicants.

Estimated Available Funds: $16,300,000. Contingent upon the availability of funds and the quality of applications, the Secretary may make additional awards in FY 2007 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $300,000–$700,000.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 20–40.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to develop and support supplemental educational programs to benefit Alaska Natives. Permissible activities under this program include the following: (1) Development and implementation of plans, methods, and strategies to improve the education of Alaska Natives; (2) Development of curricula and educational programs that address the educational needs of Alaska Native students; (3) Professional development activities for educators; (4) Development and operation of home instruction programs for Alaska Native preschool children, to ensure the active involvement of parents in their children's education from the earliest ages; (5) Family literacy services; (6) Development and operation of student enrichment programs in science and mathematics; (7) Research and data collection activities to determine the educational status and needs of Alaska Native children and adults; (8) Other research and evaluation activities related to programs carried out under Alaska Native education programs; (9) Remedial and enrichment programs to assist Alaska Native students in performing at a high level on standardized tests; (10) Education and training of Alaska Native students enrolled in a degree program that will lead to certification or licensing as teachers; (11) Parenting education for parents and caregivers of Alaska Native children to improve parenting and caregiving skills (including skills relating to discipline and cognitive development and parenting education provided through in-home visitation of new mothers); (12) Activities carried out through Even Start programs under subpart 3 of part B of Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA), and Head Start programs under the Head Start Act, including the training of teachers for Even Start and Head Start programs; (13) Other early learning and preschool programs; (14) Dropout prevention programs; (15) Career preparation activities to enable Alaska Native children and adults to prepare for meaningful employment, including programs providing ''tech-prep,'' mentoring, training, and apprenticeship activities; (16) Provision of operational support and purchasing of equipment to

develop regional vocational schools in rural areas of Alaska, including boarding schools, for Alaska Native students in grades 9 through 12, or at higher levels of education, to provide the students with necessary resources to prepare for skilled employment opportunities; (17) Construction of facilities that support the operation of Alaska Native education programs; and (18) Other activities, consistent with the purposes of this program, to meet the educational needs of Alaska Native children and adults.

Priorities: In accordance with 34 CFR 75.105(b)(2)(iv), the following competitive preference priority is from section 7304(c) of the ESEA (20 U.S.C. 7544(c)) and the invitational priority is from the Department of Education Appropriations Act, 2006 (Pub. L. 109–149).

Competitive Preference Priority: For FY 2006 and any subsequent year in which we make awards based on the list of unfunded applications from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award an additional five points to an application that meets this priority.

This priority is:

The Secretary gives priority to applications from Alaska Native regional nonprofit organizations or consortia that include at least one Alaska Native regional nonprofit organization. In order to receive a competitive preference under this priority, an application must provide documentation supporting its claim that it meets this priority.

Invitational Priority: For FY 2006 and any subsequent year in which we make awards based on the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

The use of funds to address the construction needs of rural schools serving Alaska Native students.

Program Authority: 20 U.S.C. 7541, et seq.; Department of Education Appropriations Act, 2006 (Pub. L. 109–149).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $16,300,000. Contingent upon the availability of funds and the quality of applications, the Secretary may make additional awards in FY 2007 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $300,000–$700,000.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 20–40.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* (a) Alaska Native organizations;

(b) Educational entities with experience in developing or operating Alaska Native programs or programs of instruction conducted in Alaska Native languages;

(c) Cultural and community-based organizations with experience in developing or operating programs to benefit Alaska Natives; and

(d) Consortia of organizations and entities described in this paragraph to carry out activities that meet the purposes of this program.

Note: A State educational agency or local educational agency may apply for an award under this program only as part of a consortium involving an Alaska Native organization. The consortium may include other eligible applicants.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* To obtain a copy of the application package via the Internet use the following addresses: *http://www.grants.gov* or *http://www.ed.gov/programs/alaskanative/applicant.html.* Individuals may also obtain a copy of the application package by contacting the program contact person listed in this section.

Address and mail your request for information to Alexis Fisher, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W217, Washington, DC 20202–6200. Telephone: (202) 401–0281 or by e-mail: *alexis.fisher@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We strongly encourage you to limit the application narrative (text plus all figures, charts, tables, and diagrams) to the equivalent of no more than 25 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; the abstract; the resumes; or the appendices.

3. *Submission Dates and Times:*

Applications Available: March 13, 2006.

Deadline for Transmittal of Applications: April 27, 2006.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This competition is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* Under section 7304(b) of the ESEA (20 U.S.C. 7544(b)), not more than five percent of funds provided to a grantee under this

competition for any fiscal year may be used for administrative purposes.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically, unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Alaska Native Education Program—CFDA Number 84.356A must be submitted electronically using the Grants.gov Apply site at: *http://www.grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Alaska Native Education Program at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at http://e-*Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) Registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with Grants.gov System: If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grans.gov system, we will grant you an extension until 4:30 p.m., Washington DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instruction as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that the problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extension referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission

requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Alexis Fisher, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W217, Washington, DC 20202–6200. FAX: (202) 260–8969.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier), your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.356A), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.356A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.356A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 form the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: We will use the following selection criteria from 34 CFR 75.210 to evaluate applications for new grants under this competition. The maximum score for all criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

The selection criteria for this competition are as follows:

(a) *Need for project* (20 points). The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) *Quality of the project design* (30 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(c) *Quality of the management plan* (20 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(d) *Adequacy of resources* (15 points) The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the extent to which the budget is adequate to support the proposed project.

(e) *Quality of the project evaluation* (15 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The Alaska Native Education Program seeks to support supplemental education programs to benefit Alaska Native populations. The Department uses the following performance targets to measure the program's success: (1) The percentage of Alaska Native students who meet or exceed proficiency standards in mathematics, science, or reading; (2) The percentage of Alaska Native children who improve on measures of school readiness; and (3) The dropout rate of Alaska Native middle and high school students.

Each grantee is expected to submit an annual performance report documenting its contributions in assisting the Department in meeting these performance measures.

VII. Agency Contact

For Further Information Contact: Alexis Fisher, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W217, Washington, DC 20202–6200. Telephone: (202) 401–0281 or by e-mail: *alexis.fisher@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 8, 2006.

Henry L. Johnson,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E6–3508 Filed 3–10–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice Reopening the Advanced Placement (AP) Test Fee Fiscal Year (FY) 2006 Competition

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education.

Catalog of Federal Domestic Assistance (CFDA) *Number:* 84.330B.

SUMMARY: On January 19, 2006, we published in the **Federal Register** (71 FR 3062) a notice inviting applications for the AP Test Fee FY 2006 competition. The original notice for this FY 2006 competition established a February 21, 2006 deadline date for eligible applicants to apply for funding under this program.

In order to afford as many eligible applicants as possible an opportunity to receive funding under this program, we are reopening the AP Test Fee FY 2006 competition. The new application deadline date for the competition is April 12, 2006.

DATES: *Deadline for Transmittal of Applications:* April 12, 2006, 4:30 p.m., Washington, DC, time.

Note: Applications for grants under the AP Test Fee program must be submitted electronically using the Grants.gov Apply site. You can access the electronic application, along with complete instructions for applying via Grants.gov, for the AP Test Fee program at: *http://www.Grants.gov/.* Once you access this site, you will receive specific instructions for completing your application and the electronic submission process. You must follow these requirements to ensure that your application is received by the Department no later than 4:30 p.m., Washington, DC, time, on the application deadline date.

Deadline for Intergovernmental Review: The deadline date for Intergovernmental Review under Executive Order 12372 remains as originally published, April 19, 2006.

SUPPLEMENTARY INFORMATION: Any eligible applicant may apply for funding under this program by the deadline in this notice. Eligible applicants that submitted their applications for the AP Test Fee FY 2006 competition to the Department prior to the competition's original deadline date of February 21, 2006, are not required to re-submit their applications or re-apply in order to be considered for FY 2006 awards under this program. We encourage eligible applicants to submit their applications as soon as possible to avoid any problems with filing electronic applications on the last day. The deadline for submission of applications will not be extended any further.

FOR FURTHER INFORMATION CONTACT: Madeline E. Baggett, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C153, Washington, DC 20202–6200. Telephone: (202) 260–2502 or by e-mail: *madeline.baggett@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 8, 2006.

Henry L. Johnson,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E6–3523 Filed 3–10–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on March 21, 2006, at the headquarters of the IEA in Paris, France, in connection with a meeting of the IEA's Standing Group on Emergency Questions.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on March 21, 2006, beginning at 8:30 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held at the IEA on March 21 beginning at 10:30 a.m., including a preparatory encounter among company representatives from approximately 8:30 a.m. to 9:15 a.m. The agenda for the preparatory encounter is a review of the agenda for the SEQ meeting.

The agenda for the SEQ meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Adoption of the Agenda.
2. Approval of the Summary Record of the 115th Meeting.
3. The IEA Collective Action Agreed on September 2, 2005, in Response to Disrupted Oil Supplies.
   —Summary of the IEA Collective Action of 2005.
   —Evaluation of the IEA Collective Action of 2005.
4. Status of Compliance with IEP Stockholding Commitments.
   —Status of Replenishment Plans.
   —Reports by Non-Complying Member Countries.
5. Program of Work.
   —The SEQ's Responses to the Governing Board Brainstorming Process.
   —Evaluation of Program of Work 2005.
   —SEQ Activities Planned for 2006.
   —First Steps in the SEQ Program of Work for 2007–2008.
6. Emergency Response Review Program.
   —Emergency Response Review of Hungary.
   —Emergency Response Review of Spain.
   —Questionnaire Response of Turkey.
   —Updated Emergency Response Review Schedule.
   —Plans for a Questionnaire on Oil Storage Capacity.
7. Report on Current Activities of the IAB.
8. Policy and Other Developments in Member Countries.
   —Belgium.
9. Other Emergency Response Activities.
   —Plans for First Meeting of SEQ Working Group on IEA Emergency Reserve Calculation Methodology.
10. Activities with Non-Member Countries and International Organizations.
   —NMC Activities Related to Emergency Preparedness.
   —Chinese Translation of ''Oil Supply Security'' Book.
   —Draft Emergency Response Questionnaire for Non-Member Countries.
11. Documents for Information.
   —Emergency Reserve Situation of IEA Member Countries on January 1, 2006.
   —Emergency Reserve Situation of IEA Candidate Countries on January 1, 2006.
   —Base Period Final Consumption: 1Q2005–4Q2005.
   —Monthly Oil Statistics: December 2005.
   —Update of Emergency Contacts List.
12. Other Business.
   —Dates of Next SEQ Meetings (tentative):
   June 20–21, 2006.
   November 16–17, 2006.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions; representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, March 6, 2006.

Samuel M. Bradley,

Assistant General Counsel for International and National Security Programs.

[FR Doc. 06–2324 Filed 3–10–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–441–000]

Decatur Energy Center, LLC; Notice of Issuance of Order

March 6, 2006.

Decatur Energy Center, LLC (Decatur Energy) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sales of energy, capacity and ancillary services at market-based rates. Decatur Energy also requested waiver of various Commission regulations. In particular, Decatur Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Decatur Energy.

On February 6, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Decatur Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is March 17, 2006.

Absent a request to be heard in opposition by the deadline above, Decatur Energy is authorized to issue

securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Decatur Energy, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Decatur Energy's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–3488 Filed 3–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM05–32–000]

Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005; Notice of New ''FC'' Docket Prefix and Filing Guidelines for Self-Certification Notices Under the Public Utility Holding Company Act of 2005

March 6, 2006.

By this Notice the Commission issues guidelines on the procedures for obtaining exempt wholesale generator and foreign utility company status under the Public Utility Holding Company Act of 2005 (PUHCA 2005) and 18 CFR 366.7. The guidelines are attached to this notice and will be included in the set of guidelines for filings under PUHCA 2005 that are available on the Commission's Web site at *http://www.ferc.gov/help/how-to.asp.* Notices of self-certification for exempt wholesale generator status will receive a new EG docket prefix, even if a prior EG docket applied to the facility. Notices of self-certification of foreign utility company status will receive a docket number with a newly created ''FC'' prefix.

Both the notices of self-certification of exempt wholesale generator status and notices of self-certification of foreign utility company status should be submitted using the Commission's electronic filing system accessible at the FERC Online link on *http://www.ferc.gov.*

For exempt wholesale generator notices filed on or before September 30, 2006, the heading of the document should refer to EG06–____–000. For foreign utility company notices filed on or before that date, the heading should include FC06–____–000.

Magalie R. Salas,

Secretary.

Attachment

Filing Guidelines for Holding Company Filings Under the Public Utility Holding Company Act of 2005 and 18 CFR Part 366

This document contains the guidelines for the following filings pursuant to the Public Utility Holding Company Act of 2005 and Commission Order No. 667, issued December 8, 2005:

(1) FERC–65, Notification of Holding Company Status (18 CFR 366.4(a)),

(2) FERC–65A, Exemption Notification (18 CFR 366.4(b)),

(3) FERC–65B, Waiver Notification (18 CFR 366.4(c)), and

(4) SEC Financing Authorization Orders or Letters/Reports/Other Submissions (18 CFR 366.6(b)),

(5) Notice of Self-Certification of Exempt Wholesale Generator Status (18 CFR 366.7),

(6) Notice of Self-Certification of Foreign Utility Company Status (18 CFR 366.7).

FERC–65, FERC–65A, and FERC–65–B refer to FERC reporting designations and do not represent actual forms.

FERC–65, Notification of Holding Company Status (18 CFR 366.4(a))

Companies that are holding companies as of February, 8, 2006, shall notify the Commission of their status as a holding company no later than 14 days after the Commission issues an order on rehearing. Holding companies formed after February 8, 2006, shall notify the Commission of their status no later than the later of 14 days after the Commission issues an order on rehearing or 30 days after their formation.

These notification filings should be submitted using the Commission's eFiling system available at *http://www.ferc.gov/docs-filing/ferconline.asp.* Do not include waiver or exemption notifications with these filings. The document you submit should include HC06–1–000 in the caption or heading of the document for any notification filed on or before September 30, 2006. During the eFiling submission process:

1. Select the filing type ''Production of Document.''

2. On the Select Docket screen, enter HC06–1 in the docket number search block and select HC06–1–000 from the results.

3. Before you browse, select, and attach the file, make sure that the file name is less than 25 characters and contains no spaces or special characters.

4. On the Submission Description screen, edit the description by replacing ''Production of Document'' with ''Notification of Holding Company Status.''

If you are unable to file electronically, you must submit an original and 14 paper copies of the filing to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

It is not necessary to include a form of notice for the **Federal Register**.

Please be advised that the United States Postal Service scans all documents addressed to the Commission with a heat-treatment process that may corrupt diskettes and render filings unusable. You are recommended to use express mail or courier delivery services.

FERC–65A (Exemption Notification) (18 CFR 366.4(b))

FERC–65B (Waiver Notification) (18 CFR 366.4(c))

These filings must be submitted on paper at this time. The document you submit should include PH06–____–000 in the caption or heading of the document, for filings made on or before September 30, 2006.

Submit an original and 14 copies of all ''PH'' filings, with a form of notice of the ''PH'' filing suitable for publication in the **Federal Register** on a 3½″ diskette, to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Forms of notice for ''PH'' exemption and waiver requests are available on the Commission's Web site at *http://www.ferc.gov/docs-filing/not-form.asp.*

Please be advised that the United States Postal Service scans all

documents addressed to the Commission with a heat-treatment process that may corrupt diskettes and render filings unusable. You are recommended to use express mail or courier delivery services.

SEC-Related Financing Authorization Orders or Letters/Reports/Other Submissions (18 CFR 366.6(b))

Holding companies that intend to rely on financing authorization orders or letters issued by the Securities and Exchange Commission (SEC), or that submitted reports or other submissions previously with the SEC and that now must file with the Commission, must file these orders, letters, reports or other submissions with the Commission by March 10, 2006.

These filings should be submitted using the Commission's eFiling system, available at *http://www.ferc.gov/docs-filing/ferconline.asp* provided that the entire content of the filing is in the public domain. Do not include filings under any other section with the authorization orders. The document you submit should include HC06–2–000 (Note—do not use HC06–1–000 for such submittals) in the caption or heading of the document, for filings made on or before September 30, 2006. During the eFiling submission process:

1. Select the filing type ''Production of Document.''

2. On the Select Docket screen, enter HC06–2 in the docket number search block and select HC06–2–000 from the results.

3. Before you browse, select, and attach the file, make sure that the file name is less than 25 characters and contains no spaces or special characters.

4. On the Submission Description screen, edit the description by replacing ''Production of Document'' with ''SEC Financing Authorization Order/Letter.''

If you are unable to file electronically, you must submit an original and 14 paper copies of the filing to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

It is not necessary to include a form of notice for the **Federal Register**.

Please be advised that the United States Postal Service scans all documents addressed to the Commission with a heat-treatment process that may corrupt diskettes and render filings unusable. You are recommended to use express mail or courier delivery services.

Self-Certification Notices for Exempt Wholesale Generators and Foreign Utility Companies (18 CFR 366.7)

An exempt wholesale generator or a foreign utility company, or their representative, may file with the Commission a notice of self-certification demonstrating that it satisfies the definition of exempt wholesale generator or foreign utility company. No filing fee is required for a notice of self-certification.

In the case of exempt wholesale generators, the person filing a notice of self-certification under this section must also represent in its filing that it has provided a copy of the notice to the state regulatory authority of the state in which the facility is located, and must further represent in its filing, to the extent necessary, that the state commission has made the ''specific determination'' provided in section 32(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a(c)).

In the case of foreign utility companies, the person filing a notice of self-certification under this section must represent in its filing that the relevant state commissions have certified that they had the authority and resources to protect ratepayers of public utility companies associated or affiliated with the foreign utility company.

Because notices of these filings will be published in the **Federal Register**, both exempt wholesale generators and foreign utility companies must include in their submission a separate file containing a form of notice suitable for publication in the **Federal Register**.

These filings should be submitted using the Commission's eFiling system, available at *http://www.ferc.gov/docs-filing/ferconline.asp* provided that the entire content of the filing is in the public domain. Do not include filings under any other section with these filings. The document you submit should include EG06–____–000 or FC06–____–000, as applicable, in the caption or heading of the document, for filings made on or before September 30, 2006. During the eFiling submission process:

1. Select the filing type ''Qualifying Facility Notice of Self Certification.'' (At a later date, this filing type will be changed to Notice of Self-Certification for QF's, EG's, and FC's.'').

2. Before you browse, select, and attach the file, make sure that the file names are less than 25 characters and contain no spaces or special characters.

3. On the Submission Description screen, edit the description by replacing ''Qualifying Facility Notice of Self Certification'' with either (a) ''Exempt Wholesale Generator Notice of Self Certification'' or (b) ''Foreign Utility Company Notice of Self Certification'', as applicable.

If you are unable to file electronically, you must submit an original and 14 paper copies of the filing to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

You must include a form of notice of the ''EG'' or ''FC'' filing suitable for publication in the **Federal Register** on a 3½″ diskette.

Please be advised that the United States Postal Service scans all documents addressed to the Commission with a heat-treatment process that may corrupt diskettes and render filings unusable. You are recommended to use express mail or courier delivery services.

[FR Doc. E6–3487 Filed 3–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 6, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER02–2551–003.
Applicants: Cargill Power Markets, LLC.
Description: Cargill Power Markets, LLC submits a market power analysis in support of its continued eligibility to sell electric energy at market-based rates.
Filed Date: February 28, 2006.
Accession Number: 20060303–0095.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 21, 2006.

Docket Numbers: ER03–407–007.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corp. submits an instant informational filing in response to Commission's March 8, 2005 Order.
Filed Date: February 27, 2006.
Accession Number: 20060301–0034.
Comment Date: 5 p.m. Eastern Time on Monday, March 20, 2006.

Docket Numbers: ER03–563–057; EL04–102–013.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits its Sixth Compliance Report pursuant to the June 2, 2004 Order.
Filed Date: February 28, 2006.
Accession Number: 20060303–0189.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 21, 2006.

Docket Numbers: ER05–1258–002.
Applicants: Interstate Power and Light Company; Midwest Independent Transmission System Operator, Inc.
Description: Interstate Power & Light Co. et al, submits a revised Large Generator Interconnection Agreement with FPL Energy Duane Arnold, LLC in compliance with FERC's November 8, 2005 Order.
Filed Date: February 27, 2006.
Accession Number: 20060301–0008.
Comment Date: 5 p.m. Eastern Time on Monday, March 20, 2006.

Docket Numbers: ER04–230–023.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits its response to the Commission's January 26, 2006 letter Order.
Filed Date: February 28, 2006.
Accession Number: 20060228–5067.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 21, 2006.

Docket Numbers: ER05–714–002.
Applicants: Gexa Energy, LLC.
Description: Gexa Energy, LLC submits its Amended FERC Rate Schedule 1 and pursuant to Order 652 informs FERC of a change in upstream ownership.
Filed Date: February 27, 2006.
Accession Number: 20060301–0030.
Comment Date: 5 p.m. Eastern Time on Monday, March 20, 2006.

Docket Numbers: ER05–1165–005.
Applicants: South Carolina Electric & Gas Company.
Description: South Carolina Electric & Gas Co. submits a revised compliance refund report pursuant to the Commission's October 21, 2005 Order.
Filed Date: February 7, 2006.
Accession Number: 20060302–0017.
Comment Date: 5 p.m. Eastern Time on Thursday, March 16, 2006.

Docket Numbers: ER05–1221–004.
Applicants: Commonwealth Edison Company.
Description: Commonwealth Edison Company submits a status report and request for Commission to defer acting on its July 15, 2005 Transmission Interconnection Agreement.
Filed Date: February 27, 2006.
Accession Number: 20060227–5120.
Comment Date: 5 p.m. Eastern Time on Monday, March 20, 2006.

Docket Numbers: ER06–321–001.
Applicants: Midwest Independent Transmission System Operator, Inc.; Midwest ISO Transmission Owners; Michigan Electric Transmission Company, LLC; International Transmission Company; WPS Resources Corporation; Wisconsin Electric Power Company; Duke Energy Vermillion LLC.
Description: Midwest Independent Transmission System Operator, Inc. et al submits a supplemental filing to its December 14, 2005 filing of proposed revisions to Module D of its Open Access Transmission and Energy Markets Tariff.
Filed Date: February 27, 2006.
Accession Number: 20060301–0031.
Comment Date: 5 p.m. Eastern Time on Monday, March 20, 2006.

Docket Numbers: ER06–470–001.
Applicants: Alcoa Power Generating Inc. Tapoco Division.
Description: Alcoa Power Generating Inc submits a clean and redline version of Second Substitute Original Sheet 213 with FERC's directed revision with an effective date of December 30, 2005.
Filed Date: February 28, 2006.
Accession Number: 20060303–0093.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 21, 2006

Docket Numbers: ER06–507–001.
Applicants: ISO New England Inc.; New England Participating Transmission Owners; New England Power Pool.
Description: ISO New England, Inc. *et al* submit amendments to Substitute 1st Revised Sheet 5104 *et al* to FERC Electric Tariff 3 pursuant to Rule 1907 of FERC's Rules and Regulations Order 661 & 661–A.
Filed Date: February 27, 2006.
Accession Number: 20060301–0035.
Comment Date: 5 p.m. Eastern Time on Monday, March 20, 2006.

Docket Numbers: ER06–676–000.
Applicants: Mirant Energy Trading, LLC.
Description: Mirant Energy Trading, LLC's notice of succession with respect to the agent responsibility of Mirant Americas Energy Marketing, LP under Mirant Kendall, LLC Cost-of-Service Reliability Must Run Agreement.
Filed Date: February 27, 2006.
Accession Number: 20060301–0036.
Comment Date: 5 p.m. Eastern Time on Monday, March 20, 2006.

Docket Numbers: ER06–677–000.
Applicants: Wisconsin Public Service Corporation.
Description: Wisconsin Public Service Corp. submits the Annual Formula Rate update for the post-employment benefits and post-retirement benefits other than pensions.
Filed Date: February 27, 2006.
Accession Number: 20060301–0033.
Comment Date: 5 p.m. Eastern Time on Monday, March 20, 2006.

Docket Numbers: ER06–678–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits two notices of cancellation of its interim interconnection service agreement etc.
Filed Date: February 27, 2006.
Accession Number: 20060301–0032.
Comment Date: 5 p.m. Eastern Time on Monday, March 20, 2006.

Docket Numbers: ER06–680–000.
Applicants: Northern Maine Independent System Administrator, Inc.
Description: Northern Maine Independent System Administrator, Inc. submits revisions to the NMISA FERC Electric Tariff, Original Volume 1 and to the NMISA First Revised Rate Schedule 2.
Filed Date: February 27, 2006.
Accession Number: 20060302–0053.
Comment Date: 5 p.m. Eastern Time on Monday, March 20, 2006.

Docket Numbers: ER06–681–000.
Applicants: California Independent System Operator Corporation; Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Co et al. submits Large Generator Interconnection Agreement with the City and County of San Francisco, State of California pursuant to Section 205(d) of Federal Power Act etc.
Filed Date: February 28, 2006.
Accession Number: 20060302–0060.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 21, 2006.

Docket Numbers: ER06–682–000.
Applicants: Ocean State Power I; Ocean State Power II.
Description: Ocean State Power et al. submit revisions to Ocean State I's Rate Schedule FERC 1–4 and Ocean State II's Rate Schedule FERC 5–8 to update its rate of return on equity.
Filed Date: February 28, 2006.
Accession Number: 20060302–0052.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 21, 2006.

Docket Numbers: ER06–683–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corp's Transmission submits its Access Charge Informational Filing for the period July 1, 2005 through December 31, 2005.
Filed Date: February 28, 2006.
Accession Number: 20060302–0059.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 21, 2006.

Docket Numbers: ER98–1150–004, –005, –006; EL05–87–000, –001.
Applicants: Tucson Electric Power Company.
Description: Tucson Electric Power Co responds to FERC's January 27, 2005 deficiency letter concerning a request for additional information re simultaneous transmission import studies etc.

Filed Date: February 27, 2006.

Accession Number: 20060302–0073.

Comment Date: 5 p.m. Eastern Time on Monday, March 20, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–3489 Filed 3–10–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0162; FRL–8044–2]

Agency Information Collection Activities: Submissions for OMB Review; Comment Request; EPA Information Collection Request for the Regional Haze Rule; EPA ICR No. 1813.06; OMB Control No. 2060–0421

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on July 31, 2006. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 12, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0612, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- E-mail: *A–and-r-docket@epa.gov.*
- Fax: 202–566–1741.
- Mail: OAR Docket, U.S. Environmental Protection Agency, Mail Code B102, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of 2 copies.
- Hand Delivery: EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2003–0162. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: General questions concerning today's action should be addressed to Kathy Kaufman, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Mail Code C504–02, Research Triangle Park, NC 27711, telephone (919) 541–0102, e-mail *kaufman.kathy@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2003–0162, which is available for online viewing at *http://www.regulations.gov* or in-person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. This Docket Facility is open from Monday through Friday, excluding legal holidays. The Air Docket telephone number is (202) 566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in

the docket ID number identified in this document.

What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does this Apply to?

Affected entities: Entities potentially affected by this action are State, local, and Tribal air permitting agencies; regional planning organizations; certain facilities built between 1962 and 1977.

Title: Regional haze regulations, ICR No. 1813.06, and OMB Control Number 2060–0421, expiration date: July 31, 2006. This is a request for extension of a currently approved collection.

ICR numbers: EPA ICR No. 1813.06, OMB Control No. 2060–0421.

ICR status: This ICR is currently scheduled to expire on July 31, 2006. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR is for activities related to the implementation of EPA's 1999 regional haze rule, for the time period between August 1, 2006 and July 31, 2009. This ICR renews the previous ICR, which addressed the second three year time period after the rule was promulgated. The regional haze rule, as authorized by sections 169A and 169B of the Clean Air Act, requires States to develop implementation plans to protect visibility in 156 federally-protected Class I areas. Tribes may choose to develop implementation plans. For this time period, States will be conducting technical analyses in support of development of reasonable progress goals and strategies for regional haze, as required by the rule. EPA has encouraged States to work together in regional planning organizations to develop and implement multi-state strategies.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 219 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 205.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 3.

Estimated total annual burden hours: 44,917 hours.

Estimated total annual costs: $1,862,383.

This represents an estimated burden cost. It does not include capital investment or maintenance and operational costs, as these types of costs will not be incurred during the 2006 to 2009 time period.

Are There Changes in the Estimates From the Last Approval?

For the 2006 to 2009 time period, there will be an increase in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase will reflect EPA's new estimates covering the time period from 2006 until 2009, during which time State and local air permitting agencies will be finalizing and submitting to EPA their Regional Haze State Implementation Plans (SIPs). As these estimates are updated, an annotated ICR will be placed into the docket.

What Is the Next Step in the Process for This ICR?

The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 28, 2006.

Scott Mathias,

Associate Director, Air Quality Policy Division, Office of Air Quality Planning and Standards.

[FR Doc. E6–3517 Filed 3–10–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–06–67–A (Auction No. 67); AU Docket No. 06–38; DA 06–388]

Closed Auction of 400 MHz Air-Ground Radiotelephone Service Licenses Scheduled for August 23, 2006. Comments Sought on Reserve Price or Minimum Opening Bids and Other Procedures for Auction No. 67

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of nine site-based licenses in the 400 MHz general aviation Air-Ground Radiotelephone Service scheduled to commence on August 23, 2006 (Auction No. 67). This document also seeks comments on reserve prices or minimum opening bids and other procedures for Auction No. 67.

DATES: Comments are due on or before March 20, 2006 and reply comments are due on or before March 27, 2006.

ADDRESSES: You may submit comments, identified by AU Docket No. 06–381; DA 06–388 by any of the following methods:

- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Bureau continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.
- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554. The Bureau also requests that a copy of all comments and reply comments be submitted electronically to the following address: *auction67@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Wireless Telecommunications Bureau, Auctions and Spectrum Access Division, *for legal questions:* Howard Davenport at (202) 418–0660. *For general auction questions:* Jeff Crooks at (202) 418–0660 or Linda Sanderson at (717) 338–2888. Mobility Division, *for service questions:* Erin McGrath or Richard Arsenault (legal) or Dwain Livingston (technical) at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 67 Comment Public Notice* released on March 3, 2006. The complete text of the *Auction No. 67 Comment Public Notice*, including attachments and related Commission documents is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 67 Comment Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com*. When ordering documents from BCPI please provide the appropriate FCC document number for example, DA 06–388. The *Auction No. 67 Comment Public Notice* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/67/*.

I. Licenses To Be Offered and Limitations on Participation

1. In Auction No. 67, the licenses to be auctioned are the subject of pending mutually exclusive applications for the referenced Air-Ground service that were filed on FCC Form 601. Participation in Auction No. 67 is limited to the parties that filed these pending mutually exclusive applications. These applicants, and the filing groups of which they are part, are identified in Attachment A of the *Auction No. 67 Comment Public Notice*. The applicants identified in *Attachment A of the Auction No. 67 Comment Public Notice* that wish to participate in the auction are required to file a short-form application (FCC Form 175) by the short-form deadline, which will be announced in a subsequent public notice. Applicants may seek eligibility to bid only on those licenses for which they have previously submitted an application on FCC Form 601 as set forth in Attachment A of the *Auction No. 67 Comment Public Notice*.

II. Supplemental Information Required

2. Each entity identified in Attachment A of the *Auction No. 67 Comment Public Notice* that wishes to be eligible for competitive bidding in Auction No. 67 must provide its FCC Registration Number (FRN) to the Commission for association with its pending application prior to 6 p.m. Eastern Time (ET) on April 5, 2006. Submission of an FRN for association with a pending FCC Form 601 application is required so that the FCC Auction System will display the appropriate license selection list for each short-form application. If no FRN is submitted in the prescribed manner by the specified deadline, the applicant will not be able to select its appropriate license(s) in its electronic short-form application (FCC Form 175) and will be ineligible to bid in Auction No. 67. If an applicant fails to provide this information in the prescribed manner and before the deadline specified, its pending FCC Form 601 application will be dismissed and it will not be eligible for competitive bidding for any of the licenses identified in Attachment A of the *Auction No. 67 Comment Public Notice* for which it has previously applied.

3. To submit an FRN, each listed applicant in Attachment A of the *Auction No. 67 Comment Public Notice* must provide, by 6 p.m. ET on April 5, 2006, its precise applicant name and FRN in an e-mail to *auction67@fcc.gov* or by facsimile to Kathryn Garland at (717) 338–2850. Any applicant that does not have an FRN must obtain one by registering using the FCC's Commission Registration system (CORES).

III. Additional Pre-Auction Matters

4. Each applicant identified in Attachment A of the *Auction No. 67 Comment Public Notice* that wishes to participate in the auction is required to file a short-form application (FCC Form 175) by the short-form deadline. That date will be announced in a subsequent public notice. Each such applicant is also required to submit an upfront payment by the upfront payment deadline, which date will also be announced in a subsequent public notice.

5. The Bureau will dismiss the previously filed FCC Form 601 of any applicant that fails to timely file a short-form application to participate in the auction and otherwise comply with the terms and procedures governing Auction No. 67. If only one short-form application is accepted for filing for a particular license, that license will be removed from the auction, and the FCC Form 601 of the party filing the short-form application will be processed for that license under applicable Commission procedures. In the event that more than one short-form application for a license is accepted for filing, mutual exclusivity for auction purposes will have been established, even if only one applicant submits an upfront payment. Under these circumstances, the applicant that submits an upfront payment must participate in the auction, i.e., bid the minimum opening bid, in order to win the license.

IV. Bureau Seeks Comment on Auction Procedures

6. Section 309(j)(3) of the Communications Act of 1934, as amended, requires the Commission to ''ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *.'' Consistent with the provisions of section 309(j)(3) and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau therefore seeks comment on the following issues relating to Auction No. 67.

A. Auction Structure

i. Simultaneous Multiple-Round Auction Design

7. The Bureau proposes to auction all licenses included in Auction No. 67 in a simultaneous multiple-round auction. As described further below, this type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. Typically, bidding remains open on all licenses until bidding stops on every license. The Bureau seeks comment on this proposal.

ii. Round Structure

8. The Commission will conduct Auction No. 67 over the Internet. Alternatively, telephonic bidding will also be available via the Auction Bidder Line. The toll free telephone number for telephonic bidding will be provided to qualified bidders closer to the auction event.

9. The auction will consist of sequential bidding rounds. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction.

10. The Bureau proposes to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, the Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon bidding activity levels and other factors. The Bureau seeks comment on this proposal.

iii. Stopping Rule

11. The Bureau has discretion to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time. For Auction No. 67, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses. More specifically, bidding will close simultaneously on all licenses after the first round in which no bidder submits any new bids or applies a proactive waiver. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

12. Further, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 67: (1). Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder applies a waiver or submits any new bids on any license for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule; (2). Keep the auction open even if no bidder submits any new bids or applies a waiver. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining waiver; and (3). Declare that the auction will end after a specified number of additional rounds. If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) after which the auction will close.

13. The Bureau proposes to exercise these options only in certain circumstances, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day and/or changing the minimum acceptable bid percentage. The Bureau seeks comment on these proposals.

iv. Information Relating to Auction Delay, Suspension, or Cancellation

14. For Auction No. 67, the Bureau proposes that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

The Bureau seeks comment on this proposal.

B. Auction Procedures

i. Upfront Payments and Bidding Eligibility

15. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned. As described further below, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the licenses for specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these factors in mind, the Bureau proposes to set the upfront payments for Auction No. 67 at $500 per license.

16. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the bidder's initial bidding eligibility in bidding units. The Bureau proposes that each license be assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 67 Comment Public Notice,* on a bidding unit per dollar basis. Under this proposal, each license in Auction No. 67 will be associated with 500 bidding units. The number of bidding units for a given license is fixed and does not change during the auction as prices rise. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses it selected on its FCC Form 175 as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that total number of bidding units. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round.

17. The Bureau lists all licenses, and the proposed upfront payment for each, in Attachment A of the *Auction No. 67 Comment Public Notice*. The Bureau seeks comment on these proposals.

ii. Activity Rule

18. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. A bidder's activity in a round will be the sum of the bidding units associated with any licenses upon which it places bids during the current round and the bidding units associated with any licenses for which it holds provisionally winning bids. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place bids in the auction.

19. The Bureau proposes a single stage auction with the following activity requirement: In each round of the auction, a bidder desiring to maintain its eligibility to participate in the auction is required to be active on one hundred (100) percent of its bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding.

20. The Bureau seeks comment on this proposal. Commenters that believe this activity rule should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

iii. Activity Rule Waivers and Reducing Eligibility

21. Use of an activity rule waiver preserves the bidder's eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding. Activity rule waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

22. The FCC Auction System assumes that a bidder that does not meet the activity requirement would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless: (1) The bidder has no activity rule waivers remaining; or (2) a bidder eligible to bid on more than one license overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirement. If a bidder that is eligible to bid on only one license has no waivers remaining and does not satisfy the required activity level, the bidder's eligibility will be reduced, eliminating it from the auction. If a bidder that is eligible to bid on more than one license has no waivers remaining and does not satisfy the required activity level, its eligibility will be permanently reduced, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

23. A bidder that is eligible to bid on more than one license and has insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rule as described above. Reducing eligibility is an irreversible action. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

24. A bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids will not keep the auction open. A bidder cannot submit a proactive waiver after submitting a bid in a round, and submitting a proactive waiver will preclude a bidder from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted, that waiver cannot be unsubmitted, even if the round has not yet closed.

25. The Bureau proposes that each bidder in Auction No. 67 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth above. The Bureau seeks comment on this proposal.

iv. Reserve Price or Minimum Opening Bid

26. Section 309(j) calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid amount when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum opening bid amount is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid amount and/or reserve price prior to the start of each auction.

27. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid amount, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. The auctioneer, however, has the discretion to lower the minimum opening bid amount during the course of the auction. It is also possible for the minimum opening bid amount and the reserve price to be the same amount.

28. In light of section 309(j)'s requirements, the Bureau proposes to establish minimum opening bid amounts for Auction No. 67. The Bureau believes a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool for accelerating the competitive bidding process.

29. Specifically, for Auction No. 67, the Bureau proposes to set the minimum opening bids at $500 per license. This proposed minimum opening bid amount for each license available in Auction No. 67 is set forth in Attachment A of the *Auction No. 67 Comment Public Notice.* The Bureau seeks comment on this proposal.

30. If commenters believe that this minimum opening bid amount will result in unsold licenses, or is not a reasonable amount, or should instead operate as a reserve price, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid amount levels or formulas. In establishing minimum opening bid amounts, the Bureau particularly seeks comment on such factors as the amount of spectrum being auctioned, the availability of technology to provide service, the size of the service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the 400 MHz Air-Ground Radiotelephone Service licenses being auctioned. The Bureau also seeks comment on whether, consistent with section 309(j), the public interest would be served by having no minimum opening bid amount or reserve price.

v. Bid Amounts

31. The Bureau proposes that, in each round, eligible bidders be able to place a bid on a given license in any of nine different amounts. Under this proposal, the FCC Auction System interface will list the nine acceptable bid amounts for each license.

32. The first of the nine acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid for the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage. If, for example, the minimum acceptable bid percentage is 5 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) * (1.05), rounded.

33. The eight additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage, which need not be the same as the percentage used to calculate the minimum acceptable bid amount. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is 5 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.05), rounded, or (minimum acceptable bid amount) * 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.10, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.15, rounded; etc. The Bureau will round the result using its standard rounding procedures.

34. For Auction No. 67, the Bureau proposes to use a minimum acceptable bid percentage of 10 percent. This means that the minimum acceptable bid amount for a license will be approximately 10 percent greater than the provisionally winning bid amount for the license. The Bureau also proposes to use a bid increment percentage of 10 percent to calculate the eight additional acceptable bid amounts.

35. The Bureau retains the discretion to change the minimum acceptable bid amounts, the parameters of the formula to determine the percentage increment, and the bid increment percentage if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Auction System during the auction. We seek comment on these proposals.

vi. Provisionally Winning Bids

36. At the end of a bidding round, a provisionally winning bid amount for each license will be determined based on the highest bid amount received for the license. In the event of identical high bid amounts being submitted on a license in a given round (i.e., tied bids), the Bureau will use a random number generator to select a single provisionally winning bid from among the tied bids. (Each bid is assigned a random number, and the tied bid with the highest random number wins the tiebreaker.) The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If any bids are received on the license in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the license.

37. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the license at the close of a subsequent round. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

vii. Bid Removal and Bid Withdrawal

38. For Auction No. 67, the Bureau proposes the following bid removal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing selected bids in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. A bidder removing a bid placed in the same round is not subject to any penalties. Once a round closes, a bidder may no longer remove a bid.

39. For Auction No. 67, the Bureau proposes to prohibit bidders from withdrawing any bids after the round in which the bids were placed has closed.

In the *Part 1 Third Report and Order,* 65 FR 13540, May 27, 1997, the Commission explained that allowing bid withdrawals may facilitate efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. In Auction No. 67, because bidders may bid only on licenses for which they previously submitted an application on FCC Form 601, it is unlikely that bidders will need to use withdrawals as anticipated by the *Part 1 Third Report and Order.* Accordingly, for this auction, the Bureau proposes that bidders not be permitted to withdraw bids placed in any round after it has closed. The Bureau seeks comment on these proposals.

C. Post-Auction Procedures

i. Default and Disqualification

40. Any winning bidder that defaults or is disqualified after the close of an auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. Until recently this additional payment for non-combinatorial auctions has been set at 3 percent of the defaulter's bid or of the subsequent winning bid, whichever is less.

41. On January 24, 2006, the Commission released the CSEA/Part 1 Report and Order, 71 FR 6214, February 7, 2006, in which it modified 47 CFR 1.2104(g)(2) by, inter alia, increasing the 3 percent limit on the additional default payment for non-combinatorial auctions to 20 percent. Under the modified rule, the Commission will, in advance of each non-combinatorial auction, establish an additional default payment for that auction of 3 percent up to a maximum of 20 percent. As the Commission has indicated, the level of this payment in each case will be based on the nature of the service and the inventory of the licenses being offered.

42. For Auction No. 67, the Bureau proposes to establish an additional default payment of 10 percent. As noted in the *CSEA/Part 1 Report and Order,* defaults weaken the integrity of the auctions process and impede the deployment of service to the public, and an additional default payment of more than the previous 3 percent will be more effective in deterring defaults. Because there are limited opportunities to provide general aviation air-ground service, defaults in this auction could potentially deprive the public of service in a particular locale, or at a minimum significantly delay such service. In light of this circumstance, the Bureau proposes an additional default payment of 10 percent of the relevant bid. The Bureau seeks comment on this proposal.

V. Conclusion

43. Comments are due on or before March 20, 2006, and reply comments are due on or before March 27, 2006. All filings related to the auction of 400 MHz Air-Ground Radiotelephone Service licenses should refer to AU Docket No. 06–38. Comments may be submitted using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. The Bureau strongly encourages interested parties to file comments electronically, and requests submission of a copy via the Auction No. 67 e-mail box (*auction67@fcc.gov*).

44. This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division.

[FR Doc. 06–2416 Filed 3–10–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 6, 2006.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Lake Bank Shares, Inc., Employee Stock Ownership Plan, Emmons, Minnesota; to increase its ownership of Lake Bank Shares, Inc., Emmons, Minnesota from 35.68 percent to 65.67 percent, and thereby indirectly acquire Security Bank of Minnesota, Albert Lea, Minnesota.

Board of Governors of the Federal Reserve System, March 7, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–3510 Filed 3–10–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or

bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 7, 2006.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Towne Bancorp, Inc., Mesa, Arizona; to become a bank holding company by acquiring 100 percent of Towne Bank of Arizona, Mesa, Arizona.

Board of Governors of the Federal Reserve System, March 8, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–3515 Filed 3–10–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 28, 2006.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204

1. Boston Private Financial Holdings, Inc., Boston, Massachusetts; to acquire 100 percent of the voting shares of Anchor Capital Holdings LLC, Boston, Massachusetts, and thereby indirectly acquire Anchor Capital Advisors LLC and Anchor/Russell Capital Advisors LLC, both of Boston, Massachusetts, and thereby engage in financial and investment advisory activities pursuant to section 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, March 8, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–3514 Filed 3–10–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Outcome Evaluation of NCI's Activities To Promote Research Collaboration (APRC) Program

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Outcome Evaluation of NCI's Activities to Promote Research Collaboration (APRC) Program.

Type of Information Collection Request: NEW.

Need and Use of Information Collection: The purpose of this study is to systematically assess the extent to which NCI's Activities to Promote Research Collaborations (APRC) program has been successful in accomplishing its intended goals of (1) capacity building and (2) generating innovative advances. The innovative advances outcome analysis will answer the question of whether APRC projects resulted in promising, novel concepts and advances in cancer research. The capacity building outcome analysis will determine whether participation in the APRC program has enabled the program participants to successfully integrate interdisciplinary approaches in their scientific investigations and enhanced their ability to pursue other collaborative research activities. The study will involve interviewing former APRC-funded researchers. The evaluation results will provide DCB with the information to make quality improvements to the APRC program and enhance program performance in generating significant outcomes. It will also strengthen our understanding of the value of collaborative and interdisciplinary research and inform NCI's approach to supporting and encouraging scientific collaboration among researchers from multiple disciplines in the future.

Frequency of Response: One time.

Affected Public: Individuals; scientific and research communities.

Type of Respondents: Researchers. The annual reporting burden is as follows:

Estimated Number of Respondents: 250;

Estimated Number of Responses per Respondent: 1;

Average Burden Hours per Response: .5; and

Estimated Total Annual Burden Hours Requested: 125.

The annualized cost to respondents is estimated at: $4034. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Type of respondents	Estimated annual number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Researchers	250	1	0.5	125

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms. Kelly Kim, Project Officer, DNA and Chromosome Aberrations Branch, DCB, NCI, NIH, 6130 Executive Blvd., Room 5025, Rockville, MD 20892, or call non-toll-free number (301) 496–5473 or e-mail your request, including your address to: *kimke@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: March 3, 2006.

Rachelle Ragland-Greene,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. E6–3537 Filed 3–10–06; 8:45 am]

BILLING CODE 4101–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of Grants and Training; Citizen Corps Individual Registration

AGENCY: Department of Homeland Security, Preparedness Directorate, Office of Grants and Training, Office of Community Preparedness, DHS.

ACTION: Notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS), as part of its continuing effort to reduce paperwork and respondents' burden, invites the general public to take this opportunity to comment on this proposed information collection as required by the Paperwork Reduction Act 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Community Preparedness is seeking to renew an already approved information collection request, Citizen Corps Individual Registration.

DATES: Comments are encouraged and will be accepted until May 12, 2006. This process is conducted in accordance with 5 CFR 1320.10

ADDRESSES: National Citizen Corps Office, Attn: Susan Drgos, 810 7th Street, NW., Washington, DC 20531.

- Mail: National Citizen Corps Office, Attn: Susan Drgos, 810 7th Street, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Susan Drgos, 202–786–9463 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: To request a copy of this Information Collection Request, with applicable supporting documentation, may be obtained by calling or writing Citizen Corps Contact, Susan Drgos, 202–786–9463. The Office of Management and Budget is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, Preparedness Directorate, Office of Grants and Training, Office of Community Preparedness.

Title: Citizen Corps Individual Registration.

OMB Number: 1660–0078.

Frequency: On occasion.

Affected Public: Individual citizens.

Estimated Number of Respondents: 20,000 per year.

Estimated Time Per Respondent: 5 minutes.

Total Burden Hours: 1,666.66 per year.

Total Burden Cost: None.

Total Burden Cost: None.

Description: This information collection will enable Citizen Corps to operate effectively and efficiently to regularize and coordinate activities between Citizen Corps and those groups active in educating, training, and coordinating volunteers in crime prevention, disaster preparedness, mitigation, response, public health, and safety issues.

Dated: March 6, 2006.

Charles Church,

Chief Information Officer.

[FR Doc. E6–3494 Filed 3–10–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of Grants and Training; Citizen Corps Affiliate Programs & Organizations Application

AGENCY: Department of Homeland Security, Preparedness Directorate, Office of Grants and Training, Office of Community Preparedness, DHS.

ACTION: Notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS), as part of its continuing effort to reduce paperwork and respondents' burden, invites the general public to take this opportunity to comment on this proposed information collection as required by the Paperwork Reduction Act 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Community Preparedness is soliciting comments concerning an approved information collection

request, Citizen Corps Affiliate Programs & Organizations Application).

DATES: Comments are encouraged and will be accepted until May 12, 2006. This process is conducted in accordance with 5 CFR 1320.10

ADDRESSES: National Citizen Corps Office, Attn: Susan Drgos, 810 7th Street, NW., Washington, DC 20531.

• Mail: National Citizen Corps Office, Attn: Susan Drgos, 810 7th Street, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Susan Drgos, 202–786–9463 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: To request a copy of this Information Collection Request, with applicable supporting documentation, may be obtained by calling or writing Citizen Corps Contact, Susan Drgos, 202–786–9463. The Office of Management and Budget is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, Preparedness Directorate, Office of Grants and Training, Office of Community Preparedness.

Title: Citizen Corps Affiliate Programs & Organizations Application.

OMB Number: 1660–0066.

Frequency: On Occasion.

Affected Public: Not-for-profit organizations.

Estimated Number of Respondents: 8 per year.

Estimated Time Per Respondent: 8 hours.

Total Burden Hours: 64 per year.

Total Burden Cost: None.

Total Burden Cost: None.

Description: This information collection will enable Citizen Corps to operate effectively and efficiently to regularize and coordinate activities between Citizen Corps and those groups active in educating, training, and coordinating volunteers in crime prevention, disaster preparedness, mitigation, response, public health, and safety issues.

Dated: March 6, 2006.

Charles Church,

Chief Information Officer.

[FR Doc. E6–3498 Filed 3–10–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of Grants and Training; Citizen Corps Council & CERT Program Registration

AGENCY: Department of Homeland Security, Preparedness Directorate, Office of Grants and Training, Office of Community Preparedness, DHS.

ACTION: Notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS), as part of its continuing effort to reduce paperwork and respondents' burden, invites the general public to take this opportunity to comment on this proposed information collection as required by the Paperwork Reduction Act 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Community Preparedness is seeking to renew an already approved information collection request, Citizen Corps Council & CERT Program Registration.

DATES: Comments are encouraged and will be accepted until May 12, 2006. This process is conducted in accordance with 5 CFR 1320.10

ADDRESSES: National Citizen Corps Office, Attn: Susan Drgos, 810 7th Street, NW., Washington, DC 20531.

• Mail: National Citizen Corps Office, Attn: Susan Drgos, 810 7th Street, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Susan Drgos, 202–786–9463 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: To request a copy of this Information Collection Request, with applicable supporting documentation, may be obtained by calling or writing Citizen Corps Contact, Susan Drgos, 202–786–9463. The Office of Management and Budget is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, Preparedness Directorate, Office of Grants and Training, Office of Community Preparedness.

Title: Citizen Corps Council & CERT Program Registration.

OMB Number: 1660–0079.

Frequency: On Occasion.

Affected Public: State and local Citizen Corps Councils and CERT Programs.

Estimated Number of Respondents: 500 per year.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 500 per year.

Total Burden Cost: None.

Total Burden Cost: None.

Description: This information collection will enable Citizen Corps to operate effectively and efficiently to regularize and coordinate activities between Citizen Corps and those groups active in educating, training, and coordinating volunteers in crime prevention, disaster preparedness, mitigation, response, public health, and safety issues.

Dated: March 6, 2006.

Charles Church,

Chief Information Officer.

[FR Doc. E6–3499 Filed 3–10–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of Grants and Training; Community Preparedness and Participation Survey

AGENCY: Department of Homeland Security, Preparedness Directorate, Office of Grants and Training, Office of Community Preparedness, DHS.

ACTION: Notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS), as part of its continuing effort to reduce paperwork and respondents' burden, invites the general public to take this opportunity to comment on this proposed information collection as required by the Paperwork Reduction Act 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Community Preparedness is soliciting comments concerning a proposed new collection, Community Preparedness and Participation Survey.

DATES: Comments are encouraged and will be accepted until May 12, 2006. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: National Citizen Corps Office, Attn: Susan Drgos, 810 7th Street, NW., Washington, DC 20531.

- Mail: National Citizen Corps Office, Attn: Susan Drgos, 810 7th Street, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Susan Drgos, 202–786–9463 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: To request a copy of this Information Collection Request, with applicable supporting documentation, may be obtained by calling or writing Citizen Corps Contact, Susan Drgos, 202–786–9463. The Office of Management and Budget is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, Preparedness Directorate, Office of Grants and Training, Office of Community Preparedness.

Title: Community Preparedness and Participation Survey.

OMB Number: 3067–NEW.

Frequency: Once per year.

Affected Public: Individuals and households.

Estimated Number of Respondents: 13,200 per year.

Estimated Time per Respondent: .334 hour.

Total Burden Hours: 4,408.80 per year.

Total Burden Cost: None.

Description: This information collection will enable Citizen Corps to operate effectively and efficiently to regularize and coordinate activities between Citizen Corps and those groups active in educating, training, and coordinating volunteers in crime prevention, disaster preparedness, mitigation, response, public health, and safety issues.

Dated: March 6, 2006.

Charles Church,

Chief Information Officer.

[FR Doc. E6–3500 Filed 3–10–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5038–N–01]

Notice of Proposed Information Collection: Comment Request: HOME Investment Partnership Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 12, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Shelia Jones, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Peter Huber, (202) 708–2684 (this is not a toll-free number) for copies of the proposed forms and other available documents:

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35 as Amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HOME Investment Partnerships Program (HOME).

OMB Control Number: 2506–0171.

Description of the need for the Information and proposed use: The information collected through HUD's Integrated Disbursement and Information System (IDIS) (§ 92.502) is used by HUD Field Offices, HUD Headquarters and HOME Program Participating Jurisdictions (PJs). The information on program funds committed and disbursed is used by HUD to track PJ performance and to determine compliance with the statutory 24-month commitment deadline and the regulatory 5-year expenditure deadline (§ 92.500(d)). The project-specific property, tenant, owner and financial data is used to compile annual reports to Congress required at Section 284(b) of the Act, as well as to make program management decisions about how well program participants are achieving the statutory objectives of the HOME Program. Program management reports are generated by IDIS to provide data on the status of program participants' commitment and disbursement of HOME funds. These reports are provided to HUD staff as well as to HOME PJs.

Management reports required in conjunction with the Annual Performance Report (§ 92.509) are used by HUD Field Offices to assess the effectiveness of locally designed programs in meeting specific statutory requirements and by Headquarters in preparing the Annual Report to Congress. Specifically, these reports permit HUD to determine compliance with the requirement that PJs provide a 25% match for HOME funds expended

during the Federal fiscal year (Section 220 of the Act) and that program income be used for HOME eligible activities (Section 219 of the Act), as well as the Women and Minority Business Enterprise requirements (§ 92.351(b)).

Financial, project, tenant and owner documentation is used to determine compliance with HOME Program cost limits (Section 212(e) of the Act), eligible activities (§ 92.205), and eligible costs (§ 92.206), as well as to determine whether program participants are achieving the income targeting and affordability requirements of the Act (Sections 214 and 215). Other information collected under Subpart H (Other Federal Requirements) is primarily intended for local program management and is only viewed by HUD during routine monitoring visits. The written agreement with the owner for long-term obligation (§ 92.504) and tenant protections (§ 92.253) are required to ensure that the property owner complies with these important elements of the HOME Program and are also reviewed by HUD during monitoring visits. HUD reviews all other data collection requirements during monitoring to assure compliance with the requirements of Title II and other related laws and authorities.

The additional information collected from the new IDIS Performance Measurement screens is used by HUD and HOME Program PJs. HUD tracks PJ performance in complying with the statutory requirements of 24 CFR Part 91 and 92. PJs use the required information in the execution of their program, and to gauge their own performance in relation to stated goals.

Agency form numbers, if applicable: None.

Members of affected public: State and local government participating jurisdictions.

ESTIMATION OF THE TOTAL NUMBERS OF HOURS NEEDED TO PREPARE THE INFORMATION COLLECTION INCLUDING NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, AND HOURS OF RESPONSE

Reg. section	Paperwork requirement	Recordkeeping hours	Reporting hours	Number of jurisdictions	Total hours
§ 92.61	Program Description and Housing Strategy for Insular Areas.		10	4	40
§ 92.66	Reallocation—Insular Areas		3	4	12
§ 92.101	Consortia Designation		5	36	180
§ 92.200	Private-Public Partnership	2		594	1,188
§ 92.201	Distribution of Assistance	2		594	1,188
§ 92.201	State Designation of Local Recipients		1.5	51	76.5
§ 92.202	Site and Neighborhood Standards	2		594	1,188
§ 92.203	Income Determination	2		6,667	13,334
§ 92.206 § 92.216 § 92.217 § 92.218 § 92.250 § 92.252 § 92.254	Documentation required by HUD to be included in project file to determine project eligibility, i.e., eligible uses and costs, cost limits, mixed-projects and value.	5	6,667	33,335	
§ 92.206	Eligible Costs—Refinancing		4	100	400
§ 92.251	Written Property Standards	1		6,667	6,667
§ 92.253	Tenant Protections (including lease requirement).	5		6,667	33,335
§ 92.254	Homeownership—Median Purchase Price	5		80	400
§ 92.254	Homeownership—Alternative to Resale/recapture.		5	100	500
§ 92.300	CHDO Identification	2		594	1,188
§ 92.300	Designation of CHDOs		1.5	480	720
§ 92.300	CHDO Project Assistance	2		594	1,188
§ 92.303	Tenant Participation Plan	10		4,171	41,710
§ 92.350	Equal Opportunity (including nondiscrimination, and minority and women business enterprise and minority outreach efforts).	5		6,667	33,335
§ 92.351	Affirmative Marketing	10		6,667	66,670
§ 92.353	Displacement, relocation and acquisition (including tenant assistance policy).	5		6,667	33,335
§ 92.354	Labor	2.5		6,667	16,667.50
§ 92.355	Lead-based paint	1		6,667	6,667
§ 92.357	Debarment and Suspension	1		6,667	6,667
§ 92.501	Investment Partnership Agreement	0.5	0.5	598	598
§ 92.502	Homeownership and Rental Set-Up and Completion (IDIS).		16	594	9,504
§ 92.502	Tenant-Based Rental Assistance Set-Up (IDIS)		5.5	225	1,237.50
§ 92.502	IDIS Performance Measurement Set-Up and Completion Screens.		21	6,671	140,091
§ 92.504	Participating Jurisdiction's Written Agreements	10		6,667	66,670
§ 92.509	Management Reports—Annual Performance Reports.		2.5	598	1,495
§ 92.509	Management Reports—FY Match Report		0.75	594	445.5
§ 91.220	Describe the use of ADDI funds		1	427	427
§ 91.220	Describe the Plan for outreach		1	427	427
§ 91.220	Describe plan to ensure suitability of families		1	427	427
§ 91.604	Describe prior commitment		1	37	37

ESTIMATION OF THE TOTAL NUMBERS OF HOURS NEEDED TO PREPARE THE INFORMATION COLLECTION INCLUDING NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, AND HOURS OF RESPONSE—Continued

Reg. section	Paperwork requirement	Recordkeeping hours	Reporting hours	Number of jurisdictions	Total hours
§ 91.616	Confirm first-time homebuyer status	0.1		427	43
§ 92.502	Input first-time homebuyer status (IDIS)		0.2	427	85
Total Annual Respondent and Burden Hours.				6,667	521,478

Estimate of Respondent Cost: 521,478 hours × $31/hour = $16,165,818.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 3, 2006.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. 06–2345 Filed 3–10–06; 8:45 am]

BILLING CODE 4210–67–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4917–N–07]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Administration under the provisions of the National Housing Act (the Act). The interest rate for debentures issued under section 221(g)(4) of the Act during the 6-month period beginning January 1, 2006, is 5⅛ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning January 1, 2006, is 4⅞ percent. However, as a result of an amendment to section 224 of the Act, if an insurance claim relating to a mortgage insured under sections 203 or 234 of the Act and endorsed for insurance after January 23, 2004, is paid in cash, the debenture interest rate for purposes of calculating a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

FOR FURTHER INFORMATION CONTACT: L. Richard Keyser, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2232, Washington, DC 20410–8000; telephone (202) 755–7500 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (12 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning January 1, 2006, is 4 7/8 percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 4 7/8 percent for the 6-month period beginning January 1, 2006. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the first 6 months of 2006.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	on or after	prior to
9½	Jan 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan 1, 1981.
11¾	Jan 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan 1, 1982.
12¾	Jan 1, 1982	Jan 1, 1983.
10¼	Jan 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan 1, 1984.
11½	Jan 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan 1, 1985.
11⅝	Jan 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan 1, 1986.
10¼	Jan 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan 1, 1987.
8	Jan 1, 1987	July 1, 1987.
9	July 1, 1987	Jan 1, 1988.
9⅛	Jan 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan 1, 1989.
9¼	Jan 1, 1989	July 1, 1989.
9	July 1, 1989	Jan 1, 1990.
8⅛	Jan 1, 1990	July 1, 1990.
9	July 1, 1990	Jan 1, 1991.
8¾	Jan 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan 1, 1992.
8	Jan 1, 1992	July 1, 1992.
8	July 1, 1992	Jan 1, 1993.
7¾	Jan 1, 1993	July 1, 1993.
7	July 1, 1993	Jan 1, 1994.
6⅝	Jan 1, 1994	July 1, 1994.
7¾	July 1, 1994	Jan 1, 1995.
8⅜	Jan 1, 1995	July 1, 1995.
7¼	July 1, 1995	Jan 1, 1996.
6½	Jan 1, 1996	July 1, 1996.
7¼	July 1, 1996	Jan 1, 1997.
6¾	Jan 1, 1997	July 1, 1997.
7⅛	July 1, 1997	Jan 1, 1998.
6⅜	Jan 1, 1998	July 1, 1998.
6⅛	July 1, 1998	Jan 1, 1999.

Effective interest rate	on or after	prior to
5½	Jan 1, 1999	July 1, 1999.
6⅛	July 1, 1999	Jan 1, 2000.
6½	Jan 1, 2000	July 1, 2000.
6½	July 1, 2000	Jan 1, 2001.
6	Jan 1, 2001	July 1, 2001.
5⅞	July 1, 2001	Jan 1, 2002.
5¼	Jan 1, 2002	July 1, 2002.
5¾	July 1, 2002	Jan 1, 2003.
5	Jan 1, 2003	July 1, 2003.
4½	July 1, 2003	Jan 1, 2004.
5⅛	Jan 1, 2004	July 1, 2004.
5½	July 1, 2004	Jan 1, 2005.
4⅞	Jan 1, 2005	July 1, 2005.
4½	July 1, 2005	Jan 1, 2006.
4⅞	Jan 1, 2006	July 1, 2006.

Section 215 of Division G, Title II of Public Law 108–199, enacted January 23, 2004 (HUD's 2004 Appropriations Act) amended section 224 of the Act, to change the debenture interest rate for purposes of calculating certain insurance claim payments made in cash. Therefore, effective immediately, for all claims paid in cash on mortgages insured under section 203 or 234 of the National Housing Act and endorsed for insurance after January 23, 2004, the debenture interest rate will be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years, as found in Federal Reserve Statistical Release H–15. The Federal Housing Administration is in the process of making conforming amendments to applicable regulations to fully implement this recent change to section 224 of the Act.

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' in effect at the time the debentures are issued. The term ''going Federal rate'' is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the 6-month period beginning January 1, 2006, is 5⅛ percent.

HUD expects to publish its next notice of change in debenture interest rates in July 2006.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

Authority: Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715*l*, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: March 3, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 06–2344 Filed 3–10–06; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Comprehensive Conservation Plan and Environmental Assessment for the Great Dismal Swamp National Wildlife Refuge and the Nansemond National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of Availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the draft Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for the Great Dismal Swamp National Wildlife Refuge (NWR) is available for review. The CCP/EA includes Nansemond NWR, an unstaffed refuge managed by the Great Dismal Swamp NWR. The Service prepared this CCP/EA in compliance with the National Environmental Policy Act of 1969, and the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd, *et seq.*).

This notice also advises the public that the Service is withdrawing a previous notice, published in 2002, stating that an Environmental Impact Statement (EIS) would be developed for the refuge complex. After completing the environmental analysis, we determined that an EIS is not warranted.

DATES: The draft CCP/EA will be available for public review and comment for a 30-day period starting with the publication of this notice.

ADDRESSES: Copies of the draft CCP/EA on compact diskette or in print may be obtained by writing or visiting Great Dismal Swamp NWR, 3100 Desert Road, Suffolk, Virginia 23434, or you may download an electronic copy from the *http://library.fws.gov/ccps.htm* Web site. We plan to host three public meetings in the Cities of Suffolk and Chesapeake, Virginia, and in Camden and Gates Counties in North Carolina. We will announce the details at least 2 weeks in advance in local papers and post them at the refuge.

Comments should be submitted to Deloras Freeman, Great Dismal Swamp NWR, 3100 Desert Road, Suffolk, Virginia 23434, by fax at 757–986–2353, or email at *deloras_freeman@fws.gov.* Comments via email should include the comments in the body of the email, since email security programs could delete attached files.

FOR FURTHER INFORMATION CONTACT: Deloras Freeman, Great Dismal Swamp NWR at 787–986–3706 or Bill Perry, Refuge Planner, Northeast Regional Office at 413–253–8371.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a CCP for each refuge. The purpose of developing a CCP describes the desired future conditions of the refuge and provides refuge managers with a 15-year strategy for achieving refuge purposes and contributing to the mission of the National Wildlife Refuge System, in conformance with the sound principles of fish and wildlife science, natural resources conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. The Service will review and update each CCP at least once every 15 years, in accordance with the National Wildlife Refuge System Improvement Act of 1997 and the National Environmental Policy Act of 1969.

Established in 1974, Great Dismal Swamp NWR encompasses 111,201 acres, the largest intact remnant of a vast habitat that once covered more than one million acres of southeastern Virginia and northeastern North Carolina. The Nansemond NWR, established December 12, 1973, is an unstaffed satellite refuge encompassing 423 acres.

The draft CCP/EA analyzes three alternatives for managing the refuge over the next 15 years. Alternative A (the ''No Action'' Alternative) would continue our present management and provides a baseline for comparing and

contrasting other alternatives. It continues to focus on restoring hydrology and habitat, maintaining roads, acquiring 4,000 acres of land inside the refuge boundary as it becomes available from willing sellers, restoring 1,000 acres of Atlantic white cedar, and enhancing 2,000 acres of pocosin/pine habitat for reintroduction of red-cockaded woodpeckers. It continues to provide current levels of environmental education and interpretation, boating and fishing on Lake Drummond, and annual deer hunting.

Alternative B (the Service-preferred alternative) directs the refuge toward an optimal level of habitat management and public use based on the vision for the refuge at the time of its establishment in 1974. Alternative B proposes the restoration of 8,000 acres of Atlantic white cedar habitat; the restoration of 10,000 acres of red-cockaded woodpecker habitat; and the restoration of a remnant marsh to its original 250 acres from its present 30 acres. We would establish a neotropical migratory bird focus area near Jericho Lane, in which we would focus habitat management and modeling, population surveys, and education and interpretation related to neotropical migratory bird populations. As a part of our preferred alternative, we have proposed to implement a limited bear hunt. This hunt would occur on a total of 2 days during November and December, with a total maximum of 100 permits issued. We anticipate a harvest of approximately 11 bears with a harvest limit target of 20 bears. If 10 or more bears are taken the first day, various parameters will be evaluated and the second hunt day may be cancelled. As with the deer hunt, dogs will not be allowed as a means to hunt bears. The bear hunt is currently authorized in the code of federal regulations (50 CFR part 32), but has never been implemented.

Our preferred alternative also proposes the following building projects: The development of an environmental education site at Jericho Ditch in Suffolk, Virginia. We will also develop an exhibit to be sited at the downtown visitor center that is run by the City of Suffolk. Additionally, we propose the conversion of the current administrative building for concessions, and the construction of a new visitor center and headquarters between the old and new Route 17 in Chesapeake, Virginia, and the construction of new trails, observation and photography platforms, or towers. The CCP proposes to enhance environmental education and outreach, establish hunter safety and youth hunting programs, and provide interpretative canoe or kayak tours through a concessionaire.

Alternative C (limited habitat management) reduces our emphasis on habitat management compared to current refuge operations, but significantly expands visitor services and public use. It also emphasizes monitoring and researching opportunities.

All three alternatives share some priorities. They manage invasive or exotic species and pine/pocosin habitats. They manage hydrology to slow the rate of surface drainage from the refuge, maintain normal flooding patterns, manage stands of Atlantic white cedar, and conserve water for suppressing fires. Finally, they continue to provide opportunities for compatible public use such as hunting, fishing, environmental education and interpretation, wildlife observation and photography, and off-refuge outreach and partnerships.

A Wilderness Review was also conducted for Great Dismal Swamp NWR as part of this planning process. No areas were recommended for designation because none of the wilderness inventory areas met wilderness criteria.

Dated: February 24, 2006.

Marvin E. Moriarty,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. E6–3118 Filed 3–10–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Red River National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a Draft Comprehensive Conservation Plan and Environmental Assessment for the Red River National Wildlife Refuge in Louisiana.

SUMMARY: This notice advises the public that the Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a comprehensive conservation plan and environmental assessment pursuant to the National Environmental Policy Act and its implementing regulations.

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitat, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

The purpose of this notice is to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues to include in the environmental document.

DATES: Announcements will inform people of opportunities for written input throughout the planning process. Public scoping meetings are planned and will be announced in local newspapers approximately 10 days prior to the meetings.

ADDRESSES: Comments and requests for more information regarding the Red River National Wildlife Refuge planning process should be sent to: Lindy Garner, Natural Resource Planner, North Louisiana National Wildlife Refuge Complex, 11372 Highway 143, Farmerville, Louisiana 71241; Telephone: (318) 762–4222, ext. 5; Fax: (318) 726–4667; E-mail: *northlarefuges@fws.gov.* To ensure consideration, written comments must be received no later than April 12, 2006.

SUPPLEMENTARY INFORMATION: The refuge was created by Congress on October 13, 2000, with the passage of the Red River National Wildlife Refuge Act. Land acquisition for the refuge commenced in August 2002. There are three purposes of the refuge, as stated in the Red River National Wildlife Refuge Act:

- To provide for the restoration and conservation of native plants and animal communities on suitable sites in the Red River basin, including restoration of extirpated species.
- To provide habitat for migratory birds, and
- To provide technical assistance to private landowners in the restoration of their lands for the benefit of fish and wildlife.

The refuge's enabling legislation authorizes it to acquire up to approximately 50,000 acres of Federal lands and waters along that section of

the Red River between Colfax, Louisiana, and the Arkansas state line, a distance of approximately 120 miles. the refuge growth will be strategically planned within the following five focus units:

- Lower Cane River (Natchitoches Parish).
- Spanish Lake Lowlands (Natchitoches Parish).
- Bayou Pierre Floodplain (Desoto and Red River Parishes).
- Headquarters Site (Bossier Parish).
- Wardview (Caddo Parish).

Currently, the refuge consists of 7,721 acres of fee title lands comprised of restored bottomland hardwood forest, moist soils, shrub/scrub, and fallow agricultural lands within four of the separate units. A headquarters/visitor center site is included near Shreveport/Bossier City. Another 1,100 acres of lands are under a management agreement at the Spanish Lake Lowlands Unit.

The Service will conduct a comprehensive conservation planning process that will provide opportunity for state and local government agencies, organizations, and the public to participate in issue scoping and public comment. Comments received by the planning team will be used as part ot the planning process. All comments received from individuals become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's NEPA regulations [40 CFR 1506.6(f)].

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: February 21, 2006.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 06–2360 Filed 3–10–06; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Recovery Plan for *Hackelia venusta* (Showy Stickseed)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: The U.S. Fish and Wildlife Service (''we''), announce the availability of the Draft Recovery Plan for *Hackelia venusta* (Showy Stickseed), for public review and comment.

DATES: Comments on the draft recovery plan must be received on or before May 12, 2006.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Central Washington Field Office, 215 Melody Lane, Wenatchee, Washington 98801 (telephone: 509–665–3508). Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to the Field Supervisor, Ecological Services, at the above Wenatchee address. An electronic copy of the draft recovery plan is also available online at *http://endangered.fws.gov/recovery/index.html#plans.*

FOR FURTHER INFORMATION CONTACT: Tim McCracken, Fish and Wildlife Biologist, at the above Wenatchee address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Endangered Species Act (ESA) and our endangered species program. The ESA (16 U.S.C. 1533 (f)) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Recovery plans help guide the recovery effort by describing actions considered necessary for the conservation of the species, establishing criteria for downlisting or delisting listed species, and estimating time and cost for implementing the measures needed for recovery (16 U.S.C. 1533 (f)).

Section 4(f) of the ESA also requires that public notice, and an opportunity for public review and comment, be provided during recovery plan development. We will consider all information presented during the public comment period in the development of each new or revised recovery plan. Comments received may result in changes to the draft recovery plan. Comments regarding recovery plan implementation may be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individual responses to comments will not be provided.

Showy stickseed (*Hackelia venusta*) is a perennial plant with showy white or blue-tinged flowers in the forget-me-not plant family (Boraginaceae). The species is a narrow endemic, being known from only 1 population of roughly 600 individuals in Chelan County, Washington. It occurs primarily on Federal lands, but a very small portion of the population is on private lands. Within its limited range, *Hackelia venusta* is found in open areas of steeply sloping, highly unstable granitic sand and granite cliffs. The common feature to its habitat appears to be the relatively sparse cover of other vascular plants and low canopy cover.

Hackelia venusta was listed as an endangered species on February 6, 2002 (67 FR 5515). The major threats to *Hackelia venusta* include collection and physical disturbance to the plants and habitat by humans, mass wasting (landslides), nonnative noxious weeds, competition and shading from native trees and shrubs due to fire suppression, some highway maintenance activities, and low seedling establishment. The small population size and limited geographic extent of the species exacerbates all of these threats, and renders *Hackelia venusta* highly vulnerable to extirpation or extinction from either human-caused or random natural events.

Objectives of a recovery plan would be to reduce the threats to *Hackelia venusta* and increase population size and geographic distribution. The first step in the recovery strategy for the species would be to protect and stabilize the existing population. This would include management to maintain an open habitat, noxious weed control, minimizing the damage of collection and trampling within the population, seed collection and long-term seed banking to protect the genetic resources of the species, and the development and implementation of management plans. In addition, to reduce the potential for extinction due to loss of the single population, recovery actions will likely require establishing additional populations within the estimated historical range of the species.

Public Comments Solicited

We solicit written comments on the draft recovery plan described in this notice. All comments received by the date specified above will be considered in the development of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 6, 2005.

David J. Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. E6–3505 Filed 3–10–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–0777–XX]

Notice of Public Meeting: Northeast California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northeast California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Thursday and Friday, April 20 and 21, 2006, in the Conference Room of the Bureau of Land Management Eagle Lake Field Office, 2950 Riverside Dr., Susanville, Calif. The meeting runs from 10 a.m. to 5 p.m. April 20, and then reconvenes at 8 a.m. on April 21. Time for public comment is reserved for 11 a.m. on April 21.

FOR FURTHER INFORMATION CONTACT: Tim Burke, BLM Alturas Field Office Manager, (530) 233–4666; or BLM Public Affairs Officer Joseph J. Fontana, (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northeast California and the northwest corner of Nevada. At this meeting, agenda topics will include a review of draft Resource Management Plans for the Alturas, Eagle Lake and Surprise field offices, a discussion on Stewardship Contracting and a discussion of the possibilities of land exchanges at Eagle Lake in Lassen County, Calif. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Members of the public are welcome on field tours, but they must provide their own transportation and lunch. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: March 3, 2006.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. E6–3477 Filed 3–10–06; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NMNM 0554560]

Public Land Order No. 7656; Revocation of Public Land Order No. 3620; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes, in its entirety, a public land order which withdrew 120 acres of public land and reserved it for use by the Forest Service as an administrative site. The land was never used for the intended purpose and the withdrawal is no longer needed.

DATES: *Effective Date:* March 13, 2006.

FOR FURTHER INFORMATION CONTACT: Gilda Fitzpatrick, BLM New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87502, 505–438–7597.

SUPPLEMENTARY INFORMATION: The Forest Service has determined that the withdrawal is no longer needed and has requested the revocation. The land will not be opened to surface entry or mining until completion of an analysis to determine if any of the land needs special designation.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

Public Land Order No. 3620 (30 FR 5379, April 15, 1965), which withdrew public land to protect a National Forest administrative site, is hereby revoked in its entirety.

Dated: February 27, 2006.

Mark Limbaugh,

Assistant Secretary of the Interior.

[FR Doc. E6–3525 Filed 3–10–06; 8:45 am]

BILLING CODE 4310–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 42838]

Public Land Order No. 7657; Partial Revocation of Secretarial Order Dated December 15, 1906, and Revocation of Secretarial Order Dated July 27, 1907; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes two Secretarial Orders insofar as they affect approximately 560 acres of National Forest System lands withdrawn for the protection of two Forest Service ranger stations.

DATES: *Effective Date:* March 13, 2006.

FOR FURTHER INFORMATION CONTACT: Marsha Fryer, Forest Service, Intermountain Region, 324–25th Street, Ogden, Utah 84401–2310, 801–625–5802.

SUPPLEMENTARY INFORMATION: The Forest Service has determined that these lands no longer need to be withdrawn and has requested the revocation. The lands will not be opened to surface entry or mining until completion of an analysis to determine if any of the lands need special designation or protection.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. The Secretarial Order dated December 15, 1906, which withdrew National Forest System lands for protection of Ranger Station Nos. 4 and 6, is hereby revoked insofar as it affects the following described lands:

Dixie National Forest (Formally Sevier National Forest)

Ranger Station No. 4 (Blue Spring Administrative Site)

Salt Lake Meridian

T. 36 S., R. 7 W.,
sec. 7, NE¼SE¼ and NE¼SE¼SE¼.

Ranger Station No. 6 (Duck Creek Administrative Site)

T. 38 S., R. 8 W.,
sec. 12, lots 3 and 4 and W½SE¼.

The areas described aggregate approximately 200 acres in Garfield and Kane Counties.

2. The Secretarial Order dated July 27, 1907, which withdrew the following described National Forest System lands for the protection of Ranger Station No. 4, is hereby revoked in its entirety:

Dixie National Forest (Formally Sevier National Forest)

Ranger Station No. 4 (Blue Spring Administrative Site)

Salt Lake Meridian

T. 36 S., R. 7 W.,
sec. 8, SW¼NW¼ and SW¼;
sec. 17, NW¼.

The area described contains 360 acres in Garfield County.

Dated: February 27, 2006.

Mark Limbaugh,

Assistant Secretary of the Interior.

[FR Doc. E6–3526 Filed 3–10–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–055–5853–EU]

Correction to Notice of Realty Action: Direct Sale of Public Lands in Clark County, NV, N–79693

AGENCY: Bureau of Land Management, USDI.

ACTION: Correction Notice.

SUMMARY: This notice amends the Notice of Realty Action for Direct Sale of Public Lands in Clark County, Nevada, published in 70 FR 77184–77186. Under the section entitled **SUPPLEMENTARY INFORMATION**, the following correction is made. The Land Proposed for Sale is changed from:

T. 23 S., R. 61 E.,
Sec. 9, S½SE¼SWNW ¼ to
T. 23 S., R. 61 E.,
Sec. 9, S½NE¼SW¼NW¼.

All other Terms and Conditions of the sale remain unchanged.

Dated: January 23, 2006.

Juan Palma,

Field Manager.

[FR Doc. 06–2392 Filed 3–10–06; 8:45 am]

BILLING CODE 4310–HC–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–06–018]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 23, 2006 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–851 (Review) (Synthetic Indigo from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before April 5, 2006.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: March 8, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–2434 Filed 3–9–06; 1:36 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection under Review: Federal Firearms Licensee Firearms Inventory Theft/Loss Report.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until May 12, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ben Hayes, ATF National Tracing Center, 244 Needy Road, Martinsburg, WV 25401.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Federal Firearms Licensee Firearms Inventory Theft/Loss Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 3310.11. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: Business or other for-profit. The Violent Crime Control and Law Enforcement Act requires Federal firearms licensees to report to the Bureau of Alcohol, Tobacco, Firearms and Explosives, and to the appropriate local authorities any theft or loss of a firearm from the licensee's inventory or collection, within a specific time frame after the theft or loss is discovered.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 4,000 respondents will complete a 24 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,600 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 8, 2006.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. E6–3512 Filed 3–10–06; 8:45 am]

BILLING CODE 4810–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2)(B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on August 10, 2005, ISP Freetown Fine Chemicals, 238 South Main Street, Assonet, Massachusetts 02702, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The company plans to import Phenylacetone to manufacture amphetamine.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in Schedule I or II are, and will continue to be required demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: March 6, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 06–2363 Filed 3–10–06; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 11, 2005, and published in the **Federal Register** on August 19, 2005, (70 FR 48779), Abbott Laboratories, DBA Knoll Pharmaceutical Company, 30 North Jefferson Road, Whippany, New Jersey 07981, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedules I and II:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

The company plans to manufacture bulk product and dosage units for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Abbott Laboratories, DBA Knoll Pharmaceutical Company to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Abbott Laboratories, DBA Knoll Pharmaceutical Company to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: March 6, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 06–2341 Filed 3–10–06; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

Time and Date: 10 a.m., Thursday, March 16, 2006.

Place: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

Status: Open.

Matters To Be Considered:

1. Requests form two (2) Federal Credit Unions to Convert to Community Charters.
2. NCUA's Annual Performance Budget 2006.
3. NCUA's Strategic Plan 2006–2011.
4. Interim Final Rule and Request for Comments: Part 745 of NCUA's Rules and Regulations, Share Insurance Coverage.

For Further Information Contact: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Paul M. Peterson

Acting Secretary of the Board.

[FR Doc. 06–2456 Filed 3-9–06; 3:42 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Comment Request: Biological Sciences Proposal Classification Form

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to establish clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paper Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance

of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by May 12, 2006 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov*.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send e-mail to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: *Title of Collection:* ''Biological Sciences Proposal Classification Form''.

OMB Approval Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection for three years.

Proposed Project: Three divisions within the Directorate of Biological Sciences of the National Science Foundation will use the Biological Sciences Proposal Classification Form. They are the Division of Biological Infrastructure, the Division of Evolutionary Biology, and the Division of Molecular and Cellular Biosciences. All scientists submitting proposals to these divisions will be asked to complete an electronic version of the Proposal Classification Form. The form consists of brief questions about the substance of the research and the investigator's previous Federal support. Each division will have a slightly different version of the form. In this way, submitters will only confront response choices that are relevant to their discipline.

Use of the Information: The information gathered with the Biological Sciences Proposal Classification Form serves two main purposes. The first is facilitation of the proposal review process. Since peer review is a key component of NSF's grant-making process, it is imperative that proposals are reviewed by scientists with appropriate expertise. The information collected with the Proposal Classification Form helps ensure that the proposals are evaluated by specialists who are well versed in appropriate subject matter. This helps maintain a fair and equitable review process.

The second use of the information is program evaluation. The Directorate is committed to investing in a range of substantive areas. With data from this collection, the Directorate can calculate submission rates and funding rates in specific areas of research. Similarly, the information can be used to identify emerging areas of research, evaluate changing infrastructure needs in the research community, and track the amount of international research. As the National Science Foundation is committed to funding cutting-edge science, these factors all have implications for program management.

The Directorate of Biological Sciences has a continuing commitment to monitor its information collection in order to preserve its applicability and necessity. Through periodic updates and revisions, the Directorate ensures that only useful, non-redundant information is collected. These efforts will reduce excessive reporting burdens.

Burden on the Public: The Directorate estimates that an average of five minutes is expended for each proposal submitted. An estimated 6,000 responses are expected during the course of one year for a total of 500 public burden hours annually.

Expected Respondents: Individuals.

Estimated Number of Responses: 6,000.

Estimated Number of Respondents: 6,000.

Estimated Total Annual Burden on Respondents: 500 hours.

Frequency of Responses: On occasion.

Dated: March 7, 2006.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 06–2342 Filed 3–10–06; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of March 13, 20, 27, April 3, 10, 17, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 13, 2006

Monday, March 13, 2006

1:30 p.m.—Briefing on Office of Information Services (OIS) Programs, Performance, and Plans (Public Meeting). (Contact: Edward Baker, 301–415–8700.)

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, March 15, 2006

9:30 a.m.—Briefing on Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (Public Meeting). (Contact: Evelyn S. Williams, 301–415–7011.)

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

1:30 p.m.—Discussion of Security Issues. (Closed—Ex. 1 & 3.)

Thursday, March 16, 2006

9:30 a.m.—Briefing on Office of Nuclear Reactor Regulation (NRR) Programs, Performance, and Plans (Public Meeting). (Contact: Cynthia Carpenter, 301–415–1275.)

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of March 20, 2006—Tentative

There are no meetings scheduled for the Week of March 20, 2006.

Week of March 27, 2006—Tentative

There are no meetings scheduled for the Week of March 27, 2006.

Week of April 3, 2006—Tentative

There are no meetings scheduled for the Week of April 3, 2006.

Week of April 10, 2006—Tentative

There are no meetings scheduled for the Week of April 10, 2006.

Week of April 17, 2006—Tentative

There are no meetings scheduled for the Week of April 17, 2006.

* * * * *

*The schedule for Commission meetings is subject to change on short

notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

Additional Information: By a vote of 5–0 on March 3, 2006, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of Entergy Nuclear Vermont Yankee and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station)'' be held March 3, 2006, and on less than one week's notice to the public.

An Affirmation Session tentatively planned for Thursday, March 9, 2006, has been cancelled.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at *DLC@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: March 8, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06–2426 Filed 3–9–06; 12:06 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication; Endorsement of Nuclear Energy Institute Guidance ''Enhancements to Emergency Preparedness Programs for Hostile Action''

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of opportunity for public comment.

SUMMARY: The NRC is proposing to issue a regulatory issue summary (RIS) to endorse the Nuclear Energy Institute (NEI) guidance entitled ''Enhancements to Emergency Preparedness Programs for Hostile Action'' (revised in November 2005) as an acceptable implementation methodology that licensees may use when adopting the program enhancements discussed in NRC Bulletin 2005–02, ''Emergency Preparedness and Response Actions for Security-Based Events.''

The NEI document attached to this RIS may be found in the NRC's Agencywide Documents Access and Management System (ADAMS) Accession No. ML053290326. This document may also be found on the NRC's generic communications Web page at *http://www.nrc.gov/reading-rm/doc-collections/gen-comm/docs4comment.html.*

This **Federal Register** notice (FRN) is available through the NRC's ADAMS Accession No. ML060610032.

DATES: Comment period expires May 12, 2006. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T6–D59, Washington, DC 20555–0001, and cite the publication date and page number of this FRN. Written comments may also be delivered to NRC Headquarters, 11545 Rockville Pike (Room T–6D59), Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION, CONTACT: Michael B. Norris at 301–415–4098 or by e-mail *mbn@nrc.gov.*

SUPPLEMENTARY INFORMATION:

NRC Regulatory Issue Summary 2006–XX

Endorsement of Nuclear Energy Institute Guidance ''Enhancements to Emergency Preparedness Programs for Hostile Action''

Addressees

All holders of operating licenses for nuclear power reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

Intent

The NRC is issuing this regulatory issue summary (RIS) to endorse the NEI guidance entitled ''Enhancements to Emergency Preparedness Programs for Hostile Action'' (revised in November 2005) as an acceptable implementation methodology that licensees may use when adopting the program enhancements discussed in NRC Bulletin 2005–02, ''Emergency Preparedness and Response Actions for Security-Based Events.'' This RIS requires no action or written response by addressees.

Background Information

Nuclear power plant emergency preparedness (EP) programs are designed to address a wide range of event scenarios. After the terrorist attacks of September 11, 2001, NRC evaluated the EP planning basis to ensure it continued to protect the public health and safety in the current threat environment. In 2002, NRC issued orders requiring compensatory measures for nuclear security and EP. The NRC staff has reviewed all of the responses to the 2002 orders. The NRC staff has observed licensee performance during security-event-based EP drills and exercises and security force-on-force exercises. The NRC staff has discussed security-related EP issues with Federal, State and local government officials and with licensees. The NRC staff determined that the EP planning basis continues to protect public health and safety, however, the NRC staff recognizes that enhancements are necessary to ensure effective plan implementation during security-related events. Examples of such enhancements include more timely NRC notification, improvement to onsite protective actions and revision of emergency action levels to identify security-related emergencies more succinctly.

The NRC staff issued NRC Bulletin 2005–02 on July 18, 2005, to obtain information from licensees on progress in implementing security-event-related

EP program enhancements. The NRC staff's evaluation of licensee responses to the bulletin indicate that all licensees are considering or have implemented enhancements to their programs. NEI developed the attached guidance to clarify the various options available to licensees to implement these enhancements, and requested NRC endorsement in a letter dated November 22, 2005.

Summary of Issue

The NRC staff endorses the NEI guidance entitled ''Enhancements to Emergency Preparedness Programs Hostile Action'' (May 2005, Revised November 18, 2005). The NEI guidance clarifies issues, enhances emergency action levels and provides implementation methods in support of Bulletin 2005–02. The NEI guidance remains consistent with the intent of the bulletin and is appropriate for licensee use.

The NRC staff recognizes the need for U.S. Department of Homeland Security involvement in drill and exercise program enhancements to ensure appropriate evaluation of security-event-based exercises. It may be appropriate to revise the current Exercise Evaluation Methodology and extent-of-play agreements to ensure the necessary objectives are demonstrated.

Licensees using the NEI guidance to change its emergency plan should ensure that plan changes are coordinated with offsite response organizations. Although the NEI guidance provides an acceptable method for implementing enhancements, a licensee may select other methods. If licensees adopt changes as written in the NEI guidance and Bulletin 2005–02, the NRC staff believes that those changes, on their own, would probably not pose a decrease in effectiveness and could be performed under Title 10 of the Code of Federal Regulations (10 CFR) § 50.54(q) without prior NRC approval. However, licensees have the responsibility to ensure that changes do not decrease the effectiveness of the emergency plans and that the plans, as changed, continue to meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR Part 50. Other methods for implementing the enhancements may also be acceptable, but should be evaluated by licensees to ensure they do not decrease effectiveness. Proposed changes that decrease the effectiveness of the approved emergency plans may not be implemented without application to, and approval by the NRC.

Backfit Discussion

This RIS endorses NEI guidance entitled ''Enhancements to Emergency Preparedness Programs Hostile Action'', November 2005, as an adequate methodology to implement the enhancements discussed in Bulletin 2005. Any action on the part of addressees to use the guidance endorsed by this RIS is strictly voluntary. This RIS does not impose new or modified NRC staff requirements, or prescribe a unique way to comply with the regulations, nor does it require any action or written response. Therefore, this RIS is not a backfit under 10 CFR 50.109 and the NRC staff did not perform a backfit analysis.

Congressional Review Act

This RIS is a rule as designated by the Congressional Review Act (5 U.S.C. 801–808) and, therefore, is subject to the Act.

Federal Register Notification

A notice of opportunity for public comment on this RIS was published in the **Federal Register** on XX XX XX. Comments were received from the public and comment resolution can be found in the Adams with accession No. YYYYYYY.

Paperwork Reduction Act Statement

This RIS does not contain information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collection requirements under 10 CFR Part 50 were approved by the Office of Management and Budget (OMB), approval number 3150–0011. The NRC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the requested document displays a currently valid OMB control number.

Contact

Please direct any questions about this matter to the technical contact listed below.

Christopher I. Grimes, Director, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

Technical Contact: Michael B. Norris, NSIR/DPR/EPD, (301) 415–4098. *E-mail: mbn@nrc.gov.*

Enclosure: NEI Guidance, ''Enhancements to Emergency Preparedness Programs Hostile Action'', May 2005, Revised November 18, 2005.

Note: NRC generic communications may be found on the NRC public Web site, *http://www.nrc.gov*, under Electronic Reading Room/Document Collections.

End of Draft Regulatory Issue Summary

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if you have problems in accessing the documents in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 3rd day of March 2006.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Director, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 06–2386 Filed 3–10–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Acquisition Advisory Panel; Notification of Upcoming Meetings of the Acquisition Advisory Panel

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Federal Advisory Committee meetings.

SUMMARY: The Office of Management and Budget announces two meetings of the Acquisition Advisory Panel (AAP or ''Panel'') established in accordance with the Services Acquisition Reform Act of 2003.

DATES: There are two meetings announced in this **Federal Register** notice. Public meetings of the Panel will be held on March 29th, 2006 and April 21, 2006, both beginning at 10 a.m. eastern standard time and ending no later than 5 p.m.

ADDRESSES: Both public meetings will be held at the White House Conference Center, Truman Room, 726 Jackson Place, NW., Washington, DC 20503. The public is asked to pre-register one week in advance for both meetings due to security and/or seating limitations (see below for information on pre-registration).

FOR FURTHER INFORMATION CONTACT: Members of the public wishing further information concerning these meetings

or the Panel itself, or to pre-register for the meetings, should contact Ms. Laura Auletta, Designated Federal Officer (DFO), at: *laura.auletta@gsa.gov,* phone/voice mail (202) 208–7279, or mail at: General Services Administration, 1800 F. Street, NW., Room 4006, Washington, DC 20405. Members of the public wishing to reserve speaking time must contact Ms. Rosanne Tarapacki, AAP Staff Analyst, in writing at: *rosanne.tarapacki@gsa.gov* or by FAX at 202–501–3341, or mail at the address given above for the DFO, no later than one week prior to the meeting at which they wish to speak.

SUPPLEMENTARY INFORMATION:

(a) *Background:* The purpose of the Panel is to provide independent advice and recommendations to the Office of Federal Procurement Policy and Congress pursuant to Section 1423 of the Services Acquisition Reform Act of 2003. The Panel's statutory charter is to review Federal contracting laws, regulations, and governmentwide policies, including the use of commercial practices, performance-based contracting, performance of acquisition functions across agency lines of responsibility, and governmentwide contracts. Interested parties are invited to attend the meetings. Opportunity for public comments will be provided at both meetings. Any change will be announced in the **Federal Register**.

All Meetings—While the Panel may hear from additional invited speakers, the focus of these meetings will be discussions of working group findings and recommendations. Selected working groups, established at the February 28, 2005 and May 17, 2005 public meetings of the AAP (see *http://www.acqnet.gov/aap* for a list of working groups), will discuss with the full Panel the draft findings and recommendations briefed at the October, November and December 2005 public meetings. It is anticipated that some voting may occur at one or both of these meetings. The Panel welcomes oral public comments at these meetings and has reserved one-half hour for this purpose at each meeting. Members of the public wishing to address the Panel during the meeting must contact Ms. Rosanne Tarapacki, in writing, as soon as possible to reserve time (see contact information above).

(b) *Posting of Draft Reports:* Members of the public are encouraged to regularly visit the Panel's Web site for draft reports. Currently, the working groups are staggering the posting of various sections of their draft reports at *http://www.acqnet.gov/aap* under the link for ''Working Group Reports.'' New versions of the reports from the Small Business and Interagency Contracting Working Groups are available and the public is encouraged to submit written comments on any and all draft reports.

(c) *Adopted Recommendations:* The Panel has adopted recommendations presented by the Small Business and Interagency Contracting Working Groups. While additional recommendations from these two working groups are likely, the public is encouraged to review and comment on the recommendations adopted by the Panel to date by going to *http://www.acqnet.gov/aap,* selecting the link for ''Meeting Materials'' and opening the files that include the words ''with votes'' in their titles for the January 31st and February 23rd meetings.

(d) *Availability of Meeting Materials:* Please see the Panel's Web site for any available materials, including draft agendas and minutes (*http://www.acqnet.gov/aap*). Questions/issues of particular interest to the Panel are also available to the public on this Web site on its front page, including ''Questions for Government Buying Agencies,'' ''Questions for Contractors that Sell Commercial Goods or Services to the Government,'' ''Questions for Commercial Organizations,'' and an issue raised by one Panel member regarding the rules of interpretation and performance of contracts and liabilities of the parties entitled ''Revised Commercial Practices Proposal for Public Comment.'' The Panel encourages the public to address any of these questions/issues when presenting either oral public comments or written statements to the Panel.

(e) *Procedures for Providing Public Comments:* It is the policy of the Panel to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Panel Staff expects that public statements presented at Panel meetings will be focused on the Panel's statutory charter and working group topics, and not be repetitive of previously submitted oral or written statements, and that comments will be relevant to the issues under discussion.

Oral Comments: Speaking times will be confirmed by Panel staff on a ''first-come/first-served'' basis. To accommodate as many speakers as possible, oral public comments must be no longer than 10 minutes. Because Panel members may ask questions, reserved times will be approximate. Interested parties must contact Ms. Rosanne Tarapacki, in writing (via mail, e-mail, or fax identified above for Ms. Tarapacki) at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Oral requests for speaking time will not be taken. Speakers are requested to bring extra copies of their comments and/or presentation slides for distribution to the Panel at the meeting. Speakers wishing to use a Power Point presentation must e-mail the presentation to Ms. Tarapacki one week in advance of the meeting.

Written Comments: Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received by the Panel Staff at least one week prior to the meeting date so that the comments may be made available to the Panel for their consideration prior to the meeting. Written comments should be supplied to the DFO at the address/contact information given in this FR Notice in one of the following formats (Adobe Acrobat, WordPerfect, Word, or Rich Text files, in IBM–PC/Windows 98/2000/XP format). **Please note:** Because the Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all public presentations will be treated as public documents and will be made available for public inspection, up to and including being posted on the Panel's Web site.

(f) *Meeting Accommodations:* Individuals requiring special accommodation to access the public meetings listed above should contact Ms. Auletta at least five business days prior to the meeting so that appropriate arrangements can be made.

Laura Auletta,

Designated Federal Officer (Executive Director), Acquisition Advisory Panel.

[FR Doc. 06–2385 Filed 3–8–06; 12:53 pm]

BILLING CODE 3110–01–P

POSTAL SERVICE

Customized Postage

AGENCY: Postal Service.

ACTION: Notice of authorization of Expanded Market Test for Customized Postage.

SUMMARY: The Postal Service™ provides notice of its intention to expand testing of the concept of Customized Postage for a period of up to 2 years, commencing no sooner than March 20, 2006.

DATES: This notice is effective March 13, 2006.

FOR FURTHER INFORMATION CONTACT: Daniel J. Lord, manager of Postage

Technology Management, at 703–292–3692 or by fax at 703–292–4073.

SUPPLEMENTARY INFORMATION: On April 27, 2005, the Postal Service published its notice of intention to resume testing of the concept of Customized Postage for a period of 1 year in **Federal Register**, Volume 70, Number 80, Pages 21821–21822. As a result of that notice, three companies were authorized to conduct a 1 year market test of Customized Postage beginning in May 2005. This test, now referred to as Phase II, precluded the use of commercial images in Customized Postage.

As a result of a recent amendment to 18 U.S.C. § 475, the Postal Service is providing notice of its intention to conduct further market tests of the Customized Postage concept to include commercial images. These further market tests will be referred to as Phase III. Therefore, the Postal Service invites interested parties to submit proposed concepts for consideration.

While each concept will be evaluated on its own merits, particular conditions may be required and agreed to by the Postal Service and the provider regarding the testing of that concept. The following conditions will be applied in common to all concepts:

1. The provider must be an authorized PC Postage® provider, authorized postage meter manufacturer or distributor, or a company affiliated with an authorized postage provider under conditions respecting postage revenue security approved by the Postal Service in accordance with 39 CFR 501.1 and subject to all procedures and regulations set forth throughout 39 CFR part 501.

2. The Customized Postage indicia and other printed matter must meet all Postal Service requirements respecting placement on a mailpiece, readability, avoidance of interference with and facilitation of mail processing, and identification of fraudulent indicia, as well as all regulations pertaining to PC Postage products and services.

3. The provider will be responsible for ensuring that all images to appear in the ad plate area meet the requirements of 39 CFR 501.6(g) and 501.23(d); are not obscene, deceptive, or defamatory of any person, entity, or group; do not advocate unlawful action; do not emulate any form of valid postage, government, or other official indicia, or payment of postage; and do not harm the public image, reputation, or good will of the Postal Service. The provider will also have full responsibility for ensuring that a customer acknowledges, agrees, and warrants in writing that it bears full responsibility and liability for obtaining authorization to reproduce and otherwise use an image as proposed, and that it, in fact, has the legal authority to reproduce and otherwise use the image as proposed. It is the Postal Service's declared intent not to allow its Customized Postage program to become a public forum for dissemination, debate, or discussion of public issues.

4. The test will be limited to full-rate single piece First-Class Mail® service, Priority Mail® service, and Express Mail® service.

5. The provider must agree that it has obtained all intellectual property licenses (from customers or elsewhere) necessary to provide the approved service and that it will indemnify the Postal Service for any costs and damages it may incur as a result of its failure to honor this representation.

6. The provider must acknowledge that it understands (and agrees) that the Postal Service has not invoked or exercised 28 U.S.C. 1498 with respect to any aspect of the Customized Postage product or services.

7. The provider must design its Customized Postage indicia in a manner that avoids the likelihood that the public will be misled into believing that the product image originated with the Postal Service.

8. The Postal Service may suspend or cancel without prior notice and without liability for any costs incurred or losses sustained by a provider or customer, the approval of any customer as a test participant, or the Customized Postage test itself, in the event there is sufficient cause to believe that the test presents unacceptable risk to Postal Service revenues, degradation of the ability of the Postal Service to process or deliver mail produced by test participants, an assessment that continuation of the test may expose the Postal Service or its customers to legal liability, or an assessment that continuation of the test will cause public or political embarrassment or harm to the Postal Service in any way.

9. The Postal Service will require approved providers of Customized Postage to pay an annual fee to participate in the test.

10. Additional conditions and requirements may be set forth in individual product test approval letters.

Persons interested in obtaining Postal Service authorization to participate in the Phase III Customized Postage market test should contact: Manager, Postage Technology Management, U.S. Postal Service, 1735 North Lynn Street, Room 5011, Arlington, VA 22209–6030; (703) 292–3592 (Telephone); (703) 292-4073 (Fax).

Neva Watson,

Attorney, Legislative.

[FR Doc. 06–2397 Filed 3–10–06; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* Pension Plan Reports.

(2) *Form(s) submitted:* G–88p, G–88r and G–88r.1.

(3) *OMB Number:* 3220–0089.

(4) *Expiration date of current OMB clearance:* 05/31/2006.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Business or other for-profit.

(7) *Estimated annual number of respondents:* 500.

(8) *Total annual responses:* 765.

(9) *Total annual reporting hours:* 103.

(10) *Collection description:* The Railroad Retirement Act provides for payment of a supplemental annuity to a qualified railroad retirement annuitant. The collection obtains information from the annuitant's employer to determine (a) the existence of a railroad employer pension plans and whether such plans, if they exist, require a reduction to supplemental annuities paid to the employer's former employees and the (b) the amount of supplemental annuities due railroad employees.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312–751–3363) or *Charles.Mierzwa@rrb.gov*.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget,

Room 10230, New Executive Office Building, Washington, D.C. 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E6–3476 Filed 3–10–06; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [71 FR 11249, March 6, 2006].

STATUS: Closed Meeting.

PLACE: 100 F Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, March 9, 2006 at 2 p.m.

CHANGE IN THE MEETING: Deletion of Item.

The following item will not be considered during the Closed Meeting on March 9, 2006: Consideration of amicus participation.

The Commission determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: March 9, 2006.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 06–2457 Filed 3–9–06; 3:54 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53427; File No. PCAOB–2006–01]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees

March 7, 2006.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the ''Act''), notice is hereby given that on August 2, 2005, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission'' or ''SEC'') the proposed rule described in Items I, and II below, which items have been prepared by the Board. On November 22, 2005, the Board adopted certain technical amendments to the rule and amended its filing on November 23, 2005. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rule

On July 26, 2005, the Board adopted Rules 3501—*Definitions of Terms Employed in Section 3, Part 5 of the Rules*; 3502—*Responsibility Not to Cause Violations*; 3520—*Auditor Independence*; 3521—*Contingent Fees*; 3522—*Tax Transactions*; 3523—*Tax Services for Persons in Financial Reporting Oversight Roles*; and 3524—*Audit Committee Pre-approval of Certain Tax Services* (''the proposed rules''). On November 22, 2005, the Board adopted certain technical amendments to Rule 3502, including its title, and Rule 3522. The proposed rule text is set out below.

SECTION 3. PROFESSIONAL STANDARDS—Part 5—Ethics

Rule 3501. Definitions of Terms Employed in Section 3, Part 5 of the Rules

When used in Section 3, Part 5 of the Rules, unless the context otherwise requires:

(a)(i) Affiliate of the Accounting Firm

The term ''affiliate of the accounting firm'' (or ''affiliate of the registered public accounting firm'' or ''affiliate of the firm'') includes the accounting firm's parents; subsidiaries; pension, retirement, investment or similar plans; and any associated entities of the firm, as that term is used in Rule 2–01 of the Commission's Regulation S–X, 17 CFR 210.2–01(f)(2).

(a)(ii) Affiliate of the Audit Client

The term ''affiliate of the audit client'' means—

(1) An entity that has control over the audit client, or over which the audit client has control, or which is under common control with the audit client, including the audit client's parents and subsidiaries;

(2) An entity over which the audit client has significant influence, unless the entity is not material to the audit client;

(3) An entity that has significant influence over the audit client, unless the audit client is not material to the entity; and

(4) Each entity in the investment company complex when the audit client is an entity that is part of an investment company complex.

(a)(iii) Audit and Professional Engagement Period

The term ''audit and professional engagement period'' includes both—

(1) The period covered by any financial statements being audited or reviewed (the ''audit period''); and

(2) The period of the engagement to audit or review the audit client's financial statements or to prepare a report filed with the Commission (the ''professional engagement period'')—

(A) The professional engagement period begins when the registered public accounting firm either signs an initial engagement letter (or other agreement to review or audit a client's financial statements) or begins audit, review, or attest procedures, whichever is earlier; and

(B) The professional engagement period ends when the audit client or the registered public accounting firm notifies the Commission that the client is no longer that firm's audit client.

(3) For audits of the financial statements of foreign private issuers, the ''audit and professional engagement period'' does not include periods ended prior to the first day of the last fiscal year before the foreign private issuer first filed, or was required to file, a registration statement or report with the Commission, provided there has been full compliance with home country independence standards in all prior periods covered by any registration statement or report filed with the Commission.

(a)(iv) Audit Client

The term ''audit client'' means the entity whose financial statements or other information is being audited, reviewed, or attested and any affiliates of the audit client.

(c)(i) Confidential Transaction

The term ''confidential transaction'' means—

(1) In general. A confidential transaction is a transaction that is offered to a taxpayer under conditions of confidentiality and for which the taxpayer has paid an advisor a fee.

(2) Conditions of confidentiality. A transaction is considered to be offered to a taxpayer under conditions of confidentiality if the advisor who is paid the fee places a limitation on disclosure by the taxpayer of the tax treatment or tax structure of the transaction and the limitation on disclosure protects the confidentiality of that advisor's tax strategies. A transaction is treated as confidential even if the conditions of confidentiality are not legally binding on the taxpayer.

A claim that a transaction is proprietary or exclusive is not treated as a limitation on disclosure if the advisor confirms to the taxpayer that there is no limitation on disclosure of the tax treatment or tax structure of the transaction.

(3) Determination of fee. For purposes of this definition, a fee includes all fees for a tax strategy or for services for advice (whether or not tax advice) or for the implementation of a transaction. These fees include consideration in whatever form paid, whether in cash or in kind, for services to analyze the transaction (whether or not related to the tax consequences of the transaction), for services to implement the transaction, for services to document the transaction, and for services to prepare tax returns to the extent that the fees exceed the fees customary for return preparation. For purposes of this definition, a taxpayer also is treated as paying fees to an advisor if the taxpayer knows or should know that the amount it pays will be paid indirectly to the advisor, such as through a referral fee or fee-sharing arrangement. A fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. For example, a fee does not include reasonable charges for the use of capital or the sale or use of property.

(4) Related parties. For purposes of this definition, persons who bear a relationship to each other as described in section 267(b) or 707(b) of the Internal Revenue Code will be treated as the same person.

(c)(ii) Contingent Fee

The term ''contingent fee'' means—

(1) Except as stated in paragraph (2) below, any fee established for the sale of a product or the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such product or service.

(2) Solely for the purposes of this definition, a fee is not a ''contingent fee'' if the amount is fixed by courts or other public authorities and not dependent on a finding or result.

(f)(i) Financial Reporting Oversight Role

The term ''financial reporting oversight role'' means a role in which a person is in a position to or does exercise influence over the contents of the financial statements or anyone who prepares them, such as when the person is a member of the board of directors or similar management or governing body, chief executive officer, president, chief financial officer, chief operating officer, general counsel, chief accounting officer, controller, director of internal audit, director of financial reporting, treasurer, or any equivalent position.

(i)(i) Immediate Family Member

The term ''immediate family member'' means a person's spouse, spousal equivalent, and dependents.

(i)(ii) Investment Company Complex

(1) The term ''investment company complex'' includes—

(i) An investment company and its investment adviser or sponsor;

(ii) Any entity controlled by or controlling an investment adviser or sponsor in paragraph (i) of this definition, or any entity under common control with an investment adviser or sponsor in paragraph (i) of this definition if the entity—

(A) Is an investment adviser or sponsor; or

(B) Is engaged in the business of providing administrative, custodian, underwriting, or transfer agent services to any investment company, investment adviser, or sponsor; and

(iii) Any investment company or entity that would be an investment company but for the exclusions provided by section 3(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)) that has an investment adviser or sponsor included in this definition by either paragraph (i) or (ii) of this definition.

(2) An investment adviser, for purposes of this definition, does not include a sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser.

(3) A sponsor, for purposes of this definition, is an entity that establishes a unit investment trust.

Rule 3502. Responsibility Not To Knowingly or Recklessly Contribute to Violations

A person associated with a registered public accounting firm shall not take or omit to take an action knowing, or recklessly not knowing, that the act or omission would directly and substantially contribute to a violation by that registered public accounting firm of the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards.

Subpart 1—Independence

Rule 3520. Auditor Independence

A registered public accounting firm and its associated persons must be independent of the firm's audit client throughout the audit and professional engagement period.

Note 1: Under Rule 3520, a registered public accounting firm or associated person's independence obligation with respect to an audit client that is an issuer encompasses not only an obligation to satisfy the independence criteria set out in the rules and standards of the PCAOB, but also an obligation to satisfy all other independence criteria applicable to the engagement, including the independence criteria set out in the rules and regulations of the Commission under the federal securities laws.

Note 2: Rule 3520 applies only to those associated persons of a registered public accounting firm required to be independent of the firm's audit client by standards, rules or regulations of the Commission or other applicable independence criteria.

Rule 3521. Contingent Fees

A registered public accounting firm is not independent of its audit client if the firm, or any affiliate of the firm, during the audit and professional engagement period, provides any service or product to the audit client for a contingent fee or a commission, or receives from the audit client, directly or indirectly, a contingent fee or commission.

Rule 3522. Tax Transactions

A registered public accounting firm is not independent of its audit client if the firm, or any affiliate of the firm, during the audit and professional engagement period, provides any non-audit service to the audit client related to marketing, planning, or opining in favor of the tax treatment of, a transaction—

(a) Confidential Transactions—that is a confidential transaction; or

(b) Aggressive Tax Position Transactions—that was initially recommended, directly or indirectly, by the registered public accounting firm and a significant purpose of which is tax avoidance, unless the proposed tax treatment is at least more likely than not to be allowable under applicable tax laws.

Note 1: With respect to transactions subject to the United States tax laws, paragraph (b) of this rule includes, but is not limited to, any transaction that is a listed transaction within the meaning of 26 CFR 1.6011–4(b)(2).

Note 2: A registered public accounting firm indirectly recommends a transaction when an affiliate of the firm or another tax advisor, with which the firm has a formal agreement or other arrangement related to the

promotion of such transactions, recommends engaging in the transaction.

Rule 3523. Tax Services for Persons in Financial Reporting Oversight Roles

A registered public accounting firm is not independent of its audit client if the firm, or any affiliate of the firm, during the audit and professional engagement period provides any tax service to a person in a financial reporting oversight role at the audit client, or an immediate family member of such person, unless—

(a) The person is in a financial reporting oversight role at the audit client only because he or she serves as a member of the board of directors or similar management or governing body of the audit client;

(b) The person is in a financial reporting oversight role at the audit client only because of the person's relationship to an affiliate of the entity being audited—

(1) Whose financial statements are not material to the consolidated financial statements of the entity being audited; or

(2) Whose financial statements are audited by an auditor other than the firm or an associated person of the firm; or

(c) The person was not in a financial reporting oversight role at the audit client before a hiring, promotion, or other change in employment event and the tax services are

(1) Provided pursuant to an engagement in process before the hiring, promotion, or other change in employment event; and

(2) Completed on or before 180 days after the hiring or promotion event.

Rule 3524. Audit Committee Pre-Approval of Certain Tax Services

In connection with seeking audit committee pre-approval to perform for an audit client any permissible tax service, a registered public accounting firm shall—

(a) Describe, in writing, to the audit committee of the issuer—

(1) The scope of the service, the fee structure for the engagement, and any side letter or other amendment to the engagement letter, or any other agreement (whether oral, written, or otherwise) between the firm and the audit client, relating to the service; and

(2) Any compensation arrangement or other agreement, such as a referral agreement, a referral fee or fee-sharing arrangement, between the registered public accounting firm (or an affiliate of the firm) and any person (other than the audit client) with respect to the promoting, marketing, or recommending of a transaction covered by the service;

(b) Discuss with the audit committee of the issuer the potential effects of the services on the independence of the firm; and

(c) Document the substance of its discussion with the audit committee of the issuer.

* * * * *

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule and discussed any comments it received on the proposed rule. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

(a) Purpose

Section 103(a) of the Act directs the Board, by rule, to establish ''ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by th[e] Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors.'' Moreover, Section 103(b) of the Act directs the Board to establish such rules on auditor independence ''as may be necessary or appropriate in the public interest or for the protection of investors, to implement, or as authorized under, Title II of th[e] Act.''

As discussed more fully in Exhibit 3, two types of tax services have raised serious concerns among investors, auditors, lawmakers, and others relating to the ethics and independence of accounting firms that provide both auditing and tax services—

1. The marketing to public company audit clients of questionable tax transactions used improperly to avoid paying taxes or to manipulate financial statements in order to make such statements appear more favorable to investors, and

2. The provision of tax services, including tax shelter products, to executives of public company audit clients who are involved in the financial reporting process at such companies.

Accordingly, the Board adopted a set of rules designed to establish a framework for addressing the concerns that have arisen in connection with auditors' provision of tax services to their public company audit clients. Specifically, the proposed rules are designed, among other things, to prevent auditors from providing (1) certain aggressive tax shelter services to public company audit clients, (2) any other service to a public company audit client for a contingent fee, which is a fee arrangement often used in tax work, and (3) any tax service to certain persons who serve in financial reporting oversight roles at a public company audit client. The rules also codify, in an ethics rule, the principle that persons associated with a registered public accounting firm should not cause the firm to violate relevant laws, rules, and standards, and introduce a foundation for the independence component of the Board's ethics rules. Finally, the rules implement the requirements of the Act and the SEC's independence rules when an auditor seeks audit committee pre-approval to provide tax services that are not prohibited by the Board's or the SEC's rules.

(b) Statutory Basis

The statutory basis for the proposed rule is Title I of the Act.

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rules will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rules would apply equally to all registered public accounting firms and their associated persons. Although some of the proposed rules would prohibit a registered public accounting firm from providing certain non-audit services to its audit clients, they would not restrict the provision of these same services to other companies.

C. Board's Statement on Comments on the Proposed Rule Received From Members, Participants or Others

The Board released the proposed rules for public comment in PCAOB Release No. 2004–015 (December 14, 2004). A copy of PCAOB Release No. 2004–015 and the comment letters received in response to the PCAOB's request for comment are available on the PCAOB's Web site at *http://www.pcaobus.org.* The Board received 807 written comments. The Board has modified certain aspects of the proposed rules in response to comments it received, as discussed below.

When the Board adopted the rules on July 26, 2005, it stated the following: [1]

[1] As discussed above, the Board adopted technical amendments to the rules on November 22,

Rule 3502—Responsibility Not to Cause Violations

Rule 3502, as proposed, provided that a person associated with a registered public accounting firm shall not cause that firm to violate the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards, due to an act or omission the person knew or should have known would contribute to such violation. The Board proposed the rule to codify the ethical obligation of associated persons of registered firms not to cause registered firms to commit such violations. Proposed Rule 3502 also made clear that an associated person's ethical obligation is not merely to refrain from knowingly causing a violation but also to act with sufficient care to avoid negligently causing a violation.

The Board received a number of comments on proposed Rule 3502. Several commenters supported the rule as proposed and noted that they saw the rule as essential to the Board's ability to carry out its disciplinary responsibilities under the Act. Other commenters, however, including the largest accounting firms and an accounting trade association, did not support the rule as proposed. In general, these commenters objected to the proposed rule's use of a negligence standard in light of the complex regulatory requirements with which auditors must comply. Some of these commenters also questioned the Board's authority to adopt the proposed rule, or at least the proposed rule with a negligence standard.

The Board has carefully considered these comments and determined to adopt Rule 3502, with some modifications. The Board continues to believe that it is authorized to adopt the rule. Section 103(a) of the Act directs the Board to, ''by rule, establish * * * such ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by this Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors.'' The Board believes that the rule is an appropriate exercise of this authority to set ethical standards for accountants subject to the Board's jurisdiction.

Under the Act and Board rules, both registered firms and their associated persons must comply with PCAOB rules and standards, as well as related laws. When an associated person with such a responsibility causes the firm with which he or she is associated to violate such rules, standards or laws, this conduct operates to the detriment of the protection of investors and the public interest and may bear on the ethics of the responsible associated person. When such a person engages in this conduct with knowledge that, or in reckless disregard of whether, it would directly and substantially contribute to the firm's violation, the Board believes this conduct plainly reflects an ethical lapse by the responsible person and, therefore, is within the Board's authority—and indeed responsibility—to proscribe.

At least one commenter asserted that the proposed rule was not a proper exercise of the Board's ethics standards-setting authority because it reached a range of conduct, rather than delineating ''particular impermissible conduct.'' The Board disagrees and believes the type of conduct addressed by the rule is plainly the type of conduct the Board's ethics rules can and should address. In fact, the accounting profession's existing ethical code at the time of enactment of the Act reaches any act that may ''discredit[]'' the profession—thereby reaching ranges of conduct, including violations of certain laws, rather than just specifying ''particular impermissible conduct.'' [2] When Congress vested the authority to set ethics standards in the Board, the Board believes it intended for this authority to be at least as broad as the scope of the existing ethics rules, at least as to matters within the Board's jurisdiction. This authority, in the Board's view, plainly includes the ability to require that persons subject to the Board's jurisdiction, as an ethical obligation, not cause a violation of relevant laws.

Commenters opposed to the proposed rule also sought to analogize the rule to a theory of liability that the Supreme Court rejected in *Central Bank of Denver, N.A.* v. *First Interstate Bank of Denver, N.A.*[3] In *Central Bank*, the Supreme Court held that that there is no private right of action for aiding and abetting a violation of Section 10(b) of the Securities Exchange Act of 1934 (''Exchange Act''). That decision turned on the fact that the text of Section 10(b) does not provide for aiding-and-abetting liability.[4] The Board does not believe this decision affects the scope of the Board's explicit authority to set ethics standards under Section 103 of the Act.[5] Again, the Board notes that the profession's existing ethics code also reaches what can be characterized as ''secondary'' conduct contributing to a violation.[6]

The power to adopt Rule 3502 also is inherent in, and necessary to, the Board's authority to enforce PCAOB standards, rules, and related laws against both registered firms and their associated persons. Section 105 authorizes the Board to investigate and, when appropriate, discipline registered firms and their associated persons. Certain types of violations, by their nature, may give rise to direct liability only for a registered public accounting firm. Such firms, however, can only act through the natural persons that comprise them, many of whom are ''associated persons'' subject to the Board's ethics standards and disciplinary authority. When one or more of those associated persons has caused that firm to violate PCAOB standards, rules, or related laws with the requisite state of mind, it is appropriate, and consistent with the Board's duty to discipline registered

2005. These amendments are discussed under *The Technical Amendments*, below.

[2] *See AICPA Code of Professional Conduct*, ET section (''sec.'') 501, ''Acts Discreditable'' (''A member shall not commit an act discreditable to the profession.''). Interpretations of this part of the ethical code provide that an accountant member will be considered to have committed a discreditable act if, among other things, he or she: ''fails to comply with applicable federal, state or local [tax] laws or regulations,'' ET sec. 501.08, Interpretation 501–7; fails to follow applicable requirements of a governmental body, such as the SEC, in performing accounting services, ET sec. 501.06, Interpretation 501–5; or fails to follow government audit standards and rules in conducting a governmental audit, ET sec. 501.04, Interpretation 501–3.

[3] 511 U.S. 164 (1994).

[4] *See id.* at 190 (''Because the text of § 10(b) does not prohibit aiding and abetting, we hold that a private plaintiff may not maintain an aiding and abetting suit under § 10(b).'').

[5] Rule 3502, of course, differs from an aiding-and-abetting cause of action in important respects. Among other things, the rule does not apply whenever an associated person causes another to violate relevant laws, rules and standards. Rather, Rule 3502 applies only when an associated person causes a violation by the registered firm with which the person is associated.

[6] *See AICPA Code of Professional Conduct*, paragraph .02(2) of ET sec. 91, ''Applicability'' (''A member shall not knowingly permit a person, whom the member has the authority or capacity to control, to carry out on his or her behalf, either with or without compensation, acts which, if carried out by the member, would place the member in violation of the rules. Further, a member may be held responsible for the acts of all persons associated with him or her in the practice of public accounting whom the member has the authority or capacity to control.''); *see also* ET sec. 102.02, Interpretation 102–1(c) (violation of ethics rules not just to sign, but to ''permit[] or direct[] another to sign a document containing materially false and misleading information'') (adopted as a Board interim ethics rule in Rule 3500T).

firms and their associated persons under Section 101(c)(4) of the Act, that the Board be able to discipline the associated person for that misconduct.[7]

After carefully considering the comments received, the Board has determined, however, to modify the scope of Rule 3502 to apply only when an associated person causes the registered firm's violation due to an act or omission the person ''knew, or was reckless in not knowing, would directly and substantially contribute to such violation.'' This revised formulation reflects two changes to the rule as proposed.

First, the Board has determined to change the state-of-mind requirement in the rule. Specifically, Rule 3502, as adopted, will apply to ''an act or omission the [associated] person knew, or was reckless in not knowing,'' would cause the violation. While the Board believes it has the authority to adopt a negligence standard,[8] the Board believes the revised standard strikes the right balance in the context of this rule. The Board believes that the phrase ''knew, or was reckless in not knowing'' is a well-understood legal concept, and the Board intends for the phrase to be given its normal meaning.

Second, the Board has determined to modify the phrase used to describe the connection between the associated person's conduct and the violation. Specifically, Rule 3502, as adopted, provides that the associated person's act or omission must ''directly and substantially contribute to [the firm's] violation.'' In particular, ''substantially'' in this context means that the associated person's conduct (*i.e.*, an act or omission) contributed to the violation in a material or significant way. The term ''substantially'' also means, however, that the associated person's conduct does not need to have been the sole cause of the violation. ''Directly'' means that the associated person's conduct either essentially constitutes the violation—even though it is the firm and not the individual that actually commits the violation—or is a reasonably proximate facilitating event of, or a reasonably proximate stimulus for, the violation. ''Directly and substantially'' does not mean that the associated person's conduct must be the sole cause of the violation, nor that it must be the final step in a chain of actions leading to the violation. In addition, the term ''directly'' should not be misunderstood to excuse someone who knowingly or recklessly engages in conduct that substantially contributes to a violation, just because others also contributed to the violation, or because others could have stopped the violation and did not. At the same time, the term does not reach an associated person's conduct that, while contributing to the violation in some way, is remote from, or tangential to, the firm's violation.

A number of commenters expressed concern that adoption of a negligence standard would allow the Board, or the SEC, to proceed against associated persons who in good faith, albeit negligently, have caused a registered firm to violate applicable laws or standards. For example, commenters suggested that the proposed rule could be used against compliance personnel within a firm who inadvertently design a firm's compliance system in a flawed manner. Commenters also expressed concern that, because the SEC can enforce PCAOB rules under Section 3 of the Act, the Board's rule could have the practical effect of altering the state-of-mind requirement applicable in SEC enforcement proceedings against accountants.

It was not the Board's intention to establish a new standard for SEC enforcement of the securities laws and related applicable rules. The Board also recognizes that persons subject to its jurisdiction must comply with complex professional and regulatory requirements in performing their jobs. The Board does not seek to create through this rule a vehicle to pursue compliance personnel who act in an appropriate, reasonable manner that, in hindsight, turns out to have not been successful. Nor does the Board seek to reach those whose conduct, unbeknownst to them, remotely contributes to a firm's violation. At the same time, the Board continues to believe that it is necessary and appropriate for its ethics rules to apply when an associated person has engaged in an act or omission with knowledge that, or in reckless disregard of whether, it would directly and substantially contribute to a violation.[9]

The Board also believes that, because the rule is essential to the functioning of the Board's independence rules, this rulemaking provides the appropriate forum to adopt the rule. For example, Rule 3521 provides, in part, that a registered firm is not independent of its audit client if the firm provides that audit client with a service for a contingent fee. When an associated person causes, in a manner consistent with the discussion above, the registered firm to provide that service for a contingent fee, Rule 3502 would allow the Board to discipline the associated person for that conduct.[10]

Rule 3520—The Fundamental Independence Requirement

Rule 3520 sets forth the fundamental ethical obligation of independence: a registered public accounting firm and its associated persons must be independent of the firm's audit client throughout the audit and professional engagement period. This requirement encompasses the independence requirements set out in PCAOB Rule 3600T and goes further, as a matter of the auditor's ethical obligation, to encompass any other independence requirement applicable to the audit in the particular circumstances. Accordingly, in the case of an audit client subject to the financial reporting requirements of the securities laws and the SEC's rules, the ethical obligation under Rule 3520 requires the firm and its associated persons to maintain independence consistent with the SEC's requirements.[11]

By giving this scope to Rule 3520, the Board is not promulgating any new independence requirement. The Commission's independence requirements exist independently of Rule 3520 and are subject to change at the discretion of the Commission, without Rule 3520 purporting separately

[7] Some commenters suggested that the reference to ''any act, or practice * * * in violation of this Act'' in Section 105(c)(4)—the part of the Act authorizing the Board to impose certain sanctions—was inconsistent with the proposed rule. The Board notes, however, as it did in the proposing release, that Section 105(c)(5) expressly provides that the more severe of these sanctions may be imposed when intentional, knowing, or reckless conduct, or repeated instances of negligent conduct, ''results in'' violation of law, regulations, or professional standards.

[8] A number of commenters argued that Section 105(c) of the Act prevents the Board from imposing discipline based on a negligence standard. The Board's determination to change the rule's state-of-mind requirement to recklessness moots these comments. The Board notes, however, that Section 105(c)(5) identifies a range of sanctions that the Board may not impose in the absence of knowing conduct, reckless conduct, or repeated instances of negligent conduct. The Act does not similarly limit the Board's authority to impose certain other sanctions.

[9] While the Board's proposed rule tracked some of the language of Section 21C of the Securities Exchange Act of 1934 (''Exchange Act''), the rule, as adopted, differs significantly from, and should not be interpreted in pari material with, that statutory provision.

[10] Rule 3502, of course, is not the exclusive means for the Board to enforce applicable Board rules and standards against associated persons. Among other provisions, Rules 3100 and 3200T through 3600T directly require associated persons to comply with certain auditing and related professional practice standards. In addition, PCAOB standards generally contain directives to the ''auditor.'' The term ''auditor'' is defined in PCAOB Rule 1001(a)(xii) to include both registered firms and their associated persons. Accordingly, an associated person of a registered firm that does not comply with such a directive may be charged with violations of such other standards, independent of any charges under Rule 3502.

[11] 17 CFR 210.2–01.

to lock in place any aspect of those requirements. Instead, Rule 3520 is based on the simple premise that ethical standards for auditors can and should encompass a duty by the auditor to maintain independence necessary to ensure compliance with independence requirements in the circumstances of the particular engagement.

A note to the rule emphasizes the scope of the obligation in the rule by pointing out that, even in circumstances to which the Commission's Rule 2–01 applies, a registered public accounting firm and its associated persons still may need to comply with other independence requirements, including those requirements separately established by the Board. Using this foundation, the Board may adopt additional rules in the ''Independence'' subpart of the ethics rules that effectively set out additional requirements. As described below, with the new rules adopted today, the Board's independence rules include contingent fee arrangements and tax services.

After carefully considering the comments on proposed Rule 3520, the Board has determined to adopt the rule, with only one change. Most commenters supported the scope and content of the proposed rule. A few commenters, however, asked the Board to add text to the proposed rule to clarify or emphasize that the rule incorporates certain concepts in the existing independence requirements. While these comments are discussed in more detail below, the Board did not adopt these suggestions, as a general matter, because of the purpose of Rule 3520. Rule 3520 was simply intended to require, by Board rule, compliance with applicable independence requirements. The rule was not intended to, and does not, add to—or subtract from—these existing requirements. Nor is it intended to reflect the Board's conceptual approach to independence issues. Accordingly, while the Board does not necessarily disagree with the intent of the commenters who suggested adding text to the proposed rule, it does not believe it is necessary or appropriate to modify the rule to reflect their specific suggestions.

Three commenters suggested that Rule 3520 expressly require that auditors maintain independence from their audit client ''both in fact and appearance.'' As proposed, the rule already requires auditors to maintain independence both in fact and appearance, because the SEC's independence rules—which are incorporated in Rule 3520, as discussed above—are''designed to ensure that auditors are qualified and independent of their audit clients both in fact and in appearance.'' [12] In addition, Statement on Auditing Standard (''SAS'') No. 1, *Codification of Auditing Standards and Procedures*, adopted by the Board as an interim standard, requires that auditors ''not only be independent in fact; [but also] avoid situations that may lead outsiders to doubt their independence.'' [13] Therefore, the Board does not believe it is necessary to include this additional language in Rule 3520 to preserve these existing principles.

Some commenters also recommended that Rule 3520 expressly include the SEC's four overarching independence principles that it will look to in determining whether a particular service or client relationship impairs the auditor's independence.[14] Other commenters asked the Board to explicitly note in the rule that certain tax services are consistent with the SEC's four principles. For the reasons described above, the Board has decided not to change the rule in response to either of these suggestions. The Board notes, however, that the SEC's independence rules already refer to the four principles, and these rules must be complied with under Rule 3520.

Two commenters suggested that Rule 3520 include the text of the American Institute of Certified Public Accountants' (''AICPA'') Ethics Rule 102, which provides, in pertinent part, that members of the AICPA should avoid any subordination of their judgment.[15] Although the Board shares these commenters' view about the importance of this principle, the Board has already adopted Ethics Rule 102 as part of its interim ethics rule, Rule 3500T. Accordingly, this rule is already part of the Board's ethical standards and need not be separately repeated in Rule 3520 to be enforced by the Board.

Two firms suggested that Rule 3520, as proposed, might have the effect of precluding use of exceptions in the SEC's existing independence rules and asked the Board to avoid that result. Other than creating a requirement in a Board rule to comply with existing and applicable independence requirements, it does not add to, or detract from, the scope and substantive effect of these existing requirements in any respect.

The Board has, however, as suggested by a commenter, added ''associated persons'' to the rule. While the independence requirements added to the Board's rules through this rulemaking apply to the firm, other independence requirements covered by Rule 3520 are directed to individual accountants within auditing firms. Most notably, certain of the SEC's independence rules impose independence requirements directly on individual accountants.[16] Accordingly, the Board believes it is appropriate for the rule to apply to associated persons, as well as registered firms themselves. At the same time, the Board has added a new note to the rule to make clear that the rule applies only to those associated persons of a registered public accounting firm that are required to be independent of the firm's audit client by standards, rules, or regulations of the Commission or other applicable independence criteria.[17] Accordingly, the rule does not impose independence requirements on persons not already subject to them, and does not impose new independence requirements on any associated person. Rather, Rule 3520 only requires associated persons who are otherwise subject to independence requirements to comply, as an ethical obligation, with those requirements.

Rule 3521—Contingent Fees

The Board also has determined to adopt Rule 3521 as proposed. There was widespread support among commenters for the Board's view, expressed in the proposal, that certain fee arrangements used for the provision of tax services create per se conflicts of interest that impair auditors' independence from their audit clients. As discussed more fully in the proposing release, when an accounting firm provides a service to an audit client for a contingent fee, the firm's economic interests become

[12] 17 CFR 210.2–01, Preliminary Note 1; *accord United States* v. *Arthur Young & Co.*, 465 U.S. 805, 819 n.15 (1984).

[13] SAS No. 1, *Codification of Auditing Standards and Procedures*, paragraph .03 of AU sec. 220. The standard further states that ''[p]ublic confidence would be impaired by evidence that independence was actually lacking, and it might also be impaired by the existence of circumstances which reasonable people might believe likely to influence independence.'' *Id.*

[14] *See* 17 CFR 210.2–01, Preliminary Note 2. Specifically, under those principles, the SEC looks to whether a relationship or the provision of a service: (a) Creates a mutual or conflicting interest between the accountant and the audit client; (b) places the accountant in the position of auditing his or her own work; (c) results in the accountant acting as management or an employee of the audit client; or (d) places the accountant in a position of being an advocate for the audit client.

[15] *See AICPA Code of Professional Conduct*, ET sec. 102, ''Integrity and Objectivity''.

[16] *See, e.g.*, Rule 2–01(c)(1), 17 CFR 210.2–01(c)(1). *See also* PCAOB Rule 3600T.

[17] Other applicable independence criteria include any rules of the PCAOB, other than Rule 3520, that contain independence requirements directly applicable to associated persons of the firm, such as Rule 3600T.

aligned with the interests of its audit client in a manner that is inconsistent with the firm's role as independent auditor. The Board's rule was adapted from the SEC's rule prohibiting contingent fee arrangements [18] and thus treats registered firms as not independent if they enter into contingent fee arrangements with audit clients.

Specifically, Rule 3521 provides that a registered public accounting firm is not independent of its audit client [19] if the firm, or any affiliate of the firm,[20] during the audit and professional engagement period,[21] provides any service or product to the audit client for a contingent fee or a commission, or receives from the audit client, directly or indirectly, a contingent fee or commission. The Board's definition of a contingent fee is ''any fee established for the sale of a product or the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such product or service.'' [22]

Fees fixed by courts or other public authorities and not dependent on a finding or result are excluded from this definition to permit contingencies that do not pose a risk of establishing a mutual interest between the auditor and the audit client. In the proposing release, the Board cited, as an example of such a permissible fee, fees approved by a bankruptcy court, as required under U.S. Federal bankruptcy law.[23] The Board also sought comment on whether there are courts or other public authorities that fix fees that are not dependent on a finding or result, other than bankruptcy courts, such that the term ''courts or other public authorities'' is necessary.

In response to this request, several commenters noted that they are not aware of any such authorities and encouraged the Board to eliminate the reference to ''other public authorities'' from the proposed rule. Other commenters suggested that the Board retain the phrase, even though they did not identify other contexts in which fees that are not contingent on a result of a ''product or service'' are nevertheless subject to approval by a court or other public authority.[24] After considering these comments, the Board has decided to retain the exception for fees that require approval of ''courts or other public authorities.'' The Board envisions that there may be fee approval schemes outside the U.S. that are analogous to U.S. bankruptcy law.

Although Rule 3521 and the related definition of ''contingent fee'' are modeled on the SEC's independence rules, as discussed in the Board's proposing release, they differ from those rules in that the Board's rules do not include the SEC's exception for fees ''in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies.'' [25] As discussed in the Board's proposing release, this exception may have been misinterpreted in the past and is largely redundant of the exception for fees fixed by courts or other public authorities.[26] For these reasons, proposed Rule 3521 would eliminate this exception. The few commenters who addressed this issue agreed with the Board's reasoning and the elimination of this exception. Therefore, the Board's final rule does not include an exception for tax matters in which an auditor's fee agreement is based on the results of judicial proceedings or the findings of governmental agencies.

In addition, Rule 3521 treats a firm as not independent of an audit client if it receives a contingent fee or commission from that client ''directly or indirectly.'' The rule's use of the term ''indirectly'' is meant to prevent arrangements for a fee from any person that is contingent on a finding or result attained by the audit client. The Board's determination to include such fees within the prohibition is based on the principle that, regardless of who pays the contingent fee, such a contingency gives an auditor a stake in the audit client attaining the finding or result. Accordingly, under Rule 3521, it does not matter who pays the contingent fee, if it is contingent on a finding or result attained by the audit client or otherwise related to the firm's services for the audit client. That is, while use of an intermediary to disguise an audit client's agreement to a contingent fee is certainly prohibited, the rule is not limited to circumstances in which a contingent fee may be traced (*e.g.*, through an intermediary) to an agreement or payment by an audit client.

Comparable to the SEC's independence rules, proposed Rule 3521 treats contingent fee arrangements between a registered firm's affiliates and the registered firm's audit clients as relevant to the firm's independence.[27]

[18] *See* 17 CFR 210.2–01(c)(5).

[19] Rule 3501(a)(iv) defines ''audit client'' as ''the entity whose financial statements or other information is being audited, reviewed, or attested and any affiliates of the audit client.''

[20] Rule 3501(a)(ii) defines ''affiliate of the accounting firm'' as ''the accounting firm's parents; subsidiaries; pension, retirement, investment or similar plans; and any associated entities of the firm, as that term is used in Rule 2–01 of the Commission's Regulation S–X, 17 CFR 210.2–01(f)(2).''

[21] Rule 3501(a)(iii) adapts the definition of ''audit and professional engagement period'' from the definition of that term in the Rule 2–01 of the SEC's Regulation S–X, which includes both the period covered by the financial statements under audit or review and the period beginning when a registered public accounting firm signs an initial engagement letter (or when such a firm begins audit, review or attest procedures, whichever is earlier) and ends when the audit client notifies the SEC that the engagement has ceased. *See* 17 CFR 210.2–01(f)(5).

[22] Rule 3501(c)(ii). As discussed in the Board's proposing release, the term ''contingent fee'' includes the aggregate amount of compensation for a service, including any payment, service, or promise of other value, taking into account any rights to reimbursements, refunds, or other repayments that could modify the amount received in a manner that makes it contingent on a finding or result.

[23] 11 U.S.C. 328(a) (providing that, with a court's approval, a bankruptcy trustee may employ a professional person ''on any reasonable terms and conditions of employment, including on a retainer, on a fixed or percentage fee basis, or on a contingent fee basis'').

[24] One commenter suggested that arbitration panels should be captured in the final rule as an example of ''courts or other public authorities'' that may approve auditor fees. The Board is not aware, and the commenter did not appear to suggest, that any arbitration panels currently have authority, by contract or law, to approve the payment of fees to accountants. Therefore, the Board has not expanded the exception to include fees fixed by arbitration panels. Nevertheless, if an arbitration panel were by contract given the authority to approve accountants' fees, such fees would be permissible under the Board's rule so long as the determination of the fee was not contingent on the result of a product or service.

[25] 17 CFR 210.2–01(f)(10). By eliminating this exception from its rule, the Board expresses no view on any firm's compliance with Rule 2–01 of the Commission's Regulation S–X. *See* 17 CFR 210.2–01(c)(5).

[26] As the SEC Chief Accountant has stated, the SEC's ''tax matters'' exception only permits fee arrangements where the determination of the fee is ''taken out of the hands of the accounting firm and its audit client * * *., with the result that the accounting firm and client are less likely to share a mutual financial interest in the outcome of the firm's advice or service.'' Letter from Donald T. Nicolaisen, Chief Accountant, U.S. Securities and Exchange Commission, to Bruce P. Webb, Professional Ethics Executive Committee Chair, American Institute of Certified Public Accountants (May 21, 2004), *available at http://www.sec.gov/info/accountants/staffletters/webb052104.htm* (hereinafter ''Nicolaisen Letter'').

[27] The rule does so by providing that the firm is not independent if it ''or any affiliate of the firm * * * provides any service or product to the audit client for a contingent fee or a commission, or receives from the audit client, directly or indirectly, a contingent fee or commission.'' The scope of the rule is intended to be the same as the scope of the Commission's rule, which defines the terms ''accountant'' and ''accounting firm'' to include such affiliates. Because registration with the Board is the basis for the Board's authority over an accountant, the rules would treat those persons that are related to a registered public accounting firm and satisfy the Commission's definition of ''accounting firm,'' but are not registered firms themselves, as ''affiliates of the accounting firm.''

The inclusion of such affiliates within the scope of those persons whose activities may impair the independence of a firm from an audit client is intended to prevent frustration of the rule's purpose through the use of firm subsidiaries and other affiliates.[28] The rule is not intended to, and does not, impose any requirements on affiliates of firms *per se*. Nonetheless, the conduct of an affiliate of the firm can cause the registered firm not to be independent in the situations specified in the rules.

Finally, one accounting firm commented that Rule 3521 should prohibit value-added fees because such fees could be used in lieu of contingent fees to achieve a similar effect as contingent fees. Fees that function as contingent fee arrangements are already prohibited under the SEC's rule against contingent fees,[29] and thus under the Board's final rule as well, whether such fees are labeled contingent fees, value-added fees, or otherwise. The SEC has indicated that it will closely monitor the use of value-added fees ''to determine whether a fee labeled a ''value added'' fee is in fact a contingent fee, such as where there are side letters or other evidence that ties the fee to the success of the services rendered,'' [30] and the Board intends to do so as well before, if necessary, considering additional rulemaking.

Rule 3522—Aggressive Tax Positions

Rule 3522 is intended to describe a class of tax-motivated transactions that present an unacceptable risk of impairing an auditor's independence if the auditor markets, plans, or opines in favor of, such a transaction. As discussed in the Board's proposing release, such conduct has seriously damaged investors' confidence in the judgment, objectivity, and ethics of firms that engage in such transactions. Further, aggressive tax positions carry a high risk that taxing authorities will not allow the position taken by the auditor and the audit client. As the SEC Chief Accountant noted in the context of contingent fees, ''the fact that a government agency might challenge the amount of the client's tax savings * * * heightens * * * the mutuality of interest between the firm and client.'' [31]

As proposed, Rule 3522 treated a firm as not independent of its audit client if the firm, or an affiliate of the firm, provided services related to planning, or opining on the tax consequences of a transaction that is a listed or confidential transaction under U.S. Department of Treasury (''Treasury'') regulations or that promoted an interpretation of applicable tax laws for which there is inadequate support. In order to describe such transactions in a manner that is clear and consistent with existing constructs for analyzing tax-oriented transactions, the rule is adapted from certain Treasury regulations and from the SEC's release accompanying its 2003 independence rules.

Commenters generally supported the notion that auditors should not provide tax services involving aggressive tax positions to their audit clients. They also supported the scope of Rule 3522, which as proposed covered listed transactions, confidential transactions, and other aggressive transactions. A number of commenters made suggestions to make the rule text clearer, however, and after considering such comments the Board has modified the rule in several respects.

First, several commenters suggested that the rule should make clear that it does not prohibit auditors from advising audit clients *not* to engage in an aggressive transaction. Rule 3522 was not intended to prevent such advice, so in response to these comments the Board has modified the rule to make clear the prohibition on opining on aggressive transactions is limited to ''opining *in favor of* the tax treatment of'' such transactions (emphasis added). Thus, auditors are permitted to advise *against* an audit client's execution of an aggressive tax transaction.[32] However, Rule 3522 prohibits an opinion that a transaction does not satisfy the more-likely-than-not standard but does satisfy a lower standard of confidence. Similarly, the rule prohibits advice that an audit client will ''probably'' lose an argument in favor of a tax treatment, because such advice can imply up to a 49-percent chance of success.

In addition, as recommended by one commenter, given recent concerns about accounting firms establishing marketing centers to sell tax shelter products, the Board has added the term ''marketing'' to the list of activities that compromise an auditor's independence. That is, under Rule 3522, as adopted, an auditor may not market an aggressive tax transaction to an audit client, in addition to being prohibited from ''planning, or opining in favor of the tax treatment of,'' such a transaction.

Finally, proposed Rule 3522(a)'s prohibition on auditors' involvement in listed transactions has been moved to become a part of the prohibition on involvement in aggressive tax position transactions, in light of the overlap of the two provisions and also in light of questions regarding whether the prohibition on listed transactions could apply in the context of a non-U.S. tax regime. Accordingly, Rule 3522 now provides for two categories of prohibitions related to aggressive tax transactions, whereas, as proposed, it had provided for three such categories. These two categories, as well as modifications of their proposed versions, are discussed below.

Rule 3522(b)—Aggressive Tax Position Transactions [33]

Rule 3522(b) would treat a registered firm as not independent if the firm, or

Thus, Rule 3501(a)(i) would adapt the Commission's definition of the term ''accounting firm'' to define the term ''affiliate of the accounting firm'' as ''the accounting firm's parents, subsidiaries, pension, retirement, investment or similar plans, and any associated entities of the firm, as that term is used in Rule 2–01 of the Commission's Regulation S–X, 17 CFR 210.2–01(f)(2).''

[28] *See, e.g., In re PricewaterhouseCoopers LLP, & PricewaterhouseCoopers Securities LLC,* Exchange Act Release No. 46216 (July 17, 2002), *available at http://www.sec.gov/litigation/admin/34–46216.htm* (finding an auditing firm and an affiliate under the control of the firm in violation of Commission requirements because the affiliate performed investment banking services for the firm's audit clients for contingent fees); In *KPMG, LLP* v. *Securities & Exch. Comm'n,* 289 F.3d 109 (D.C. Cir. 2002), the D.C. Circuit Court declined to find KPMG in violation of the AICPA's rule against contingent fees, where KPMG only indirectly received a contingent royalty from an audit client, through an associated entity of the firm. The Board's rules should be understood, however, to treat such an arrangement as an impairment of a registered firm's independence.

[29] *See* Revision of the Commission's Auditor Independence Requirements, SEC Release No. 33–7919, § IV.D.5 (Nov. 21, 2000), 17 CFR parts 210 and 240. Indeed, the SEC staff has cautioned audit committees against approving— any agreement '' from a direct contract provision to ''a wink and a nod''—that provides for the possible additional payment of a 'value added' fee based on the results of an accounting firm's performance of a tax or other service [that] would be viewed as impairing the firm's independence. In addition, an audit committee should consider carefully the impact on an accounting firm's independence of the possibility of even a completely voluntary payment of a ''value added'' fee by an audit client to the firm.

Nicolaisen Letter, *supra* note 25.

[30] *See* Revision of the Commission's Auditor Independence Requirements, SEC Release No. 33–7919, § IV.D.5 (Nov. 21, 2000), 17 CFR parts 210 and 240.

[31] Nicolaisen Letter, *supra* 25.

[32] In addition, a number of commenters asked for clarification of the scope of Rule 3522's prohibition against ''opining'' on an aggressive transaction. The Board does not intend the rule to encompass the auditor's opinion on the fairness of financial statements that reflect the accounting for a transaction that an audit client has executed. Rather, Rule 3522 is intended to prevent auditors from facilitating clients' execution of aggressive transactions by, among other things, providing auditors' written tax opinions that protect the audit client from the assertion of penalties by tax authorities or courts.

[33] As proposed, this provision was entitled ''aggressive tax positions.'' One commenter questioned whether this title was intended to expand the scope of this provision beyond

Continued

an affiliate of the firm, provided an audit client any service related to marketing, planning, or opining in favor of the tax treatment of, a transaction that satisfies three criteria—

- The transaction was initially recommended, directly or indirectly, by the firm;
- A significant purpose of the transaction is tax avoidance; and
- The proposed tax treatment of the transaction is not at least more likely than not to be allowed under applicable tax laws.

Rule 3522(b) is adapted from the SEC's guidance to audit committees in its release accompanying its 2003 independence rules, which cautioned that audit committees should ''scrutinize carefully'' the retention of the auditor ''in a transaction initially recommended by the accountant, the sole business purpose of which may be tax avoidance and the tax treatment of which may be not supported in the Internal Revenue Code and related regulations.'' [34] The rule builds on this guidance from the perspective of the auditor, by providing that a registered firm is not independent of its audit client if the firm, or an affiliate of the firm, participates in such a transaction.

The first prong of the rule's test looks for transactions that the auditing firm—directly or indirectly, *e.g.*, through an affiliate, through or with another tax advisor with which the firm has an arrangement, or otherwise—initially recommended to the audit client. In this manner, the rule excludes from its scope those transactions that the audit client itself, or a party other than a tax advisor with which the firm has an arrangement [35] (*e.g.*, an acquiring corporation), initiated. The term ''initially recommended'' is intended to be a test based on fact. Thus, the prong would be satisfied, notwithstanding a representation from the audit client that the audit client initiated the development of the transaction,[36] if the auditor had knowledge that the auditor, its affiliate, or another tax advisor with which the firm has an arrangement, initially recommended it. As proposed, the rule would have looked for transactions that were ''initially recommended by the registered public accounting firm or another tax advisor.'' Some commenters expressed concern that an auditor might not be in a position to know whether another tax advisor with no relationship to the auditor had recommended a transaction. In response to these comments, the Board has modified the first prong of Rule 3522(b) to make clear that auditors are only responsible for ascertaining whether the firm, one of its affiliates, or another tax advisor with which the firm has a formal agreement or other arrangement related to the promotion of such a transaction, initially recommended the transaction.[37]

The second and third prongs of Rule 3522(b) incorporate concepts that have existing meaning and relevance to tax advisors. The second prong of the test set forth in Rule 3522(b) uses the phrase ''significant purpose of which is tax avoidance,'' adapted from the Internal Revenue Code.[38] The term ''tax avoidance'' should be understood to include acceleration of deductions into earlier taxable years and deferral of income to later taxable years. A few commenters noted that the test whether a significant purpose of a transaction is tax avoidance appears to be a low threshold that could encompass any plan to reduce taxes, and some of those commenters suggested that the Board raise that threshold. The Board intends for the threshold to be low, however, and therefore has not used terms that might seem to establish a higher threshold, such as requiring an evaluation of whether the ''sole purpose'' of a transaction is tax avoidance.

In addition, the rule uses the term ''more likely than not to be allowable under applicable tax laws,'' which is the standard certain taxpayers must meet, under Treasury regulations, to avoid penalties for substantial understatement of income tax in connection with a tax shelter.[39] This test is based, in part, on the Board's observation of some firms' policies that rely on the ''more likely than not'' standard to approve the firm's involvement in providing tax services relating to a transaction initiated by the firm. The rule also uses this standard because a tax treatment that is not ''more likely than not'' to be allowed poses a significantly higher risk of being challenged by taxing authorities, such that a mutuality of interest between the auditor and the audit client could arise.[40] Moreover, the rule uses this standard, as opposed to a higher standard, in recognition of the fact that tax laws may often be complex and subject to differing good faith interpretations.[41]

In order to satisfy Rule 3522(b)'s ''more likely than not'' standard, a registered public accounting firm must establish, based on an analysis of the pertinent facts and authorities, that there is a greater than 50-percent likelihood that the tax treatment of the transaction would, if challenged, be upheld.[42] To satisfy this test, an auditor's analysis must be objectively reasonable and well-founded at the time the analysis is conducted. The Board would not, however, treat an auditor as

transactions. In addition, the commenter noted that the term ''transaction'' was consistent with Treasury regulations. In response to this comment, the Board has re-titled this provision to be ''aggressive tax position transactions.''

[34] Strengthening the Commission's Requirements Regarding Auditor Independence, at § II.B.11 (Jan. 28, 2003).

[35] The term ''tax advisor'' is not intended to denote a group with a certain license or professional status, but rather to cover any person, other than the client, that recommends a tax transaction to the client.

[36] Two commenters indicated that, as they interpreted the term ''transaction,'' an auditor's tax services in connection with, for example, a merger transaction that was initiated by the client or another company, would not come within the ambit of Rule 3522(b), because the auditor would not have recommended the merger transaction itself. This is not a fair interpretation of the rule and indeed would thwart its purpose.

[37] *See* Rule 3522(b), Note 2. The term ''formal agreement or other arrangement'' in Note 2 relates only to relationships a registered firm may have with a tax advisor that is not already an affiliate of the firm.

[38] The Internal Revenue Code treats transactions with respect to which a ''significant purpose * * * is the avoidance or evasion of Federal income tax'' as tax shelters, for purposes of determining whether an adequate disclosure defense is available for the substantial understatement penalty. *See* 26 U.S.C. 6662(d)(2)(C) (amended by the Jobs Act; *see also* 26 U.S.C. 6662A(b)(2)(B) (imposing 20-percent penalty on understatements of tax in connection with ''any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax'').

[39] *See* 26 CFR 1.6664–4(f).

[40] Some commenters noted that, while the term ''more likely than not'' is well-understood in the context of evaluating U.S. tax advice, it has not been used in non-U.S. contexts. One of these commenters also noted that this standard may be hard to judge in jurisdictions in which the rule of law does not always prevail. After considering these comments, the Board has determined to maintain the ''more likely than not standard,'' because it is an objective standard that may be applied in contexts outside the U.S. even where it has not applied to-date. Further, the Board notes that foreign private issuers ordinarily file U.S. tax returns and therefore are already expected to comply—and be familiar with—U.S. tax laws and regulations.

[41] A few commenters recommended that the Board use a standard higher than ''more likely than not,'' on the ground that there is some evidence that some accounting firms that used the ''more likely than not'' standard in the past have not adhered to it. While the Board is concerned about the record on this issue, the Board has determined not to use a higher standard at this time. The Board intends to monitor compliance with the rule through its inspections of registered public accounting firms and will consider revising the rule in the future, if that monitoring or other evidence reveals that the rule is not achieving its intended purpose.

[42] *Cf.* 26 CFR 1.6664–4(f)(2)(i)(B)(*1*) (incorporating by reference methodology set forth in 26 CFR 1.6662–4(d)(3)(ii) for analysis of whether a tax treatment has ''substantial authority'' or, in the case of tax shelters, is ''more likely than not'' the proper treatment, for purposes of determining whether a penalty may be due on a substantial understatement of income tax).

not independent if the law changed after the service was provided or if the tax treatment simply turned out to be not allowed, despite the auditor's reasonable judgment before the ultimate resolution of a tax claim or other dispute.

Rule 3522(b) does not require a registered public accounting firm to obtain a third-party opinion that a tax treatment is ''more likely than not'' to be allowed under applicable tax laws. On the contrary, while a firm may decide for its own reasons to obtain a third-party opinion, such an opinion would not relieve the firm of its obligation to form its own judgment on the likelihood of a proposed tax treatment to be allowed.[43]

Finally, although the SEC's release accompanying its 2003 independence rules cautioned audit committees to scrutinize situations in which a proposed tax treatment might not be supported ''in the Internal Revenue Code and related regulations,'' the proposed rule would use the term ''applicable tax laws'' in recognition of the variety of tax laws and regulations, including Federal, state, local, foreign, and other tax laws, that may be the subject of tax services. For this reason, and in response to questions from several commenters, the Board also incorporated its proposed prohibition on auditors providing tax services in connection with transactions that are listed by the IRS into Rule 3522(b). That is, IRS listing is one example of aggressive tax transactions covered by the rule.

Accordingly, the prohibition on advising in favor of listed transactions, which was proposed as Rule 3522(a), has been moved to a note to what is now Rule 3522(b). Specifically, Note 1 to Rule 3522(b) treats a registered public accounting firm as not independent of its audit client if the firm, or any affiliate of the firm, provided services related to marketing, planning, or opining in favor of the tax treatment of, a listed transaction. Under Treasury regulations, a listed transaction is ''a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction.''[44] The IRS uses its listing process to identify and publish a list of transactions that tax promoters and advisors have developed and sold to clients but that, in the IRS's view, do not comply with applicable laws. Thus, the Treasury's regulation on ''listed transactions'' identifies a class of transactions that, in the Board's view, carries an unacceptable risk of disallowance, which in turn create an unacceptable risk of establishing a mutuality of interest between the auditor and the audit client if the auditor participated in marketing, planning, or opining in favor of the tax treatment of a transaction that impairs independence. By referring to this class of transactions, Note 1 to Rule 3522(b) incorporates an existing framework that auditors who serve as tax advisors already follow in their tax practices and that is highly likely to remain current since the Treasury and the IRS regularly update guidance related to listed transactions.[45]

As discussed above, the Board's proposed prohibition on auditor involvement in transactions that are ''listed'' by the IRS has been moved to a note to Rule 3522(b). By definition, a listed transaction is not ''more likely than not to be allowable under applicable tax laws'' at the time the auditor advises on it. Because the risk of IRS or other scrutiny of listed transactions, including transactions that are substantially similar to listed transactions,[46] is high, tax advisors and taxpayers tend not to enter into such transactions once they are listed. In light of this fact, when it proposed this rule, the Board sought comment on whether the rule should treat an auditor as not independent if a transaction planned or opined on by the auditor subsequently became listed. In general, commenters recommended against adopting a *per se* rule that subsequent listing of such a transaction impaired an auditor's independence with respect to either the period in which the transaction was executed or in subsequent periods. The Board agrees that such a *per se* rule would not be appropriate, but as discussed below, firms should nevertheless be cautious in participating in transactions that they believe could become listed.

Even if a firm were independent at the time a transaction was executed, because it reasonably and correctly concluded the transaction was not the same as, or substantially similar to, a listed transaction, once a transaction is actually listed (or a substantially similar transaction becomes listed), a firm that has participated in the transaction may find its independence impaired due to the mutuality of interest caused by the listing. That is, depending on the circumstances, a firm's independence may become impaired in some cases after a transaction planned or opined on by the firm becomes listed. In such cases, the auditor should carefully consider the potential impairment of its independence with the audit committee of its audit client.[47] For example, once a transaction is listed, either the audit client or the firm, or both, may be required to defend the tax treatment of the transaction and, in some cases, pay penalties. In addition, the firm may face liability to the audit client related to the firm's tax advice. The auditor's judgment regarding appropriate financial reporting and disclosure concerning a transaction that becomes listed could become biased by the auditor's vested interests in defending its tax advice.

Some auditors commented that they would prefer a bright-line rule providing that, so long as a transaction recommended by the firm was not listed at the time it was executed, subsequent listing cannot impair an auditor's independence later in time, when the auditor is called on to defend its earlier

[43] Treasury regulations permit corporations to avoid penalties for substantial understatement of income taxes in connection with tax shelters if they ''reasonably rel[y] in good faith on the opinion of a professional tax advisor, if the opinion is based on the tax advisor's analysis of the pertinent facts and authorities * * * and unambiguously states that the tax advisor concludes that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue Service.'' 20 CFR 1.6664–4(f)(2)(i)(B)(*2*). Rule 3522(b) would not permit registered public accounting firms, who themselves serve as tax advisors, to rely on other tax advisors to satisfy the rule's standard because registered firms that provide tax services are themselves in a position to perform such an analysis.

[44] *See*, *e.g.*, 26 CFR 1.6011–4(b)(2).

[45] The IRS updates the list of listed transactions by issuing a listing notice, both adding to and removing transactions from the list of listed transactions. *See*, *e.g.*, IRS Notice No. 2004–67, 2004–41 I.R.B. 600. Some commenters questioned whether the Board should effectively incorporate the IRS's changes to its list into the Board's rule on aggressive transactions. This is, indeed, the Board's intention. To freeze the IRS's list as of the date of the Board's final rule, or to establish a system of reviewing the IRS's list as it is updated, might permit auditors to provide tax services in favor of listed transactions notwithstanding that the IRS had identified those transactions as potentially abusive. Such a system would thwart the underlying intent of the Board's rule.

[46] By its terms, the Treasury regulation requiring reporting of listed transactions makes clear that the definition of ''listed transaction'' includes transactions that have been listed by the IRS as well as transactions that are ''substantially similar'' to such transactions. By expressly referring to the Treasury's regulation on listed transactions, the Board intends Rule 3522(b) to encompass such substantially similar transactions that are included in the Treasury's regulation.

[47] According to ISB Standard No. 1, which is incorporated in the Board's Rule 3600T interim independence standards, at least annually, an auditor must ''disclose to the audit committee of the company (or the board of directors if there is no audit committee), in writing, all relationships between the auditor and its related entities and the company and its related entities that in the auditor's professional judgment may reasonably be thought to bear on independence.''

tax advice. Such a bright-line rule, however, would do little to address circumstances in which, because of IRS scrutiny after execution of the transaction, the auditor's interest in the client's successful defense of the transaction becomes heightened to the point where the auditor can no longer be impartial about the financial statement presentation of the transaction. That said, as some commenters noted, existing independence requirements address these kinds of circumstances, and thus the Board has determined not to expand Rule 3522(b) either to retroactively deem an auditor not independent upon subsequent listing of a transaction or to deem an auditor not independent *per se* in the period in which such a transaction becomes listed.

Rule 3522(a)—Confidential Transactions

The Treasury has identified transactions with tax-advisor imposed conditions of confidentiality as potentially abusive. By regulation, the Treasury requires taxpayers to disclose to the IRS transactions in which a tax advisor ''places a limitation on disclosure by the taxpayer of the tax treatment or tax structure of the transaction and the limitation on disclosure protects the confidentiality of that advisor's tax strategies.'' [48] Tax-advisor imposed confidentiality may also be indicative of a tax product that a tax advisor intends to market to multiple customers, thus necessitating commitments by customers to treat the tax treatment or structure of the advisor's product as confidential.

As discussed in the proposing release, the Board is concerned that marketing, planning, or opining in favor of tax products that require confidentiality in order that they may be offered to multiple clients contributes to the erosion of public confidence in the ethics and integrity of such firms. A reasonable investor easily could infer that the auditor has a vested interest in advocating to the IRS the tax treatment it promoted, or helped to promote, to multiple clients and perpetuating that treatment in the audit client's financial statements. Based on these concerns, Rule 3522(a) treats a registered public accounting firm as not independent of its audit client if the firm, or an affiliate of the firm, provided services related to marketing, planning, or opining in favor of the tax treatment of a transaction for an audit client under terms that satisfy the definition of ''confidential transaction,'' as defined by Rule 3501(c)(i), which is adapted from the Treasury's regulation requiring tax advisors to report confidential transactions.[49]

It should be noted that, Rule 3501(c)(i) defines confidential transactions in terms of confidentiality restrictions imposed by tax advisors generally, not specifically auditors. Therefore, whereas under Rule 3522(b) a transaction that is initially recommended by a tax advisor other than the auditor or an affiliate of the auditor unless the tax advisor has an arrangement with the auditor does not fall within the first prong of the rule, Rule 3522(a) prohibits an auditor from marketing, planning, or opining in favor of a confidential transaction whether the applicable terms of confidentiality are imposed by the auditor or by another tax advisor, acting independently of the auditor.

Commenters generally supported the Board's proposed prohibition on confidential transactions. Although some commenters expressed the view that tax advisors might impose conditions of confidentiality for reasons other than the ability to market the proposed transaction to multiple clients, other commenters agreed that auditors should not become involved in transactions subject to tax-advisor imposed confidentiality restrictions. One accounting firm commenter also noted that, even if a transaction were not potentially abusive, the fact that there is a disclosure limitation is likely to create a negative impression concerning the objectivity of the auditor.

In addition, a few commenters suggested that the rule be limited to circumstances in which terms of confidentiality are imposed with respect to the U.S. tax treatment of a transaction. After carefully considering these comments, the Board has determined not to modify the scope of the rule. Tax-advisor imposed conditions of confidentiality facilitate aggressive selling of novel tax ideas that pose too great a risk of impairing the objectivity of auditors who market, plan, or opine in favor of them. Further, the rule continues to permit audit clients themselves to impose conditions of confidentiality in connection with transactions on which auditors may provide tax advice, and this fact appears to adequately serve audit clients' needs to maintain appropriate confidentiality. Finally, there does not appear to be a reasoned basis to limit the prohibition on confidential transactions to proposed tax treatments under U.S. tax laws.

Rule 3523—Tax Services for Persons in Financial Reporting Oversight Roles

Rule 3523 provides that a registered public accounting firm is not independent of an audit client if the firm, or any affiliate of the firm, during the audit and professional engagement period, provides any tax service to a member of management in a financial reporting oversight role at the audit client.[50] As discussed in the Board's proposing release, this rule addresses concerns that performing tax services for certain individuals involved in the financial reporting processes of an audit client creates an appearance of a mutual

[48] 26 CFR 1.6011–4(b)(3)(ii).

[49] 26 CFR 1.6011–4(b)(3) (2005). The proposed version of this rule incorporated the Treasury's definition of the term ''confidential transaction'' by reference. A number of commenters noted generally that incorporation of this Treasury regulation by reference could lead to unintended changes to the Board's rules if the Treasury amends those regulations (or the IRS amends its list of listed transactions). As discussed above, the Board intends for its prohibition on auditors' involvement as tax advisors in audit clients' execution of listed transactions to be kept current by changes to the IRS's list. Upon further consideration, unlike the Board's prohibition on listed transactions, the Board has determined that it may not be appropriate for any changes the Treasury may make to its definition of ''confidential transaction'' to automatically be reflected in the Board's prohibition on auditors' involvement in such a transaction. The definition of ''confidential transaction'' in Rule 3501(c)(i) is intended to be the same as the current Treasury regulation, except for the minimum fee requirement.

The proposed version of the rule did not incorporate the Treasury's minimum fee exception to its regulation on confidential transactions. That is, Treasury Regulation 1.6011–4(b)(3)(i) provides that ''a confidential transaction is a transaction that is offered to a taxpayer under conditions of confidentiality and for which the taxpayer has paid an advisor a minimum fee.'' 26 CFR 1.6011–4(b)(3) (2005). Under the regulation, the ''minimum fee'' is $250,000 for corporate taxpayers (and partnerships and trusts in which all of the owners or beneficiaries are corporations) and $50,000 for all other transactions. *Id.* 26 CFR 1.6011–4(b)(3)(iii). Although some commenters suggested that the Board should adopt the minimum fee exception, the Board understands the IRS disclosure rules to serve a different purpose than Rule 3522(a). Accordingly, the Board has not adopted a minimum fee exception in its final rule either.

[50] The rule's use of the term ''financial reporting oversight role'' is based on the Commission's definition of ''financial reporting oversight role,'' which includes any person who has direct responsibility for oversight over those who prepare the issuer's financial statements and related information (for example, management's discussion and analysis) that are included in filings with the Commission. *See* Strengthening the Commission's Requirements Regarding Auditor Independence, at § II.A. The Commission uses the term ''financial reporting oversight role'' to describe those positions that are covered by the Act's ''cooling off'' period, during which a public company would not be independent from its audit firm if a member of the engagement team for the audit of that company assumed such a position. *See* Sarbanes-Oxley Act of 2002, § 206, 17 CFR 210.2–01(f)(3)(ii). The term ''financial reporting oversight role'' as defined in Rule 3501(f)(i) mirrors verbatim the SEC's definition of the same term in Rule 2–01 of Regulation S–X. 17 CFR 210.2–01(f)(3)(ii).

interest between the auditor and those individuals.

The Board received varied comments on Rule 3523. Some commenters, including groups representing investors and issuers, as well as several large accounting firms, supported the proposed rule on the ground that it is necessary to preserve the objectivity, and the appearance of objectivity, of auditors. Other commenters, however, including a number of smaller accounting firms, accounting associations, and a few issuers, claimed that the rule is not necessary, that these services have long been provided, and that auditors should be allowed to provide senior financial management of issuers with the same types of tax services the auditor may provide the issuer. After carefully considering these comments, the Board has determined to adopt the rule, with a few modifications. The Board continues to believe that the provision of tax services by the auditor to the senior management responsible for the audit client's financial reporting creates an unacceptable appearance of the auditor and such senior management having a mutual interest.

The Board also received a number of comments on specific aspects of the proposed rule. For example, some commenters expressed confusion as to whether Rule 3523 is intended to apply to directors, in part because the definition of ''financial reporting oversight role'' includes directors. In response to these comments, the Board has modified the rule to exclude directors more explicitly. Thus, the rule no longer uses the term ''officer''—which is how the proposed rule narrowed the scope to exclude directors—and instead includes an explicit exception for any person who serves in a financial reporting oversight role ''only because he or she serves as a member of the board of directors or similar management or governing body of the audit client.'' [51]

The Board also included a second exception in Rule 3523(b) in response to comments regarding whether the rule should apply to persons who serve in a financial reporting oversight role at an affiliate of an issuer. After considering these comments, the Board has determined not to restrict auditors' provision of tax services to employees in a financial reporting oversight role at an affiliate of an audit client, so long as the financial statements of the affiliate are not material to the financial statements of the audit client or are audited by an auditor other than the firm or an associated person of the firm. This exception is intended to exclude executives of affiliates that do not contribute to the consolidated financial statements of the audit client. The Board does not believe that auditors' relationships with executives of immaterial affiliates, or affiliates whose financial statements are audited by an auditor other than the firm or an associated person of the firm, pose as great a risk to auditors' impartiality regarding an audit clients' consolidated financial statements as do auditors' provision of tax services to executives involved in the consolidated financial reporting of the client.

The first part of this exception, Rule 3523(b)(i), excludes persons in a financial reporting oversight role at immaterial affiliates of the entity being audited. This exception would encompass, among others, executives of most affiliates within the same investment company complex as the audited entity and executives of up-stream affiliates of the audited entity. The second part of this exception, Rule 3523(b)(ii), excludes executives in financial reporting oversight roles of a subsidiary of an audit client that is not audited by the firm or any firm that is an associated person of the firm, as defined by PCAOB Rule 1001. On the other hand, executives in financial reporting oversight roles at a material subsidiary whose financial statements are audited by a firm that is an associated person of the registered firm would be subject to Rule 3523. For purposes of Rule 3523(b)(ii), the term ''audited'' should be understood to include audit procedures that contribute to the firm's preparation or issuance of an audit report on an audit client's consolidated financial statements, whether or not such procedures result in an audit opinion on the affiliate's financial statements.

Some commenters also expressed concern that the rule could impose an undue hardship on persons who become subject to the rule because they are hired or promoted into a financial reporting oversight role at an audit client. To address that concern, the Board determined to create a time-limited exception to the rule to cover such situations. Specifically, the Board has determined to add a new exception to the rule that applies to a person who was not in a financial reporting oversight role at the audit client before a hiring, promotion, or other change in employment event, when the tax services are both: (1) Provided pursuant to an engagement that was in process before the hiring, promotion, or other change in employment event; and (2) completed on or before 180 days after the hiring or promotion event.[52] The Board will treat engagements as ''in process'' if an engagement letter has been executed and substantive work on the engagement has commenced; the Board will not treat engagements as ''in process'' during negotiations on the scope and fee for a service.

Some commenters also suggested that, as proposed, Rule 3523 could invite persons subject to the rule to evade the rule by using the auditor's tax services through an immediate family member or through an entity controlled by the person. In response to this comment, the Board has added to the scope of the rule immediate family members of persons who are covered by the rule.[53]

In addition, some commenters suggested that the rule be expanded to cover all non-audit services, such as services involving investment, personal financial planning, and executive compensation, on the ground that any such services provided to those in a financial reporting oversight role create a perception of a mutuality of interest between auditors and those members of management who receive such services.[54] Other commenters suggested that the rule be expanded to include persons who do not play a financial reporting oversight role but nevertheless play a key role in operations, such as vice presidents of sales.[55] Other

[51] Rule 3523(a).

[52] Rule 3523(c).

[53] The Board also has added a definition of ''immediate family member,'' adapted from the SEC's definition in its independence rules. *Compare* Rule 3501(i)(i) *with* 17 CFR 210.2–01(f)(13). The Board has not included entities controlled by persons in financial reporting oversight roles, such as trusts and investment partnerships. The Board notes, however, that an auditor who provides services to an entity controlled by a person in a financial reporting oversight role of an audit client should consider whether, under ISB Standard No. 1, it is necessary to notify the client's audit committee of such services.

[54] Some commenters asked for clarification of whether persons in a financial reporting oversight role could seek the assistance of the registered public accounting firm that prepared the original tax return to assist them in responding to an IRS or other governmental agency examination regarding that specific tax return after Rule 3523 becomes effective. If a registered firm prepared such a tax return before the rule's effective date, the rule does not operate to prohibit that person from answering questions and providing assistance when that tax return is under examination by a taxing authority after the rule's effective date, Such assistance, of course, must be otherwise consistent with Board and SEC auditor independence rules, including the requirement the auditor not become an advocate for its audit client.

[55] A few commenters suggested that the Board use the list of officers in section 16 of the Exchange Act, rather than relying on the defined term ''financial reporting oversight role.'' The ''financial reporting oversight role'' term, however, includes those individuals at an audit client that, because of their

Continued

commenters recommended the rule cover audit committee members. Still other commenters, however, disagreed with these commenters and noted that applying the rule to audit committee members might serve as a practical disincentive to audit committee service.

The Board has determined not to expand the final rule to include all non-audit services, directors or persons outside the definition of ''financial reporting oversight role.'' To date, the concerns that have arisen in this area have related to auditors' provision of tax services to executives of public companies. Accordingly, the Board believes it is appropriate, at this time, to limit the rule to address this problem. The Board intends to monitor implementation of the rule, however. In addition, to the extent that issuers pay for non-audit services provided to any individuals, audit committees can and should be scrutinizing the potential effects on the auditor's independence due to such services. Further, as discussed in the proposing release, although accounting firms are not now required to seek pre-approval for executive tax services paid directly by the employee, auditors should consider under Independence Standards Board (''ISB'') Standard No. 1 whether it is necessary to notify the audit committee of these services [56] or whether it is otherwise advisable to inform audit committees of such services.[57] In this regard, while the Board is reluctant to establish a *per se* prohibition on auditors' provision of tax services to directors of their audit clients, the Board notes that firms can—and some have—adopted procedures to notify the audit committee of such services so it may evaluate the potential effect of such services on the auditor's independence.[58]

Rule 3524—The Auditor's Responsibilities in Connection With Audit Committee Pre-approval of Tax Services

Under Section 10A(h) of the Exchange Act, as amended by Section 202 of the Sarbanes-Oxley Act, all non-audit services that the auditor proposes to perform for an issuer client ''shall be pre-approved by the audit committee of the issuer.'' The SEC's 2003 independence rules implemented the Act's pre-approval requirement by adopting a provision on audit committee administration of the engagement.[59] Rule 3524 implements the Act's pre-approval requirement further by strengthening the auditor's responsibilities in seeking audit committee pre-approval of tax services. Specifically, Rule 3524 requires a registered public accounting firm that seeks pre-approval of an issuer audit client's audit committee [60] to perform tax services that are not otherwise prohibited by the Act or the rules of the SEC or the Board to—

- Describe, in writing, to the audit committee the nature and scope of the proposed tax service;
- Discuss with the audit committee the potential effects on the firm's independence that could be caused by the firm's performance of the proposed tax service; and
- Document the firm's discussion with the audit committee.

These requirements are intended to buttress the pre-approval processes established by the Act and the Commission's rules. Whether an audit committee pre-approves a non-audit service on an *ad hoc* basis or on the basis of policies and procedures, the Commission staff has stated that ''detailed backup documentation that spells out the terms of each non-audit service to be provided by the auditor'' should be provided to the audit committee.[61] Indeed, the SEC staff has indicated ''[s]uch documentation should be so detailed that there should never be any doubt as to whether any particular service was brought to the audit committee's attention and was considered and pre-approved by that committee.'' [62]

Rule 3524 implements the Act's pre-approval requirement further by requiring that registered firms provide the audit committee of an issuer audit client a description of proposed tax services engagements that includes descriptions of the scope of any tax service under review and the fee structure for the engagement.[63] Some commenters suggested significant changes to the scope of the proposed rule. One group of commenters recommended that the rule be broadened to apply to all non-audit services, rather than only tax services. Other commenters expressed concern that the rule appeared to impose restrictions on audit committee pre-approval in excess of the SEC's requirements and, for that reason,

oversight of the company's financial reporting process, raise special concerns when they have certain relationships with the auditor. For this reason, the Board continues to believe this is the appropriate group to include in this rule.

[56] *See* ISB Standard No. 1; *see* also Memorandum from Scott A. Taub, Deputy Chief Accountant, Office of the Chief Accountant, U.S. Securities and Exchange Commission to William H. Donaldson, Chairman, Securities and Exchange Commission at 5 (June 24, 2003) (attached to letter from Chairman William H. Donaldson, U.S. Securities and Exchange Commission, to Five Consumer Groups) (July 11, 2003), *available at http://www.sec.gov/info/accountants/staffletters/taub071103.pdf* (hereinafter ''Taub Memo'').

[57] For example, the SEC staff has recommended that audit committees scrutinize audit firms' provision of these services—The provision of tax services to the executives of an audit client is not expressly addressed in the Act or in the Commission's rules. Nonetheless, an audit committee should review the provision of those services to assure that reasonable investors would conclude that the auditor, when providing such services, is capable of exercising objective and impartial judgment on all issues within the audit engagement.

Taub Memo, *supra* note 55, at 5.

[58] *See, e.g.*, Remarks of Scott Bayless, Deloitte & Touche LLP, *Auditor Independence Roundtable on Tax Services* (July 14, 2004) at 152 (indicating that even when ''the company does not pay for those services * * * there is a notification procedure to ensure that the audit committee has the ability to take control of that relationship if they so desire'').

[59] *See* 17 CFR 210.2–01(c)(7).

[60] Proposed Rule 3524 used the term ''audit committee of the audit client,'' which some commenters interpreted to mean that the rule would require auditors to make the required communications in connection with proposed tax services for affiliates of an audit client that are not consolidated as subsidiaries with the audit client for financial statement purposes. One commenter noted that the Commission's Rule 2–01(c)(7) requires only that ''[b]efore the accountant is engaged by the issuer or its subsidiaries, or the registered investment company or its subsidiaries, to render audit or non-audit services, the engagement [be] approved by the issuer's or registered investment company's audit committee.'' By using the phrase ''in connection with seeking audit committee pre-approval,'' the Board intends Rule 3524 to apply only when the SEC's Rule 2–01(c)(7) requires such approval. Accordingly, the rule does not require registered firms to make the specified communications or to seek audit committee pre-approval in any situations in which audit committee pre-approval is not already required by the SEC's rules. Nor should the rule be understood to require pre-approval by any committee other than the committee required to provide pre-approval by the SEC's rules. To clarify this issue, the Board has also modified Rule 3524 to more clearly track the language of section 10A(h) of the Exchange Act and the SEC's Rule 2–01(c)(7).

[61] Taub Memo, *supra* note 55, at 3; *see also* SEC Office of the Chief Accountant: Application of Commission's Rules on Auditor Independence Frequently Asked Questions, Audit Committee Pre-approval, Question 5, (issued August 13, 2003), *available at http://www.sec.gov/info/accountants/ocafaqaudind121304.htm* (hereinafter ''FAQs'').

[62] Taub Memo, *supra* note 55, at 3; *see also* FAQs, *supra* note 60, Audit Committee Pre-approval, Question 5 (issued August 13, 2003). The SEC staff FAQ answer states that (''[p]re-approval policies must be designed to ensure that the audit committee knows precisely what services it is being asked to pre-approve so that it can make a well-reasoned assessment of the impact of the service on the auditor's independence. For example, if the audit committee is presented with a schedule or cover sheet describing services to be pre-approved, that schedule or cover sheet must be accompanied by detailed back-up documentation regarding the specific services to be provided'').

[63] *See* Rule 3524(a)(1). Audit committees may ask auditors for other materials not identified in the rule, to assist them in their determinations whether to pre-approve proposed tax services. Rule 3524 should not be understood to limit the information or materials that an audit committee may request, or that a registered firm may decide to provide, in connection with the pre-approval of tax services.

recommended that the Board narrow or eliminate the rule. The Board has determined not to change the scope of the rule in response to these comments. While auditors and audit committees may find the procedures in Rule 3524 to be useful for purposes of considering non-audit services generally, the Board adopts these rules only after having engaged in a substantial effort to obtain facts and views of interested persons on appropriate procedures for considering proposed tax services. Before considering broadening the rule, the Board would seek additional information, based, among other things, on experience with this rule, inspections of registered firms, and additional public input. On the other hand, notwithstanding the concerns of some commenters that Rule 3524 requires more than the parallel SEC rule, the Board has determined not to narrow or eliminate the rule. The Board continues to believe that the rule is an appropriate complement to the SEC's pre-approval rule. Rule 3524 supports the procedure under the SEC rule, by requiring the auditor—who is in the best position to describe a proposed engagement—to gather the information required to be presented to the audit committee by the SEC rule. Indeed, it is the SEC rule and staff interpretations of what information audit committees need that have informed the Board's development of the rule.

The Board has made certain modifications to the proposed rule, however. As proposed, the rule would have required auditors to provide audit committees copies of all engagement letters for proposed tax services. While some commenters supported this proposal as a way to ensure that audit committees received adequate information on which to base their judgments, other commenters expressed concern that the rule could result in audit committees being provided voluminous stacks of engagement letters—some in foreign languages—that would obscure rather than elucidate the nature of the tax services proposed. On the basis of this information, and because the underlying purpose of the proposed requirement was to establish a manageable collection of information on which audit committees could make their determinations to pre-approve tax services, the Board has determined to eliminate the proposed rule's requirement to supply the audit committee a copy of each tax service engagement letter. Instead, the rule requires auditors to describe for audit committees, in writing, the scope of the proposed service, the proposed fee structure for the service, and the potential effect of the service on the auditor's independence. The Board believes requiring such a description of a proposed service better meets the Board's goal to improve the quality of information auditors provide audit committees about proposed tax services.

The rule also requires the auditor to describe for the audit committee any amendment to the engagement letter or any other agreement relating to the service (whether oral, written, or otherwise) between the firm and the audit client.[64] While the Board does not expect or encourage auditors to enter into side agreements relating to tax services, the Board understands that, in the past, some accounting firms have entered into such agreements.[65] To the extent firms do so, they must disclose those agreements to the audit committee.

In addition, to the extent that a firm receives fees or other consideration from a third party in connection with promoting, marketing, or recommending a tax transaction, Rule 3524 requires the firm to disclose those fees or other consideration to the audit committee. Specifically, Rule 3524(a)(2) requires that the firm disclose to the audit committee ''any compensation arrangement or other agreement, such as a referral agreement, a referral fee or fee-sharing arrangement, between the registered public accounting firm (or an affiliate of the firm) and any person (other than the audit client) with respect to the promoting, marketing or recommending of a transaction covered by the service.'' This provision is adapted from the IRS's rules of practice, which require tax advisors to disclose such arrangements to taxpayer clients.[66]

Rule 3524(b) also requires registered public accounting firms to discuss with audit committees of their issuer audit clients the potential effects of any proposed tax services on the firm's independence. Even if a non-audit service does not *per se* impair an auditor's independence, the Commission's independence rules nevertheless deem an auditor not to be independent if—

> the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement.[67]

Rule 3524(b) is intended to provide audit committees a robust foundation of information upon which to determine whether to pre-approve proposed tax services. Some commenters have asked for guidance as to the scope of the discussions intended by the rule. The Board intends that the scope of such discussions remain flexible, to address the matters that are pertinent in the judgment of the audit committee, as informed by Commission requirements. While the Act's legislative history makes clear that the Act ''does not require the audit committee to make a particular finding in order to pre-approve an activity,'' [68] the Commission's staff expects a robust review of proposed non-audit services—

> The audit committee must take its role seriously and perform diligent analyses and reviews that allow the committee to conclude that reasonable investors would view the auditor as capable of exercising objective and impartial judgment on all matters brought to the auditor's attention.[69]

To be clear, the rule does not prescribe any test for audit committees or require audit committees to make legal assessments as to whether proposed services are prohibited or permissible. Nor is the rule intended to limit an audit committee's discretion to establish its own more stringent pre-approval procedures. Rather, the rule directs registered firms to present detailed information and analysis to audit committees for audit committees' consideration, in their own judgment, of

[64] *Id.* One commenter expressed concern that Rule 3524(a)'s requirement to describe an ''other agreement'' could be understood to require the auditor to submit to the audit committee documentation concerning ''essentially every communication with the audit client.'' The Board believes this comment is misplaced. Rule 3524 does not require that the auditor describe all communications with the audit client, but rather all agreements with the audit client that relate to the proposed service.

[65] *See, e.g., In re PricewaterhouseCoopers LLP, & PricewaterhouseCoopers Securities LLC, supra* note 27 (''through side letters or oral understandings, the parties created contingent fee arrangements''). In addition, some commenters have expressed concern that Rule 3524 requires disclosure to the audit committee of fee arrangements that are prohibited by Rule 3521 (or by professional association membership requirements, such as certain referral agreements and fees). Those commenters have asked the Board to clarify that Rule 3524 does not operate to permit such fee structures that are otherwise prohibited by the Board's rules or to endorse fee structures that are prohibited or discouraged by professional ethics rules. It is the case that Rule 3524 does not permit or otherwise endorse such fees.

[66] *See* 31 CFR 10.35(e)(1) (2005), *available at http://www.irs.gov/pub/irs-pdf/pcir230.pdf.*

[67] 17 CFR 210.2–01(b).

[68] S. Rep. No. 107–205, at 19 (2002).

[69] Taub Memo, *supra* note 55, at 7–8; *see also* FAQs, *supra* note 60, Audit Committee Pre-approval, Question 5 (issued August 13, 2003).

the best interests of the issuer and its shareholders.

In addition, through the discussion required by Rule 3524(b), the Board expects registered firms to convey to the audit committee information sufficient to distinguish between tax services that could have a detrimental effect on the firm's independence and those that would be unlikely to have a detrimental effect. Some commenters expressed concern that an example of such a distinction that the Board provided in the proposing release could be understood to suggest that audit committees should not permit an auditor to provide any tax services unless the company had an internal tax department and/or a tax director who could make sound management decision in the best interest of the company. The Board did not intend to suggest that particular functional departments or managers must exist at a company before its auditor may provide it tax services. Rather, the inquiry the auditor should engage in when proposing to provide tax services to an audit client is whether, in the particular case, the company has the capacity to make its own decisions regarding the proposed tax matter, such that the auditor would not be in the position of performing management functions or making management decisions for the company.[70] The resolution of this inquiry will vary depending on the nature of the tax matter at issue and the sophistication of the company, among other things.

Rule 3524, both as proposed and as adopted, is intentionally silent as to when a registered public accounting firm should provide the required information about a proposed tax service to an audit committee. This is because, under the SEC's 2003 independence rules, audit committees themselves may have policies that establish a procedure and schedule for audit committee review of non-audit services, including tax services.[71] Some commenters expressed concern that the rule might favor one approval method (*ad hoc*) over another (approval pursuant to policies and procedures). This is not the case. Similar to the SEC's 2003 independence rules, Rule 3524 does not dictate, or even express a preference as to, whether the documentation and discussions required under Rule 3524 should take place pursuant to an audit committee's policies and procedures on pre-approval or on an ad hoc basis. Many issuers have adopted policies that provide for pre-approval in annual audit committee meetings. The Board understands that such an annual planning process can include as robust a presentation to the audit committee as a case-by-case pre-approval process, and Rule 3524 is designed to be flexible enough to accommodate either system and to encourage auditors and audit committees to develop systems tailored to the needs and attributes of the issuer.

The timing and method by which auditors describe for, and discuss with, audit committees proposed tax services will necessarily vary depending on different audit committees procedures. For those audit committees that hold an annual meeting to consider proposed non-audit services for the upcoming year, often by reviewing a proposed annual budget for non-audit services, it would be appropriate for auditors to provide their disclosures pursuant to Rule 3524(a), and hold their discussions pursuant to Rule 3524(b), about proposed tax services that are known at the time of the meeting in connection with or at that meeting. In addition, some audit committees' policies delegate authority to pre-approve non-audit services to one committee member and require reporting of any services approved by delegated authority at the next scheduled audit committee meeting, on a quarterly basis, or otherwise, in order for the audit committee to review an updated forecast or other summary of non-audit services. In such cases, it would be appropriate for auditors to provide the member holding delegated authority to approve a tax service a description of the service that complies with Rule 3524(a). Also, although the auditor may discuss the service with the member holding delegated authority when the member is considering the service, in order to comply with Rule 3524(b), the auditor ought to discuss the service with the audit committee as a whole when the audit committee considers the updated forecast or other summary.

Finally, Rule 3524(c) requires a registered public accounting firm to document the substance of its discussion with the audit committee under subparagraph (b). The few commenters who addressed this provision supported it.[72]

Effective and Transition Dates

The Board intends that the rules become effective at varying times.

In light of pre-existing legal and regulatory requirements, Rules 3502 and 3520 do not, in any practical sense, create new criteria for appropriate conduct. Accordingly, no transition period is called for, and therefore the Board intends that Rules 3502 and 3520, as well as the definitions in Rule 3501, become effective 10 days after the date that the SEC approves the rules.

Rule 3521 is based on the SEC's existing contingent fee rule, although it differs from that rule in certain respects. Accordingly, the Board will not apply Rule 3521 to contingent fee arrangements that were paid in their entirety, converted to fixed fee arrangements, or otherwise unwound before the later of December 31, 2005, or 10 days after the date that the SEC approves the rules. Of course, as noted above, the Commission's Rule 2–01 on auditor independence treats an auditor as not independent if it enters into a contingent fee arrangement with an audit client today.[73]

Rules 3522, 3523, and 3524 establish new criteria for appropriate conduct by registered public accounting firms and their associated persons. The Board believes it is appropriate to allow a reasonable period of time for such firms to prepare internal policies and procedures, and train their employees to ensure compliance with these new requirements. In addition, the Board understands that engagements covered by these rules may be in progress and that firms will need to terminate or complete these engagements in a professional manner. Accordingly, the Board believes it is appropriate to allow transition periods for these rules.

The Board understands that Rule 3523 will, in practical effect, lead to some registered firms terminating recurring engagements to provide tax services and may require certain members of public companies' senior management to find other tax preparers. Accordingly, the Board has determined that it will not apply Rule 3523 to tax services being provided pursuant to an engagement in process at the time the SEC approves the rules, provided that such services are completed on or before the later of June 30, 2006 or 10 days after the date that the SEC approves the rules. As

[70] *See* PCAOB Rule 3600T (adopting *AICPA Code of Professional Conduct*, paragraph .05 of ET sec. 101, ''Independence'', Interpretation No. 101–3, ''Performance of Other Services,'' as of April 16, 2003) (''care should be taken not to perform management functions or make management decisions for attest clients the responsibility for which remains with the client's board of directors and management.'') (Interpretation No. 101–3 was later amended by the AICPA in December 2003).

[71] 17 CFR 210.2–01(c)(7)(i)(B).

[72] One commenting auditor suggested that the Board consider requiring specific forms or occasions for auditor documentation of audit committee discussion. After considering this suggestion, the Board has determined that such forms or required timing of discussions could unnecessarily limit the scope of the discussions that, in the judgment of the auditor and audit committee, are appropriate.

[73] 17 CFR 210.2–01(c)(5).

discussed above, the Board will treat engagements as ''in process'' if an engagement letter has been executed and work of substance has commenced; the Board will not treat engagements as ''in process'' during negotiations on the scope and fee for a service.

Although the Board does not expect them to require the same transition as Rule 3523, Rules 3522 and 3524 also impose new legal requirements. Accordingly, the Board has determined that it will not apply Rule 3522 to tax services that were completed by a registered public accounting firm no later than the later of December 31, 2005, or 10 days after the date that the SEC approves the rules. Rule 3524 will not apply to any tax service pre-approved before the later of December 31, 2005, or 10 days after the date that the SEC approves the rules, or, in the case of an issuer that pre-approves non-audit services by policies and procedures, the rule will not apply to any tax service provided by March 31, 2006.

The Technical Amendments

On November 22, 2005, the Board adopted technical amendments to Rules 3502 and 3522 and revised the effective dates for certain of the rules. The Board described these amendments as follows:

After discussions with the SEC staff, the Board has decided to remove the word ''cause'' from the title and text of Rule 3502. This amendment is intended to avoid any misperception that the rule affects the interpretation of any provision of the federal securities laws. The rule, as amended, should be interpreted and understood to be the same as the rule adopted by the Board in July, however.[74] In particular, under the amended rule, the person's conduct must have the same relation to the violation and the person must act with the same mental state as under the rule the Board adopted in July.

The Board is also amending Note 1 to Rule 3522(b) to correct a typographical error in the citation of the provision of the Internal Revenue Code cited in that note.

In light of the time that has elapsed since their adoption, the Board has also decided to revise the effective dates for certain of the rules. Three of those rules '' Rules 3521, 3522 and 3524 '' had effective dates of the later of December 31, 2005 or 10 days after the date the SEC approves the rules.[75] The Board has decided to revise the effective dates of those three rules to 60 days after the date the SEC approves the rules.[76]

Specifically, the Board will not apply Rule 3521 to contingent fee arrangements that were paid in their entirety, converted to fixed fee arrangements, or otherwise unwound before 60 days after the date that the SEC approves the rules.[77] The Board will not apply Rule 3522 to tax services that were completed by a registered public accounting firm no later than 60 days after the date that the SEC approves the rules. Rule 3524 will not apply to any tax service pre-approved before 60 days after the date that the SEC approves the rules, or, in the case of an issuer that pre-approves non-audit services by policies and procedures, the rule will not apply to any tax service provided by March 31, 2006. Combined with the time period since the rules' adoption, the extension of the effective dates for these rules should allow reasonable time for affected firms to prepare internal policies and procedures, train their employees to ensure compliance with the new requirements, and, if necessary, terminate or complete any ongoing engagements covered by the rules in a professional manner.

III. Date of Effectiveness of the Proposed Rule and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents, the Commission will:

(a) By order approve such proposed rule; or

(b) Institute proceedings to determine whether the proposed rule should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rules are consistent with the requirements of Title I of the Act. The Commission also requests specific comment on the following:

Regarding proposed Rule 3522, the Board indicates that while an auditor's independence is not impaired *per se* upon a subsequent listing of a transaction under the regulations of the Department of Treasury or the Internal Revenue Service, ''firms should nevertheless be cautious in participating in transactions that they believe could become listed.'' The Board further states that, if a transaction later becomes listed, the auditor ''should carefully consider the potential impairment of its independence with the audit committee of its client.'' For example, the Board states that the ''auditor's judgment regarding appropriate financial reporting and disclosure concerning a transaction that becomes listed could become biased by the auditor's vested interests in defending its tax advice.'' The Board also declined to adopt a bright-line rule providing that, so long as a transaction recommended by the firm was not listed at the time it was executed, subsequent listing could not impair an auditor's independence at the later date. Instead, the Board notes that the requirement for the auditor to consider, on a forward-looking basis, whether such a situation may reasonably be thought to bear on its independence is addressed in existing independence requirements. As such, the Board determined not to expand proposed Rule 3522(b) to specifically address this issue. We request comment on this discussion. Is it clear from the Board's discussion that a subsequent listing of a transaction, while not in and of itself impairing the auditor's independence prior to the listing of the transaction, may impact independence from the date of the listing forward? Is additional guidance necessary regarding the consideration of an auditor's independence when a transaction planned or opined on by the auditor subsequently becomes listed?

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/pcaob.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number PCAOB–2006–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. PCAOB–2006–01. This file number

[74] *See* PCAOB Release No. 2005–014 (July 26, 2005), at 9–14 (discussing Rule 3502).

[75] *See id.*, at 47–48.

[76] The effective dates of Rules 3501, 3502, 3520 and 3523 are not changed by this release and remain as set forth in the Board's adopting release. *Id.*

[77] Of course, the Commission's Rule 2–01 on auditor independence treats an auditor as not independent if it enters into a contingent fee arrangement with an audit client today. 17 CFR 210.2–01(c)(5).

should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090. Copies of such filing also will be available for inspection and copying at the principal office of PCAOB. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should be submitted on or before April 3, 2006.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. 06–2365 Filed 3–10–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Gary Player Direct, Inc., First Chesapeake Financial Corp., and North Lily Mining Co.; Order of Suspension of Trading

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Gary Player Direct, Inc. because it has not filed a periodic report since the period ending December 31, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of First Chesapeake Financial Corp. because it has not filed a periodic report since the period ending September 30, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of North Lily Mining Co. because it has not filed a periodic report since the period ending September 30, 2000.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed companies is suspended for the period from 9:30 a.m. EST on March 9, 2006, through 11:59 p.m. EST on March 22, 2006.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. 06–2412 Filed 3–9–06; 11:40 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53403; File No. SR–Amex–2006–04]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Procedures for Denying Initial and Continued Listing

March 2, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 23, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. On February 22, 2006, Amex filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add new Section 127 and amend Sections 101, 401, 402, 710, 1002, and 1009 of the Amex Company Guide to increase the transparency of the process associated with staff determinations to deny the initial or continued listing of a company's securities on the Amex.

The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com,* at the Amex's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Sections 101 and 1002 of the Amex Company Guide provide broad discretionary authority to the Exchange to deny initial or continued listing to a company, the condition or business of which raises public interest or other qualitative concerns that could undermine investor confidence in Amex listed securities. The Exchange proposes to add new Section 127 and amend Sections 101 and 1002 of the Amex Company Guide to clarify the circumstances in which the Exchange generally uses this authority and provide greater transparency to listed companies and applicants.[4]

The proposed rule and rule amendments would specify that the Exchange has authority to deny initial listing to an applicant, impose additional or more stringent criteria on initial or continued listing of a company's securities, or delist a company's securities under the following circumstances:

- The listed company or applicant, or an individual associated with the listed company or applicant, has a history of regulatory misconduct;[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made technical changes to the rule text submitted in Exhibit 5.

[4] The Commission notes that this proposed rule change is substantially similar to a proposal submitted by the National Association of Securities Dealers, Inc. and approved by the Commission. *See* Securities Exchange Act Release No. 52342 (August 26, 2005), 70 FR 52456 (September 2, 2005) (SR–NASD–2004–125).

[5] Such individuals would typically be an officer, director, substantial security holder or consultant to the issuer. The Exchange proposes in new Section 127, Commentary .01 that an interest consisting of more than either 5% of the number of shares of common stock or 5% of the voting power outstanding of an issuer or party shall be considered a substantial interest and cause the holder of such an interest to be regarded as a substantial security holder. Telephone conversation between Jan Woo, Attorney, Division of Market Regulation, Commission, and Courtney McBride,

• The listed company or applicant files for protection under any provision of the federal bankruptcy laws or comparable foreign laws;

• The independent accountants of the listed company or applicant issue a disclaimer opinion on financial statements required to be audited;

• The financial statements of the listed company or applicant do not contain a required certification; or

• The Exchange determines that the listed company or applicant entity has violated or evaded applicable corporate governance standards (for example, by delisting from another marketplace in order to effect a violative transaction and seeking an Amex listing thereafter).

Proposed new Section 127 of the Amex Company Guide would explain the factors used by the Exchange in evaluating whether the regulatory misconduct of an individual associated with a company should be used as a basis to deny initial or continued listing, as well as remedial measures that may serve to mitigate public interest concerns. Section 127 would also state that Sections 101 and 1002 do not provide a basis for the Exchange to grant exemptions or exceptions from the enumerated initial or continued listing criteria.

The Exchange is also proposing to update its disclosure policies by amending Sections 402 and 1009 of the Amex Company Guide. These proposed amendments would conform the Amex disclosure time frames to those mandated by the Commission for current reports filed on Form 8–K, specifically to instructions provided under General Instruction B.1. to Form 8–K for material disclosed pursuant to Item 3.01 of Form 8–K (Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing), by reducing to four business days the time within which a listed company must publicly disclose that the Exchange has given it written notice that it is noncompliant with one or more of the continued listing standards. The proposed amendments would also extend the disclosure obligations applicable to a company that receives a written delisting notice to include a company that receives a written notice of noncompliance with a continued listing requirement. A written notice of noncompliance with a continued listing requirement may be in the form of either a Warning Letter or a Deficiency Letter.[6]

In addition, the Amex proposes certain clarifying amendments to Section 710 of the Amex Company Guide. Section 710(b) provides that an exception to the shareholder approval requirements contained in Sections 711, 712, and 713 may be made upon application to the Exchange when (i) the delay in securing shareholder approval would seriously jeopardize the financial viability of the enterprise, and (ii) reliance by the company on the exception is expressly approved by the audit committee of the company's board of directors or a comparable body of the board of directors. The Exchange proposes to add that the comparable body of the board of directors which may approve a company's reliance on the financial viability exception must be comprised solely of independent and disinterested directors. The Exchange also proposes to prohibit a company from issuing, or authorizing its transfer agent or registrar to issue or register the securities subject to the shareholder approval requirements until it has received written notification from the Exchange that the financial viability exception has been granted and the securities have been approved for listing.

Section 710 of the Amex Company Guide currently requires a company that receives the financial viability exception to provide notice to shareholders of its reliance on such exception ten days before issuance of the subject securities. The Exchange proposes to require increased disclosure by requiring the company to issue a press release ten days before issuance of the subject securities. Both the shareholder notice and press release would need to specify: (i) The terms of the transaction subject to the shareholder approval requirements (including the number of shares of common stock that could be issued and the consideration received), (ii) the fact that the company is relying on the financial viability exception to the stockholder approval rules, and (iii) that such reliance has been approved either by the audit committee or by another body of the board of directors that is comprised solely of independent and disinterested directors.

Finally, the Exchange proposes minor, technical changes to Section 401 of the Amex Company Guide.

2. Statutory Basis

The Exchange believes that the amended proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the amended proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Amex–2006–04 on the subject line.

Assistant General Counsel, Amex, on February 23, 2006.

[6] Telephone conversation between Jan Woo, Attorney, Division of Market Regulation, Commission, and Courtney McBride, Assistant General Counsel, Amex, on February 23, 2006.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2006–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–04 and should be submitted on or before April 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–3485 Filed 3–10–06; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53398; File No. SR–Amex–2005–107]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Relating to Amending Exchange Delisting Rules To Conform to Recent Amendments to Commission Rules Regarding Removal From Listing and Withdrawal From Registration

March 2, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 24, 2005, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. Amex filed Amendment No. 1 to the proposal on October 27, 2005.[3] On February 1, 2006, Amex filed Amendment No. 2 to the proposal.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise Amex Rule 18 and Sections 1010, 1011, 1201, 1202, 1203, 1204, 1205 and 1206 of the Amex Company Guide with respect to delisting procedural requirements as mandated by recent amendments to Commission rules.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

American Stock Exchange Rules

* * * * *

Withdrawal From Listing

Rule 18.

Rule 18 in the following form is effective through April 23, 2006. It will be rescinded after that date and will be replaced as set forth below.

Balance of rule—No change.

Rule 18 in the following form will be effective on April 24, 2006.

(a) An issuer may voluntarily apply to withdraw a class of securities from listing on the Exchange by filing an application with the Securities and Exchange Commission on Form 25, provided (i) the issuer complies with all applicable state laws in effect in the state in which it is incorporated, (ii) the issuer complies with applicable federal securities laws, including but not limited to Rule 12d2–2(c) under the Securities Exchange Act of 1934 and (iii) the issuer's board of directors (or comparable governing body) approves such action. The issuer must provide the Exchange with a certified copy of the requisite resolutions prior to filing the Form 25.

(b) An issuer seeking to voluntarily apply to withdraw a class of securities from listing on the Exchange pursuant to paragraph (a) that has received notice from the Exchange, pursuant to Section 1009 or otherwise, that it is below the Exchange's continued listing policies and standards, or that is aware that it is below such continued listing policies and standards notwithstanding that it has not received such notice from the Exchange, must disclose that it is no longer eligible for continued listing (including the specific continued listing policies and standards that the issue is below) in: (i) Its statement of all material facts relating to the reasons for withdrawal from listing provided to the Exchange along with written notice of its determination to withdraw from listing required by Rule 12d2–2(c)(2)(ii) under the Exchange Act and; (ii) its public press release and Web site notice required by Rule 12d2–2(c)(2)(iii) under the Exchange Act.

(c) No application for delisting shall be filed with the Commission until the requirements of this rule and § 1010 of the Exchange's Company Guide have been complied with.

(d) The issuer must notify the Exchange that it has filed Form 25 with the Securities and Exchange Commission contemporaneously with such filing.

* * * * *

American Stock Exchange Company Guide

* * * * *

Procedures for Delisting and Removal

Section 1010.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original proposed rule change in its entirety.

[4] In Amendment No. 2, Amex added footnotes to the Form 19b–5 and Exhibit 1 that reference appropriate sections of the Amex Company Guide; made grammatical corrections to the proposed rule text regarding the final effective of the old Amex rules; and clarified the circumstances under which the Exchange is authorized to file a Form 25 for certain corporate actions.

Section 1010 in the following form is effective through April 23, 2006. It will be rescinded after that date and will be replaced as set forth below.

Balance of rule—No change.

Section 1010 in the following form will be effective on April 24, 2006.

(a) The action required to be taken by the Exchange to strike a class of securities from listing and registration following certain corporate actions (as specified in Rule 12d2–2(a) promulgated under the Securities Exchange Act), such as where the entire security class is matured, redeemed, retired or extinguished by operation of law is set forth in Rule 12d2–2(a) promulgated under the Securities Exchange Act.

(b) Whenever the Exchange determines, in accordance with Section 1009 or otherwise, that a class of securities should be removed from listing (or unlisted trading) for reasons other than the reasons specified in paragraph (a), it will follow the procedures contained in Part 12.

(c) Whenever the Exchange staff is authorized to file an application with the Securities and Exchange Commission on Form 25 to strike a class of securities from listing and registration for reasons other than certain corporate actions (as specified in Rule 12d2–2(a) promulgated under the Securities Exchange Act), the following procedures are applicable:

(i) The Exchange staff will file an application with the Securities and Exchange Commission on Form 25, with a statement attached that sets forth the specific grounds on which the delisting is based, in accordance with Sections 19(d) and 6(d) of the Exchange Act, and will promptly deliver a copy of such form and attached statement to the issuer of the class of securities which is subject to delisting and deregistration. The Form 25 will be filed at least ten days prior to the date the delisting is anticipated to be effective.

(ii) The Exchange will provide public notice of its final determination to strike the class of securities from listing by issuing a press release and posting notice on the Exchange's Web site at least ten days prior to the date that the delisting is anticipated to be effective. The posting will remain on the Exchange's Web site until the delisting is effective.

(iii) The issuer of the class of securities which is subject to delisting must comply with all applicable reporting and disclosure obligations including, but not limited to, obligations mandated by the Exchange, state laws in effect in the state in which the issuer is incorporated, and the federal securities laws.

(d) An issuer may voluntarily withdraw its securities from listing and registration on the Exchange as permitted by and in accordance with Exchange Rule 18. For the convenience of listed issuers, the text of Rule 18 is reproduced below:

* * * * *

Withdrawal From Listing

Rule 18. (a) An issuer may voluntarily apply to withdraw a class of securities from listing on the Exchange by filing an application with the Securities and Exchange Commission on Form 25, provided (i) the issuer complies with all applicable state laws in effect in the state in which it is incorporated, (ii) the issuer complies with applicable federal securities laws, including but not limited to Rule 12d2–2(c) under the Securities Exchange Act of 1934 and (iii) the issuer's board of directors (or comparable governing body) approves such action. The issuer must provide the Exchange with a certified copy of the requisite resolutions prior to filing the Form 25.

(b) An issuer seeking to voluntarily apply to withdraw a class of securities from listing on the Exchange pursuant to paragraph (a) that has received notice from the Exchange, pursuant to Section 1009 or otherwise, that it is below the Exchange's continued listing policies and standards, or that is aware that it is below such continued listing policies and standards notwithstanding that it has not received such notice from the Exchange, must disclose that it is no longer eligible for continued listing (including the specific continued listing policies and standards that the issue is below) in: (i) Its statement of all material facts relating to the reasons for withdrawal from listing provided to the Exchange along with written notice of its determination to withdraw from listing required by Rule 12d2–2(c)(2)(ii) under the Exchange Act and; (ii) its public press release and Web site notice required by Rule 12d2–2(c)(2)(iii) under the Exchange Act.

(c) No application for delisting shall be filed with the Commission until the requirements of this rule and § 1010 of the Exchange's Company Guide have been complied with.

(d) The issuer must notify the Exchange that it has filed Form 25 with the Securities and Exchange Commission contemporaneously with such filing.

* * * * *

(e) As required by Rule 12d2–2 under the Securities Exchange Act of 1934, upon receiving written notice from an issuer that such issuer has determined to withdraw a class of securities from listing on the Exchange pursuant to paragraph (d), the Exchange will provide notice on its Web site of the issuer's intent to delist its securities beginning on the business day following such notice, which will remain posted on the Exchange's Web site until the delisting on Form 25 is effective.

** * * Commentary.*

.01 For the convenience of listed companies, the text of Rule 12d2–2 under the Securities Exchange Act of 1934 (as adopted July 14, 2005) is reproduced below.

Rule 12d2–2. Removal from Listing and Registration.

Preliminary Note: The filing of the Form 25 (§ 249.25 of this chapter) by an issuer relates solely to the withdrawal of a class of securities from listing on a national securities exchange and/or from registration under section 12(b) of the Act (15 U.S.C. 78l(b)), and shall not affect its obligation to be registered under section 12(g) of the Act and/or reporting obligations under section 15(d) of the Act (15 U.S.C. 78o(d)).

Implementation. The rules of each national securities exchange must be designed to meet the requirements of this section and must be operative no later than April 24, 2006. Each national securities exchange must submit to the Commission a proposed rule change that complies with section 19(b) of the Act (15 U.S.C. 78s) and Rule 19b–4 (17n CFR 240.19b–4) thereunder, and this section no later than October 24, 2005.

(a) A national securities exchange must file with the Commission an application on Form 25 (17 CFR 249.25) to strike a class of securities from listing on a national securities exchange and/or registration under section 12(b) of the Act within a reasonable time after the national securities exchange is reliably informed that any of the following conditions exist with respect to such a security:

(1) The entire class of the security has been called for redemption, maturity or retirement; appropriate notice thereof has been given; funds sufficient for the payment of all such securities have been deposited with an agency authorized to make such payments; and such funds have been made available to security holders.

(2) The entire class of the security has been redeemed or paid at maturity or retirement.

(3) The instruments representing the securities comprising the entire class have come to evidence, by operation of law or otherwise, other securities in substitution therefor and represent no other right, except, if such be the fact, the right to receive an immediate cash

payment (the right of dissenters to receive the appraised or fair value of their holdings shall not prevent the application of this provision).

(4) All rights pertaining to the entire class of the security have been extinguished; provided, however, that where such an event occurs as a result of an order of a court or other governmental authority, the order shall be final, all applicable appeal periods shall have expired, and no appeals shall be pending.

(b)(1) In cases not provided for in paragraph (a) of this section, a national securities exchange may file an application on Form 25 to strike a class of securities from listing and/or withdraw the registration of such securities, in accordance with its rules, if the rules of such exchange, at a minimum, provide for:

(i) Notice to the issuer of the exchange's decision to delist its securities;

(ii) An opportunity for appeal to the national securities exchange's board of directors, or to a committee designated by the board; and

(iii) Public notice of the national securities exchange's final determination to remove the security from listing and/or registration, by issuing a press release and posting notice on its Web site. Public notice under this paragraph shall be disseminated no fewer than 10 days before the delisting becomes effective pursuant to paragraph (d)(1) of this section, and must remain posted on its Web site until the delisting is effective.

(2) A national securities exchange must promptly deliver a copy of the application on Form 25 to the issuer.

(c)(1) The issuer of a class of securities listed on a national securities exchange and/or registered under section 12(b) of the Act may file an application on Form 25 to notify the Commission of its withdrawal of such securities from listing on such national securities exchange and its intention to withdraw the securities from registration under section 12(b) of the Act.

(2) An issuer filing Form 25 under this paragraph must satisfy the requirements in paragraph (c)(2) of this section and represent on the Form 25 that such requirements have been met:

(i) The issuer must comply with all applicable laws in effect in the state in which it is incorporated and with the national securities exchange's rules governing an issuer's voluntary withdrawal of a class of securities from listing and/or registration.

(ii) No fewer than 10 days before the issuer files an application on Form 25 with the Commission, the issuer must provide written notice to the national securities exchange of its determination to withdraw the class of securities from listing and/or registration on such exchange. Such written notice must set forth a description of the security involved, together with a statement of all material facts relating to the reasons for withdrawal from listing and/or registration.

(iii) Contemporaneous with providing written notice to the exchange of its intent to withdraw a class of securities from listing and/or registration, the issuer must publish notice of such intention, along with its reasons for such withdrawal, via a press release and, if it has a publicly accessible Web site, posting such notice on that Web site. Any notice provided on an issuer's Web site under this paragraph shall remain available until the delisting on Form 25 has become effective pursuant to paragraph (d)(1) of this section. If the issuer has not arranged for listing and/or registration on another national securities exchange or for quotation of its security in a quotation medium (as defined in § 240.15c2–11), then the press release and posting on the Web site must contain this information.

(3) A national securities exchange, that receives, pursuant to paragraph (c)(2)(ii) of this section, written notice from an issuer that such issuer has determined to withdraw a class of securities from listing and/or registration on such exchange, must provide notice on its Web site of the issuer's intent to delist and/or withdraw from registration its securities by the next business day. Such notice must remain posted on the exchange's Web site until the delisting on Form 25 is effective pursuant to paragraph (d)(1) of this section.

(d)(1) An application on Form 25 to strike a class of securities from listing on a national securities exchange will be effective 10 days after Form 25 is filed with the Commission.

(2) An application on Form 25 to withdraw the registration of a class of securities under section 12(b) of the Act will be effective 90 days, or such shorter period as the Commission may determine, after filing with the Commission.

(3) Notwithstanding paragraphs (d)(1) and (d)(2) of this section, the Commission may, by written notice to the exchange and issuer, postpone the effectiveness of an application to delist and/or to deregister to determine whether the application on Form 25 to strike the security from registration under section 12(b) of the Act has been made in accordance with the rules of the exchange, or what terms should be imposed by the Commission for the protection of investors.

(4) Notwithstanding paragraph (d)(2) of this section, whenever the Commission commences a proceeding against an issuer under section 12 of the Act prior to the withdrawal of the registration of a class of securities, such security will remain registered under section 12(b) of the Act until the final decision of such proceeding or until the Commission otherwise determines to suspend the effective date of, or revoke, the registration of a class of securities.

(5) An issuer's duty to file any reports under section 13(a) of the Act (15 U.S.C. 78m(a)) and the rules and regulations thereunder solely because of such security's registration under section 12(b) of the Act will be suspended upon the effective date for the delisting pursuant to paragraph (d)(1) of this section. If, following the effective date of delisting on Form 25, the Commission, an exchange, or an issuer delays the withdrawal of a security's registration under section 12(b) of the Act, an issuer shall, within 60 days of such delay, file any reports that would have been required under section 13(a) of the Act and the rules and regulations thereunder, had the Form 25 not been filed. The issuer also shall timely file any subsequent reports required under section 13(a) of the Act for the duration of the delay.

(6) An issuer whose reporting responsibilities under section 13(a) of the Act are suspended for a class of securities under paragraph (d)(5) of this section is, nevertheless, required to file any reports that an issuer with such a class of securities registered under section 12 of the Act would be required to file under section 13(a) of the Act if such class of securities:

(i) Is registered under section 12(g) of the Act; or

(ii) Would be registered, or would be required to be registered, under section 12(g) of the Act but for the exemption from registration under section 12(g) of the Act provided by section 12(g)(2)(A) of the Act.

(7)(i) An issuer whose reporting responsibilities under section 13(a) of the Act are suspended under paragraph (d)(5) of this section is, nevertheless, required to file any reports that would be required under section 15(d) of the Act but for the fact that the reporting obligations are:

(A) Suspended for a class of securities under paragraph (d)(5) of this section; and

(B) Suspended, terminated, or otherwise absent under section 12(g) of the Act.

(ii) The reporting responsibilities of an issuer under section 15(d) of the Act shall continue until the issuer is required to file reports under section 13(a) of the Act or the issuer's reporting responsibilities under section 15(d) of the Act are otherwise suspended.

(8) In the event removal is being effected under paragraph (a)(3) of this section and the national securities exchange has admitted or intends to admit a successor security to trading under the temporary exemption provided for by § 240.12a–5, the effective date of the Form 25, as set forth in paragraph (d)(1) of this section, shall not be earlier than the date the successor security is removed from its exempt status.

(e) The following are exempt from section 12(d) of the Act and the provisions of this section:

(1) Any standardized option, as defined in § 240.9b–1, that is:

(i) Issued by a clearing agency registered under section 17A of the Act (15 U.S.C. 78q–1); and

(ii) Traded on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)); and

(2) Any security futures product that is:

(i) Traded on a national securities exchange registered under section 6(a) of the Act or on a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 79o–3(a)); and

(ii) Cleared by a clearing agency registered as a clearing agency pursuant to section 17A of the Act or is exempt from registration under section 17A(b)(7) of the Act.

Delisting Application by Company

Sec. 1011.

Section 1011 in the following form is effective through April 23, 2006. It will be rescinded after that date.

Balance of rule—No change.

* * * * *

Part 12—Procedures For Review of Amex Listing Determinations

Purpose and General Provisions

Sec. 1201. (a)–(c) No change.

Section 1201(d) in the following form is effective through April 23, 2006. It will be rescinded after that date and will be replaced as set forth below.

(d) no change.

Section 1201(d) in the following form will be effective on April 24, 2006.

(d) At each level of a proceeding under Part 12, a Listing Qualifications Panel, the Committee on Securities, or the Amex Board, as part of its respective review, may consider any failure to meet any quantitative standard or qualitative consideration set forth in Part 1 or Part 10, including failures previously not considered in the proceeding. The issuer will be afforded notice of such consideration and an opportunity to respond. The fact that an applicant may meet the Exchange's quantitative standards does not necessarily mean that its application for initial listing will be approved. Other factors which will also be considered include the nature of a company's business, the market for its products, the reputation of its management, its historical record and pattern of growth, its financial integrity, its demonstrated earning power and its future outlook. With respect to continued listing, although the Exchange has adopted certain standards under which it will normally give consideration to suspending dealings in, or removing, a security from listing or unlisted trading, these standards in no way limit or restrict the Exchange in applying its policies regarding continued listing, and the Exchange may at any time, in view of the circumstances of each case, suspend dealings in, or file an application with the Securities and Exchange Commission on Form 25 to strike the class of securities from listing or unlisted trading when in its opinion such security is unsuitable for continued trading on the Exchange. Such action will be taken in accordance with Section 1010 regardless of whether the issuer meets or fails to meet any or all of the continued listing standards.

Written Notice of Staff Determination

Sec. 1202. (a) No change.

Section 1202(b) in the following form is effective through April 23, 2006. It will be rescinded after that date and will be replaced as set forth below.

(b) no change.

Section 1202(b) in the following form will be effective on April 24, 2006.

*(b) An issuer that receives a Staff Determination to prohibit the continued listing of the issuer's securities under Section 1202(a) shall make a public announcement through the news media that it has received such notice, including the specific policies and standards upon which the determination was based. Prior to the release of the public announcement, the issuer shall provide such announcement to Amex's StockWatch and Listing Qualifications Departments.** The public announcement shall be made as promptly as possible, but not more than four business days following receipt of the Staff Determination.*

***Notification should be provided to Amex's StockWatch Department at (212) 306–8383 (telephone, (2212) 306–1488 (facsimile) and Listing Qualifications Department at (212) 306–1331 (telephone) and (212) 306–5325 (facsimile).*

Request for Hearing

Sec. 1203. (a)–(c) No change.

Section 1203(d) in the following form is effective through April 23, 2006. It will be rescinded after that date and will be replaced as set forth below.

(d) no change.

Section 1203(d) in the following form will be effective on April 24, 2006.

(d) A request for a hearing will ordinarily stay a delisting action pursuant to a Staff Determination to prohibit the continued listing of an issuer's securities in accordance with Section 1204(d), but the Exchange staff may immediately suspend trading in any security or securities pending review should it determine that such immediate suspension is necessary or appropriate in the public interest, for the protection of investors, or to promote just and equitable principles of trade. If the issuer does not request a review and pay the requisite fee, within the time period specified in paragraph (a) of this Section, the Exchange shall suspend trading in the security or securities when such time period has elapsed and the Exchange staff shall file an application with the Securities and Exchange Commission on Form 25 to strike the class of securities from listing and registration in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder and in accordance with Section 1010.

The Listing Qualifications Panel

Sec. 1204. (a)–(c) No change.

Section 1204(d) in the following form is effective through April 23, 2006. It will be rescinded after that date and will be replaced as set forth below.

(d) no change.

Section 1204(d) in the following form will be effective on April 24, 2006.

(d) If the Panel Decision provides that the issuer's security or securities should be delisted, the Exchange will suspend trading in such securities as soon as practicable and initiate the delisting process in accordance with Section 1010.

Review by the Amex Committee on Securities

Sec. 1205. (a)–(d) No change.

Sections 1205(e)–(g) in the following form are effective through April 23, 2006. They will be rescinded after that date and will be replaced as set forth below.

(e)–(g) no change.

Sections 1205(e)–(g) in the following form will be effective on April 24, 2006.

(e) The Committee on Securities will issue a written decision (the ''Committee on Securities Decision'') that affirms, modifies, or reverses the Panel Decision or that refers the matter to the Staff or to the Panel for further consideration. The Committee on Securities Decision will describe the specific grounds for the decision, identify any quantitative standard or qualitative consideration set forth in Part 1 or Part 10 that the applicant has failed to satisfy, including, if applicable, the basis for its determination that (i) the issuer's securities should be approved for listing pursuant to Section 1203(c); (ii) the issuer's securities should continue to be listed as permitted by Section 1009; or (iii) the Panel Decision was in error, and provide notice that the Amex Board may call the Committee on Securities Decision for review at any time before its next meeting that is at least 15 calendar days following the issuance of the Committee on Securities Decision. The Committee on Securities Decision will be promptly provided to the issuer and will take immediate effect unless it specifies to the contrary, or as provided in Section 1205(f).

(f) If the Committee on Securities Decision reverses the Panel Decision and provides that the issuer's listing application should be approved, the listing of the security or securities which are the subject of such application will not be effective unless and until such Committee on Securities Decision represents final action of the Exchange as specified in Section 1206(d). If the Committee on Securities Decision reverses the Panel Decision and provides that the issuer's security or securities should not be delisted, and such security or securities have been suspended pursuant to Section 1204(d), such suspension shall continue until either the Committee on Securities Decision represents final action of the Exchange as specified in Section 1206(d) or in accordance with a discretionary review by the Amex Board pursuant to Section 1206.

(g) If the issuer does not request a review, and pay the requisite fee, within the time period specified in paragraph (b) of this Section by the Committee on Securities of a Panel Decision which provided that the issuer's security or securities should be delisted, when such time period has elapsed, the Exchange will suspend trading in such security or securities, if it has not already done so pursuant to Section 1204(d), and file an application with the Securities and Exchange Commission on Form 25 to strike the class of securities from listing and registration in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder and in accordance with Section 1010.

Discretionary Review by Amex Board

Sec. 1206. (a)–(c) No change.

Sections 1206(d)–(f) in the following form are effective through April 23, 2006. They will be rescinded after that date and will be replaced as set forth below.

(d)–(f) no change.

Sections 1206(d)—(f) in the following form will be effective on April 24, 2006.

(d) If the Amex Board conducts a discretionary review, the issuer will be provided with a written decision describing the specific grounds for its decision, and identifying any quantitative standard or qualitative consideration set forth in Part 1 or Part 10 that the issuer has failed to satisfy, including, if applicable, the basis for its determination that (i) the issuer's securities should be approved for listing pursuant to Section 1203(c); (ii) the issuer's securities should continue to be listed as permitted by Section 1009; or (iii) that the Committee on Securities Decision was in error. The Amex Board may affirm, modify or reverse the Committee on Securities Decision and may remand the matter to the Committee on Securities Council, Panel, or Staff with appropriate instructions. The decision represents the final action of the Exchange and will take immediate effect unless it specifies to the contrary. If the Board Decision provides that the issuer's security or securities should be delisted, the Exchange will suspend trading in such security or securities as soon as practicable, if it has not already done so pursuant to Section 1204(d), and the Exchange staff will file an application with the Securities and Exchange Commission on Form 25 to strike the class of securities from listing and registration in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder and in accordance with Section 1010.

(e) If the Amex Board declines to conduct a discretionary review or withdraws its call for review, the issuer will be promptly provided with written notice that the Committee on Securities Decision represents the final action of the Exchange. If the Committee on Securities Decision provides that the issuer's security or securities should be delisted, upon the expiration of the time period specified in paragraph (a) of this Section, or upon the Amex Board's determination to withdraw a call for review, the Exchange will suspend trading in such security or securities as soon as practicable, if it has not already done so pursuant to Sections 1204(d), and the Exchange staff will file an application with the Securities and Exchange Commission on Form 25 to strike the class of securities from listing and registration in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder and in accordance with Section 1010.

(f) Any issuer aggrieved by a final action of the Exchange may make application for review to the Commission in accordance with Section 19 of the Securities Exchange Act of 1934.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex is proposing to revise Rule 18 and Sections 1010, 1011, 1201, 1202, 1203, 1204, 1205 and 1206 of the Amex Company Guide with respect to delisting procedural requirements as mandated by recent amendments to Rule 12d2–2 under the Act (''Commission Rule 12d2–2'').

Section 12 of the Act [5] and Commission Rule 12d2–2 adopted thereunder [6] govern the process for the delisting and deregistration of securities listed on national securities exchanges. Currently, such delistings and/or deregistrations are effected in the following three situations:

1. First, when the entire class of securities is matured, redeemed, retired or extinguished by operation of law. Currently, the exchange upon which such class of securities is listed files Commission Form 25 in paper form with the Commission to effect the delisting.

[5] 15 U.S.C. 78*l*.

[6] 15 CFR 240.12d2–2.

2. Second, an exchange may file a written application with the Commission to delist a class of securities if it has fallen below the exchange's listing standards,[7] and the Commission must formally approve the application. The application must set forth the basis for the exchange's determination that the securities are not eligible for continued listing and the exchange must provide a copy of the application and determination to the issuer of the securities in question. Commission approval is generally granted ten days after the application is filed.

3. Third, an issuer may initiate the delisting of its securities by filing a written application with the Commission. These applications are subject to a notice and comment period, generally followed by Commission approval of the application.

Recent amendments to Commission Rule 12d2–2 and other related rules will require the electronic filing of revised Form 25 on the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system by exchanges and issuers for all delistings, other than delistings of standardized options and securities futures, which are exempted.[8]

The revised Commission rules do not require any material changes to the existing process applicable to delistings when the entire class of securities is matured, redeemed, retired or extinguished by operation of law, other than that Form 25 will be filed electronically through EDGAR rather than in paper form.

In the case of exchange initiated delistings, the amendments to Commission Rule 12d2–2 require that exchange rules provide the following:

1. Notice to the issuer of the exchange's decision to delist its securities; [9]

2. an opportunity for appeal to the exchange's board of directors, or to a committee designated by the board; and

3. public notice, no fewer than 10 days before the delisting becomes effective, of the exchange's final determination to delist the securities via a press release and posting on the exchange's Web site (which notice must remain posted until the delisting is effective).

Amex rules currently provide the requisite issuer notice as well as an opportunity for appeal to a committee designated by the Board.[10] Specifically, issuers may appeal staff delisting determinations to panel of at least two members of the Committee on Securities, which is a board-appointed committee.[11] Adverse panel decisions may be appealed to the Committee on Securities.[12] In addition, the Board may in its discretion call any Committee on Securities decision for review.[13] Amex rules do not currently provide for the mandated public notice, and accordingly the Amex is proposing changes to Section 1010(c) of the Amex Company Guide as required by the recent amendments to Commission rules.

The proposed changes do not impact the Amex's existing authority to suspend trading in an issuer's securities following an adverse panel decision but prior to the filing of a delisting application and/or effective date of a delisting.

In the case of an issuer initiated delisting, Amex is proposing revisions to Amex Rule 18 and Section 1010 of the Amex Company Guide, as mandated, to require the issuer to:

1. Comply with the Exchange's rules for delisting and applicable state laws;

2. submit written notice to the Exchange, no fewer than ten days before filing a Form 25, of its intent to withdraw its security, which notice includes a statement of all material facts relating to the reasons for filing the application (effectively, this notice to the Exchange will be provided at least 20 days before the delisting becomes effective); and

3. issue public notice of its intent to delist via a press release, and, if it has a publicly available Web site, by posting the notice on that Web site, contemporaneously with providing written notice to the exchange and keeping it posted until the delisting is effective. In addition, changes are proposed to Amex Rule 18 to require that the board of directors (or comparable governing body) of an issuer initiating the delisting of its securities must approve the decision to delist, and that the issuer provide the Exchange with a certified copy of the relevant board resolution.

Further, as required by the revised Commission rules, the Amex will post notice of issuer initiated delistings on the Amex's Web site beginning on the business day following receipt of notice from the issuer and will keep the notice posted until the delisting becomes effective.

As in the case of an exchange-initiated delisting, the Amex will retain the ability to suspend trading in an issuer's securities, in order to accommodate its transfer to another marketplace, prior to the effective date of the delisting.

The proposed changes will be effective as of April 24, 2006 as required by Commission Rule 12d2–2.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [14] in general and furthers the objects of Section 6(b)(5) [15] in particular in that the proposed rule change is designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal**

[7] An exchange may be able to delist a class of securities for other reasons as well.

[8] *See* Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

[9] This notice will trigger the issuer's requirement to disclose its receipt of delisting notice by filing a current report on Form 8–K (Item 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing).

[10] *See* Amex Company Guide, Section 1202 (Written Notice of Staff Determination) and Section 1203 (Request for Hearing).

[11] *See* Amex Company Guide, Section 1204 (The Listing Qualifications Panel).

[12] *See* Amex Company Guide, Section 1205 (Review by the Amex Committee on Securities).

[13] *See* Amex Company Guide, Section 1206 (Discretionary Review by Amex Board).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Amex–2005–107 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2005–107. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–107 and should be submitted on or before April 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E6–3490 Filed 3–10–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53430; File No. SR–Amex–2005–124]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval of Proposed Rule Change and Amendments Nos. 1 and 3 Thereto Relating to Increases in the Original Listing and Annual Fees

March 7, 2006.

I. Introduction

On December 6, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to amend Sections 140 and 141 of the Amex Company Guide and the Amex Fee Schedule to increase the original listing and the annual issuer fees. On December 28, 2005, Amex filed Amendment No. 1 to the proposed rule change. On January 23, 2006, Amex filed Amendment No. 2 to the proposed rule change and withdrew Amendment No. 2 on January 31, 2006. On January 27, 2006, Amex filed Amendment No. 3 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on February 8, 2006.[3] The Commission received no comments regarding the proposal.[4] This order approves the proposed rule change, as amended, on an accelerated basis.

II. Description of the Proposal

This proposal amends Sections 140 and 141 of the Amex Company Guide and the Amex Fee Schedule to increase the original listing and the annual issuer fees. Amex proposes to implement the increased annual fees as of January 2006 and the increased original listing fees upon the Commission's approval of this proposal.

Currently the original listing fees pursuant to Section 140 of the Amex Company Guide for stock issues range from $35,000 to $65,000 (which includes a non-refundable application processing fee of $5,000) depending on the number of shares to be listed. Amex proposes that the original listing fees be increased as follows:

Number of shares	Current fee*	Proposed fee*
Less than 5,000,000 shares	$35,000	$45,000
5,000,000 to 10,000,000 shares	45,000	55,000
10,000,001 to 15,000,000 shares	55,000	60,000
In excess of 15,000,000 shares	65,000	70,000

* Includes the non-refundable application-processing fee of $5,000.

In addition, the original listing fee for non-U.S. companies listed on a foreign stock exchange is currently 50% of the fees charged to U.S. companies. Amex proposes that the original listing fee for non-U.S. companies be a flat fee of $40,000, which will include the one-time, non-refundable application-processing fee of $5,000.

The annual fees set forth in Section 141 of the Amex Company Guide currently range from $15,000 to $30,000 depending on the number of shares

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 53205 (February 1, 2006), 71 FR 6528.

[4] The comment period expired on March 1, 2006.

outstanding. Amex proposes that the annual fees be increased as follows:

Number of shares	Current fee	Proposed fee
5,000,000 shares or less	$15,000	$16,500
5,000,001 to 10,000,000 shares	17,500	19,000
10,000,001 to 25,000,000 shares	20,000	21,500
25,000,001 to 50,000,000 shares	22,500	24,500
50,000,001 to 75,000,000 shares	30,000	32,500
In excess of 75,000,000 shares	30,000	34,000

Amex also proposes other minor technical changes to Sections 140 and 141 of the Amex Company Guide, which will not further alter the fees but will clarify the text of these Sections.

III. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission believes that the proposal is consistent with Section 6(b)(4) of the Act,[6] in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities. The Commission notes that the Exchange has represented that the proposal is necessary to cover increased costs it has incurred in the enhancement and development of its trading technology and improvements in the overall level of services provided to its members and listed companies. The Commission also notes that the Exchange's original and annual listing fees have not increased since 2002, and that pursuant to the proposed rule change, companies with a fewer number of shares will continue to be charged less than companies with a greater number of shares. The new original listing fees and annual fees therefore are consistent with the Exchange's stated goals of attracting and retaining the listing of small and mid-size companies and in recognition of the greater impact of fees on small and mid-size companies. In addition, with respect to non-U.S. companies, the Exchange represents that the amended original listing fee is below the lowest rate paid by U.S. companies, but is still competitive with rates charged by other markets.

The Exchange has requested accelerated approval of the proposed rule change. The Exchange represents that its practice is to invoice its issuers the annual fee in January, and that therefore billing of the annual fee this year has been delayed until the Commission approved this proposal.[7] The Exchange represented that issuers have contacted the Exchange regarding the delay in billing and in one instance that they noted that they need the invoice for accrual purposes.[8] The Exchange believes that further delay in approving the proposal, as well as uncertainty in knowing when invoices will be issued, will continue to place a burden on the Exchange's issuers.[9] The Exchange also notes that this delay in invoicing the annual fee has resulted in at least a two month delay in the Exchange collecting the increased revenue generated by the annual listing fees, and that it had anticipated that the increase in the original listing fee would be in place in January as well.[10] The Exchange believes that further delay in the implementation of the increased annual listing fee and original listing fees will negatively impact the collection of this necessary revenue.[11] In addition, the Commission notes that the proposed rule change was published for a full notice and comment period and no comments were received. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[12] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Amex–2005–124) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Nancy M. Morris,

Secretary.

[FR Doc. E6–3491 Filed 3–10–06; 8:45 am]

BILLING CODE 8010–01–P

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(4).

[7] *See* e-mail from Claire McGrath, Senior Vice President and General Counsel, Amex, to Heather Seidel, Senior Special Counsel, Division of Market Regulation, Commission, dated March 2, 2006.

[8] *Id.*

[9] *Id.*

[10] *See id.* The Exchange represents that based upon 2005 financial statements, the revenue generated by the annual fee accounts for 6% of the Amex's total revenues and is used to fund the operations and regulatory programs of the Exchange.

[11] *Id.*

[12] 15 U.S.C. 78s(b)(2).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53415; File No. SR–Amex–2006–10]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Its Fee Cap Program for Certain Options Spread Trades

March 3, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 2, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by Amex. On February 28, 2006, Amex submitted Amendment No. 1 to the proposed rule change.[3] Amex has designated the proposed rule change, as amended, as one establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Amex proposes to make the revised fee cap program for dividend spreads, merger spreads, and short stock interest spreads a six-month pilot program expiring August 1, 2006.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Options Fee Schedule relating to its fee cap program for certain options spread trades.

The text of the proposed rule change, as amended, is available on Amex's Web site at *http://www.amex.com,* at the Office of the Secretary at Amex, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Exchange provides a fee cap program in which it limits to $2,000 per trade the transaction, comparison and floor brokerage fees (hereinafter referred to collectively as ''transaction-based fees'') charged to specialists, registered options traders, non-member market makers, member firms, broker dealers and non-member broker dealers (referred to hereinafter as ''non-customer market participants'') for accommodation and spread trades.[6] The fee cap program does not apply to the license fees that are charged for transactions in some option classes. The program requires the submission to the Exchange of a Fee Reimbursement Form together with appropriate documentation for fees collected in excess of the cap to be reimbursed to the non-customer market participants. Currently, there is no time limit within which the Fee Reimbursement Form must be submitted.

Over the years, the execution of certain types of spread trades have grown in popularity—in particular, option transactions that are part of dividend spreads[7], merger spreads,[8] and short stock interest spreads[9] have grown significantly with two to three million contracts a day being executed. In order to become more competitive with fee cap programs in place at other options exchanges, the Exchange is now proposing to revise its cap program. The following revisions are being proposed:

First, for dividend spreads, merger spreads, and short stock interest spreads, the Exchange proposes to convert the cap on transaction-based fees from a per trade cap to a cap on all transactions executed as part of these spreads on the same trading day in the same option class and reduce the amount of fees charged before the cap is applied to $1,000 per day. The Exchange is making these revisions to its fee cap program to match similar fee cap programs at other exchanges.[10]

Second, the Exchange proposes to add a monthly fee cap of $50,000 on transaction-based fees per initiating firm for transactions in dividend spreads, merger spreads, and short stock interest spreads. The purpose of this revision is to also match similar fee cap programs at other exchanges.[11]

Third, the Exchange proposes to provide a $2,000 per trade cap on transaction-based fees charged to members for customer box spread transactions[12] in index options. The recent options fee increases have significantly altered the economics for customers engaging in box spread transactions in index options. In order to retain this type of order flow, the Exchange is proposing ro expand the fee cap program to customer box transactions in index options as a way of remaining competitive with the other options exchanges.

Fourth, the Exchange proposes to establish that the Fee Reimbursement Form must be submitted within three business days of the transaction. The Exchange believes that a limited time for submission of the Form will assist it in more efficiently processing the reimbursement requests and that while the timeframe is limited, market participants, including firms seeking reimbursements for transaction-based fees charged for customer box spreads, should be able to meet the proposed deadline, which is already in effect at other options exchanges with similar fee cap programs.

Lastly, the Exchange proposes to establish the revised fee cap program for dividend spreads, merger spreads, and short stock interest spreads as a six-month pilot program expiring August 1, 2006. The Exchange intends to implement the proposed revisions to the fee cap program effective February 6, 2006.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(4)[14] in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the Exchange is proposing to implement revisions to a fee cap program that is competitive with similar programs at other options exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex believes that the proposed rule change, as amended, does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change, as amended.

[6] Accommodation trades (also known as cabinet trades) are transactions to close out positions in worthless or nearly worthless out-of-the-money option contracts. Spread trades include: (i) Reversals and conversions, (ii) dividend spreads, (iii) box spreads, (iv) butterfly spreads, (v) merger spreads, and (vi) short stock interest spreads.

[7] A dividend spread transaction is defined as any trade done to achieve a dividend arbitrage between any two deep-in-the-money options.

[8] A merger spread transaction is defined as a transaction executed pursuant to a merger spread strategy involving the simultaneous purchase and sale of options of the same option class and expiration date, but different strike prices followed by the exercise of the resulting long option position. Merger spreads are executed prior to the date that shareholders of record in a stock subject to a merger are required to elect their respective form of consideration (*i.e.,* cash or stock).

[9] A short stock interest spread is defined as a spread that uses two deep in-the-money put options followed by the exercise of the resulting long position of the same class in order to establish a short stock interest arbitrage position. This strategy is used to capture short stock interest.

[10] *See* PCX Options Fee Schedule and Securities Exchange Act Release No. 53171 (January 24, 2006) (SR–CBOE–2005–117).

[11] *Id.*

[12] This is a combination of a long synthetic stock or index position (long call plus short put) and a short synthetic stock position (long put plus short call), which expire simultaneously and have different strike prices. Box spreads are used primarily to ''borrow'' or ''lend'' money. A lender is said to ''buy'' the box and a borrower is said to ''sell'' the box. Boxes are evaluated essentially on the basis of returns on the cash they tie up or free up.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [15] and subparagraph (f)(2) of Rule 19b–4 thereunder [16] because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2006–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2006–10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–10 and should be submitted on or before April 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Nancy M. Morris,

Secretary.

[FR Doc. E6–3497 Filed 3–10–06; 8:45 am]

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[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

[17] The effective date of the original proposed rule change is February 2, 2006, the date of the original filing, and the effective date of Amendment No. 1 is February 28, 2006, the filing date of the amendment. For purposes of calculating the 60-day abrogation period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on February 28, 2006, the date on which the Exchange submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53410; File No. SR–CBOE–2006–24]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Rule 8.3 To Extend for an Additional Year a Pilot Program Relating to Market-Makers Quoting Outside Their Appointed Trading Station

March 3, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 2, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 8.3 to extend for an additional year a pilot program relating to Market-Makers quoting outside their appointed trading station. The text of the proposed rule change is below. Proposed additions are in *italics* and proposed deletions are in brackets:

Rule 8.3—Appointment of Market-Makers

Rule 8.3. This Rule governs the appointment of Market-Makers other than Remote Market-Makers. Rule 8.4 governs the appointment of Remote Market-Makers.

(a) No change.

(b) No change.

(c) Absent an exemption by the appropriate Market Performance Committee, an appointment of a Market-Maker confers the right to quote as described below:

(i) No change.

(ii) No change.

(iii) No change.

With respect to classes located at his/her appointed trading station, a Market-Maker may submit, [for a one-year] *as part of a* pilot *program* [period] ending March 24, *2007* [2006], electronic quotations from a location outside of the appointed trading station in his/her appointed Hybrid classes and his/her appointed Hybrid 2.0 Classes. Any Market-Maker affiliated with an e-DPM or RMM shall be ineligible to submit electronic quotations from outside of its appointed trading station pursuant to this rule in any class in which the affiliated e-DPM or RMM has an appointment.

* * * * *

(d) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] As required by Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii), the CBOE submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.

comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to extend for an additional year, until March 24, 2007, an existing Pilot Program that allows a CBOE Market-Maker to submit electronic quotations in his/her Hybrid and Hybrid 2.0 classes from a location outside of his/her appointed trading station.

In March 2005, the CBOE amended its rules relating to Market-Maker appointments and quoting obligations.[6] The Exchange amended, among other things, Rule 8.3 to provide that a Market-Maker may submit electronic quotations from a location outside of his/her appointed trading station. Previously, Market-Makers were only permitted to stream electronic quotations in their appointed Hybrid and Hybrid 2.0 classes when they were physically present in the trading crowd. In making this change, the CBOE determined to request that it only be approved on a pilot basis so as to give the Exchange the ability to evaluate the effectiveness of allowing Market-Makers to quote remotely. The current Pilot program is scheduled to expire on March 24, 2006.

The Exchange believes that the Pilot Program has been successful, in that it allows Market-Makers to choose how they would like to participate in CBOE's Hybrid Trading System, *i.e.*, electronically, in open outcry, or both. The CBOE states that, although not all Market-Makers have chosen to quote electronically from outside their trading station, those Market-Makers that have availed themselves of this Pilot Program continued to provide liquidity and increased competition in their appointed option classes when they quoted remotely. The Exchange states that it has not experienced any negative effects from allowing Market-Makers to quote from a location outside of their appointed trading station. Thus, the CBOE believes it would be appropriate and beneficial to extend the Pilot Program for an additional year until March 24, 2007, and permit Market-Makers to continue to have the option to quote electronically from a location outside their appointed trading station.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the requirement of Section 6(b)(5) Act[8] that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The CBOE has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

Normally, a proposed rule change filed under Rule 19b–4(f)(6) does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

The CBOE has asked the Commission to waive the 30-day operative delay. Allowing Market-Makers to quote electronically into their appointed Hybrid and Hybrid 2.0 option classes from a location outside their appointed trading station does not raise any new or unique issues.[9] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the continuation of this program may enhance competition and liquidity and provide Market-Makers with additional trading opportunities.[10] For this reason, the Commission designates that the proposal has become effective and operative immediately upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2006–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

[6] *See* Securities Exchange Act Release No. 51429 (March 24, 2005), 70 FR 16536 (March 31, 2005) (approving SR–CBOE–2004–58).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See supra,* at n.6.

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See* Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–24 and should be submitted on or before April 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–3481 Filed 3–10–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53399; File No. SR–CBOE–2005–87]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Amending Exchange Delisting Rules To Conform to Recent Amendments to Commission Rules Regarding Removal From Listing and Withdrawal From Registration

March 2, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 21, 2005, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. CBOE filed Amendment No. 1 to the proposal on December 14, 2005.[3] On February 24, 2006, CBOE filed Amendment No. 2 to the proposal.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise its non-option securities listing rules to incorporate into the Exchange's delisting rules for non-option securities new rule changes promulgated by the Commission in SEC Rule 12d2–2.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in [brackets].

* * * * *

Chicago Board Options Exchange, Incorporated

* * * * *

Rule 31.94. Suspension and Delisting Policies

* * * * *

C. Application of Policies

To assist in the application of these policies, the Exchange has adopted certain criteria, outlined below, which a security must meet to continue to be listed on the Exchange. However, these minimum criteria[,] in no way limit or restrict the Exchange's right to delist a security, and the Exchange may at any time, in view of the circumstances in each case, suspend dealings in, or remove, a security from listing or unlisted trading when in its opinion such security is unsuitable for continued trading on the Exchange. Such action will be taken regardless of whether the issuer meets any or all of the criteria discussed below.

* * * * *

(b) Limited Distribution—Reduced Market Value

(i) common stock:

(A) The number of shares publicly held (exclusive of holdings of officers, directors, controlling shareholders or other family or concentrated holdings) is at least 200,000; and

(B) The total number of round lot shareholders of record is at least 300; and

(C) The aggregate market value of shares publicly held is at least $1,000,000;

(ii) Preferred stock:

(A) The number of shares publicly held is at least 50,000; or

(B) The aggregate market value of shares publicly held is at least $1,000,000;

(iii) Bonds: The delisting of bond and debenture issues will be considered on a case by case basis. The Exchange will normally consider suspending dealings in, or removing from the list, debt security when any one or more of the following conditions exist:

([a]*A*) If the aggregate market value or the principal amount of bonds publicly held is less than $400,000; or

([b]*B*) If the issuer is not able to meet its obligations on the listed debt securities.

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Rule 31.94(C)(f) in the following form is effective until April 23, 2006. It will be rescinded after that date and will be replaced as set forth below.

(f) No change.

Rule 31.94(C)(f) in the following form will be effective on April 24, 2006.

(f) SEC Rule 12d2–2(a) Conditions—The Exchange will remove a class of securities from listing whenever the Exchange is reliably informed that any of the conditions set forth in Rule 12d2–2(a) under the Exchange Act exist with respect to such security, such as a corporate action where the entire security class is matured, redeemed, retired or extinguished by operation of law, and shall file an application with the SEC on Form 25 in accordance with Rule 12d2–2(a) under the Exchange Act.

New paragraph (g) of Rule 31.94(C) in the following form will be effective on April 24, 2006.

(g) Other Events—The Exchange will normally consider suspending dealings in, or removing from the list, a security when any one of the following events shall occur:

(i) Registration No Longer Effective—If the registration (or exemption from registration thereof) pursuant to the Exchange Act is no longer effective.

(ii) Operations Contrary to Public Interest—If the company or its management shall engage in operations which, in the opinion of the Exchange, are contrary to the public interest.

(iii) Failure to Pay Listing Fees—If the company shall fail or refuse to pay, when due, any applicable listing fees established by the Exchange.

(iv) Low Selling Price Issues—In the case of a common stock selling for a

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original filing in its entirety.

[4] In Amendment No. 2, CBOE amended CBOE Rule 31.94(G)(h) to state that in appropriate circumstances, when the Exchange is considering delisting because a company no longer meets the requirements for continued listing, a company may, with the consent of the Exchange, file a Form 25 with the SEC, provided that it follows the requirements set forth in SEC Rule 12d2–2(c) and discloses that it is no longer eligible for continued listing on the Exchange in its written notice to the Exchange and public press release, and if it has a publicly accessible Web site, posts such notice on that Web site.

substantial period of time at a price less than $3 per share, if the issuer shall fail to effect a reverse split of such shares within a reasonable time after being notified that the Exchange deems such action to be appropriate under all circumstances. In its review of the question of whether it deems a reverse split of a given issue to be appropriate, the Exchange will consider all pertinent factors including, market conditions in general, the number of shares outstanding, plans which may have been formulated by management, applicable regulations of the state or country of incorporation or of any governmental agency having jurisdiction over the company, the relationship to other Exchange policies regarding continued listing, and, in respect of securities of foreign issuers, the general practice in the country of origin of trading in low-selling price issues.

* * * * *

G. Delisting Procedures

The following introductory sentence of Rule 31.94(G) is effective until April 23, 2006.

Whenever the Exchange determines that it is appropriate to consider removing a security from listing (or from unlisted trading) for other than routine reasons (redemptions or maturities) it will follow the following procedures:

The following introductory sentence of Rule 31.94(G) will be effective on April 24, 2006.

Whenever the Exchange determines that it is appropriate to consider removing a security from listing (or from unlisted trading) for other than the reasons set forth in Rule 31.94(C)(f) it will follow the following procedures:

(a)–(g) No change.

Rule 31.94(G)(h) in the following form is effective until April 23, 2006. It will be rescinded after that date and will be replaced as set forth below.

(h) No change.

Rule 31.94(G)(h) in the following form will be effective on April 24, 2006.

(h) If the Board of Directors or the Executive Committee, as the case may be, shall approve the recommendation of the committee which has heard the matter, an application shall be submitted by the Exchange to the SEC to strike the security from listing (or unlisted trading) and a copy of such application shall be furnished to the issuer in accordance with Section 12 of the Exchange Act and the rules promulgated thereunder. The Exchange shall also provide public notice of its final determination to strike a class of securities from listing by issuing a press release and posting notice on the Exchange's website at least ten days prior to the date that the delisting is anticipated to be effective. The posting will remain on the Exchange's website until the delisting is effective. The action required to be taken by the Exchange to strike a security from listing and registration for corporate actions such as redemption, maturity, and retirement is set forth in Exchange Rule 31.94(C)(f) and Rule 12d2–2(a) under the Exchange Act. The relevant portions of the Section and Rules under the Exchange Act pertaining to the suspension, removal or withdrawal of securities for all other reasons, and the requirements of the Exchange applicable in certain cases, are summarized below:

(a) SEC authorization of withdrawal or striking from listing of Exchange-listed security—Section 12(d) of Exchange Act;

(b) Suspension of trading by Exchange—Rule 12d2–1 under the Exchange Act;

(c) Application of Exchange to strike security from listing and registration—Rule 12d2–2(a) and (b) under the Exchange Act; or

(d) Application of issuer to withdraw from listing and registration—Rule 12d2–2(c) under the Exchange Act. Pursuant to Rule 12d2–2(c)(2)(i) under the Exchange Act, an issuer filing an application on Form 25 must comply with all applicable laws in effect in the state in which it is incorporated. Rule 12d2–2(c)(2)(ii) under the Exchange Act provides that an issuer is required to provide written notice to the Exchange of its determination to withdraw a class of securities from listing and/or registration on the Exchange no fewer than ten days before the issuer files an application on Form 25 with the SEC. As required by Rule 12d2–2 under the Exchange Act, upon receiving written notice from an issuer that such issuer has determined to withdraw a class of securities from listing on the Exchange pursuant to this paragraph (d), the Exchange will provide notice on its website of the issuer's intent to delist its securities beginning on the business day following such notice, which will remain on the Exchange's website until the delisting on Form 25 is effective. The issuer must also notify the Exchange that it has filed Form 25 with the SEC contemporaneously with such filing.

In appropriate circumstances, when the Exchange is considering delisting because a company no longer meets the requirements for continued listing, a company may, with the consent of the Exchange, file a Form 25 with the SEC, provided that it follows the requirements set forth in SEC Rule 12d2–2(c) and discloses that it is no longer eligible for continued listing on the Exchange in its written notice to the Exchange and public press release, and if it has a publicly accessible Web site, posts such notice on that Web site.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission adopted amendments to SEC Rule 12d2–2,[5] which sets forth procedures that national securities exchanges and issuers must follow in order to remove from listing, and withdraw from registration, securities under Section 12(b) of the Act.[6] The final rules[7] adopted by the Commission (''SEC Delisting Rules'') generally require that national securities exchanges have in place procedures for the delisting and/or deregistration of a security that are consistent with SEC Rule 12d2–2.[8] The purpose of the proposed rule change is to incorporate into CBOE's non-option securities listing rules the new rules set forth in SEC Rule 12d2–2[9] so that the Exchange may continue to have the authority to suspend or delist securities from trading on the Exchange in the event that the issuer and/or securities of the issuer fail to adhere to certain of the Exchange's original and continued listing standards.

The provisions of SEC Rule 12d2–2(a),[10] which generally remain unchanged by the SEC Delisting Rules, require national securities exchanges to submit an application on SEC Form 25[11] within a reasonable time after the exchange is reliably informed that any

[5] 17 CFR 240.12d2–2.

[6] 15 U.S.C. 78l(b).

[7] *See* Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

[8] 17 CFR 240.12d2–2.

[9] *Id.*

[10] 17 CFR 240.12d2–2(a).

[11] 17 CFR 249.25.

of the conditions set forth in SEC Rule 12d2–2(a)(1)–(4) [12] exist. The conditions set forth in SEC Rule 12d2–2(a)(1)–(4) [13] generally relate to the redemption, retirement, or maturity of the entire class of securities, or the extinguishment of all rights of an entire class of securities of the issuer. Other than a submission by the Exchange to the Commission of SEC Form 25,[14] no other notice requirements or appeal rights are required to be provided to the issuer under SEC Rule 12d2–2(a)(1)–(4).[15]

In the event a national securities exchange determines to strike a class of securities from listing and/or withdraw the registration of such securities in cases other than as set forth in SEC Rule 12d2–2(a),[16] the SEC Delisting Rules require national securities exchanges to follow new procedures. Specifically, SEC Rule 12d2–2(b) [17] authorizes national securities exchanges to strike a class of securities from listing and/or withdraw the registration of such securities provided that the rules of such exchanges provide for the following: notification to the issuer of such determination; an opportunity for the issuer to appeal the determination; and upon a final determination of the Exchange to strike a class of securities from listing and/or withdraw the registration of such securities, provide public notice of such determination.

CBOE Chapter 31 sets forth the Exchange's non-option securities listing rules. Current CBOE Rule 31.94 generally sets forth the policies and procedures that apply to the delisting and suspension of listing of non-option securities on the Exchange, including the policies that guide the Exchange in determining whether to delist or suspend non-option securities. In regard to the process by which the Exchange delists non-option securities, current CBOE Rule 31.94(G) differentiates between delistings that result from ''routine reasons,'' which are referred to in the introductory paragraph of that section as ''redemptions or maturities,'' and all other types of delistings. The Exchange is only required to provide notice and the right to appeal delistings resulting from non-routine events, but not routine events.

To make the Exchange's delisting procedures consistent with SEC Rule 12d2–2,[18] the Exchange is proposing to revise current CBOE Rule 31.94(G) to clarify that the appeal and notification provisions for delistings that are currently set forth in CBOE Rule 31.94(G) will only apply to delistings that are based on reasons other than those that are set forth in SEC Rule 12d2–2(a)(1)–(4).[19] As stated above, SEC Rule 12d2–2(a)(1)–(4) [20] requires an exchange to file Form 25 [21] within a reasonable time after it is reliably informed that, among other things, an entire class of securities has matured or has been redeemed or retired. The concept that the Exchange will delist a class of securities for the reasons set forth in SEC Rule 12d2–2(a) [22] is currently set forth in Rule 31.94(C)(f)(ii) and effective April 24, 2006, will be reflected in proposed Rule 31.94(C)(f) as revised. Proposed CBOE Rule 31.94(C)(f) also makes clear that the Exchange will file SEC Form 25 [23] with the Commission in connection with any such delisting. Effective April 24, 2006, CBOE Rule 31.94(C)(f) in its current form will shift to new CBOE Rule 31.94(C)(g), except that the substance of current Rule 31.94(C)(f)(ii) will remain in the form of proposed Rule 31.94(C)(f).

Likewise, the Exchange is revising CBOE Rule 31.94(G) to incorporate the new requirements set forth in SEC Rule 12d2–2(b).[24] The Exchange notes that the provisions set forth in current CBOE Rule 31.94(G), which provide for notification to the issuer in the event that the Exchange determines to delist the issuer's securities and the right to appeal the Exchange's determination, satisfy the minimum provisions set forth in SEC Rule 12d2–2(b) [25] except for the requirement in SEC Rule 12d2–2(b)(iii) [26] that requires national securities exchanges to provide public notice of determinations to delist an issuer's securities. As stated above, the notice and appeal requirements only apply to delistings that result from events other than those provided pursuant to SEC Rule 12d2–2(a).[27] Therefore, proposed CBOE Rule 31.94(G)(h) would require the Exchange to provide public notice, in accordance with SEC Rule 12d2–2(b)(iii),[28] of a final determination by the Exchange to strike an issuer's securities from listing and/or withdraw the registration of such securities on the Exchange in all cases other than as provided pursuant to SEC Rule 12d2–2(a).[29]

The Exchange is also proposing to make clear in proposed Rule 31.94(G) that the issuer is required to notify the Exchange in case it elects to delist its securities from the Exchange, and upon such notification, the Exchange would be required to issue a public notice of such determination. These proposed changes reflect the requirements set forth in SEC Rule 12d2–2(c).[30] The proposed rule filing sets forth a requirement in addition to those set forth in SEC Rule 12d2–2(c) [31] that would require the issuer to notify the Exchange that it has filed Form 25 [32] with the SEC contemporaneously with such filing.

In addition, CBOE proposes to amend CBOE Rule 31.94(G)(h) to state that in appropriate circumstances, when the Exchange is considering delisting because a company no longer meets the requirements for continued listing, a company may, with the consent of the Exchange, file a Form 25 with the SEC, provided that it follows the requirements set forth in SEC Rule 12d2–2(c) and discloses that it is no longer eligible for continued listing on the Exchange in its written notice to the Exchange and public press release, and if it has a publicly accessible Web site, posts such notice on that Web site.[33]

Lastly, the Exchange is proposing to make housekeeping changes that relate to references to the Act and certain rules in the Act.

The proposed changes, other than the housekeeping changes, will be effective as of April 24, 2006 as required by SEC Rule 12d2–2.[34]

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is found in Section 6(b)(5),[35] in that the proposed rule change is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Exchange believes that the proposed rule change will enable the Exchange to remain competitive in the marketplace.

[12] 17 CFR 240.12d2–2(a)(1)–(4).
[13] *Id.*
[14] 17 CFR 249.25.
[15] 17 CFR 240.12d2–2(a)(1)–(4).
[16] 17 CFR 240.12d2–2(a).
[17] 17 CFR 240.12d2–2(b).
[18] 17 CFR 240.12d2–2.
[19] 17 CFR 240.12d2–2(a)(1)–(4).
[20] *Id.*
[21] 17 CFR 249.25.
[22] 17 CFR 240.12d2–2(a).
[23] 17 CFR 249.25.
[24] 17 CFR 240.12d2–2(b).
[25] *Id.*
[26] 17 CFR 240.12d2–2(b)(iii).
[27] 17 CFR 240.12d2–2(a).
[28] 17 CFR 240.12d2–2(b)(iii).
[29] 17 CFR 240.12d2–2(a).
[30] 17 CFR 240.12d2–2(c).
[31] *Id.*
[32] 17 CFR 249.25.
[33] *See* Amendment No. 2, *supra* note 4.
[34] 17 CFR 240.12d2–2.
[35] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2005–87 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2005–87. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–87 and should be submitted on or before April 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[36]

Nancy M. Morris,

Secretary.

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[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53412; File No. SR–CBOE–2006–20]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to an Extension of the Dividend, Merger, and Short Stock Interest Strategies Fee Cap Pilot Program

March 3, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 28, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by CBOE. CBOE has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its Fees Schedule to extend until September 1, 2006 the dividend, merger, and short stock interest strategies fee cap program.

The text of the proposed rule change is available on CBOE's Web site at *http://www.cboe.com,* at the Office of the Secretary at CBOE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently caps market-maker, firm, and broker-dealer transaction fees associated with dividend, merger and short stock interest strategies, as described in Footnote 13 of the CBOE Fees Schedule (''Strategy Fee Cap''). The Strategy Fee Cap is in effect as a pilot program that is due to expire on March 1, 2006.

The Exchange proposes to extend the Strategy Fee Cap program until September 1, 2006. No other changes are proposed. The Exchange believes that extension of the Strategy Fee Cap program should attract additional liquidity and permit the Exchange to remain competitive for these types of strategies.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

of the Act,[5] in general, and Section 6(b)(4),[6] in particular, in that it provides for an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder[8] because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2006–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–20 and should be submitted on or before April 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–3495 Filed 3–10–06; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53414; File No. SR–CBOE–2006–25]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Rule 8.4 To Extend for an Additional Year a Pilot Program Relating to RMM Multiple Aggregation Units

March 3, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 2, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 8.4 to extend for an additional year a pilot program relating to Remote Market Makers (''RMMs'') multiple aggregation units.[6] The text of the proposed rule change is below. Proposed additions are in *italics* and proposed deletions are in [brackets]:

Rule 8.3—Appointment of Market-Makers

Rule 8.3. This Rule governs the appointment of Market-Makers other than Remote Market-Makers. Rule 8.4 governs the appointment of Remote Market-Makers.

(a) No change.

(b) No change.

(c) Absent an exemption by the appropriate Market Performance Committee, an appointment of a Market-Maker confers the right to quote as described below:

(i) No change.

(ii) No change.

(iii) Additionally, a Market-Maker that is submitting electronic quotations in his/her appointed Hybrid and Hybrid 2.0 Classes can submit electronic quotations in either two (2) additional Hybrid 2.0 Classes in Tier A or Tier B that are not located in the Market-Maker's appointed trading station, or five (5) additional Hybrid 2.0 Classes in Tiers C, D, or E that are not located in the Market-Maker's appointed trading station. (For purposes of this paragraph,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] As required by Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii), the CBOE submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.

[6] The Commission notes that the Exchange is also amending a cross-reference to this program contained in CBOE Rule 8.3.

the Exchange is using the Tiers set forth in Rule 8.4 that have been structured for purposes of RMM appointments.) A Market-Maker cannot be affiliated with an e-DPM or RMM that holds an appointment in any of these additional Hybrid 2.0 Classes. Pursuant to a Pilot Program that expires on September 14, 2006, a Market-Maker can be affiliated with another Market-Maker (''Affiliated Market-Maker'') who holds an appointment in one of these additional Hybrid 2.0 Classes, provided the Market-Maker cannot submit electronic quotations in these additional Hybrid 2.0 Classes if the Affiliated Market-Maker is submitting electronic quotations from outside its appointed trading station. Pursuant to a Pilot Program that expires on March 14, *2007* [2006], if both Market-Makers operate as multiple aggregation units under the criteria set forth in Rule 8.4(c)(ii), the preceding restriction does not apply.

(d) No Change.

* * * * *

Rule 8.4—Remote Market-Makers

Rule 8.4. (a) No Change.

(b) No change.

(c) Affiliation Limitations: Except as provided in subparagraphs (i) or (ii), an RMM may not have an appointment as an RMM in any class in which it or its member organization serves as DPM, e-DPM, RMM, or Market-Maker on CBOE.

(i) No change.

(ii) A CBOE Member or Member Firm may have, as part of a pilot program until March 14, *2007* [2006], multiple aggregation units operating as separate RMMs within the same class provided:

(A) No change.

(B) No change.

(C) No change.

(d) No change.

(e) No change.

(f) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to extend for an additional year, until March 14, 2007, an existing Pilot Program which allows a CBOE member or member firm to have multiple aggregation units operating as separate RMMs within the same class, provided they satisfy certain criteria set forth in CBOE Rule 8.4(c)(ii)(A)–(C).

In March 2005, CBOE amended its rules to establish a new membership status called RMM, who have the ability to submit quotes to the CBOE from a location outside of the physical trading station of the RMM's appointed class.[7] In connection with the adoption of these rules, CBOE also adopted provisions in its rules relating to RMM affiliation limitations. Specifically, CBOE Rule 8.4(c) provides that except as otherwise provided, an RMM may not have an appointment as an RMM in any class in which it or its member organization serves as DPM, e-DPM, RMM, or Market-Maker on CBOE. One exception that was approved on a pilot basis was the ability of a CBOE member or member firm to have multiple aggregation units operating as separate RMMs within the same class, provided certain specific criteria were complied with.[8] These criteria were set forth in subparagraphs (A) though (C) of CBOE Rule 8.4(c)(ii), and were based on the criteria contained in Regulation SHO which was approved by the Commission in July 2004.

CBOE's believes that the Pilot Program has been successful, in that it allows a CBOE member or member firm to have multiple aggregation units operating as separate RMMs within the same class, provided they comply with certain specific criteria. CBOE has not experienced any negative effects with respect to the Pilot Program. Thus, CBOE believes it would be appropriate and beneficial to extend this Pilot Program for an additional year, until March 14, 2007.

[7] *See* Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005) (approving SR–CBOE–2004–75).

[8] A second exception, also adopted on a pilot basis for a period ending September 14, 2006 and contained in CBOE Rule 8.4(c)(i), permits a member or member firm operating as an RMM in a class to have one Market-Maker affiliated with the RMM organization trading in open outcry in any specific class allocated to the RMM, provided such Market-Maker trades on a separate membership.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[10] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The CBOE has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

Normally, a proposed rule change filed under Rule 19b–4(f)(6) does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

The CBOE has asked the Commission to waive the 30-day operative delay. Allowing a CBOE member or member firm to have multiple aggregation units operating as separate RMMs within the same class, subject certain specific requirements, does not raise any new or

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

unique issues.[11] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the continuation of this practice may enhance competition and liquidity.[12] For this reason, the Commission designates that the proposal has become effective and operative immediately upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2006–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–25 and should be submitted on or before April 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Nancy M. Morris,

Secretary.

[FR Doc. E6–3496 Filed 3–10–06; 8:45 am]

BILLING CODE 8010–01–P

[11] *See supra*, at n.7.

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] *See* Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53431; File No. SR–CBOE–2004–65]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto Relating to Restrictions on Arbitrators Serving on CBOE's Arbitration Committee

March 7, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 14, 2004, the Chicago Board Options Exchange, Inc. (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by CBOE. On December 13, 2005 and February 15, 2006, CBOE filed Amendments Nos. 1 and 2, respectively, to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces the original filing in its entirety. Amendment No. 2 replaces the rule text in the original filing and Amendment No. 1 in their entirety. Also, Amendment No. 2 supplements the ''Purpose'' section of Amendment No. 1 with additional explanation as to the bases for certain proposed rule amendments.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange rules relating to arbitrations. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Chapter XVIII

Rule 18.10—Designation of Number of Arbitrators

Rule 18.10. (a)–(b) No change.

(c) Arbitrator Restrictions. The following restrictions shall apply to persons who serve on the Arbitration Committee.

(i) No member of the Arbitration Committee shall represent a party as counsel in any dispute, claim or controversy submitted for CBOE arbitration (''CBOE Arbitration'') while that member is serving on the Arbitration Committee and for a period of six months after the date on which that member ceases being a member of the Arbitration Committee and,

(ii) if a Committee member is appointed as an arbitrator in a pending CBOE Arbitration (''Pending CBOE Arbitration'') and subsequently ceases being a member of the Committee, but continues to serve as an arbitrator in the Pending CBOE Arbitration, that person cannot represent a party as counsel in a separate CBOE Arbitration until he or she has ceased serving as an arbitrator in the Pending CBOE Arbitration.

* * * * *

Rule 18.13—Disclosures Required of Arbitrators

Rule 18.13. (a)–(c) No Change.

(d) *Removal by the Director.*

(1) The Director of Arbitration may remove an arbitrator based on information that is required to be disclosed pursuant to this Rule.

(2) After [Prior to] the beginning *of (A)* the first *pre-hearing conference or (B) the first* hearing session, whichever is earlier, the Director of Arbitration may remove an arbitrator based on information *not known to the parties when the arbitrator was selected.* [disclosed pursuant to this section. The Director of Arbitration shall also inform the parties of any information disclosed pursuant to this section, if the arbitrator who disclosed the information is not removed.]

(3) The Director of Arbitration will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is

biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.

(4) The Director of Arbitration shall inform the parties to an arbitration proceeding of any information disclosed to the Director of Arbitration under this Rule unless either the arbitrator who disclosed the information withdraws voluntarily as soon as the arbitrator learns of any interest, relationship, or circumstances described in paragraph (a) that might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, or the Director of Arbitration removes the arbitrator.

* * * * *

Rule 18.14—Disqualification or Other Disability of Arbitrators

Rule 18.14*(a). Disqualification by Director of Arbitration Due to Conflict of Interest or Bias. After the appointment of an arbitrator and prior to the beginning of (A) the first pre-hearing conference or (B) the first hearing session, whichever is earlier, if the Director of Arbitration or a party objects, pursuant to Rule 18.12(b), to the continued service of an arbitrator, the Director shall determine if the arbitrator should be disqualified. If the Director of Arbitration determines that an arbitrator should be disqualified then the Director of Arbitration will notify both parties of the decision. The parties will have 5 days to retain the arbitrator, notwithstanding the Director of Arbitration's decision to disqualify the arbitrator. The parties must agree to retain the arbitrator unanimously and convey their decision to the Director of Arbitration in writing not later than 5 days after the Director of Arbitration's notice to disqualify.*

(b) Removal by Director. After the beginning of (A) the first pre-hearing conference or (B) the first hearing session, whichever is earlier, the Director of Arbitration may remove an arbitrator from an arbitration panel based on information that is required to be disclosed pursuant to Rule 18.13 and that was not previously disclosed.

(c) Standards for Deciding Challenges for Cause. The Director of Arbitration will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.

(d) Vacancies. In the event that any arbitrator, after the [commencement] *beginning* of the first hearing session and prior to the rendition of the award, should resign, die, withdraw, be disqualified or otherwise be unable to perform as an arbitrator, the remaining arbitrator(s) may continue with the hearing and determination of the controversy, unless such continuation is objected to by any party within five (5) days of notification of such resignation, death, withdrawal, disqualification, or other inability. Upon objection, the Director of Arbitration shall appoint a new member to the panel to fill any vacancy. The Director of Arbitration shall inform the parties as soon as possible of the name and employment history of the replacement arbitrator pursuant to Rule 18.11, as well as any other information disclosed pursuant to Rule 18.13. A party may make further inquiry of the Director of Arbitration concerning the replacement arbitrator's background and within the time remaining prior to the next scheduled hearing session or the five (5) day period provided under Rule 18.12, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in Rule 18.12.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

This proposed rule change would amend CBOE Rules 18.10, 18.13 and 18.14 relating to arbitrators who serve as members of the CBOE Arbitration Committee (''Committee'') and the removal of arbitrators.

Proposed Changes to CBOE Rule 18.10. The Exchange is proposing to amend CBOE Rule 18.10 to codify its unwritten policy that restricts members of the Committee from representing parties as counsel [4] in any arbitration dispute, claim or controversy that has been submitted to CBOE for resolution (''CBOE Arbitration''). This restriction would extend for six months after the date on which a Committee member ceases being a member of the Committee. Moreover, if a member of the Committee is an appointed arbitrator in a pending CBOE Arbitration (''Pending Arbitration'') when that person ceases to be a member of the Committee, that Committee member cannot represent a party as counsel in any other CBOE Arbitration until the Pending Arbitration is closed, regardless of whether six months have passed since the date on which the former member ceased being a Committee member.

Under CBOE rules, any CBOE Arbitration between parties who are members or persons associated with a member shall be resolved by an arbitration panel that consists of three members of the Committee.[5] The Committee is maintained primarily as a means for managing a pool of qualified industry arbitrators that is composed of a cross-section of Exchange members and/or former members or associated persons of members or other individuals who are knowledgeable about the securities industry.[6] All Committee members are appointed in accordance with Exchange governance rules and guidelines.[7]

The Exchange has long adhered to an unwritten policy that prohibits a Committee member who is an attorney from representing a party in a CBOE Arbitration while that person is serving on the Committee. This policy is

[4] CBOE Rule 18.17 provides: ''All parties shall have the right to representation by counsel at any stage of the proceedings.'' Since persons who are eligible to act as ''counsel'' in CBOE arbitration proceedings are not limited to licensed attorneys, the proposed rule change would apply to any person acting as ''counsel'' in a CBOE arbitration proceeding whether the person is a licensed attorney or not.

[5] *See* CBOE Rule 18.2(a). Rule 18.2(a) specifically provides that the arbitration panel appointed to resolve member-to-member arbitrations shall consist of ''not less than three members of the Arbitration Committee.'' However, as a matter of practice, arbitration panels typically consist only of three members of the Arbitration Committee.

[6] Unlike other Exchange committees, the Arbitration Committee does not meet as a whole except for training or to administer the annual Committee orientation. For a CBOE Arbitration involving customers or non-Exchange members and a member(s), CBOE rules require that the dispute be resolved by an arbitration panel that consists of no less than three arbitrators, the majority of which consists of arbitrators who are not from the securities industry (''Public Arbitrators''). (*See* CBOE Rule 18.10). In non-member CBOE Arbitrations, members of the Arbitration Committee may be appointed as industry arbitrators.

[7] *See* CBOE Rule 18.10.

consistent with the Exchange's belief that, while serving on the Arbitration Committee, arbitrators should be committed to the impartial resolution of any disputes that come before them and should avoid circumstances that could disqualify them from being appointed in future arbitrations or give rise to the appearance of partiality. The Exchange does not believe that a Committee member should act as an advocate in a CBOE Arbitration while serving as a member of the CBOE Arbitration Committee. Accordingly, the Exchange feels it would be prudent to codify its unwritten policy within the rules governing CBOE Arbitrations. Additionally, the Exchange notes that the proposed rule text relating to restricting an arbitrator from representing a party as counsel in any CBOE Arbitration (proposed Rule 18.10(c)) also would extend to restrict an arbitrator from representing a party as counsel in any capacity, not just acting as an attorney.

In addition, the Exchange believes that a sufficient period of time should pass after an arbitrator is no longer a member of the Committee before that individual may represent a party as counsel in a CBOE Arbitration. Without this required separation period, a former Committee member conceivably could appear as counsel to a party before other members of the Committee in a CBOE arbitration immediately after resigning from the Committee. Although CBOE does not believe that membership on the Arbitration Committee necessarily creates meaningful relationships with other Committee members, such that present Committee members could not be impartial in considering a case on which a recently retired Committee member serves as counsel, a prescribed waiting period is a sensible precaution against the appearance of partiality. The Exchange believes that a six-month waiting period would be appropriate and would help to eliminate the appearance of partiality that could otherwise exist.

Finally, the rule proposal provides that, if a Committee member is appointed as an arbitrator to a pending CBOE Arbitration and subsequently ceases to be a member of the Committee, but continues to serve as an arbitrator in the pending CBOE Arbitration, that person cannot represent a party in a separate CBOE Arbitration as counsel until the arbitrator ceases to be appointed as an arbitrator in the pending CBOE Arbitration. This provision of the proposed rule would address the unlikely, but possible, situation in which an arbitration proceeding remains pending more than six months after the date on which an appointed arbitrator to that case ceased being a member of the Committee.[8] The Exchange believes that this provision is consistent with the purpose of this rule change, which is the avoidance of the appearance of partiality on the part of a CBOE Arbitrator.

The proposed rules supplement existing policies and procedures that are in place to screen arbitrators for conflicts, potential conflicts, and the appearance of conflicts prior, and subsequent, to appointment. Specifically, CBOE policies and procedures require any arbitrator, prior to or subsequent to appointment to a CBOE Arbitration, to disclose any information that presents a conflict, existing or potential, or creates the appearance of a conflict with any party, fact, or circumstance related to the case in question.[9] Arbitrators also are required to disclose any new information or circumstances that may arise after their appointment that would create a similar conflict or potential for conflict. Thus, if a former member of the Arbitration Committee were to serve as counsel to a party before a CBOE arbitration panel, the appointed arbitrators would be required to disclose any past relationships with the former Committee member regardless of how much time has passed since that former member resigned from the Committee.[10]

Proposed Changes to CBOE Rules 18.13 and 18.14. The Exchange also proposes to adopt new rules governing the process for removing or disqualifying arbitrators (1) when the appointed arbitrator has conflicts of interest with the parties or subject matter or if there is evidence of arbitrator bias or (2) for failing to comply with arbitrator disclosure requirements. Specifically, Exchange Rules 18.13 and 18.14 would be amended to provide greater safeguards against the possibility that a CBOE Arbitration could proceed with an appointed arbitrator who should, by rule, not be hearing and resolving the arbitration. These amendments would be substantially similar to those recently proposed by the NASD.[11]

Rule 18.13(a)–(c) currently outlines the disclosures that a CBOE arbitrator must make that help to assess whether the arbitrator would be precluded from rendering an objective and impartial decision in a CBOE Arbitration.[12] Proposed Rules 18.13(d)(1) and 18.13(d)(2) provide that the Director of Arbitration may remove an arbitrator based on the disclosures made under Rule 18.13(a)–(c) and information not known to the parties when the arbitrator was selected. The Exchange also proposes to amend Rule 18.13(d), in proposed Rule 18.13(d)(3), to clarify that the Director of Arbitration will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the CBOE Arbitration. Such interest or bias must be direct, definite, and capable of reasonable demonstration, rather than being remote or speculative. In addition, proposed Rule 18.13(d)(4) would help to ensure that parties to a CBOE Arbitration are informed of the disclosure of any new information that is required to be disclosed by an arbitrator under Rule 18.13 unless either the Director of Arbitration removes the arbitrator or the arbitrator withdraws voluntarily as soon as the arbitrator learns of any interest, relationship, or circumstances described under Rule 18.13(a) that might preclude the arbitrator from rendering an objective and impartial determination in the CBOE Arbitration. These proposed changes are substantially similar to the standards proposed by the NASD.[13]

Also, this proposal would amend CBOE Rule 18.14, which currently provides the process by which the Exchange fills vacancies of an arbitrator, who for any reason, is unable to perform as an arbitrator.[14] The Exchange proposes to provide within Rule 18.14 a more detailed process by which the Director of Arbitration may remove or disqualify an arbitrator based on: (1) Conflicts of interest or bias involving an arbitrator; (2) challenges for cause; and (3) information required to be disclosed pursuant to Rule 18.13 and that was not previously disclosed.[15] These proposed changes are also substantially similar to

[8] Proposed CBOE Rule 18.10(c)(ii).

[9] *See* CBOE Rule 18.13.

[10] *Id.*

[11] *See* Securities Exchange Act Release No. 51856 (June 15, 2005); 70 FR 36442 (June 23, 2005) (proposing new NASD Code of Arbitration Procedure for Customer Disputes (''Proposed Customer Code'')); Securities Exchange Act Release No. 51857 (June 15, 2005); 70 FR 36430 (June 23, 2005) (proposing new NASD Code of Arbitration Procedure for Industry Disputes (''Proposed Industry Code'')).

[12] *See* CBOE Rule 18.13(a)–(c).

[13] *See* Proposed Customer Code and Proposed Industry Code, *supra* note 11.

[14] Such reasons include the disqualification, resignation, death, disability, or withdrawal of the arbitrator.

[15] Proposed Rule 18.14(c) also would provide standards to be used in deciding challenges for cause, which standards are identical to those provided under proposed Rule 18.13(d).

proposed NASD arbitration rules governing the same subject matter.[16]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market by strengthening the integrity of the CBOE Arbitration program.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule amendments will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule amendments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2004–65 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2004–65. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, Station Place, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–65 and should be submitted by April 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Nancy M. Morris,

Secretary.

[FR Doc. E6–3513 Filed 3–10–06; 8:45 am]

BILLING CODE 8010–01–P

[16] *See* Proposed Customer Code and Proposed Industry Code, *supra* note 11.

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53419; File No. SR–ISE–2005–50]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Approving Proposed Rule Change, and Amendment No. 1 Thereto, To Amend ISE Rule 803 To Provide for a Back-Up Primary Market Maker

March 6, 2006.

I. Introduction

On October 14, 2005, the International Securities Exchange, Inc. (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend ISE Rule 803 to provide for a Back-Up Market Maker. On January 12, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change was published for comment in the **Federal Register** on January 30, 2006.[4] The Commission received no comment letters regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of Proposed Rule

The Exchange proposes to amend ISE Rule 803 to provide for a Back-Up Primary Market Maker and to correct an inconsistency in the Exchange's Rules. Specifically, the Exchange proposes to enhance the ISE System to allow Competitive Market Makers that are also Primary Market Makers on the Exchange to voluntarily act as Back-Up Primary Market Makers when the appointed Primary Market Maker experiences technical difficulties that interrupt its participation in the market. Under the proposal, only Competitive Market Makers that are also Primary Market Makers on the Exchange would be eligible to be designated as a Back-Up Primary Market Maker because, according to the Exchange, these members are readily able to assume all of the responsibilities of a Primary Market Maker on the Exchange, such as handling customer orders when an away market has a better price.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1, which replaced the original filing in its entirety, made technical and clarifying changes to the proposed rule change.

[4] *See* Securities Exchange Act Release No. 53164 (January 20, 2006), 71 FR 4949 (January 30, 2006) (''Notice'').

Under the proposed rule change, the ISE System would automatically switch a Competitive Market Maker quoting in the affected options series to an active Back-Up Primary Market Maker if the appointed Primary Market Maker stops quoting as a result of technical difficulties.[5] The ISE System would automatically switch back to the appointed Primary Market Maker when it re-establishes its quotes in the series, but the Back-Up Primary Market Maker would continue to be responsible for any outstanding unexecuted orders it is handling. During the period that the services of the Back-Up Primary Market Maker are required, it would assume most of the responsibilities and privileges of a Primary Market Maker under the ISE Rules with respect to any series in which the appointed Primary Market Maker fails to have a quote in the ISE System.[6]

The Exchange also proposes to correct an inconsistency in its rules. In April 2004, the Exchange received Commission approval of a proposed rule change that allowed it to disseminate a quotation for less than ten contracts.[7] Because the options intermarket linkage plan and the Exchange's rules continued to require the Exchange to guarantee that the Firm Customer Quote Size (''FCQS'') and Firm Principal Quote Size (''FPQS'') would be at least 10 contracts, ISE Rule 803(c)(1) was amended to provide that the Primary Market Maker had the obligation to buy or sell the number of contracts necessary to provide an execution of at least 10 contracts to incoming linkage orders when the Exchange's disseminated market quotation was for less than 10 contracts.[8]

In August 2004, the intermarket linkage plan was amended to provide that the 10 contract minimum FCQS and FPQS does not apply when the Exchange is disseminating a quotation of fewer than 10 contracts.[9] In October 2004, the Exchange, and all of the other options exchanges, received approval for changes to their linkage rules to implement this change to the intermarket linkage plan.[10] Accordingly, the Primary Market Maker no longer is required to guarantee a minimum of 10 contracts to an incoming linkage order when the Exchange's disseminated market quotation is for less than 10 contracts. However, the Exchange neglected to remove the language in ISE Rule 803(c)(1) at the time the changes to the linkage rules were approved, thereby creating an inconsistency in the ISE Rules. The Exchange now proposes to delete the language in ISE Rule 803(c)(1) as a purely non-substantive clean-up of the ISE Rules.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

The Commission believes that the proposal should help to ensure that the functions of the Primary Market Maker are performed in an uninterrupted fashion even when a Primary Market Maker experiences difficulties that cause it to remove its quotes from the market. In particular, the Commission believes that the proposed rule change should help to ensure that the Back-Up Primary Market Makers would provide continuous quotations in all of the series of the options classes in a manner consistent with the obligations of the Primary Market Maker, set forth in ISE Rule 803. Further, this proposed rule change should reduce the number of non-firm quotes or ''fast market'' states disseminated by the ISE.[13]

The ISE proposal to indicate that a Primary Market Maker is not required to guarantee a minimum of 10 contracts to an incoming linkage order when the Exchange's disseminated market quotation is less than 10 contracts is of a clarifying and technical nature. Accordingly, based on the foregoing the Commission believes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–ISE–2005–50) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Nancy M. Morris,

Secretary.

[FR Doc. E6–3492 Filed 3–10–06; 8:45 am]

BILLING CODE 8010–01–P

[5] If there is more than one eligible member quoting in the series, the ISE System would automatically switch to the member with the largest offer in the series.

[6] A Competitive Market Maker would not become subject to the requirement in ISE Rule 804(e)(1) to enter continuous quotations in all of the series of all of the options classes to which it is appointed, as opposed to only 60% of the options classes under ISE Rule 804(e)(2), by acting as a Back-Up Primary Market Maker.

[7] *See* Exchange Act Release No. 49602 (April 22, 2004), 69 FR 23841 (April 30, 2004) (the ''Real Size Filing'').

[8] *See id.*

[9] *See* Exchange Act Release No. 50211 (August 18, 2004), 69 FR 52050 (August 24, 2004).

[10] *See* Exchange Act Release Nos. 50562 (October 19, 2004), 69 FR 62925 (October 28, 2004) and 50587 (October 25, 2004), 69 FR 63417 (November 1, 2004).

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] The Commission notes that the Exchange represents that most interruptions in Primary Market Maker quoting are very brief in duration. Telephone conversation between Katherine Simmons, Deputy General Counsel, ISE, Marc F. McKayle, Special Counsel, Division of Market Regulation (''Division''), Commission and Johnna B. Dumler, Attorney, Division, Commission on November 2, 2005.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53424; File No. SR–NSCC–2005–17]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Modify Its Rules and Procedures Related to the Collection of Commission Payments

March 6, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 29, 2005, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on February 3, 2006, amended, the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change is to modify NSCC's Rules and Procedures with regard to the collection of commission payments.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As part of ongoing efforts to increase processing efficiencies, NSCC is proposing to modify its Rule 16, ''Settlement of Commissions,'' to further standardize and automate the processing of commission bill payments.

In 2001, NSCC modified Rule 16 to implement the use of Automated Clearing House (''ACH'') wire transfers when making payments to non-clearing members utilizing the commission bill service. As a part of NSCC's move to payment of credits by ACH wire transfer, all non-clearing members were required to execute appropriate ACH documentation in order to receive their credit payments.[3] While NSCC automated the payment of funds from NSCC to non-clearing members, the collection of monies owed to NSCC by non-clearing members was not automated. Non-clearing members continue to pay commission bill settlement funds to NSCC by checks.

NSCC proposes to further modify Rule 16 to require the use of ACH preauthorized payments in the collection of funds from those non-clearing members that are indebted to NSCC as a result of utilizing the service. Accordingly, within the timeframe determined by NSCC, NSCC would debit the bank account designated by each non-clearing member an amount equal to the debit owed by the non-clearing member to NSCC.[4] All non-clearing members would be required to execute appropriate ACH documentation.

In addition to the above change, NSCC would also make a technical correction to Rule 16(3) to conform the Rule to practice. NSCC would eliminate text that provides that non-clearing members deliver information to NSCC on the 10th day of each month, as this practice has been discontinued.

Implementation

NSCC will work with New York Stock Exchange (''NYSE'') and American Stock Exchange (''AMEX'') staff to obtain new ACH documentation from all non-clearing members that currently utilize the commission bill service. By March 15, 2006 (or within two weeks of approval by the SEC of this rule filing, whichever is later) NSCC will begin implementing the ACH debit process on a rolling-basis. NSCC anticipates that collection of funds by check from non-clearing members to NSCC would be discontinued in its entirety by the end of the second quarter of 2006.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder applicable to NSCC because it will facilitate the prompt and accurate payment of commission bill transactions, thereby promoting the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has worked with and has received the support of the NYSE and AMEX with respect to these proposed changes. No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2005–17 in the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSCC–2005–17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site, *http://www.nscc.com\legal.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Securities Exchange Act Release No. 44550 (July 12, 2001), 66 FR 37509 (July 18, 2001) [File No. SR-NSCC–2001–08].

[4] Currently, commission bill settlement takes place on the 15th day of each month or on the next preceding business day if the 15th is not a business day.

[5] 15 U.S.C. 78q–1.

should refer to File Number SR–NSCC–2005–17 and should be submitted on or before April 3, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Nancy M. Morris,

Secretary.

[FR Doc. E6–3483 Filed 3–10–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53426; File No. SR–NYSE–2006–15]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Technical Amendments to the Restated Certificate of Incorporation of NYSE Regulation, Inc.

March 7, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 6, 2006, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make certain technical changes to the restated certificate of incorporation of NYSE Regulation (''NYSE Regulation'') to comply as to form with the requirements of the Not-for-Profit Corporation Law of the State of New York (''N–PCL'') and to specifically recite the ways in which the restated certificate of incorporation modifies the certificate of incorporation as originally filed under the N–PCL.[5]

The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is submitting this rule filing in connection with its proposed merger with Archipelago Holdings, Inc. (''Archipelago''), as a result of which the businesses of the Exchange and Archipelago will be held under a single, publicly traded holding company named NYSE Group, Inc. (''NYSE Group''). Following the merger, the Exchange's current businesses and assets will be held in three separate entities affiliated with NYSE Group—New York Stock Exchange LLC, NYSE Market, Inc. and NYSE Regulation. The Commission has approved the Exchange's rule filing in connection with the merger (''Merger Filing'')[6] and the merger is scheduled to close on March 7, 2006.[7]

NYSE Regulation is a corporation organized and existing under the N–PCL. The restated certificate of incorporation of NYSE Regulation was included in Exhibit 5 to the Merger Filing as approved. However, subsequent to the Merger Filing's approval, the Secretary of State of New York has informed the Exchange that it will not accept a filing of the restated certificate of incorporation unless certain technical changes are made to comply as to form with the requirements of the N–PCL and to specifically recite the ways in which the restated certificate of incorporation modifies the certificate of incorporation as originally filed under the N–PCL. The changes do not affect the substance of the restated certificate of incorporation as approved by the Commission in any way. The Exchange needs this proposed rule change to be effective prior to the consummation of the merger, as it must file the restated certificate of incorporation with the Secretary of State of the State of New York before the closing of the merger, as contemplated by the Merger Filing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under Section 6(b)(5) of the Act[8] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] At the request of the Exchange, the Commission staff revised the text to clarify that the reference to the modifications is with respect to the certificate of incorporation as originally filed under the N–PCL. Telephone conversation between John Carey, Assistant General Counsel, NYSE, and Kim M. Allen, Special Counsel, Division of Market Regulation, Commission, on March 6, 2006 (''Telephone Conversation'').

[6] *See* Securities Exchange Act Release No. 53382 (February 27, 2006) 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77).

[7] The Commission notes that the Exchange included in the proposed rule change two different dates for the schedule closing date of the merger, March 7, 2006 and March 8, 2006. The Commission staff clarified with the Exchange that the scheduled closing date of the merger is March 7, 2006. Telephone Conversation.

[8] 15 U.S.C. 78f(b)(5).

effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) [11] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay, and designate the proposed rule change immediately operative.[13] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[14] The Exchange has stated that the restated certificate of incorporation as modified by this proposed rule change must be filed with the Secretary of State of the State of New York before the closing of the merger that is scheduled for March 7, 2006. The Commission notes that the proposed modifications to the restated certificate of incorporation are technical changes that are non-substantive. Accordingly, the Commission designates that the proposed rule change become operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2006–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–15 and should be submitted on or before April 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–3484 Filed 3–10–06; 8:45 am]

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] *Id.*

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] The Exchange also asked the Commission to waive the five-business day pre-filing notice requirement. *See* Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii). The Commission is exercising its authority to designate a shorter time and notes that the Exchange provided the Commission with one business day notice.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53425; File No. SR–OCC–2005–19]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to Submission of Exercise Notices for American Option Contracts Other Than at Expiration

March 6, 2006.

I. Introduction

On December 12, 2005, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2005–19 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on January 18, 2006.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The purpose of the proposed rule change is to modify OCC Rule 801, which applies to the submission of exercise notices for American-style option contracts other than at expiration, to delete specific references to the times when such exercise notices may be submitted and to instead provide OCC with the authority to prescribe the time frames for their submission. Implementing this change requires additional conforming changes to Rule 801 as described herein.

Rule 801

Rule 801(a) permits a clearing member desiring to exercise an American-style equity or non-equity option on a business day other than the business day prior to its expiration to submit an exercise notice to OCC between 9 a.m. and 7 p.m. provided that an exercise notice for an American-style currency option must be submitted by 2:30 p.m.[3] (All times are at Central Time.) Exercise instructions submitted with respect to equity and non-equity options become irrevocable at 7 p.m. and 2:30 p.m. in the case of currency options unless the exercise instruction has been modified or revoked by a clearing member because of a bona fide error by the clearing member or its

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 53090 (January 10, 2006), 71 FR 2973.

[3] Except for short dated options, an American-style option may not be exercised on the business day prior to its expiration date.

customer in accordance with the procedures prescribed by OCC.

Rule 801(b) allows the OCC Board of Directors to designate with not less than seven days' prior written notice to non-equity securities clearing members a cut-off time earlier than that specified in Rule 801(a) as the deadline for submitting exercise notices with respect to American-style non-equity option contracts and the time when such exercise notices become irrevocable.

Subject to specified exceptions and conditions, Rule 801(e) grants certain OCC employees [4] the discretion to permit a clearing member to file, revoke, or modify any exercise notice submitted in accordance with Rule 801(a) after the 7 p.m. deadline for the purpose of correcting a bona fide error. One condition is that the requesting clearing member is liable to OCC for a late filing fee in escalating increments and time segments. The late filing fee is as follows:

- $2,000 for any request accepted between 7 p.m. and 8 p.m.;
- $5,000 for any request accepted between 8:01 p.m. and the start of critical processing provided that the request does not materially affect the start of critical processing; and
- $20,000 per line item listed on any exercise notice accepted for filing after the start of critical processing with 50% of the fee to be distributed to the assigned clearing member or clearing members on a pro rata basis if more than one clearing member is assigned.

Changes to Rule 801

The operational and processing efficiencies gained from real-time trade submission have prompted the OCC Roundtable [5] to propose that OCC advance the 7 p.m. cut-off time for submission of post-trade instructions, including exercise notices, by clearing members on regular business days. The Roundtable believes that an earlier deadline for filing such instructions would further straight-through processing goals by permitting OCC to move forward the times when it initiates nightly processing and distributes data to members.

Although current discussions have centered on a post-trade submission cut-off time of 6:30 p.m., the Roundtable has not yet reached a consensus on a recommended time.[6] Notwithstanding that additional discussions are required to determine a new deadline, the Roundtable has asked OCC to amend Rule 801 to eliminate the requirement that exercise notices with respect to most American-style options be submitted between 9 a.m. and 7 p.m. on a business day. In response to the Roundtable's request and consistent with other OCC rules, OCC will amend Rule 801 to permit OCC to specify the times when such exercise notices may be submitted.[7] (Such times will be specified in OCC's operations manual.) The amendment will allow OCC to promptly implement the new deadline for post-trade instructions once it is determined and will give OCC greater flexibility in responding to future operational and technology developments. OCC will also make the following conforming changes to Rule 801.

- Amend Rule 801(a) to eliminate the mandated 2:30 p.m. deadline for filing exercise notices with respect to currency options. The deadline will instead be a time specified by OCC (in its operations manual). While there are no current plans to advance this deadline, the language of the rule will be changed for consistency and future flexibility.
- Amend Rule 801(a) to provide that the prescribed deadlines for submitting exercise notices may be changed with not less than 30 days' prior written notice to affected clearing members. This will ensure that clearing members have sufficient time to adjust their procedures for submitting exercise notices.
- Delete Rule 801(b) which authorizes the Board to advance the deadline for submitting exercise notices for American-style non-equity options. The subject matter of Rule 801(b) will be covered by the changes to Rule 801(a).
- Amend Rule 801(e) to restructure portions of the fee schedule for submitting late requests to file, revoke, or modify exercise notices. The $2,000 filing fee will be eliminated. The $5,000 filing fee will be applied to all requests accepted after the deadline specified pursuant to Rule 801(a) but before the start of critical processing. No change will be made to the filing fee for requests accepted after the start of critical processing. These proposed changes will align the filing fee schedule under Rule 801 with the filing fee schedule for supplementary exercise notices filed under Rule 805 (which applies to expiration date processing).

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[8] The Commission finds that OCC's proposed rule change is consistent with this requirement because it enables OCC to take advantage of operational and processing efficiencies gained from real-time trade submission to move forward the times for accepting submissions of exercise notices. Earlier submission of exercise notices permits OCC to move forward the times when it initiates nightly processing and distributes data to its members. Moreover, by OCC having more flexibility with respect to designating time frames and deadlines OCC will be able to keep such time frames and deadlines in step with future operational and technical advances.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–OCC–2005–19) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E6–3482 Filed 3–10–06; 8:45 am]

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[4] Those employees are OCC's Chairman, Management Vice Chairman, President, or a designee of such officer.

[5] The OCC Roundtable is an OCC-sponsored advisory group comprised of representatives from OCC, a cross-section of clearing members, participant exchanges, and industry service bureaus. The Roundtable considers operational improvements that may be made to increase efficiencies and to lower costs in the options industry.

[6] An analysis by OCC staff determined that submission of files containing exercise instructions after 6:30 p.m. occurred seven times during the period April 1–December 31, 2005. E-mail from Jean M. Cawley, First Vice President and Deputy General Counsel, dated January 11, 2006.

[7] Under Rule 805, OCC already has the authority to prescribe deadlines for the submission of exercise instructions for purposes of expiration date processing.

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53407; File No. SR–Phlx–2006–12]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Expansion of Time for Exercising Expiring Options and Submitting Contrary Exercise Advices

March 3, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 13, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Phlx filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Section 19(b)(1) of the Act[5] and Rule 19b–4 thereunder,[6] proposes to amend Phlx Rule 1042 to add two additional minutes within which one may make a final decision to exercise or not exercise an option or deliver a contrary exercise advice (''CEA'')[7] to the Exchange. The proposal is intended to conform Phlx Rule 1042 to a change in the closing time for equity options and narrow-based index options from 4:02 p.m. to 4 p.m. (EST).[8] The text of the proposed rule change is available on the Phlx's Web site (*http://www.phlx.com*), at the Phlx's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed amendment to Phlx Rule 1042 is to change the time for deciding whether to exercise an option and for delivering a contrary exercise advice to conform to the new trading hours for equity options and narrow-based index options.[9]

Currently, Phlx Rule 1042(c) establishes that on the business day immediately prior to an expiration date, option holders may make final decisions to exercise or not exercise options, and members and member organizations may accept exercise instructions and submit CEAs to the Exchange as late as 5:30 p.m. or 6:30 p.m. (EST), pursuant to circumstances set forth in Phlx Rule 1042(c). Phlx Rule 1042(g) establishes that where, on the last business day before the day of expiration, the Exchange provides advance notice of a modified time for the close of trading in equity options, the deadline to make a final decision to exercise or not exercise an expiring option and to deliver a CEA to the Exchange will be 1 hour 28 minutes or 2 hours 28 minutes after the announced modified closing time, instead of the 5:30 p.m. or 6:30 p.m. (EST) deadline set by Phlx Rule 1042(c). The Exchange proposes to add two minutes to each of these timeframes to correspond to the two minute difference in trading time created by the change in the close of trading time from 4:02 p.m. to 4 p.m. (EST).

According to the Exchange, this proposal seeks only to change the exercise timeframes for equity options, not index options, because the Phlx Rule governing index options does not have pre-set times. Accordingly, for index options, exercise forms submitted by specialists, traders, and others must be time stamped no later than five minutes after the close of trading on the day of the exercise.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(5) of the Act[11] in particular, because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by establishing expiring option exercise and CEA timeframes similar to that of other options exchanges and in conformity with new trading hours for equity options and narrow-based index options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Phlx has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30-days after the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78s(b)(1).

[6] 17 CFR 240.19b–4.

[7] A CEA is a communication either to not exercise an option that would be automatically exercised pursuant to the Options Clearing Corporation's (''OCC'') Exercise-by-Exception (''Ex-by-Ex'') procedure, or to exercise an option that would not be automatically exercised pursuant to the OCC's Ex-by-Ex procedure.

[8] *See* Securities Exchange Act Release No. 53247 (February 7, 2006), 71 FR 8037 (February 15, 2006) (approving SR–Phlx–2006–01, which amended Phlx Rules 101, 1012, 1047, 1047A, and 1101A and Phlx Floor Procedure Advice (''OFPA'') G–2, so that equity options and narrow-based index options may trade until 4 p.m. instead of 4:02 p.m. (EST). The proposed rule change did not affect broad-based index options or exchange traded fund options trading until 4:15 p.m.). The 4 p.m. (EST) closing time was implemented on February 13, 2006 on an industry-wide basis.

[9] *See supra* note 8.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative prior to 30-days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Phlx has asked the Commission waive the 30-day operative delay and the 5-day pre-filing requirement. The Commission believes that waiving the 30-day operative delay and the 5-day pre-filing requirement is consistent with the protection of investors and the public interest because such waiver will allow the Phlx to immediately clarify its rule and conform it to the industry-wide close of trading times now in effect. Accelerating the operative date will allow for a more efficient and effective market operation by offering clarity and internal consistency with existing Phlx rules. For these reasons, the Commission designates the proposed rule change as effective and operative immediately upon filing with the Commission.[15]

At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2006–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2006–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2006–12 and should be submitted on or before April 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E6–3493 Filed 3–10–06; 8:45 am]

BILLING CODE 8010–01–P

[14] *Id.*

[15] For the purposes only of waiving the 30-day operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below: (OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974. (SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Amex Building, 6401 Security Blvd., Baltimore, MD 21235. Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. Request for Workers' Compensation/Public Disability Benefit Information—20 CFR 404.408(e)—0960–0098. Section 224 of the Social Security Act provides for an offset of disability insurance benefits when workers' compensation (WC) or public disability benefits (PDB) is also being received. The SSA–1709 is used to request and/or verify information regarding WC/PDB given to Social Security disability recipients so that the proper adjustment is made to their monthly benefits. The respondents are Federal, State, and local agencies administering WC/PDB, insurance carriers, and public or private self-insured companies.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 120,000.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 30,000 hours.

2. Request for Reconsideration—20 CFR 404.907–404.921, 416.1407–416.1421—0960–0622. The information collected on Form SSA–561–U2 is used by SSA to document and initiate the reconsideration process for determining entitlement to Social Security benefits (Title II), Supplemental Security Income (SSI) payments (Title XVI), and Special Veterans Benefits (Title VIII). The respondents are individuals filing for reconsideration.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 1,455,000.

Frequency of Response: 1.

Average Burden per Response: 8 minutes.

Estimated Annual Burden: 194,000 hours.

3. Statement of Employer—20 CFR 404.801–803—0960–0030. The information collected on Form SSA–7011–F4 is needed to substantiate allegations of wages paid to workers when wages do not appear in SSA's records of earnings and the worker has no proof of said earnings. SSA can use the information to process claims for benefits and resolve discrepancies in the worker's earnings record. The respondents are certain employers who can verify wage allegations made by the wage earner.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 925,000.

Frequency of Response: 1.

Average Burden per Response: 20 minutes.

Estimated Annual Burden: 308,333 hours.

4. Claimant Statement About Loan of Food or Shelter; Statement About Food or Shelter Provided to Another—20 CFR 416.1130–416.1148—0960–0529. Forms SSA–5062 and SSA–L5063 are used to obtain statements about food and/or shelter provided to an SSI claimant or recipient. SSA uses this information to determine whether food and/or shelter are bona fide loans or should be counted as income for SSI purposes. This determination can affect eligibility for SSI and the amount of SSI benefits payable. The respondents are claimants/recipients for SSI benefits and individuals that provide loans of food and/or shelter to SSI claimants/recipients.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 131,080.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 21,847 hours.

5. Instructions for Completion of Federal Assistant Application—0960–0184.

The information on Form SSA–96 will be used to assist SSA in selecting grant proposals for funding based on their technical merits. The information will also assist in evaluating the soundness of the design of the proposed activities, the possibilities of obtaining productive results, the adequacy of resources to conduct the activities and the relationship to other similar activities that have been or are being conducted. The respondents are State and local governments. State-designated protection and advocacy groups, colleges and universities and profit and nonprofit private organizations.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 400.

Frequency of Response: 2 hours.

Average Burden per Response: 14 hours.

Estimated Annual Burden: 11,200 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Office at 410–965–0454, or by writing to the address listed above.

1. Permanent Residence Under Color of the Law (PRUCOL)—20 CFR 416.1615 and 416.1618—0960–0451. Under Public Law 104–193, which was effective August 22, 1996, a non-citizen must be a ''qualified alien'' and meet certain additional requirements in order to be eligible for Supplemental Security income (SSI). This law also established an exception to the new requirements for certain ''nonqualified aliens'' (i.e., non-citizens who are not qualified aliens). Nonqualified aliens who were receiving SSI on August 22, 1996 were allowed to remain on the rolls until September 30, 1997, at which time benefits would be suspended if the aliens had not acquired alien status. Public Law 105–33 extended the suspension date to September 30, 1998. Public Law 105–306, enacted October 28, 1998, provided that nonqualified aliens who were receiving SSI on Ausut 22, 1996 would remain eligible for SSI after September 30, 1998 provided all other requirements for eligibility were met (e.g., income and resources, etc.). SSI eligibility for this group of aliens—''grandfathered nonqualified aliens''—will continue to be determined based on the rules governing alien eligibility in effect prior to August 22, 1996, i.e., the PRUCOL standard.

As discussed in SSA regulations at 20 CFR 416.1615 and 416.1618, a PRUCOL alien must present evidence of his/her alien status at application and periodically thereafter as part of the eligibility determination process for SSI. SSA verifies the validity of the evidence of PRUCOL for grandfathered nonqualified aliens with the Department of Homeland Security (DHS). Based on the DHS response, SSA will determine whether the individual is PRUCOL. Without this information, SSA would not be able to determine whether the individual is eligible for SSI payments. The respondents are individuals who have alien status and live in the United States.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 9,000.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 750 hours.

2. Request for Evidence from Doctor or Hospital—20 CFR 404.1512, 404.1513(a), (b) & (e), 404.1514, 416.912, 416.913(a), (b) & (e), 41694—0960–NEW. Claimants are required to provide medical evidence of their impairments(s) in pursuing a disability claim. SSA uses the forms listed below to request medical evidence from sources (doctors and hospitals) where the claimant has been treated, see or otherwise evaluated. Respondents are doctors and hospitals where the claimant has been evaluated.

Type of Request: Collection in Use Without OMB Number.

Form type	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated annual burden (hours)
Request for Evidence from a Doctor (J1)	10,000	20	200,000	15	50,000
Request for Evidence from a Hospital (J2)	10,000	20	200,000	15	50,000
Totals	20,000		400,000		100,000

Estimated Annual Burden: 1000,000 hours.

3. Request for School Records—20 CFR Part 416, Subpart I, 416906, 416.913, 416.946, 404, Subpart P, Appendix 1—0960–NEW. School records are pertinent evidence in a childhood claim for disability benefits. ALJs send a letter to schools which the claimant has attended requesting the claimant's school records. These records are evaluated for evidence relative to the claimant's impairments or ability to do age-appropriate activities. Respondents are the school(s) which the claimant has attended.

Type of Request: Collection in Use Without OMB Number.

Number of Respondents: 10,000.

Frequency of Response: 6.

Average Burden per Response: 30 minutes.

Estimated Annual Burden: 30,000 hours.

4. Homeless Outreach Project and Evaluation (HOPE)—0960–0704.

Background

Congress passed the McKinney Act of 1987 in recognition of an in an effort to address situations and conditions facing people without permanent shelter. The Act funded 15 emergency services and nine individual titles to authorize the provision of specific programs by Federal agencies. The Act also established the Interagency Council on Homelessness (ICH) composed of leaders from 15 Federal agencies who are in charge of coordinating efforts to assist people who are homeless. During the past decade, SSA and other ICH agencies have compiled important data about people who are homeless and have carried out evaluations of services which have generated evidence about ''best'' or ''promising practices'' well suited to combating homelessness.

In fiscal year 2003, President George W. Bush announced an initiative to end chronic homelessness in 10 years. As a result, SSA developed Project HOPE and in May 2004 awarded34 Cooperative Agreements to organizations which provide outreach, support services and benefit application assistance to the chronically homeless and other underserved populations. An additional 7 cooperative agreements were awarded in November 2004 for a total of 41. The goal of Project HOPE is to improve both the quantity and quality of applications for disability benefits. Project HOPE gives focused support to Cooperative (co-op) awardees via a training program and ongoing technical assistance.

Evaluation of Project HOPE

SSA uses the project HOPE evaluation to determine the effectiveness and the efficiency of the program. To obtain the information needed for the evaluation, SSA has developed an interactive Web site that is used by co-op awardees to input client and program data, and by SSA to communicate project-wide announcements to the awardees. The respondents are HOPE grantees/non-profit social services organizations serving people who are homeless and disabled.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 41.

Frequency of Response: 12.

Average Burden per Response: 65 minutes.

Estimated Annual Burden: 533 hours.

Dated: March 6, 2006.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 06–2289 Filed 3–10–06; 8:45 am]

BILLING CODE 4191–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program Update for Albany International Airport, Albany, NY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Albany County Airport Authority under the provisions of 49 U.S.C. (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On July 8, 2005 the FAA determined that the noise exposure maps submitted by the Albany County Airport Authority under part 150 were in compliance with applicable requirements. On January 4, 206, the FAA approved the Albany International Airport's updated noise compatibility program. Most of the recommendations of the program update were approved. Four measures were approved as voluntary measures and four were disapproved in part. One measure was disapproved for part 150 purposes.''

DATES: The effective date of the FAA's approval of the Albany International Airport's noise computability program update is January 4, 2006.

FOR FURTHER INFORMATION CONTACT: Maria Stanco, Environmental Protection Specialist, Federal Aviation Administration, New York Airports District Office, 600 Old County Road, Suite 446, Garden City, NY 11530, Telephone 516 227–3808. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program update for the Albany International Airport, effective January 4, 2006.

A. Under section 47504 of the Act, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise computability program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with Interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

1. The noise computability program was developed in accordance with the provisions and procedures of FAR Part 150;

2. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

3. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

4. Program measures relating to the use of flight procedures can be implemented within the period covered

by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA New York Airports District Office in Garden City, New York.

The Albany County Airport Authority submitted its noise exposure maps, descriptions, and other documentation produced during the noise compatibility study in 2002 to the FAA on April 9, 2003, and on November 18, 2004. The Albany International Airport's noise exposure maps were determined by FAA to be in compliance with applicable requirements on July 8, 2005. Notice of this determination was published in the **Federal Register** on July 21, 2005.

The Albany International Airport study contains a proposed noise compatibility program update comprised of actions designed for phased implementation by airport management and adjacent jurisdictions. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on July 8, 2005 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted noise compatibility program update contained thirty-one new proposed actions for noise mitigation. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The Acting Associate Administrator for Airports approved the overall program effective January 4, 2006.

Thirty of the thirty-one program measures have been approved in whole or in part. Four measures were approved as voluntary measures and four measures were disapproved in part. One measure was disapproved for part 150 purposes.

Noise abatement element 2 (announcement of an approach procedure on the ATIS) was disapproved in part due to current FAA procedures on the use of the ATIS. Noise abatement measure 5 (engine maintenance run-up policies) was disapproved in part pending submission of additional information to make an informed analysis. Land use measures 11 (residential land acquisition) and 15 (acquisition of undeveloped land in business/commercial zones) were disapproved in part for purpose of part 150 with respect to AIP funding for those parcels outside the DNL 65 dB noise contour in accordance with Section 189 of Vision 100 Reauthorization Act. A Supplemental Land Use Measure (to acquire the Ann Lee Nursing Home and associated land) was disapproved for purposes of part 150 since the NCP did not demonstrate that acquisition was necessary to prevent new noncompatible development.

These determinations are set forth in detail in a Record of Approval signed by the Acting Associate Administrator for Airports on January 4, 2006. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Albany County Airport Authority. The Record of Approval also will be available on-line at *http://www.faa.gov/arp/environmental/14cfr150/index14.cfm.*

Issued in Garden City, New York, March 3, 2006.

Otto N. Suriani,

Acting Manager, New York Airports District Office.

[FR Doc. 06–2351 Filed 3–10–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program for the Atlantic City International Airport, Atlantic City, NJ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the South Jersey Transportation Authority under the provisions of 49 U.S.C., (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On July 15, 2005 the FAA determined that the noise exposure maps submitted by the South Jersey Transportation Authority under part 150 were in compliance with applicable requirements. On January 11, 2006, the FAA approved the Atlantic City International Airport's noise compatibility program. FAA approved in whole or in part all three proposed measures.

DATES: The effective date of the FAA's approval of the Atlantic City International Airport's noise compatibility program update is January 11, 2006.

FOR FURTHER INFORMATION CONTACT: Maria Stanco, Environmental Protection Specialists, Federal Aviation Administration, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530, Telephone 516 227–3808. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for the Atlantic City International Airport, effective January 11, 2006.

A. Under section 47504 of the Act, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local

communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

1. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

2. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

3. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

4. Program measures relating to the uses of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA New York Airports District Office in Garden City, New York.

The South Jersey Transportation Authority submitted its noise exposure maps, descriptions, and other documentation produced during the noise compatibility study in 2003 to the FAA on December 31, 2004. The Atlantic City International Airport's noise exposure maps were determined by FAA to be in compliance with applicable requirements on July 15, 2005. Notice of this determination was published in the **Federal Register** on July 27, 2005.

The Atlantic City International Airport study contains a proposed noise compatibility program update comprised of actions designed for phased implementation by airport management and adjacent jurisdictions. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on July 15, 2005 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted noise compatibility program contained three proposed actions for noise mitigation. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The Acting Associate Administrator for Airports approved the overall program effective January 11, 2006.

All three program measures have been approved in whole or in part. Measure 3 (use of Runway 13–31 as the preferential runway for night departures) was disapproved in part due to ATCT concerns.

These determination are set forth in detail in a Record of Approval signed by the Acting Associate Administrator for Airports on January 11, 2006. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administration offices of the South Jersey Transportation Authority. The Record of Approval also will be available on-line at *http://www.faa.gov/arp/environmental/14cfr150/index14.cfm.*

Issued in Garden City, New York, March 3, 2006.

Otto N. Suriani,

Acting Manager, New York Airports District Offices.

[FR Doc. 06–2350 Filed 3–10–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program Modification and Request for Review; Orlando Sanford International Airport, Sanford, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program modification that was submitted for Orlando Sanford International Airport under the provisions of 49 U.S.C. 47501 *et seq.* (the Aviation Safety and Noise Abatement Act hereinafter referred to as ''the Act'') and 14 CFR part 150 by the Sanford Airport Authority. This program modification proposes to revise Land Use Element H of the Noise Compatibility Program (NCP) for SFB approved on November 6, 2002, to reflect the incompatible land uses located within the 65 DNL noise contour of the 2004 Noise Exposure Map. This program modification was submitted subsequent to a determination by FAA that the associated noise exposure maps submitted under 14 CFR part 150 for Orlando Sanford International Airport were in compliance with applicable requirements effective June 22, 2005. The proposed noise compatibility program modification will be approved or disapproved on or before August 30 2006.

DATES: The effective date of the start of FAA's review of the proposed noise compatibility program modification is March 3, 2006. The public comment period ends May 2, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Lindy McDowell, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822, (407) 812–6331, Extension 130. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise

compatibility program modification for Orlando Sanford International Airport which will be approved or disapproved on or before August 30, 2006. This notice also announces the availability of this program modification for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has formally received the noise compatibility program for Orlando Sanford International Airport, effective on March 3, 2006. The airport operator has requested that the FAA review this material and that the modified noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program modification. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 30, 2006.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety or create an undue burden on interstate or foreign commerce, and whether they are reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments relating to these factors, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, March 3, 2006.

Matthew J. Thys,

Assistant Manager, Orlando Airports District Office.

[FR Doc. 06–2353 Filed 3–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 202: Portable Electronic Devices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 202 Meeting: Portable Electronic Devices.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 202: Portable Electronic Devices.

DATES: The meeting will be held on April 3–7, 2006, from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at Conference Rooms, 1828 L Street, NW., Suite 805, Washington, DC.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 202 Portable Electronic Devices meeting. The agenda will include:

- April 3:
- Co-chairs' Strategy Sessions with Working Group Leaders
- Working Group Progress and Status Update/Plan for Terms of Reference (TOR) Compliance Review
- Overall Review of Plan and Schedule for Phase 2
- Plan for Recommendation on Scoping of Picocell Assessment and Guidelines
- WG1, WG2, and WG3 to develop recommendations to SC–202 plenary on Mask-Like Object, recommendations to FCC on emissions, and susceptibility limits required from the aircraft systems side
- Working Group Coordination
- Time for all Working Groups to meet together if required
- Working Groups (WG) 1 through 5 meet.
- WG–1, PED Characterization, Garmin Room
- WG–2, Aircraft Path Loss and Test, with WG–3, Aircraft Susceptibility, MacIntosh-NBAA-Hilton/ATA Room
- WG–4, Risk Assessment, Mitigation, and process, Colson Board Room
- WG–5, airplane Design and Certification Guidance, ARINC Conference Room
- Chairmen's Strategy session with Working Group Leaders
- Coordinate Recommendations to Plenary: Phase 2 work plan, TOR compliance verification, and schedule
- April 4:
- Opening Plenary Session (Welcome and Introductory Remarks, Review Agenda, Review/Approve previous Common Plenary Summary, Review Open Action Items)
- Results of RTCA PMC meeting on publication of interim update DO–294A
- Update from Regulatory Agencies (FAA, UK–CAA, Canadian TSB, FCC, or other)
- Update on Work of EUROCAE Working Group WG58 by Michael Crokaert of Airbus, WG58 Chairman
- CEA PEDs Working Group Report and plans for ANSI accredited standard by Doug Johnson of CEA
- Update on CTIA Task Force on cell phones on airborne aircraft by Paul Guckian of QUALCOMM
- ''Active RFID Transponders' RF Emission and Cargo Bay Interference Path Loss Measurements for Aircraft Com/Nave Bands'' by Truong Nguyen of NASA Langley Research Center
- ''RF Propagation Flight Testing'' (report on results from test) by Frank Whetten of Boeing
- Break-out sessions for Working Groups:
- Working Groups (WG) 1 through 5 meet.
- WG–1, PED Characterization
- WG–2, Aircraft Path Loss and Test, with WG–3, Aircraft Susceptibility
- WG–4, Risk Assessment, Mitigation, and process
- WG–5, Airplane Design and Certification Guidance
- Committee Consensus on Remaining Phase 2 Work Plan. TOR Compliance Plan, and Schedule for Completion
- April 5:
- Co-chairs' Strategy Session with Working Group Leaders
- WG Progress and Status Update/ Plan for (TOR) Compliance Review
- Overall Review of Plan and Schedule for Phase 2
- Working Groups Coordination
- Time for all Working Groups to meet, if required
- Working Groups Meet if required

• WG–1 PEDs Characterization
• WG–2 Aircraft Path Loss and Test with WG–3, Aircraft Susceptibility
• WG–4 Risk Assessment, Mitigation, and Process
• WG–5 Airplane Design and Certification Guidance
• Chairmen's Strategy Session with Working Group Leaders
• Phase 2 Goals, Schedule, and Work Plan
• April 6:
• Chairmen's Day 2 Opening Remarks and Process Check
• Working Groups report out
• Each Working Group will cover the following:
• Schedule and TOC Compliance Assessment
• Coordination and Requirements, Open Issues, Action Items, etc.
• Phase 2 Work Remaining: work plan and schedule for completion
• Working Group 1 (PEDs Characterization, Test and Evaluation)
• Working Group 2 (Aircraft Test and Analysis)
• Working Group 3 (Aircraft Systems Susceptibility)
• Working Group 4 (Risk Assessment, Practical Application, and Final Documentation)
• Collaboration with EUROCAE WG58
• Working Group 5 (Recommended Guidance for Airplane Design and Certification)
• Feasibility of single document with EUROCAE WG58, committee concensus on how to proceed
• Updates to Phase 2 work statement, committee structure, work plan, and schedule, including:
• Need for additional SC–202 meetings to complete document
• Plan for access to material and organization of data in appendix CD for Phase 2 document
• Working Groups' teleconference and meeting schedule, plan for Phase 2 work completion
• Closing Session (Other Business, Date and Place of Next Meeting (July 10–14, 2006, Fifteenth Plenary at RTCA; October 16–20, 2006, Sixteenth Plenary at RTCA; January 22–26, 2007, Seventeenth Plenary at RTCA, Closing Remarks, Adjourn)
• Break-out sessions for Working Groups Phase 2 work if required and time permits
• April 7:
• Working Groups complete action items as required
• Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 3, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06–2352 Filed 3–10–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aircraft Electrical Load and Power Source Capacity Analysis

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces a Federal Aviation Administration (FAA) proposed policy on recognizing ASTM International's F2490–05 Standard Guide for Aircraft Electrical Load and Power Source Capacity Analysis as an acceptable means of compliance to 14 CFR part 23, 23.1351(a)(2). The Standard Guide provides acceptable methods and procedures to determine electrical system capacity needed to provide worst-case combinations of electrical loads during all phases of airplane operations. This notice is necessary to advise the public of this FAA policy and give all interested persons an opportunity to present their views on it.

DATES: Comments must be received on or before May 12, 2006.

ADDRESSES: Mail comments to: Federal Aviation Administration, Small Airplane Directorate, Continued Operational Safety, ACE–113, Attention: Barry Ballenger, Room 301, 901 Locust, Kansas City, Missouri 64106. Specify the standard being addressed by ASTM designation and title and mark all comments: Consensus Standards Comments.

FOR FURTHER INFORMATION CONTACT: Barry Ballenger, Aerospace Engineer, Continued Operational Safety Branch (ACE–113), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4152; e-mail: *barry.ballenger@faa.gov*.

Comments Invited: Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the consensus standard number and be submitted to the address specified above. All communications received on or before the closing date for comments will be forwarded to ASTM International Committee F39 for consideration. The standard may be changed in light of the comments received. The FAA will address all comments received during the recurring review of the consensus standard and will participate in the consensus standard revision process.

Background: Under the provisions of the revised Office of Management and Budget (OMB) Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' dated February 10, 1998, industry and the FAA have been working with ASTM International to develop consensus standards for the design, fabrication, modification, inspection, and maintenance of electrical systems installed on normal and utility category airplanes.

These consensus standards satisfy the FAA's goal for airworthiness certification and a verifiable minimum safety level for normal, utility, acrobatic, and commuter category airplanes. The FAA participates as a member of Committee F39 in developing these standards. The use of the consensus standard process assures government and industry discussion and agreement on appropriate standards for the required level of safety.

The Consensus Standards

The FAA finds the following new consensus standard acceptable for normal and utility, acrobatic, and commuter category airplanes. The consensus standard listed below may be used unless the FAA publishes a specific notification otherwise.

a. ASTM Designation F 2490–05, titled: Standard Guide for Aircraft Electrical Load and Power Source Capacity Analysis.

Availability

ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959 copyrights these consensus standards. Individual reprints of this standard (single or multiple copies, or special compilations and other related technical information) may be obtained by contacting ASTM at this address, or at (610) 832–9585 (phone), (610) 832–9555 (fax), through *service@astm.org* (e-mail), or through the ASTM Web site at *http://www.astm.org/*. To inquire about standard content and/or membership, or

about ASTM International Offices abroad, contact Daniel Schultz, Staff Manager for Committee F39 on Aircraft Electrical Load and Power Source Capacity Analysis: (610) 832–9716, *dschultz@astm.org*.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–3478 Filed 3–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Motor Theft Prevention Standard; American Suzuki Motor Corporation

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of American Suzuki Motor Corporation, (Suzuki) in accordance with § 543.9(c)(2) of 49 CFR part 543, *Exemption from the Theft Prevention Standard*, for the Suzuki XL–7 vehicle line. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with the 2007 model year.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Mazyck's phone number is (202) 366–4139. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated December 19, 2005, Suzuki requested exemption from the parts-marking requirements of the theft prevention standard (49 CFR part 541) for the Suzuki XL–7 vehicle line beginning with MY 2007. The Suzuki XL–7 which had previously been a model of the Suzuki Grand Vitara line will no longer be produced as a model of that vehicle line beginning with MY 2007. However, Suzuki plans to use the XL–7 nameplate for its new vehicle line beginning with the 2007 model year. According to Suzuki, the new XL–7 will have a distinct visual difference from that of the XL–7 model. The petition requested exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard*, based on the installation of an antitheft device as standard equipment for the entire vehicle line. According to Suzuki, this vehicle line will be certified by CAMI Automotive, Inc.

Under § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one line of its vehicle lines per year. In its petition, Suzuki provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new vehicle line. Suzuki will install its antitheft device as standard equipment on its Suzuki XL–7 vehicle line beginning with MY 2007. Features of the antitheft device will include an electronically coded ignition key, passive immobilizer, engine control module and PASS-Key III+ controller module. Suzuki's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in 543.5 and the specific content requirements of 543.6.

The antitheft device to be installed on the MY 2007 Suzuki XL–7 is the PASS-Key III+. Suzuki stated that the PASS-Key III+ device is designed to be active at all times without direct intervention by the vehicle operator. The system is fully armed immediately after the ignition has been turned off and the key removed. The system will provide protection against unauthorized starting and fueling of the vehicle engine. Components of the antitheft device include a special ignition key and decoder module. Before the vehicle can be operated, the key's electrical code must be sensed and properly decoded by the PASS-Key III+ control module. The electronics molded into the ignition key head receive energy and data from the control module. Upon receipt of the data, the key will calculate a response to the data and transmit the response back to the vehicle. The controller module translates the radio frequency signal received from the key into a digital signal and compares the received response to an internally calculated value. If the values match, the key is recognized as valid and the vehicle can be operated.

In addressing the specific content requirements of 543.6, Suzuki provided information on the reliability and durability of the proposed device. To ensure reliability and durability of the device, Suzuki conducted tests based on its own specified standards. Suzuki provided a detailed list of the tests conducted on the components of its immobilizer device and believes that the device is reliable and durable since it complied with the specified requirements for each test. Specifically, Suzuki stated that the components of the device were tested and met compliance in climatic, mechanical and chemical environments, and immunity to various electromagnetic radiations.

Suzuki indicated that the theft rates, as reported by the Federal Bureau of Investigation's National Crime Information Center, are lower for Suzuki models equipped with the ''PASS-Key''-like systems which have exemptions from the parts-marking requirements of 49 CFR part 541, than the theft rates for earlier, similarly-constructed models which were parts-marked. Based on the performance of the PASS-Key, PASS-Key II, and PASS-Key III systems on other Suzuki models, and the advanced technology utilized in PASS-Key III+, Suzuki believes that the PASS-Key III+ will be more effective in deterring theft than the parts-marking requirements of 49 CFR part 541.

Suzuki stated that although its antitheft device provides protection against unauthorized starting and fueling of the vehicle, it does not provide any visible or audible indication of unauthorized entry by means of flashing vehicle lights or sounding of the horn. Since the system is fully operational once the vehicle has been turned off, specific visible or audible reminders beyond key removal reminders have not been provided. Suzuki also stated that the PASS-Key III+ device to be used on the XL–7 vehicle line is the same theft deterrent system used on motor vehicles produced by General Motors Corporation. Based on a comparison of the reduction in the theft rates of Chevrolet Corvettes using a passive theft deterrent device along with an audible and visual alarm system to the reduction in theft rates for the Chevrolet Camaro and Pontiac Firebird vehicles equipped with a passive theft deterrent device without an alarm, GM found that the lack of an alarm or attention attracting device does not compromise the theft deterrent performance of a system such as PASS-Key III+.

On the basis of this comparison, Suzuki has concluded that the antitheft device proposed for its XL–7 vehicle line is no less effective than those devices installed in the lines for which NHTSA has already granted full exemption from the parts-marking requirements.

Based on the evidence submitted by Suzuki, the agency believes that the antitheft device for the XL–7 vehicle

line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a)(4) and (5), the agency finds that Suzuki has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Suzuki provided about its device.

For the foregoing reasons, the agency hereby grants in full Suzuki's petition for exemption for the XL–7 vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR 543.7(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts marking requirements of the Theft Prevention Standard.

If Suzuki decides not to use the exemption for this line, it should formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Suzuki wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: March 7, 2006.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E6–3533 Filed 3–10–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34284]

Southwest Gulf Railroad Company—Construction and Operation Exemption—Medina County, TX

AGENCY: Surface Transportation Board, Transportation.

ACTION: Notice of intent to prepare a Supplemental Draft Environmental Impact Statement.

SUMMARY: This Notice discusses the environmental review process conducted thus far for this proceeding and the basis for determining that a Supplemental Draft Environmental Impact Statement is needed; the scope of the Supplemental Draft Environmental Impact Statement; and the remaining steps necessary to conclude the environmental review process.

FOR FURTHER INFORMATION CONTACT: Ms. Rini Ghosh, Section of Environmental Analysis, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001, or by phone at (202) 565–1539. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. The Web site for the Surface Transportation Board is *http://www.stb.dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

On February 27, 2003, Southwest Gulf Railroad Company (SGR) filed a petition with the Surface Transportation Board (Board) pursuant to 49 U.S.C. 10502 for authority to construct and operate a new rail line in Medina County, Texas. The proposal involves the construction and operation of approximately seven miles of new rail line from a Vulcan Construction Materials, LP (VCM) proposed limestone quarry to the Union Pacific Railroad Company rail line near Dunlay, Texas. The Board's Section of Environmental Analysis (SEA) issued a Draft Environmental Impact Statement (Draft EIS) on November 5, 2004, for public review and comment. The Draft EIS evaluated the potential environmental impacts that could result from SGR's proposed rail line construction and operation, four alternatives to SGR's proposed rail line (including the No-Action Alternative) and recommended mitigation that could be undertaken to reduce the potential impacts identified.

In response to the Draft EIS, SEA has received approximately 120 written comment letters to date,[1] as well as 75 oral comments submitted at two public meetings held in Hondo, Texas, on December 2, 2004 (SEA has considered each time a commenter spoke as one comment, even though several commenters spoke multiple times).

SEA has carefully reviewed all comments received, as well as additional information about the project proposal submitted by SGR, and has decided to prepare a concise Supplemental Draft EIS (SDEIS) that focuses on three specific matters. The SDEIS will contain a discussion of the following: (1) Evaluation of three alternative rail routes that were not studied in detail in the Draft EIS and a comparison of these three alternative routes to the four rail routes previously studied in the Draft EIS; (2) a discussion of the progress of additional historic property identification efforts; (3) and the additional noise analysis that SEA will perform, based on updated operational data (that trains may operate during nighttime hours) provided by SGR. Below, we discuss the following: (1) The environmental review process for this proceeding thus far and the rationale for determining that a SDEIS is needed; (2) the scope of the SDEIS; and (3) the remaining steps in the environmental review process.

[1] Although the official deadline for submitting comments was January 10, 2006, SEA has continued to receive comment letters that were postmarked after that date. In the interests of providing all parties with ample opportunity to participate in the environmental review process, SEA is considering all comments received to date. These comments have been placed in the public record for this proceeding and are available in the Environmental Correspondence section of the Board's Web site at *http://www.stb.dot.gov*.

Background of the Environmental Review Process to Date

Under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA), the Board must consider the environmental impacts of actions requiring Board authorization and complete its environmental review before making a final decision on a proposed action. SEA is the office within the Board that carries out the Board's responsibilities under NEPA and related environmental laws and regulations, including the Council on Environmental Quality's (CEQ) regulations for implementing NEPA at 40 CFR part 1500, the Board's environmental regulations at 49 CFR part 1105, and the National Historic Preservation Act (NHPA) of 1966, as amended, 16 U.S.C. 470.

SEA began the environmental review of SGR's proposal by consulting with appropriate Federal, state, and local agencies, as well as with SGR, and conducting technical surveys and analyses. Due to substantial early public interest in SGR's proposal, SEA conducted an informational Open House in Hondo, Texas, on June 12, 2003, and received over 100 comment letters in response to the Open House, which raised concerns regarding potential environmental impacts.

SEA reviewed the comments received and continued to conduct technical studies, which included the identification of historic properties in the project area. SEA also initiated consultation with the Texas Historic Commission (THC), in accordance with the regulations implementing Section 106 of NHPA at 36 CFR part 800 and identified several consulting parties to the Section 106 process.

On October 10, 2003, SEA issued a Preliminary Cultural Resources Assessment report to the then-identified Section 106 consulting parties for review and comment. The report summarized the historic properties identified in the project area, which included a potential historic district, and set forth SEA's preliminary conclusions and recommendations regarding the cultural resources in the proposed project area. The THC, the consulting parties, and other individuals submitted comment letters in response to the report.[2]

Based on the nature and content of the numerous public and agency comments received, SEA determined that the effects of the proposed project on the quality of the human environment are likely to be highly controversial, and that thus, pursuant to 40 CFR 1508.27(b)(4), preparation of an EIS would be appropriate. On January 28, 2004, SEA issued a Notice of Intent to Prepare an EIS and Draft Scope of Study for the EIS (Draft Scope) for public review and comment. SEA received approximately 100 comment letters in response to the Draft Scope. SEA reviewed and carefully considered the comments in preparing the Final Scope of Study for the EIS (Final Scope), which was issued on May 7, 2004. SEA then continued to conduct appropriate studies and analyses for the environmental review of SGR's proposed project.

Additional cultural resources identification efforts were conducted. Through these efforts, SEA identified a potential rural historic landscape in the project area. In consultation with the THC and SGR, SEA developed a draft Programmatic Agreement to mitigate potential effects on cultural resources in the area, which SEA included in the Draft EIS for public review and comment.

As stated above, SEA issued the Draft EIS for public review and comment on November 5, 2004. In the Draft EIS, SEA evaluated the environmental effects of the proposed rail line construction and operation for the following impact categories, as identified in the Final Scope: Transportation and traffic safety; public health and worker health and safety; water resources; biological resources; air quality; geology and soils (including karst features); land use; environmental justice; noise; vibration; recreation and visual resources; cultural resources; and socioeconomics. SEA also studied the potential cumulative effects and indirect effects that could be caused by the proposed project. The alternatives that SEA studied in depth included four potential rail alignments (the Proposed Route, Alternative 1, Alternative 2, and Alternative 3) and the No-Action Alternative (which SEA defined as the use of trucks to transport limestone from VCM's quarry to the UP rail line, based on SGR's statements that VCM would transport the material by truck if SGR's rail line were not built).[3]

While some of the commenters to the Draft EIS expressed support for SGR's proposed project, the majority of the commenters expressed opposition to the project and raised concerns about the Draft EIS. The comments covered the following topics:

- Allegations that the Draft EIS is inadequate and requests for an SDEIS to be prepared.
- General statements of opposition or support for the project.
- Concerns regarding potential air quality impacts.
- Requests that other alternative rail routes be studied (specifically, that an alignment that uses part of the old Medina Dam rail route in the area would be reasonable and feasible).
- Allegations that use of trucks to transport limestone from the quarry to the UP rail line would not be feasible, and that thus, SEA has improperly defined the No-Action Alternative.
- Concerns regarding potential impacts to water and water-associated resources (such as the Edwards Aquifer, floodplains and flooding impacts, groundwater, the Medina Lake Dam, stream crossings, surface waters, water supplies, wells, and wetlands).
- Concerns regarding potential impacts to biological resources in the area.
- Questions regarding how SGR could be considered a common carrier and questions about condemnation of private properties.
- Concerns regarding potential impacts to cultural resources.
- Concerns regarding potential cumulative impacts (i.e. combined impacts from SGR's rail line construction and operation and other projects in the area).
- Concerns about the potential impacts to pipelines in the area.
- Concerns about indirect impacts (i.e. impacts that would be caused by the proposed rail line construction and operation but that would be felt later in time or beyond the proposed project area).
- Concerns about impacts to karst features.
- Concerns about impacts to existing land uses.
- Requests to consider VCM's quarry and SGR's rail line as connected actions (i.e. as combined components of one overall proposed action).
- Questions regarding SGR's plans to maintain the rail line and the rail line right-of-way.
- Requests for more-detailed maps and graphics.
- Requests for additional mitigation.
- Concerns about potential noise impacts.
- Questions regarding the details of SGR's proposed train operations.
- Requests for more detailed information about the construction and engineering of the proposed rail line.
- Allegations that SEA has not been sufficiently responsive to the public.

[2] The report was also made publicly available by posting on the Board's Web site.

[3] In prior documents, SEA did not capitalize the terms Proposed Route and No-Action Alternative. For the sake of clarity and to establish uniformity with the other alternatives being discussed in this proceeding, SEA has decided to capitalize these terms in this and future documents.

• Questions regarding the purpose and need for SGR's proposed project.
• Concerns regarding potential impacts to recreational and visual resources.
• Concerns regarding potential at-grade crossings and potential safety impacts.
• Concerns regarding potential socioeconomic impacts.
• Concerns regarding potential impacts to prime farmland soils.
• Concerns regarding impacts to local traffic and transportation.
• Concerns regarding impacts from an increase in truck traffic on area roadways.
• Concerns about potential vibration impacts.
• Allegations that SEA's field studies and methodology were inadequate.

The comments received included those from some of the Section 106 consulting parties regarding the results of the cultural resources analysis in the Draft EIS. Particular concern was expressed by the THC and the Advisory Council on Historic Preservation regarding the need to further identify the potential rural historic landscape that had been discussed in the Draft EIS and to look at additional rail alternatives that could potentially avoid historic properties near Quihi, Texas. As a result of these consultations, SEA determined that a separate study of the rural historic landscape was warranted. The study is currently ongoing.

In order to respond to and to better assess all the comments to the Draft EIS, SEA requested and received additional information from SGR.[4] In particular, SEA requested information regarding how SGR had developed the four potential rail alignment routes that SEA studied in depth in the Draft EIS (the Proposed Route, Alternative 1, Alternative 2, and Alternative 3) and whether SGR had studied the feasibility of rail routes that are farther to the west or farther to the east of those four alignments and that could potentially bypass the Quihi area.

The Development of Rail Line Alternatives. In response to SEA's request, SGR submitted information stating that initially 15 potential rail alignments had been considered, all of which were in the same general area as the four alignments considered in depth in the Draft EIS. According to SGR, these 15 alignments consisted of eight basic alignments and seven variations of those alignments. SGR explained that it had screened the alignments by using specific criteria including: Avoidance of wetlands; topography (avoidance of grades in excess of 1%); avoidance of curves in excess of 4 degrees near the ends of the line and 3 degrees near the central part of the line; limiting the number of properties required to be crossed; and minimization of the number of properties that might have to be bisected. According to SGR, apart from the Proposed Route, Alternative 1, Alternative 2, and Alternative 3, none of the other initial routes fully satisfied these screening criteria.

SGR also asserted that other alternative alignments further to the east or to the west of the routes studied in depth in the Draft EIS, essentially bypassing the Quihi area, would not be reasonable or feasible. According to SGR, among other problems, a western bypass route would traverse areas containing a large number of historic resources and would also cross more floodplain than any of the four routes studied in depth in the Draft EIS.

As for an eastern bypass route, SGR stated that any such route would require a degree of cut and fill that would be much greater than the four routes studied in depth in the Draft EIS, making such a route infeasible. Nevertheless, in order to address the feasibility of an eastern bypass route, and to respond to SEA's specific questions regarding the determination of cut and fill volumes, SGR developed two eastern alignments (the Eastern Bypass Route and SGR's Modified Medina Dam Route) and provided SEA with a study of the cut and fill calculations for these two routes as compared to the Proposed Route, Alternative 1, Alternative 2, and Alternative 3.

One of these routes, SGR's Modified Medina Dam Route, had initially been developed prior to issuance of the Draft EIS. The Medina County Environmental Action Association (MCEAA), as well as several other parties, had submitted comments in response to the Draft Scope suggesting as an alternative rail alignment one that used a portion of railroad right-of-way utilized to facilitate the construction of the Medina Dam in the early 1900s. According to MCEAA, such an alignment would cause fewer potential environmental impacts than the Proposed Route, Alternative 1, Alternative 2, or Alternative 3. In particular, MCEAA asserted that a route using a portion or portions of the old Medina Dam route would traverse less floodplain and impact fewer historic resources than the Proposed Route, Alternative 1, Alternative 2, or Alternative 3.

In response to MCEAA's comments, SGR had submitted information stating that it had assessed several variations that would utilize part of the old Medina Dam route and connect the UP rail line to VCM's proposed quarry, including SGR's Modified Medina Dam Route. SGR stated at the time that none of these routes would be reasonable and feasible, due to the amount of cut and fill that would be needed.

As discussed in the Draft EIS, SEA independently evaluated the information provided by SGR regarding potential routes that could use portions of the old Medina Dam route. Based on the information then available, SEA concurred that no routes using the old Medina Dam route appeared to be reasonable and feasible.

The cut and fill calculations submitted by SGR subsequent to issuance of the Draft EIS and SEA's preliminary review of that information supports SEA's initial conclusion that a rail route that traverses the area to the east of the alignments considered in depth in the Draft EIS would require greater amounts of cut and fill to build.

However, MCEAA has submitted comments challenging the accuracy of the cut and fill calculations prepared by SGR and suggests that another alternative rail route that would use a portion of the old Medina Dam route should now be studied. According to MCEAA, this other alternative (the MCEAA Medina Dam Alternative), is a reasonable and feasible alternative that could require less cut and fill than the eastern routes developed by SGR. MCEAA also alleges that the grading and design considerations used by SGR to determine cut and fill volumes may not be appropriate.

Due to the controversy surrounding the cut and fill volumes here, SEA now believes that, in this proceeding, cut and fill volumes alone should not be a basis for excluding a potential rail route from being considered reasonable and feasible. While cut and fill volumes may be important in distinguishing between routes or in determining which route is ultimately environmentally preferable, SEA will not rely solely on cut and fill volumes to eliminate a potential route from detailed study in this proceeding.

The Reasonable Range of Rail Line Alternatives for this Environmental Review Process. As discussed in the Draft EIS, as part of the environmental review process required by NEPA, an agency must evaluate all reasonable alternatives and the no-action alternative, and briefly discuss reasons for eliminating any unreasonable

[4] SEA's requests for information and SGR's responses can be found in the Environmental Correspondence section of the public docket for this proceeding and are also available on the Board's Web site.

alternatives from further consideration.[5] The reasonable alternatives considered in detail, including the proposed action, should be analyzed in enough depth for reviewers to evaluate their comparative merits.[6] The goals of an action delimit the universe of the action's reasonable alternatives.[7] The objectives must not be defined so narrowly that all alternatives are effectively foreclosed, nor should they be defined so broadly that an ''infinite number'' of alternatives might further the goals and the project would ''collapse under the weight'' of the resulting analysis.[8] A reasonable range of alternatives need not include all possible alternatives as long as examples from a full spectrum of alternatives are covered.[9]

The primary purpose of SGR's proposed rail line construction and operation is to transport limestone from VCM's quarry to the UP rail line for shipments to markets in eastern Texas. Thus, in order to serve this purpose, a reasonable and feasible rail alignment would need to connect to the proposed rail loading track at the quarry site and to the existing UP rail line in a manner that would enable outbound shipments from the quarry to travel east.[10]

As discussed in the Draft EIS, SEA has already conducted an in-depth analysis of four potential rail alignments (Proposed Route, Alternative 1, Alternative 2, and Alternative 3) that would meet SGR's stated purpose. With several reasonable and feasible rail line alternatives in existence, there is no need at this point to study alternative routes that would clearly have the potential for causing greater environmental impacts. Thus, any alignment that is less environmentally preferable than the four routes identified above would not be reasonable and feasible. Moreover, due to the potential impacts to transportation and traffic safety that would be associated with constructing a grade separated crossing of U.S. Highway 90,[11] a reasonable and feasible rail line alternative would need to connect to the UP rail line north of U.S. Highway 90. Also, because of the associated increase in potential environmental impacts from an increase in the length of the rail line (air quality impacts; transportation and traffic safety impacts; land use impacts; and impacts to biological resources), an alignment that would be significantly longer than the reasonable and feasible alternatives already studied need not be developed.

Based on all information to date, and the above-discussed criteria, SEA determines that the full spectrum of alternative rail routes for this proceeding should include the following: (1) Rail alignments that traverse directly through the Quihi area (the central corridor); (2) rail alignments that bypass the Quihi area to the east (eastern corridor); (3) and rail alignments that bypass the Quihi area to the west (western corridor). The four alternative rail routes studied in depth in the Draft EIS constitute a reasonable range of alternatives for the central corridor and no further routes in this corridor need to be studied. SGR's Modified Medina Dam Route, the Eastern Bypass Route, and the MCEAA Medina Dam Alternative constitute a reasonable range of alternatives for the eastern corridor.[12] Furthermore, any western bypass route that is not significantly longer than the four routes studied in the Draft EIS would pass through more floodplain area and would impact a large number of historic resources (including historic resources in the New Fountain, Texas area).[13] Therefore, any such route would be less environmentally preferable than the four routes studied in depth in the Draft EIS and SEA is excluding any such route (though no such route has been developed to date) from further consideration.

In short, SEA believes that there are currently three alternative rail routes that have been developed in this proceeding (SGR's Modified Medina Dam Route, the Eastern Bypass Route, and the MCEAA Medina Dam Alternative) that are potentially reasonable and feasible but have not yet been studied in depth. These alternatives warrant study in a supplemental EIS.[14] Therefore, SEA will issue for public review and comment an SDEIS studying these three routes. The attached Figure 1 is a map showing the three additional routes to be studied in the SDEIS, as well as the four rail routes assessed in depth in the Draft EIS (Proposed Route, Alternative 1, Alternative 2, and Alternative 3) and the old Medina Dam route (included for reference). No other alternative rail alignments will be studied in the SDEIS.

Scope of the Supplemental Draft Environmental Impact Statement

The primary purpose of the SDEIS will be to provide the public with an opportunity to review and comment on SEA's analysis of SGR's Modified Medina Dam Route, the Eastern Bypass Route, and the MCEAA Medina Dam Alternative. Thus, the SDEIS will be a focused document, containing an appropriate analysis of these three alternative rail routes and a comparison to the four routes previously studied in detail. The SDEIS will also contain a discussion of the rural historic landscape study, which SEA is currently conducting to assess historic resources in the project area, and a discussion of additional noise analysis that SEA will be performing, based on updated operational data (that trains may operate during nighttime hours) recently provided by SGR.

While comments to the Draft EIS have requested that a SDEIS be prepared to address other issues, SEA believes that the majority of the comments to the Draft EIS can be appropriately responded to in the Final EIS, which will be issued after the conclusion of the comment period in the SDEIS (see below for more detail) and no additional public review and comment is required prior to responding to these comments

[5] 42 U.S.C. 4332(2)(c)(iii).

[6] *See* 40 CFR 1502.14.

[7] *Citizens Against Burlington* v. *Busey*, 938 F.2d 190, 195 (D.C. Cir. 1990).

[8] *Id.* at 196. *See also Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 Fed. Reg. 18026 (1981) (*Forty Questions*), Question 1.

[9] *See Forty Questions*, Question 1.

[10] *See* SGR's Petition for Exemption filed with the Board on February 27, 2003 and letter from SGR to SEA dated May 4, 2004 (Environmental Correspondence Traking Number #EI–793).

[11] According to the Texas Department of Transportation's San Antonio District Highway Map for 2004 (2004 Map), the annual Average Daily Traffic (ADT) for U.S. Highway 90 between Castroville, Texas and Dunlay, Texas was 12,900 vehicles and the ADT for U.S. Highway 90 in Hondo, Texas was 16,400 vehicles. Thus, at a minimum, construction of a grade separated crossing of U.S. Highway 90 would cause traffic flow disruptions much greater than construction of the four routes studied in depth in the Draft EIS. Farm to Market Road 2676, the one state road that would be crossed by the Proposed Route, Alternative 1, Alternative 2, or Alternative 3, had an ADT of between 660 vehicles to 1050 vehicles in the project area, according to the 2004 Map.

[12] MCEAA has asserted that the other deviations that SGR initially studied for an alignment that would use part of the old Medina Dam route as well as the original Medina Dam route itself need to be studied further (*see* letter from MCEAA to SEA, dated October 5, 2005, Environmental Correspondence Tracking Number #EI–1698). However, MCEAA has not shown that SGR's Modified Medina Dam Route, the Eastern Bypass Route, and the MCEAA Median Dam Alternative do not constitute a reasonable range of routes in the eastern corridor. Moreover, the original Medina Dam route on its own would not meet the purpose and need for SGR's rail line, since it does not connect to VCM's proposed quarry.

[13] SEA has not approximated the length that such a route would need to be (because no such route has been developed). However, from a review of the Federal Emergency Management Agency's floodplain map for Medina County, it appears that any western bypass route that would cross a comparable amount of floodplain to the alternative rail routes under consideration would need to connect to the UP rail line many miles to the west of the quarry, which would significantly increase the line's length.

[14] *See* (*Forty Questions*), Question 29b.

in a Final EIS. Commenters need not resubmit the comments they made to the Draft EIS; the Final EIS will contain responses to all comments that have been received to date, as well as comments on the SDEIS.

The CEQ regulations implementing NEPA do not require that formal scoping activities be undertaken to determine the scope of study for a supplement.[15] While the Board's environmental regulations at 49 CFR 1105.10(a)(5) indicate that preparation of a draft scope of study for public review and comment and then a final scope of study that takes into consideration the comments received on the draft scope may be appropriate for a supplemental EIS, because the scope of the SDEIS has been well-defined by the environmental review process to date, such scoping activities need not be undertaken here.

Alternatives considered in detail must be examined in a manner that allows reviewers to compare them equally.[16] Thus, the scope of analysis for SGR's Modified Medina Dam Route, the Eastern Bypass Route, and the MCEAA Medina Dam Alternative in the SDEIS will be the same as the scope of analysis for the alternatives considered in depth in the Draft EIS, as defined by the Final Scope, issued on May 7, 2004. This will include analysis of the following resource areas: Transportation and traffic safety; public health and worker health and safety; water resources; biological resources; air quality; geology and soils (including karst features); land use; environmental justice; noise; vibration; recreation and visual resources; cultural resources; and socioeconomics. The SDEIS will also provide a comparison of the three eastern routes to the rail routes studied in depth in the Draft EIS.

The Remaining Steps in the Environmental Review Process

Upon its completion, the SDEIS will be made available for public and agency review and comment for at least 45 days. After the close of the comment period on the SDEIS, SEA will review all comments. Then SEA will issue a Final EIS that responds to comments on the Draft EIS and the SDEIS, discusses any additional analysis, and presents SEA's final recommendations to the Board. After issuance of the Final EIS, the environmental review process will be completed.

The Board then will issue a final decision in this proceeding. In reaching a final decision either to approve SGR's proposal, to deny SGR's proposal, or to approve SGR's proposal with conditions, the Board will take into consideration the Draft EIS, the SDEIS, the Final EIS, and all environmental comments that are received.

A paper copy of the entire SDEIS will be sent to parties on the Board's official service list for this proceeding, which includes parties of record, Federally-recognized tribes, Federal, state and local agencies, elected officials, representatives of organizations, and Section 106 consulting parties. The SDEIS will also be posted on the Board's website and copies will be made available in libraries in the vicinity of the project area.

SEA is sending a copy of this Notice to all persons on SEA's environmental mailing list, which is a compilation of local area residents and other individuals who have expressed interest in the environmental review process for this proceeding. Individuals on this environmental mailing list who would like to remain on the mailing list and to receive a paper copy or an electronic copy of the SDEIS are requested to complete and return the enclosed postcard. Those individuals who do not return the enclosed postcard will be removed from the environmental mailing list. If you are not now on and would like to be added to SEA's environmental mailing list for this proceeding, please contact Rini Ghosh at (202) 565–1539.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

BILLING CODE 4915–01–P

[15] *See* 40 CFR 1502.9(c)(4) (''Agencies shall prepare, circulate, and file a supplement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council'').

[16] *See* 40 CFR 1502.14(b).

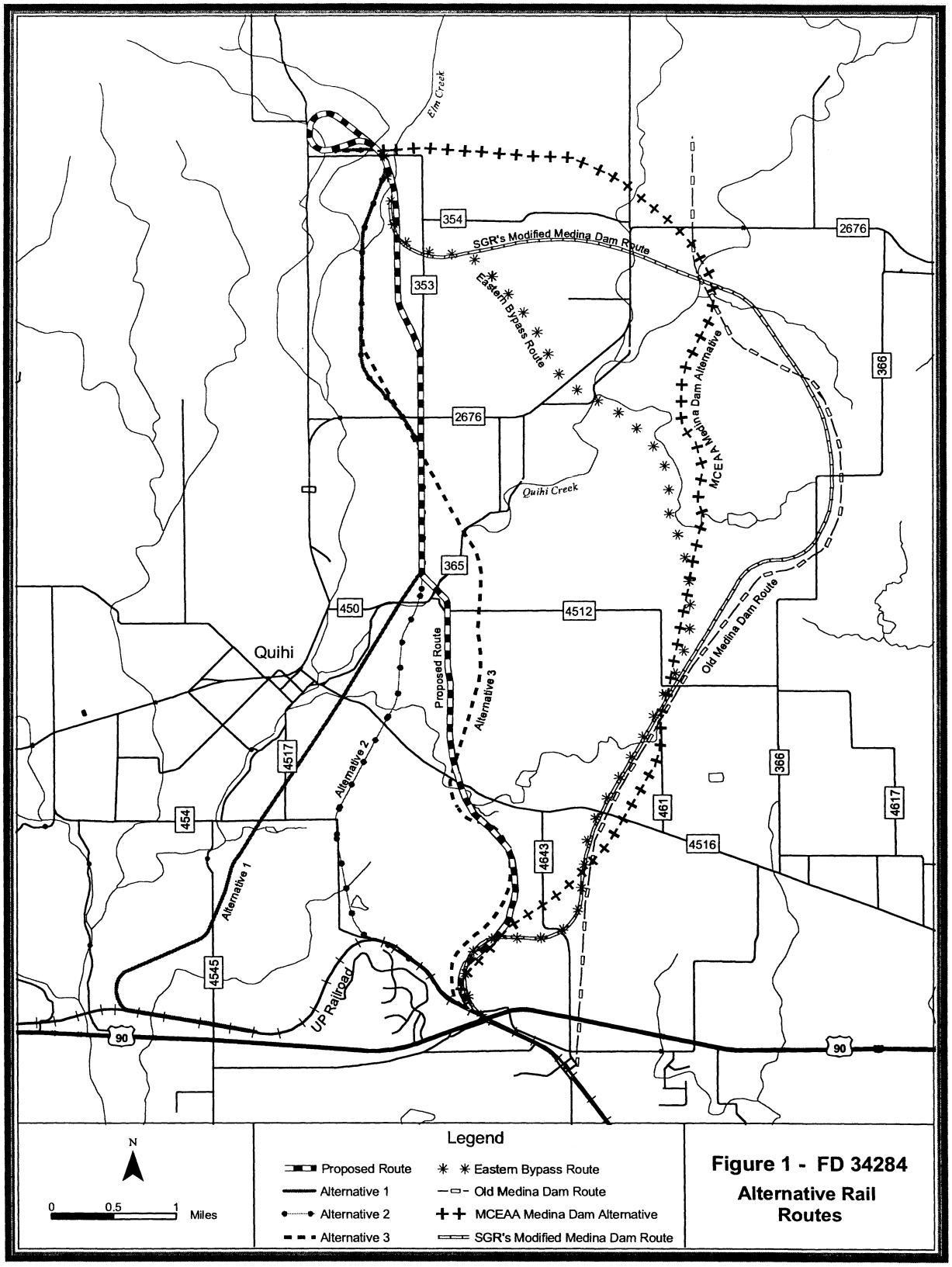

Figure 1 - FD 34284
Alternative Rail Routes

[FR Doc. 06–2391 Filed 3–10–06; 8:45 am]

BILLING CODE 4915–01–C

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 7, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 12, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1952.

Type of Review: Extension.

Title: Automatic Consent for Eligible Educational Institution to Change Reporting Methods.

Description: This revenue procedure prescribes how an eligible educational institution may obtain automatic consent from the Service to change its method of reporting under section 6050S of the Code and the Income Tax Regulations.

Respondents: Not-for-profit institutions.

Estimated Total Burden Hours: 300 hours.

Clearance Officer: Glenn P. Kirkland (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–3511 Filed 3–10–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Amendment—American Fire and Casualty Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 9 to the Treasury Department Circular 570, 2005 Revision, published July 1, 2005, at 70 FR 38502.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6507.

SUPPLEMENTARY INFORMATION: The underwriting limitation for American Fire and Casualty Company, which was listed in the Treasury Department Circular 570, published on July 1, 2005, is hereby amended to read $4,655,000.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2005 Revision, at 70 FR 38505 to reflect this change, effective today.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–05219–0.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: February 8, 2006.

Vivian L. Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 06–2348 Filed 3–10–06; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Amendment—The Insurance Company of the State of Pennsylvania

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 11 to the Treasury Department Circular 570, 2005 Revision, published July 1, 2005, at 70 FR 38502.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–1033.

SUPPLEMENTARY INFORMATION: The underwriting limitation for The Insurance Company of the State of Pennsylvania, which was listed in the Treasury Department Circular 570, published on July 1, 2005, is hereby amended to read $48,248,000.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2005 Revision, at 70 FR 38524 to reflect this change, effective today.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–05219–0.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville MD 20782.

Dated: February 9, 2006.

Vivian L. Cooper,

Director, Financial Accounting and Services Division, Financial Management Services.

[FR Doc. 06–2346 Filed 3–10–06; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Amendment—National Union Fire Insurance Company of Pittsburgh, PA

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplemental No. 12 to the Treasury Department Circular 570, 2005 Revision, published July 1, 2005 at 70 FR 38502.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–1033.

SUPPLEMENTARY INFORMATION: The underwriting limitation for National Union Fire Insurance Company of Pittsburgh, PA, which was listed in the Treasury Department Circular 570,

published on July 1, 2005, is hereby amended to read $566,591,000.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2005 Revision, at 70 FR 38530 to reflect this change, effective today.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–05219–0.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: February 9, 2006.

Vivian L. Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 06–2349 Filed 3–10–06; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Amendment—New Hampshire Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 10 to the Treasury Department Circular 570, 2005 Revision, published July 1, 2005, at 70 FR 38502.

FOR FURTHER INFORMATION CONTACT: Surety Gond Branch at (202) 874–1033.

SUPPLEMENTARY INFORMATION: The underwriting limitation for New Hampshire Insurance Company, which was listed in the Treasury Department Circular 570, published on July 1, 2005, is hereby amended to read $81,037,000.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2005 Revision, at 70 FR 38531 to reflect this change, effective today.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–05219–0.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: February 9, 2006.

Vivian L. Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 06–2347 Filed 3–10–06; 8:45 am]

BILLING CODE 4810–35–M

Federal Register

Monday,
March 13, 2006

Part II

Nuclear Regulatory Commission

10 CFR Parts 1, 2 et al.

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

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 10, 19, 20, 21, 25, 26, 50, 51, 52, 54, 55, 72, 73, 75, 95, 140, 170, and 171

RIN 3150–AG24

Licenses, Certifications, and Approvals for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations by revising the provisions applicable to the licensing and approval processes for nuclear power plants and making necessary conforming amendments throughout the NRC's regulations to enhance the NRC's regulatory effectiveness and efficiency in implementing its licensing and approval processes. The proposed changes would clarify the applicability of various requirements to each of the licensing processes (*i.e.*, early site permit, standard design approval, standard design certification, combined license, and manufacturing license). On July 3, 2003, the NRC published a proposed rulemaking to clarify and correct the NRC's regulations related to nuclear power plant licensing. Upon further consideration, the NRC is now proposing new requirements to enhance its licensing and approval processes and changes throughout the NRC's regulations to support these processes. This proposed rule supersedes the 2003 proposed rule. The Commission believes that this rulemaking action will improve the effectiveness and efficiency of the licensing and approval processes for future applicants.

DATES: Submit comments by May 30, 2006. 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.

The NRC is holding a workshop on March 14, 2006 (see **ADDRESSES** section for the location).

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 Web site to Carol Gallagher 301–415–5905; e-mail *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 a.m. and 4:15 p.m. 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 PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Workshop: The NRC workshop to be held on March 14, 2006, will take place in the Auditorium at the NRC offices at 11545 Rockville Pike, Rockville, Maryland, between 9 a.m. and 4 p.m. Please contact Nanette V. Gilles, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, at telephone 301–415–1180 or e-mail *nvg@nrc.gov* to pre-register for the workshop. Questions may be submitted in writing in advance of the workshop to Ms. Gilles at *nvg@nrc.gov,* or sent by mail to Ms. Gilles at the U.S. Nuclear Regulatory Commission, Mail Stop O–4D9A, Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Nanette V. Gilles, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1180, e-mail *nvg@nrc.gov;* or Jerry N. Wilson, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, telephone 301–415–3145, e-mail *jnw@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Workshop
II. Background
  A. Development of Proposed Rule
  B. Publication of Revised Proposed Rule
III. Reorganization of Part 52 and Conforming Changes in the NRC's Regulations
IV. Discussion of Substantive Changes
  A. Introduction.
  B. Testing Requirements for Advanced Reactors
  C. Proposed Changes to 10 CFR Part 52
  D. Proposed Changes to 10 CFR Part 50
  E. Proposed Change to 10 CFR Part 1
  F. Proposed Changes to 10 CFR Part 2
  G. Proposed Changes to 10 CFR Part 10
  H. Proposed Changes to 10 CFR Part 19
  I. Proposed Changes to 10 CFR Part 20
  J. Proposed Changes to 10 CFR Part 21
  K. Proposed Change to 10 CFR Part 25
  L. Proposed Changes to 10 CFR Part 26
  M. Proposed Changes to 10 CFR Part 51
  N. Proposed Changes to 10 CFR Part 54
  O. Proposed Changes to 10 CFR Part 55
  P. Proposed Changes to 10 CFR Part 72
  Q. Proposed Changes to 10 CFR Part 73
  R. Proposed Change to 10 CFR Part 75
  S. Proposed Changes to 10 CFR Part 95
  T. Proposed Changes to 10 CFR Part 140
  U. Proposed Changes to 10 CFR Part 170
V. Specific Request for Comments
VI. Availability of Documents
VII. Agreement State Compatibility
VIII. Plain Language
IX. Voluntary Consensus Standards
X. Environmental Impact—Categorical Exclusion
XI. Paperwork Reduction Act Statement
XII. Regulatory Analysis
XIII. Regulatory Flexibility Certification
XIV. Backfit Analysis

I. Workshop

The NRC is holding a workshop on March 14, 2006, to provide additional information on the basis for the changes it is proposing in this document, to facilitate public discussion on the proposed rulemaking, and to answer stakeholder questions regarding the proposed rule. Questions may be submitted in writing in advance of the workshop as specified in the **ADDRESSES** section of this document. To facilitate complete and accurate responses to questions, the Commission requests that questions be submitted by March 10, 2006.

Participants may provide informal oral comments during the workshop, but in order to receive a formal response in the final rule, participants must submit comments in writing as

indicated in the **ADDRESSES** section of this document. To aid the public in their development of comments on the proposed rule, the workshop will be transcribed and the transcript will be made available electronically at the NRC rulemaking Web site at *http://ruleforum.llnl.gov.* and at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.*

II. Background

A. Development of Proposed Rule

On July 3, 2003 (68 FR 40026), the NRC published a proposed rulemaking that would clarify and/or correct miscellaneous parts of the NRC's regulations; update 10 CFR part 52 in its entirety; and incorporate stakeholder comments. The NRC is issuing a revised proposed rule that rewrites part 52, makes changes throughout the Commission's regulations to ensure that all licensing processes in part 52 are addressed, and clarifies the applicability of various requirements to each of the processes in part 52 (i.e., early site permit, standard design approval, standard design certification, combined license, and manufacturing license). This proposed rule supersedes the July 3, 2003 proposed rule.

The NRC issued 10 CFR part 52 on April 18, 1989 (54 FR 15372), to reform the NRC's 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 licensing proceedings and were intended to enhance the safety and reliability of nuclear power plants through standardization. Subsequently, the NRC certified four nuclear power plant designs under subpart B of 10 CFR part 52—the U.S. Advanced Boiling Water Reactor (ABWR) (62 FR 25800; May 12, 1997), the System 80+ (62 FR 27840; May 21, 1997), the AP600 (64 FR 72002; December 23, 1999), and the AP1000 (71 FR 4464; January 27, 2006) designs and codified these designs in appendices A, B, C, and D of 10 CFR part 52, respectively.

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.

B. Publication of Revised Proposed Rule

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. First, public comments identified several concerns about whether the proposed rule adequately addressed the relationship between part 50 and part 52, and whether it clearly specified the applicable regulatory requirements for each of the licensing and approval processes in part 52. In addition, as a result of the NRC staff's review of the first three early site permit applications, the staff gained additional insights into the early site permit process. The NRC also had the benefit of public meetings with external stakeholders on NRC staff guidance for the early site permit and combined license processes. 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 has decided to revise the July 2003 proposed rule and publish the revised proposed rule for public comment. As discussed in more detail in Section III, Reorganization of Part 52 and Conforming Changes in the NRC's regulations, this revised proposed rule contains a rewrite of part 52, as well as changes throughout the NRC's regulations, to ensure that all licensing and approval processes in part 52 are addressed, and to clarify the applicability of various requirements to each of the processes in part 52 (i.e., early site permit, standard design approval, standard design certification, combined license, and manufacturing license). In light of the substantial rewrite of the July 2003 proposed rule, the expansion of the scope of the rulemaking, and the NRC's decision to publish the revised proposed rule for public comment, the NRC has decided that developing responses to comments received on the July 2003 proposed rule is not an effective use of agency resources. The NRC requests that commenters on the July 2003 proposed rule who believe that their earlier comments are not adequately addressed in this proposed rule resubmit their comments. The NRC will provide resolutions for comments received on the revised proposed rule in the statement of considerations for the final rule. The NRC will not be providing a comment resolution for all of the comments received on the original July 2003 proposed rule.

III. Reorganization of Part 52 and Conforming Changes in the NRC's Regulations

Since the NRC first adopted 10 CFR part 52 in 1989, the NRC and its external stakeholders have identified a number of interrelated issues and concerns. One significant concern is that the overall regulatory relationship between part 50 and part 52 is not always clear. It is often difficult to tell whether general regulatory provisions in part 50 apply to part 52. One example is whether the absence of an exemption provision in part 52 denotes the NRC's determination that exemptions from part 52 requirements are not available, or that these exemptions are controlled by § 50.12. A related problem is the current lack of specific delineation of the applicability of NRC requirements throughout 10 CFR Chapter 1 to the licensing and approval processes in part 52. For example, the indemnity and insurance provisions in part 140 were not revised to address their applicability to applicants for and holders of combined licenses under part C of part 52. Even where part 52 provisions referenced specific requirements in part 50, it was not always clear from the language of the part 50 requirement how that requirement applied to the part 52 processes. For example, § 52.47(a)(1)(i) provides that a standard design certification application must contain the ''technical information which is required of applicants for construction permits and operating licenses by 10 CFR * * * part 50 * * * and which is technically relevant to the design and not site-specific.''

The language does not explicitly identify the part 50 requirements that are ''technically relevant to the design.'' Even where a specific regulation in part 50 is identified as a requirement, the language of the referenced regulation itself was not changed to reflect the specific requirements as applied to the part 52 processes. For example, § 52.79(b) provides that the application must contain the ''technically relevant information required of applicants for an operating license required by 10 CFR 50.34.'' Other than the fact that this

language shares the problem discussed earlier of what constitutes a ''technically relevant'' requirement, § 50.34(b) is based upon the two-step licensing process whereby certain important information is submitted at the construction permit stage, and then supplemented with more detailed information at the operating license stage. Thus, it could be asserted that certain information that must be submitted in the construction permit application, e.g., the ''principal design criteria for the facility'' required by § 50.34(a)(3)(i), may be regarded as not required to be submitted for a combined license application under the current version of part 52.

Another potential source of confusion is that the different subparts of part 52 and the appendices on standard design approvals and manufacturing licenses are not organized using the same format of individual sections (e.g., ''Scope of subpart,'' followed by ''Relationship to other subparts,'' followed by ''Filing of application''). Moreover, the organization and textual content of identically-titled sections differs among the subparts, and with appendices M, N, O, and Q, which establish additional licensing and approval processes. While these differences do not constitute an insurmountable problem to their use and application, it became apparent to the Commission that adoption of a common format, organization, and textual content would enhance the user experience and result in increased regulatory effectiveness and efficiency.

In the 2003 proposed rule, the NRC proposed several changes that were intended to address some (but not all) of these issues. However, based upon comments received on the 2003 proposed rule, the NRC's experience to date with early site permit applications, interactions with external stakeholders concerning NRC guidance for combined license applications, and NRC's screening of 10 CFR Chapter 1 requirements following the receipt of public comments on the 2003 proposed rule, the NRC concludes that the 2003 proposed rule would not adequately address and resolve these issues.

Accordingly, the NRC now proposes to take a more comprehensive approach to addressing these issues by reorganizing part 52, implementing a uniform format and content for each of the subparts in part 52, using consistent wording and organization of sections in each of the subparts, and making conforming changes throughout 10 CFR Chapter 1 to reflect the licensing and approval processes in part 52. The NRC has also attempted to coordinate and reconcile differences in wording among provisions in parts 2, 50, 51, and 52 to provide consistent terminology throughout all of the regulations affecting part 52. Under the NRC's proposed reorganization of part 52, the existing appendices O and M on standard design approvals and manufacturing licenses, respectively, would be redesignated as new subparts in part 52. Redesignating these appendices as subparts in part 52 would result in a consistent format and organization of the requirements applicable to each of the licensing and approval processes. In addition, the redesignation would clarify that each of the licensing and approval processes in these appendices are available to potential applicants as an alternative to the processes in part 50 (construction permit and operating license) and the existing subparts A through C of part 52. The Commission does not, by virtue of the proposed redesignation, either favor or disfavor the processes in the current appendices M and O. Rather, the Commission is simply attempting to standardize the format and organization of part 52, and to clarify the full range of alternatives that are available under part 52 for use by potential applicants. Consistent with the broad scope of part 52, the NRC proposes to retitle 10 CFR part 52 as ''Licenses, Certifications, and Approvals for Nuclear Power Plants.''

The NRC also proposes to reorganize and expand the scope of the administrative and general regulatory provisions that precede the part 52 subparts by adding new sections on written communications (analogous to § 50.4), employee protection (analogous to § 50.7), completeness and accuracy of information (analogous to § 50.9), exemptions (analogous to § 50.12), combining licenses (analogous to § 50.52), jurisdictional limits (analogous to § 50.53), and attacks and destructive acts (analogous to § 50.13). In general, the NRC believes that adding the new sections to part 52 rather than revising the comparable sections in part 50 is more consistent with the general format and content of the Commission's regulations in each of the parts of 10 CFR.

Appendix N, which addresses duplicate design licenses, would be removed from part 52 and would be retained in part 50 because the duplicate design license is a part 50 operating license. Appendix Q, which addresses early staff review of site suitability issues, would also be removed from part 52 but retained in part 50. Appendix Q provides for NRC staff issuance of a staff site report on site suitability issues with respect to a specific site for which a potential applicant seeks the NRC staff's views. The staff site report is issued after receiving and considering the comments of Federal, State, and local agencies and interested persons, as well as the views of the Advisory Committee on Reactor Safeguards (ACRS), but only if site safety issues are raised. The staff site report does not bind the Commission or a presiding officer in any hearing under part 2. This process is separate from the early site permit process in subpart A of part 52. The NRC recognizes that there appears to be some redundancy between the early review of site suitability issues and the early site permit process. Accordingly, the NRC proposes to remove appendix Q from part 52 and retain it only in part 50.

Inasmuch as the NRC may, in the future, adopt other regulatory processes for nuclear power plants, the NRC proposes to reserve several subparts in part 52 to accommodate additional licensing processes that may be adopted by the NRC. The NRC used a standard format and content for revising the regulations in the existing subparts and developing the new subparts that address the current appendices M and O. The standard format and content was modeled on the existing organization and content of subparts A and C.

Perhaps most importantly, the NRC has reviewed the existing regulations in 10 CFR Chapter 1 to determine if the existing regulations must be modified to reflect the licensing and approval processes in part 52. First, the NRC determined whether an existing regulatory provision must, by virtue of a statutory requirement or regulatory necessity, be extended to address a part 52 process, and, if so, how the regulatory provision should apply. Second, in situations where the NRC has some discretion, the NRC determined whether there were policy or regulatory reasons to extend the existing regulations to each of the part 52 processes. Most of the NRC's proposed conforming changes occur in 10 CFR part 50. In making conforming changes involving 10 CFR part 50 provisions, the NRC has adopted the general principle of keeping the technical requirements in 10 CFR part 50 and maintaining all applicable procedural requirements in part 52. However, due to the complexity of some provisions in 10 CFR part 50 (*e.g.*, § 50.34), this principle could not be universally followed. A description of, and bases for, the proposed conforming changes for each affected part follows.

The NRC has prepared the following table that cross-references the proposed reorganized provisions of part 52 with the current requirements in part 52:

TABLE 1.—CROSS-REFERENCES BETWEEN PROPOSED 10 CFR PART 52 AND EXISTING REQUIREMENTS

Proposed rule	Existing requirements
General Provisions	
52.0	52.1
52.1	52.3
52.2	52.5
52.3	None
52.4	52.9
52.5	None
52.6	None
52.7	None
52.8	None
52.9	None
52.10	None
52.11	52.8
Subpart A—Early Site Permits	
52.12	52.11
52.13	52.13
52.15	52.15
52.16	None
52.17	52.17
52.18	52.18
None	52.19
52.21	52.21
52.23	52.23
52.24	52.24
52.25	52.25
52.27	52.27
52.28	None
52.29	52.29
52.31	52.31
52.33	52.33
52.35	52.35
None	52.37
52.39	52.39
Subpart B—Standard Design Certifications	
52.41	52.41 and 52.45
52.43	52.43
52.45	52.45 and 52.49
52.46	None
52.47	52.47
52.48	52.48
52.51	52.51
52.53	52.53
52.54	52.54
52.55	52.55
52.57	52.57
52.59	52.59
52.61	52.61
52.63	52.63
Subpart C—Combined Licenses	
52.71	52.71
52.73	52.73
52.75	52.75
52.77	52.77
None	52.78
52.79/52.80	52.79
52.81	52.81
None	52.83
52.85	52.85
52.87	52.87
52.80	52.89
52.91	52.91
52.93	52.93

TABLE 1.—CROSS-REFERENCES BETWEEN PROPOSED 10 CFR PART 52 AND EXISTING REQUIREMENTS—Continued

Proposed rule	Existing requirements
52.97	52.97
52.98	None
52.99	52.99
52.103	52.103
52.104	None
52.105	None
52.107	None
52.109	None
52.110	None
Subpart D—Reserved	
Subpart E—Standard Design Approvals	
52.131	App. O, Introduction
52.133	None
52.135(a)	App. O, Paragraph 1
52.135(b)	App. O, Paragraph 2
52.135(c)	None
52.136	App. O, Paragraph 3
52.137	App. O, Paragraph 3
52.139	None
52.141	App. O, Paragraph 4
52.143	App. O, Paragraph 5
52.145(a)	App. O, Paragraph 5
52.145(b)	App. O, Paragraph 6
52.145(c)	App. O, Paragraph 7
52.147	None
Subpart F—Manufacturing Licenses	
52.151	App. M, Introduction
52.153(a)	App. M, Paragraph 8
52.153(b)	N/A
52.155	App. M, Paragraphs 2 and 4
52.156	App. M, Paragraph 4
52.157	App. M, Paragraphs 2, 4, 5, 6
52.158	App. M, Paragraph 3
52.159	App. M, Paragraph 1
52.161 [Reserved]	N/A
52.163	App. M, Paragraph 1
52.165	App. M, Paragraph 1
52.167	App. M, Paragraphs 5,6,8, 10
52.169 [Reserved]	N/A
52.171	App. M, Paragraphs 11 and 12
52.173	App. M, Paragraph 6
52.175	None
52.177	None
52.179	None
52.181	None
Subpart G—Reserved	
Subpart H—Enforcement	
52.301	52.111
52.303	52.113

IV. Discussion of Substantive Changes

A. Introduction

The proposed changes in 10 CFR Chapter I are further discussed by part. Proposed changes to parts 52 and 50 are discussed first followed by proposed changes to other parts in numerical order. Within each part, general topics are discussed first, followed by discussion of proposed changes to individual sections as necessary. In addition to the substantive changes, existing rule language was revised to make conforming administrative changes (*e.g.*, identification of regulations containing information collection requirements in § 52.10), correct typographic errors, adopt consistent terminology (e.g., ''makes the finding under § 52.103(g)''), correct grammar, and adopt plain English. These changes are not discussed further.

B. Testing Requirements for Advanced Reactors

This proposed rule would amend §§ 50.43, 52.47(b) (proposed § 52.47(c)), 52.79, and appendix M to part 52 (proposed § 52.157) to achieve consistency in the requirements for testing advanced reactor designs and plants. This amendment would require applicants for a combined license, operating license, or manufacturing license that do not reference a certified advanced reactor design to also perform the design qualification testing required of applicants for design certification under the current § 52.47(b)(2). If a combined license application references a certified design, the qualification testing required by the current § 52.47(b)(2) will have been performed. The codification of testing requirements in § 52.47(b)(2) was a principal issue during the original development of 10 CFR part 52 (see Section II of 54 FR 15372; April 18, 1989). The requirements in § 52.47(b)(2), which demonstrate the performance of new safety features for nuclear power plants that differ significantly from evolutionary light-water reactors or use simplified, inherent, passive, or other innovative means to accomplish their safety functions (advanced reactors), were included in 10 CFR part 52 to ensure that these new safety features will perform as predicted in the applicant's safety analysis report, that the effects of systems interactions are acceptable, and to provide sufficient data to validate analytical codes. The design qualification testing requirements may be met with either separate effects or integral system tests; prototype tests; or a combination of tests, analyses, and operating experience. These requirements implement the Commission's policy on proof-of-performance testing for all advanced reactors (see Policy Statement at 51 FR 24643; July 8, 1986) and the Commission's goal of resolving all safety issues before authorizing construction.

During the development of 10 CFR part 52, the focus of the nuclear industry and the NRC was on applications for design certification. That is why the testing requirements to qualify new or innovative safety features was only included in subpart B of part 52. Furthermore, the tests to qualify a new safety feature are different than verification tests, which are required by the current § 52.79(c) and performed in accordance with Section XI, ''Test Control,'' of appendix B to part 50. Verification tests are used to provide assurance that construction and installation of equipment (as-built) in the facility has been accomplished in accordance with the approved design.

This amendment also proposes, in §§ 50.43(e)(2) and 52.79(a), a requirement for licensing a prototype plant, as defined in proposed §§ 50.2 and 52.1, if it is used to meet the qualification testing requirements in proposed § 50.43(e). New § 50.43(e) states that, if a prototype plant is used to comply with the testing requirements, the NRC may impose additional requirements on siting, safety features, or operational conditions for the prototype plant to compensate for any uncertainties associated with the performance of the new or innovative safety features in the prototype plant. Although the NRC stated that it favors the use of prototypical demonstration facilities and that prototype testing is likely to be required for certification of advanced non-light-water designs (see Policy Statement at 51 FR 24646; July 8, 1986, and Section II of the final rule (54 FR 15372; April 18, 1989) on 10 CFR part 52), this revised proposed rule would not require the use of a prototype plant for qualification testing. Rather, this proposed rule would provide that if a prototype plant is used to qualify an advanced reactor design, then additional requirements may be required for licensing the prototype plant to compensate for any uncertainties with the unproven safety features. Also, the prototype plant could be used for commercial operation. Finally, it would be inconsistent for the NRC to require qualification testing only for design certification applications (paper designs) and not require testing for applications to build and operate an actual nuclear power plant. Therefore, the NRC proposes to amend the current §§ 50.43, 52.47(b), 52.79, and appendix M to part 52 to implement its intent in adopting part 52 and its policy on advanced reactors that it is necessary to demonstrate the performance of new or innovative safety features through design qualification testing for all advanced nuclear reactor designs or plants (including reactors manufactured under a manufacturing license).

C. Proposed Changes to 10 CFR Part 52

1. Use of Terms: Site characteristics, Site parameters, Design characteristics, and Design parameters in §§ 52.1, 52.17, 52.24, 52.39, 52.47, 52.54, 52.79, 52.93, 52.157, 52.158, 52.167, 52.171, and Appendices A, B, and C

The NRC believes that 10 CFR part 52 should be modified to clarify the use of the terms, *site characteristics, site parameters, design characteristics,* and *design parameters,* to present the NRC's requirements governing applications for and issuance of early site permits, design approvals, design certifications, combined licenses, and manufacturing licenses in clear and unambiguous terms. The proposed rule adds or revises these terms where necessary to reflect this clarification. Corresponding changes are made to §§ 52.17, 52.24, 52.39, 52.47, 52.54, 52.79, 52.93, 52.157, 52.158, 52.167, 52.171, and Section III.E of appendices A, B, and C to part 52.

The NRC is also proposing to add definitions of the terms *design characteristics, design parameters, site characteristics,* and *site parameters* to § 52.1 to clarify the use of these terms. *Design characteristics* are defined as 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 defined as 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. *Site characteristics* are defined as 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 defined as 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.

In addition, the NRC has revised § 52.79 to include a requirement that a combined license application referencing a certified design must contain information sufficient to demonstrate that the design of the facility falls within the site characteristics and design parameters specified in the early site permit. Section 52.79 already contains a requirement that a combined license application referencing an early site permit contain information sufficient to demonstrate that the design of the facility falls within the parameters specified in the early site permit. The NRC interprets *parameters* in this case to mean the site characteristics and design parameters as defined in proposed § 52.1. The NRC proposes similar changes to §§ 52.39 and 52.93. The need for these changes became evident during NRC's review of the pilot early site permit applications. Because the NRC is relying on certain design parameters specified in the early site permit applications to reach its conclusions on site suitability, these design parameters will be included in any early site permit issued. The NRC believes that these changes, in the aggregate, will provide sufficient clarification on the use of the terms in question.

As the NRC completes its review of the first early site permit applications and prepares for the submittal of the first combined license application, it is focusing on the interaction among the early site permit, design certification, and combined license processes. The NRC believes that its review of a combined license application that references an early site permit will involve a comparison to ensure that the actual characteristics of the design chosen by the combined license applicant fall within the design parameters specified in the early site permit. Commission review of a combined license application that references a design certification will involve a comparison to ensure that the actual characteristics of the site chosen by the combined license applicant fall within the site parameters in the design certification. Similarly, if a combined license applicant references both an early site permit and a design certification, the NRC will review the application to ensure that the site characteristics in the early site permit fall within the site parameters in the referenced design certification and that the actual characteristics of the certified design fall within the design parameters in the early site permit. For these reasons, the NRC believes it is important to clarify the use of these terms and their applicability to the part 52 licensing processes.

2. Issuance of Combined and Manufacturing Licenses (§§ 52.97 and 52.163)

Current § 50.50 sets forth the NRC's authority to include conditions and limitations in permits and licenses issued by the NRC under part 50. Similar language delineating the NRC's authority in this regard is also set forth

in § 52.24 for early site permits, but is not included in part 52 with respect to either combined licenses or manufacturing licenses. There are two possible ways of addressing this omission: § 50.50 could be revised to refer to combined licenses and manufacturing licenses, or provisions analogous to § 50.50 could be added to the appropriate sections in part 52 for combined licenses and manufacturing licenses. Inasmuch as the NRC's inclusion of appropriate conditions in combined licenses is not a technical matter per se but rather a matter of regulatory authority, the most appropriate location for this provision appears to be in part 52. Inclusion of these provisions in appropriate portions of part 52 would be consistent with the provision applicable to early site permits in § 52.24. Accordingly, the NRC proposes to add the language in §§ 52.97(d) for combined licenses, and 52.163 for manufacturing licenses, which are analogous to § 50.50.

3. General Provisions

a. *Section 52.0, Scope; applicability of 10 CFR Chapter 1 provisions.* The NRC proposes to redesignate current § 52.1, Scope, as § 52.0, Scope; applicability of 10 CFR Chapter 1 provisions. In proposed § 52.0, paragraph (a) consists of current § 52.1 on the scope of part 52, and paragraph (b) addresses the applicability of 10 CFR Chapter 1 provisions. Currently § 52.1 states that part 52 governs the issuance of early site permits, standard design certifications, and combined licenses for nuclear power facilities licensed under Section 103 or 104b of the Atomic Energy Act of 1954 (AEA), as amended (68 Stat. 919), and Title II of the Energy Reorganization Act of 1974 (88 Stat. 1242). In proposed § 52.0(a), the NRC proposes to revise this provision to include standard design approvals and manufacturing licenses within the scope of part 52 and to restrict licenses issued under part 52 to those issued under Section 103 of the AEA. After passage of the 1970 amendments to the AEA, all licenses for commercial nuclear power plants with construction permits issued after the date of the amendments were required to be issued as Section 103 licenses. The NRC interprets the 1970 amendment as requiring combined licenses under section 185 to be issued as section 103 licenses.[1] Accordingly, the NRC proposes to revise the scope of part 52 to limit its applicability to licenses issued under Section 103 of the AEA.

The addition of proposed § 52.0(b) stems from the July 3, 2003 (68 FR 40026) proposed rule. In that proposed rule, the NRC proposed a new § 52.5 listing all of the licensing provisions in 10 CFR part 50 that also apply to all of the licensing processes in 10 CFR part 52. This proposed change was in response to a letter dated November 13, 2001, from the Nuclear Energy Institute (NEI) that stated:

> The industry proposes that additional General Provisions be added to Part 52 in addition to an appropriate provision on Written Communications. This approach is preferable to including cross-references in Part 52 to Part 50 general provisions because these provisions typically must be tailored to apply appropriately to the variety of licensing processes in Part 52.

The purpose of the amendment proposed in 2003 was to clarify that these 10 CFR part 50 provisions are applicable to the licensing processes that were formerly in 10 CFR part 50 (appendices M, N, O, and Q) and are now in 10 CFR part 52, as well as to the new licensing processes for early site permits, standard design certifications, and combined licenses. Although these provisions in 10 CFR part 50 did not refer to the additional licensing processes in 10 CFR part 52, the new § 52.5 was proposed to make it clear that a holder of or applicant for an approval, certification, permit, or license issued under 10 CFR part 52 must comply with all requirements in these provisions that are otherwise applicable to applicants or licensees under 10 CFR part 50. In preparing the revised proposed rule, the NRC has taken into account the comments it received on the 2003 proposed rule which indicated that the previous change to add § 52.5 was overly broad and would impose burdensome and seemingly inappropriate new requirements on applicants for design certifications that were not warranted for entities that were neither constructing nor operating a reactor.

The NRC agrees that the amendment proposed in 2003 was not sufficiently detailed to make it clear which of the part 50 provisions applied to each of the part 52 licensing processes. The NRC has concluded that the most effective solution to this problem is to make conforming changes to all of the regulations in 10 CFR Chapter 1 that are applicable to the part 52 licensing processes. Accordingly, the NRC has reviewed all of 10 CFR Chapter 1 to identify requirements that apply to one or more of the licensing processes in 10 CFR part 52 and is proposing conforming changes to those requirements. As a result of this effort, the NRC proposes to add new § 52.0(b) which makes it clear that the regulations in 10 CFR Chapter 1 apply to a holder of, or applicant for an approval, certification, permit, or license issued under part 52 and that any license, approval, certification, or permit, issued under 10 CFR part 52 must comply with these regulations.

b. *Section 52.1, Definitions.* The NRC proposes to amend § 52.1 by adding the definitions for *decommission, license, licensee, manufacturing license, modular design, prototype plant,* and *standard design approval.* The definition of *decommission* from 10 CFR part 50 would be added to 10 CFR part 52 because the NRC is proposing that part 52 address decommissioning of nuclear power facilities with combined licenses. The definitions of *license* and *licensee* are consistent with the definitions of the same terms that the NRC is proposing in 10 CFR parts 2 and 50. Definitions of *manufacturing license* and *standard design approval* would be added so that each of the part 52 license types are defined in this section.

The definition of *modular design* would be added to explain the type of modular reactor design to which the NRC intended to refer to in the second sentence of the current § 52.103(g). This special provision for modular designs would be added to part 52 to facilitate the licensing of nuclear plants, such as the Modular High Temperature Gas-Cooled Reactor (MHTGR) and Power Reactor Innovative Small Module (PRISM) designs, that consisted of 3 or 4 nuclear reactors in a single power block with a shared power conversion system. During the period that the power block is under construction, the NRC could separately authorize operation for each nuclear reactor when each reactor and all of its necessary support systems were completed. The NRC believes that the term *modular design* needs to be defined to aid future use of the current § 52.103(g) by distinguishing the intended definition from other definitions for modular design that may be used within the nuclear industry.

The NRC proposes to add a definition for *prototype plant* to explain the type of nuclear power plant that the NRC intended in the current § 52.47(b), and in the proposed §§ 50.43, 52.47, 52.79, and 52.157. A prototype plant is a licensed nuclear reactor test facility that is similar to and representative of either the first-of-a-kind or standard nuclear plant design in all features and size, but may have additional safety features. The purpose of the prototype plant is to

[1] This may be an academic distinction, in light of the Energy Policy Act of 2005, Pub. L. 109–58, which removed the need for antitrust reviews of new utilization facilities.

perform testing of new or innovative safety features for the first-of-a-kind nuclear plant design, as well as being used as a commercial nuclear power facility.

c. *Section 52.2, Interpretations; and Section 52.4, Deliberate misconduct.* The current section on interpretations in § 52.5 is retained and redesignated as § 52.2 and the current section on deliberate misconduct in § 52.9 is retained and redesignated as § 52.4.

d. *Section 52.3, Written communications; Section 52.5, Employee protection; Section 52.6, Completeness and accuracy of information; Section 52.7, Specific exemptions; Section 52.8, Combining licenses; Section 52.9, Jurisdictional limits; and Section 52.10, Attacks and destructive acts.* The NRC proposes to clarify the regulatory structure of part 52 by proposing to add new §§ 52.3, Written communications; 52.5, Employee protection; 52.6, Completeness and accuracy of information; 52.7, Specific exemptions; 52.8, Combining licenses; 52.9, Jurisdictional limits; and 52.10, Attacks and destructive acts. The Commission proposes to add § 52.3, Written communications, which is essentially identical with the current § 50.4, to address the requirements for correspondence, reports, applications, and other written communications from applicants, licensees, or holders of a standard design approval to the NRC concerning the regulations in part 52.

The Commission proposes to add § 52.5, to address discrimination against an employee for engaging in certain protected activities concerning the regulations in part 52. Accordingly, the Commission proposes to add § 52.5, which is essentially identical with the current § 50.7, with the exception of the addition of a provision on coordination with the requirements in 10 CFR part 19.

The Commission proposes to add § 52.6, which is identical with the current § 50.9, to require that information provided to the Commission by a licensee, a holder of a standard design approval, and an applicant under part 52, and information required by statute or by the NRC's regulations, orders, or license conditions to be maintained by a licensee, holder of a standard design approval, and applicant under part 52 (including the applicant for a standard design certification under part 52 following Commission adoption of a final design certification rule) be complete and accurate in all material respects.

The Commission proposes to add § 52.7, which is essentially identical with current § 50.12, to address the procedure and criteria for obtaining an exemption from the requirements of part 52. Although part 50 contains a provision (§ 50.12) for obtaining specific exemptions, § 50.12 by its terms applies only to exemptions from part 50. Although it would be possible to revise § 50.12 so that its provisions apply to exemptions from part 52, this is inconsistent with the general regulatory structure of 10 CFR, wherein each part is treated as a separate and independent regulatory unit. The NRC notes that the exemption provisions in § 52.7 are generally applicable to part 52, and do not supercede or otherwise diminish more specific exemption provisions that are in part 52, for example the provisions of a specific design certification rule or § 52.63(b)(1) governing exemptions from one or more elements of a design certification rule. An applicant or licensee referencing a standard design certification rule who wishes to obtain an exemption with regard to design certification information must meet the criteria in the specific design certification rule or § 52.63(b)(1), as applicable. If the applicant or licensee seeks an exemption from other provisions of Subpart B or other provisions of a particular standard design certification rule, then it may request an exemption under the more encompassing authority of § 52.7. The exemption request must then demonstrate compliance with the additional criteria in § 52.7.

The NRC proposes to add § 52.8, which is essentially identical with the current § 50.31, to clarify the Commission's authority under Section 161.h of the AEA to combine NRC licenses, such as a special nuclear materials license under part 70 for the reactor fuel, with a combined license under part 52. Although § 50.31 contains a provision allowing a part 50 license, such as an operating license, to be combined with a part 52 license, such as an early site permit, § 50.31 does not address the Commission's authority to combine a part 52 license with a non-part 50 license.

The Commission proposes to add § 52.9, which is identical with § 50.53, to clarify that NRC licenses issued under part 52 do not authorize activities which are not under or within the jurisdiction of the United States; an example would be the construction of a nuclear power reactor outside the territorial jurisdiction of the United States which uses a design identical to that approved in a standard design certification rule in part 52.

The Commission proposes to add § 52.10 because there is no specific provision in part 52 that applies to part 52 processes the Commission's longstanding determination with respect to the lack of need for design features and other measures for protection of nuclear power plants against attacks by enemies of the United States, or the use of weapons deployed by United States defense activities. That determination, which was upheld by the U.S. Court of Appeals for the D.C. Circuit, see *Siegel* v. *Atomic Energy Commission,* 400 F.2d 778 (D.C. Cir 1968), is currently codified for part 50 facilities in § 50.13. Although it would be possible to revise § 50.13 so that its provisions apply to part 52 licenses, early site permits, standard design certifications, and standard design approvals, this is inconsistent with the overall regulatory pattern of 10 CFR, whereby each part is treated as a separate and independent regulatory unit. Moreover, any changes to § 50.13 may erroneously be viewed as changes to the Commission's substantive determination on this matter.

For these reasons, the Commission is proposing to add § 52.10, which is essentially identical with § 50.13. Inclusion of this provision in part 52 would make clear that combined licenses, manufacturing licenses, design certification rulemakings, standard design approvals, and amendments to these licenses, rulemakings, and approvals under part 52—as with licenses issued under part 50—need not provide design features or other measures for protection of nuclear power plants against attacks by enemies of the United States, or the use of weapons deployed by United States defense activities. In adding § 52.10, the Commission emphasizes that it is not changing in any way, nor is it intending to revisit in this rulemaking, the Commission's determination with respect to the lack of need for design features or other measures for protection of nuclear power plants against attacks by enemies of the United States, or the use of weapons deployed by United States defense activities. The Commission is simply making it clear that its longstanding determination applies to applications under part 52 just as it applies to applications under part 50.

4. Subpart A, Early Site Permits

a. *Emergency Preparedness Requirements for Early Site Permit Applicants.* The NRC proposes to amend §§ 52.17(b), 52.18, and 52.39 to address changes to emergency preparedness requirements for early site permit applicants. The NRC proposes to

amend § 52.17(b)(1), which requires that an early site permit application identify physical characteristics unique to the proposed site that could pose a significant impediment to the development of emergency plans. The NRC proposes to add a sentence to require that, if physical characteristics that could pose a significant impediment to the development of emergency plans are identified, the application must identify measures that would, when implemented, mitigate or eliminate the significant impediment. The NRC believes this addition is necessary to clarify the NRC's expectations in cases where a physical characteristic exists that could pose a significant impediment to the development of emergency plans. Simply identifying these physical characteristics alone does not provide the NRC with enough information to determine if these characteristics are likely to pose a significant impediment to the development of emergency plans. Similarly, the Commission proposes to amend § 52.18 to require that the Commission determine whether the information required of the applicant by § 52.17(b)(1) shows that there is no significant impediment to the development of emergency plans *that cannot be mitigated or eliminated by measures proposed by the applicant* [emphasis added].

The NRC proposes to amend §§ 52.17(b)(2)(i), 52.17(b)(2)(ii), and 52.18 to clarify that any emergency plans or major features of emergency plans proposed by early site permit applicants must be in accordance with the applicable standards of 10 CFR 50.47 and the requirements of appendix E to part 50. These changes would clarify the standards applicable to emergency preparedness information supplied with an early site permit application. In addition, the Commission proposes to add new § 52.17(b)(3) to require that any complete and integrated emergency plans submitted for review in an early site permit application 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 would operate in conformity with the license, the provisions of the AEA, and the NRC's regulations. The NRC is proposing these amendments for consistency with the requirements in subpart C of part 52 regarding the review of emergency plans at the early site permit stage. The NRC believes that its review of complete and integrated plans included in an early site permit application should be no different than its review of emergency plans submitted in a combined license application, given that the NRC must make the same findings in both cases, namely, that the plans submitted by the applicant provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. The NRC will not be able to make the required finding without the inclusion of proposed inspections, tests, analyses, and acceptance criteria in an early site permit application that includes complete and integrated emergency plans.

b. *Section 52.13, Relationship to other subparts.* The NRC proposes to retitle § 52.13 from ''Relationship to subpart F of 10 CFR part 2 and appendix Q of this part,'' to ''Relationship to other subparts,'' to reflect the revised scope of this section, which has been refocused on part 52. The reference to Appendix Q and part 2 are no longer needed, consistent with the Commission's decision (discussed earlier in section II) to remove Appendix Q from part 52.

c. *Section 52.16, Contents of applications; general information and Section 52.17, Contents of applications; technical information.* The NRC proposes to add § 52.16 to include the general content requirements from § 52.17(a)(1).

The title of § 52.17 would be revised to read, ''Contents of applications; technical information,'' Section 52.17(a)(1) would be amended to state that the early site permit application should specify the range of facilities for which the applicant is requesting site approval (e.g., one, two, or three pressurized-water reactors). This new language, which is consistent with the language in paragraph 2 of current appendix Q to part 52, provides a clearer and more complete statement of the applicant's proposal with respect to the facilities which may be located under the early site permit. This facilitates NRC review, as well as providing adequate notice to potentially-affected members of the public and State and local governmental entities. The NRC assumes that an applicant for an early site permit may not know what type of nuclear plant may be built at the site. Therefore, the application must specify the postulated design parameters for the range of reactor types, the numbers of reactors, etc., to increase the likelihood that approval of the site will resolve issues with respect to the actual plant or plants that the early site permit or construction permit applicant decides to build. In a letter dated November 13, 2001 (comment 27 on draft proposed rule text), NEI stated, ''The proposed change is too limited. To address the required assessment of major SSCs [structures, systems, and components] that bear on radiological consequences and all items 52.17(a)(1)(i–viii), industry recommends a new § 52.17a.2.'' The NRC disagrees with NEI's proposal to have a separate provision for applicants who have not determined the type of plant that they plan to build at the proposed site. The NRC expects that applicants for an early site permit may not have decided on a particular type of nuclear power plant, therefore, § 52.17(a)(1) was revised to address this situation.

The NRC proposes to amend § 52.17(a)(1) to eliminate all references to § 50.34. The references to § 50.34(a)(12) and (b)(10) would be removed because these provisions require compliance with the earthquake engineering criteria in appendix S to part 50 and are not requirements for the content of an application. The reference to § 50.34(b)(6)(v), which requires plans for coping with emergencies, would also be removed. All requirements related to emergency planning for early site permits are addressed in § 52.17(b). Finally, the reference to the radiological consequence evaluation factors identified in § 50.34(a)(1) would be removed and restated in § 52.17(a)(1). The NRC is proposing to modify the existing requirement for early site permit applications to describe the seismic, meteorological, hydrologic, and geologic characteristics of the proposed site to add that these descriptions must reflect appropriate consideration of the most severe of the natural phenomena that have been historically reported for the site and surrounding area and with sufficient margin for the limited accuracy, quantity, and time in which the historical data have been accumulated. This proposed addition is to ensure that future plants built at the site would be in compliance with General Design Criterion 2 from appendix A to part 50 which requires that structures, systems, and components important to safety be designed to withstand the effects of natural phenomena such as earthquakes, tornadoes, hurricanes, floods, tsunami, and seiches without loss of capability to perform their safety functions. The design bases for these structures, systems, and components are required to reflect appropriate consideration of

the most severe of the natural phenomena that have been historically reported for the site and surrounding area, with sufficient margin for the limited accuracy, quantity, and time in which the historical data have been accumulated.

The NRC proposes to add several requirements to § 52.17(a)(1). A requirement would be added to § 52.17(a)(1)(xi) that applications for early site permits include information to demonstrate that adequate security plans and measures can be developed. This requirement is inherent in current § 52.17(a)(1) which states that site characteristics must comply with 10 CFR part 100. Section 100.21(f) states that site characteristics must be such that adequate security plans and measures can be developed. A new § 52.17(a)(1)(xii) would be added to require early site permit applications to include a description of the quality assurance program applied to site activities related to 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. This proposed change was made for consistency with proposed changes to § 50.55 and appendix B to part 50. A discussion of these changes can be found in this section under the heading ''Appendix B to Part 50.''

Two additional requirements would be added § 52.17(a)(1) that are taken from § 50.34(b), and which the NRC believes are applicable to early site permit applicants. Section 52.17(a)(1)(xii) would require applicants proposing to site nuclear power plants on sites which already have on them one or more licensed units to include in its application an evaluation of the potential hazards of construction activities to the structures, systems, and components important to safety of operating units, as well as a description of the managerial and administrative controls to be used to provide assurance that the limiting conditions for operation of the existing units are not exceeded as a result of construction activities. This requirement currently exists for applicants for construction permits, operating licenses, and combined licenses. The NRC believes it should also be applicable to applicants for early site permits so that all applicable issues are included in the NRC's review of site suitability before a decision is made on issuance of an early site permit, including issues that affect units already operating on the site (if this matter is addressed and resolved in an early site permit, this matter would have finality and need not be addressed in a referencing combined license proceeding). Section 52.17(a)(1)(xiii) would require that early site permit applications include an evaluation of the site against the applicable sections of the Standard Review Plan revision in effect 6 months before the docket date of the application. This requirement currently exists for applicants for construction permits, operating licenses, design certifications, design approvals, combined licenses, and manufacturing licenses. The NRC believes it should also be applicable to applicants for early site permits because they are partial construction permits that can be referenced in applications for construction permits or combined licenses.

The NRC would amend § 52.17(a)(2) to clarify that an early site permit applicant has the flexibility of either addressing the matter of alternative energy sources in the environmental report supporting its early site permit application, or deferring consideration of alternative energy sources to the time that the early site permit is referenced in a licensing application. The NRC believes the current regulations already afford the early site permit applicant such flexibility, inasmuch as § 52.17(a)(2) states that the environmental report submitted in support of an early site permit application must ''focus on the environmental effects of construction and operation of a reactor, or reactors * * *.'' The environmental report's discussion of alternative energy sources does not, per se, address the ''environmental effects of construction and operation of a reactor,'' which is one of the matters which must be addressed in an environmental impact statement (EIS). [See 10 CFR 51.71(d); National Environmental Policy Act of 1969 (NEPA), Sec. 102(2)(C)(i), (ii), and (v).] Rather, alternative energy sources constitute part of the discussion of reasonable alternatives to the proposed action, which is required by Sec. 102(2)(C)(iii) of NEPA. [See 10 CFR 51.71(e) n.4; 46 FR 39440 (August 3, 1981) (proposed rule that would eliminate consideration of need for power and alternative energy sources at operating license stage), at 39441 (first column) (final rule published March 26, 1982; 47 FR 12940)]. See Exelon Generation Company, LLC et al., CLI–05–17, 62 NRC 5, where the Commission ruled that:

> [T]he ''reasonable alternatives'' issue does not apply with full force to ESP (or ''partial'' construction permit) cases. At the ESP stage of the construction permit process, the boards' ''reasonable alternatives'' responsibilities are limited because the proceeding is focused on an appropriate site, not the actual construction of a reactor. Thus, boards must merely weigh and compare alternative sites, not other types of alternatives (such as alternative energy sources).

Id. at 48 (citations omitted). Accordingly, the NRC believes that § 52.17(a)(2) already provides the early site permit applicant the flexibility of choosing to defer consideration of alternative energy sources to the time that the early site permit is referenced in a combined license or a construction permit application. The proposed rule would clarify that the early site permit applicant may either include a discussion of alternative energy sources in its environmental report, or defer consideration of the matter. The NRC proposes a conforming amendment to §§ 52.18 and 52.21 to clarify that the NRC's EIS need not address the need for power or alternative energy sources (and therefore these matters may not be litigated) if the early site permit applicant chooses not to address these matters in its environmental report. The environmental report and EIS for an early site permit must address the benefits associated with issuance of the early site permit (e.g., early resolution of siting issues, early resolution of issues on the environmental impacts of construction and operation of a reactor(s) that fall within the site characteristics, and ability of potential nuclear power plant licensees to ''bank'' sites on which nuclear power plants could be located without obtaining a full construction permit or combined license). The benefits (and impacts) of issuing an early site permit must always be addressed in the environmental report and EIS for an early site permit, regardless of whether the early site permit applicant chooses to defer, under § 52.17(a)(2), consideration of the benefits associated with the construction and operation of a nuclear power plant that may be located at the early site permit site. This is because the ''benefits * * * of the proposed action'' for which the discussion may be deferred under §§ 52.17(a)(2), are the benefits associated with the construction and operation of a nuclear power plant that may be located at the early site permit site; the benefits which may be deferred under § 52.17(a)(2) are entirely separate from the benefits of issuing an early site permit. The proposed action of issuing an early site permit is not the same as the ''proposed action'' of constructing and operating a nuclear power plant for which the discussion of benefits (including need for power) may be deferred under

§ 52.17(a)(2).[2] With this clarification, the NRC does not believe that further changes to the language of §§ 52.17 and 52.18 are necessary.

The NRC would amend § 52.17(c) to clarify that if the applicant wants to request authorization to perform limited work activities at the site after receipt of the early site permit, the application must contain an identification and description of the specific activities that the applicant seeks authorization to perform. This request by the early site permit applicant would be separate from but not in addition to a request to perform activities under 10 CFR 50.10(e)(1). The submittal of this descriptive information would enable the NRC staff to perform its review of the request, consistent with past practice, to determine if the requested activities are acceptable under § 50.10(e)(1). If an applicant for a construction permit or combined license references an early site permit with authorization to perform limited work activities at the site and subsequently decides to request authorization to perform activities beyond those authorized under § 52.24(c), those additional activities would have to be requested separately under § 50.10(e)(1).

d. *Section 52.24, Issuance of early site permit.* The Commission proposes to amend § 52.24 to clarify the information that the NRC must include in the early site permit when it is issued. Section 52.24 would also be amended to be more consistent with the parallel provision in § 50.50, Issuance of licenses and construction permits, by requiring the NRC to ensure that there is reasonable assurance that the site is in conformity with the provisions of the AEA, and the NRC's regulations; that the applicant is technically qualified to engage in any activities authorized; and that issuance of the permit will not be inimical to the common defense and security or to the health and safety of the public.

Section 52.24 would be amended to provide that the early site permit must state the site characteristics and design parameters, as well as the ''terms and conditions,'' of the early site permit, rather than the ''conditions and limitations'' as is currently provided. The change would provide consistency with § 52.39(a)(2), and in particular paragraph (a)(2)(iii) of the current regulations, which also refers to ''site parameters'' (corrected to ''site characteristics'' in the proposed rule) and ''terms and conditions.'' Section 52.24(c) would be added to require that the early site permit state the activities that the permit holder is authorized to perform at the site. This change would be consistent with the revision to § 52.17(c) where the applicant must specify the activities that it is requesting authorization to perform at the site under § 50.10(e)(1).

e. *Section 52.28, Transfer of early site permit.* Section 52.28 would be added to state that transfer of an early site permit from its existing holder to a new applicant would be processed under § 50.80, which contains provisions for transfer of licenses. In a letter dated November 13, 2001 (comment 19 on draft proposed rule text), the Nuclear Energy Institute recommended that a new section be added to part 52 to clarify the process for transfer of an early site permit. The NRC has determined that a new section is not necessary because an early site permit is a partial construction permit and, therefore, is considered to be a license under the AEA. The NRC believes that the procedures and criteria for transfer of utilization facility licenses in 10 CFR 50.80 (and the procedures in subpart M of part 2 for the conduct of any hearing) should apply to the transfer of an early site permit.

f. *Section 52.37, Reporting of defects and noncompliance; revocation, suspension, modification of permits for cause.* Section 52.37 would be removed because this provision only contains a cross-reference to 10 CFR part 21 and § 50.100, and the NRC is proposing conforming changes to those requirements to account for requirements for early site permits.

g. *Section 52.39, Finality of early site determinations; and Section 52.93, Exemptions and variances.* Section 52.39 would be revised to address the finality of an early site permit. While some of the proposed changes are conforming or clarifying, some proposed changes represent a change from the finality provisions in the current § 52.39. Paragraph (a)(2) of the current rule distinguishes among issues alleging that: (i) A ''reactor does not fit within one or more of the site parameters,'' which are to be treated as valid contentions (paragraph (a)(2)(i)); (ii) a ''site is not in compliance with the terms of an early site permit,'' which are to be subject to hearings under the provisions of the Administrative Procedure Act (paragraph (a)(2)(ii)); and (iii) the ''terms and conditions of an early site permit should be modified,'' which are to be processed in accordance with 10 CFR 2.206(a)(2)(iii). With the benefit of hindsight and experience gained in reviewing the first three early site permit applications, the NRC believes that all issues concerning a referenced early site permit may be characterized as:

(1) Questions regarding whether the site characteristics, design parameters, or terms and conditions specified in the early site permit have been met;

(2) Questions regarding whether the early site permit should be modified, suspended, or revoked; or

(3) Significant new emergency preparedness or environmental information not considered on the early site permit.

Questions about the referencing application demonstrating compliance with the early site permit are fundamentally questions of compliance with the early site permit. They do not attack the underlying validity of the permit. For example, if a person questions whether the design characteristics of the nuclear power facility that the referencing applicant proposes to construct on the site falls within the design parameters specified in the early site permit, it is a matter of compliance with the early site permit. These compliance matters are specific to the proceeding for the referencing application, and the NRC concludes that any question about whether the referencing application complies with the early site permit should be regarded as a question material to the proceeding and admissible as a contention in the referencing application proceeding (assuming that all relevant Commission requirements in 10 CFR part 2 such as standing and admissibility are met).

The NRC also regards new emergency preparedness information submitted in the referencing application which materially changes the Commission's determination on emergency preparedness matters as an issue material to the proceeding and admissible as a contention in the referencing application proceeding. Any significant environmental issue material to the combined license application which was not considered in the early site permit proceeding is also subject to litigation during the proceeding on the referencing application to the extent the issue differs from issues discussed or reflects significant new information. Because new emergency planning or environmental information, if any, will be identified only at the time a license application referencing the early site permit is submitted to the NRC, the NRC believes it is appropriate to address

[2] The NRC emphasizes that under § 52.17(a)(2), only the discussion of benefits (including need for power) of constructing and operating a nuclear power reactor (or reactors), and the discussion of alternative energy sources, may be deferred. The environmental report must always address the ''environmental impacts of construction and operation of a reactor, or reactors, which have characteristics which fall within the postulated site parameters.''

these issues in the proceeding on the referencing application.

Other questions regarding whether the permit should be modified, suspended, or revoked will be challenges to the validity of the early site permit. These challenges may be framed in many different ways, e.g., a Commission error committed at the time of issuance (i.e., Commission failure to consider relevant information known and available at the time of issuance); or actual changes to the site have occurred since issuance of the permit that render some aspect of the permit irrelevant or inadequate to protect public health and safety or common defense and security. The Commission's process for challenges to the validity of a license is contained in 10 CFR 2.206. Accordingly, the Commission concludes that challenges to the validity of an early site permit should be processed in accordance with § 2.206. In the Commission's view, a variance is not fundamentally a challenge to the validity of the early site permit, because it requests dispensation from compliance with some aspect of the permit whose validity remains undisputed. Therefore, the Commission concludes that variances should be treated as proceeding-specific issues of compliance that are potentially valid subjects of a contention in a proceeding for a referencing application.

The proposed revisions to § 52.39 are in agreement with these Commission conclusions. Section 52.39 would be divided into five paragraphs addressing different aspects of early site permit finality; each paragraph is provided with a subtitle characterizing the subject matter addressed in that paragraph. Section 52.39(a) focuses on how the NRC accords finality to an early site permit, with § 52.39(a)(1) setting forth the circumstances under which the NRC may modify an early site permit. The proposed rule language is based upon the existing regulation, but adds an additional circumstance. Section 52.39(a)(1)(iii) would provide that the NRC may modify the early site permit if it determines a modification is necessary based on an update to the emergency preparedness information under § 52.39(b). Section 52.39(a)(1)(iv) would provide that the NRC may modify the early site permit if a variance is issued under proposed § 52.39(d) (paragraph (b) in the current regulations); the NRC considers this a conforming change inasmuch as the current regulation provides for issuance of variances.

The NRC proposes to clarify what aspects of the early site permit are subject to the change restrictions in § 52.39(a)(1) by substituting the phrase, ''terms and conditions'' of an early site permit for the current term, ''requirements.'' Under the proposed language, the NRC may not change or impose new site characteristics, design parameters, or terms and conditions on the early site permit, including emergency planning requirements, unless the special backfitting criteria in § 52.39(a)(1) are satisfied. No substantive change is intended by this clarification; the proposed language would specify more clearly the broad scope of matters in an early site permit which the NRC intended to finalize. The phrase, ''site characteristics, or terms, or conditions, including emergency planning requirements,'' would be used consistently throughout § 52.39 and corresponding provisions in the proposed revision to § 52.79.

Section 52.39(a)(2) would describe how the NRC would treat matters resolved in the early site permit proceeding in subsequent proceedings on applications referencing the early site permit, and is drawn from the current language of § 52.39(a)(2). In addition, under the last sentence of proposed § 52.39(a)(2), the NRC would finalize changes to an early site permit's emergency plan (or major features of it, as contemplated under § 52.17(b)(2)) that are made after the issuance of the early site permit, but only if (1) the approved early site permit's emergency plan (or major feature) is based upon an emergency plan in use by a licensee of a nuclear power plant; (2) the changes to the early site permit emergency plan are identical to the changes in the referenced licensee's plan; and (3) the changes in the referenced licensee emergency plan are in compliance with § 50.54(q). The Commission's proposal is premised on the view that changes to emergency plans which are properly implemented under § 50.54(q) do not require NRC review and approval before implementation. Therefore, by analogy, similar changes to an early site permit's emergency preparedness plan made with similar controls should not require NRC review and approval as part of the licensing process. Any issues with compliance with § 50.54(q) should be treated as an enforcement matter.

Section 52.39(b) is discussed separately under Section IV.C.6.a of this document, which discusses emergency preparedness requirements for a combined license applicant referencing an early site permit.

Section 52.39(c) would replace the current criteria in §§ 52.39(a)(2)(i) through (iii), governing how the NRC would treat various issues with respect to the early site permits and its referencing in a combined license application. Matters regarding compliance with the early site permit which would be potentially valid subjects of contention under the proposed rule are listed in §§ 52.39(c)(1)(i) through (iii), e.g., whether the reactor proposed to be built under the referencing application fits within the site characteristics and design parameters specified in the early site permit; whether one or more of the terms and conditions of the early site permit have been met; and whether a variance requested by the referencing applicant is unwarranted or should be modified. Matters regarding significant new emergency preparedness or environmental information material to the combined license proceeding, which would be potentially valid subjects of contention under the proposed rule, are listed in §§ 52.39(c)(1)(iv) and (v).

Other matters, including changes to the site characteristics, design parameters, or terms and conditions of the early site permit, would be treated under proposed § 52.39(c)(2) as challenges to the permit and processed in accordance with § 2.206. The proposed rule would retain the current provision in § 52.39(a)(2)(iii) requiring that the Commission consider a petition filed under § 2.206, and determine whether immediate action is required before construction commences, as well as the current provision indicating that if a petition is granted, the Commission will issue an appropriate order which does not affect construction unless the Commission makes its order immediately effective.

The proposed rule would redesignate the current provision in § 52.39(b) allowing an applicant for a license referencing an early site permit to request a variance from one of more ''elements'' of the early site permit as § 52.39(d). The proposed rule would clarify ''elements'' for which a variance may be sought by substituting the phrase, ''site characteristic, design parameter, term, or condition.'' The Commission notes that the admission of a contention on a proposed variance, which is currently addressed in § 52.39(b), would now be addressed in § 52.39(c)(iii) of the proposed rule. Finally, the proposed rule would preclude the Commission from issuing a variance once a construction permit, operating license, or combined license referencing the early site permit is issued; any changes that would otherwise require a variance should instead be treated as an amendment to the combined license.

Finally, the Commission proposes to add a new paragraph (e) to the ''finality'' section in each subpart of part 52,

including § 52.39, entitled ''Information requests,'' which would delineate the restrictions on the NRC for information requests to the holder of the early site permit. This provision is analogous to the current provision on information requests in paragraph 8 of appendix O to parts 50 and 52, and is based upon the language of § 50.54(f). For early site permits, this proposed provision would be contained in § 52.39(d), and would require the NRC to evaluate each information request on the holder of an early site permit to determine that the burden imposed by the information request is justified in light of the potential safety significance of the issue to be addressed in the information request. The only exceptions would be for information requests seeking to verify compliance with the current licensing basis of the early site permit. If the request is from the NRC staff, the request would first have to be approved by the Executive Director for Operations (EDO) or his or her designee.

5. Subpart B, Standard Design Certifications

a. *Section 52.41, Scope of subpart.* This section defines the scope of subpart B of part 52. The requirements on scope and type of nuclear power plants that are eligible for design certification would be moved from the current § 52.45(a) to this section.

b. *Section 52.43, Relationship to other subparts.* This section defines the relationship of subpart B to other subparts in 10 CFR part 52. The proposed rule would remove the requirements currently located in §§ 52.43(c), 52.45(c), and 52.47(b)(2)(ii) because the Commission has decided not to require a final design approval (FDA) as a prerequisite for certification of a standard plant design under subpart B. This requirement was included in 10 CFR part 52 because, at the time of the original rulemaking, the NRC had no experience with design certification applications. By requiring an FDA as a prerequisite to design certification, the NRC indicated that the licensing processes for design certifications and FDAs were similar, even though the requirements for and finality of a design certification differ from that of an FDA. The NRC now has considerable experience with design certification reviews, and the current requirement to apply for an FDA as part of an application for design certification is no longer needed. Future applicants have the option to apply for either an FDA, a design certification, or both.

c. *Section 52.45, Filing of applications.* This section presents the requirements for filing design certification applications. This section would be formatted for consistency with the other subparts in 10 CFR part 52 and would replace the references to specific paragraphs within §§ 50.4 and 50.30 with references to subpart H of part 2. Specific references are no longer needed because the NRC proposes conforming changes to §§ 50.4 and 50.30 that clarify which provisions are applicable to combined license applications. A new § 52.45(c) on design certification review fees, which are currently set forth in § 52.49, is included.

d. *Section 52.46, Contents of applications; general information.* A new section would be added containing the appropriate general content requirements from 10 CFR 50.33 as a conforming amendment.

e. *Section 52.47, Contents of applications; technical information.* This section presents the requirements for contents of a design certification application. Section 52.47 would be reorganized into separate provisions. The requirements for the final safety analysis report (FSAR) are proposed in §§ 52.47(a) and 52.47(c), and the technical requirements for the remainder of the design certification application are proposed in § 52.47(b). The current § 52.47(a)(1)(i) requires the submittal of information required of applicants for construction permits and operating licenses by parts 20, 50 (including the applicable requirements from 10 CFR 50.34), 73, and 100, and which is technically relevant to the design and not site-specific. That requirement would be removed and replaced with the relevant requirements from the regulations that describe what must be included in an FSAR. In addition, the Commission proposes to codify technical positions that were developed after part 52 was adopted by the Commission in 1989, such as the proposed requirement in § 52.47(a)(19) requiring an explanation how relevant operating experience was incorporated into the standard design (see SRM on SECY–90–377, dated February 15, 1991, ML003707892). Also, the technical requirements in the regulations that are relevant would be revised to clearly state their applicability to design certifications. In doing so, the NRC has attempted to capture all relevant requirements regarding contents of the FSAR for a design certification application.

A new § 52.47(b) would be added to cover the required technical contents of a design certification application that are not contained in the FSAR. The proposed rule would conform the requirement for acceptable inspections, tests, analyses, and acceptance criteria (ITAAC) (proposed § 52.47(b)(2)) with the AEA and the requirements in the current § 52.97(b). This clarification of the current language, which was a condensed version of the language in §§ 52.79(c) and 52.97(b), is intended to avoid any future misunderstandings.

The current § 52.47(b) (proposed § 52.47(c)) would be reorganized by separating the requirements on scope of design and modular configuration from the testing requirements. This is part of the NRC's goal to set forth the procedural requirements for the licensing processes in part 52 and the reactor safety requirements in part 50. As a result, the testing requirements would be relocated to § 50.43(e), and the requirements on scope of design and modular configuration would remain in the proposed § 52.47(c). Also, see the discussion on testing requirements for advanced nuclear reactors in Section B.1 of this document.

f. *Section 52.54, Issuance of standard design certification.* Section 52.54 would be amended to be consistent with the parallel provisions in §§ 50.50 and 50.57 by including requirements that, after conducting a rulemaking proceeding and receiving the report submitted by the ACRS, the Commission determines that there is reasonable assurance that the design conforms with the provisions of the AEA, and the Commission's regulations; that the applicant is technically qualified; and that issuance of the design certification will not be inimical to the common defense and security or to the health and safety of the public. In addition, a new § 52.54(a)(8) would be added to indicate that the NRC will not issue a design certification unless it finds that the design certification applicant has implemented the quality assurance program described in the safety analysis report. This requirement is being added to indicate the NRC's expectation that design certification applicants implement the QA program that is required to be included in their application under § 52.47(a)(21). The NRC is also considering whether a parallel requirement should be added to Part 50 (*e.g.*, in a new § 50.54a), similar to the requirements for QA program implementation contained in proposed §§ 50.54(a) and 50.55(f). A new § 52.54(b) would be added, consistent with § 50.50, which states that a design certification shall specify the site parameters and design characteristics and any additional requirements and restrictions of the rule, as the Commission deems necessary and appropriate.

The Commission is proposing to modify § 52.54 to require that applicants

for a design certification agree to withhold access to National Security Information from individuals until the requirements of 10 CFR parts 25 and/or 95 are met. Section 52.54 would be amended to include a new paragraph (c) which requires that every standard design certification rule contain a provision stating that, after the Commission has adopted the final design certification rule, the applicant for that design certification will not permit any individual to have access to, or any facility to possess, Restricted Data or classified National Security Information until the individual and/or facility has been approved for access under the provisions of 10 CFR parts 25 and/or 95. The NRC believes that this amendment, along with the proposed changes to parts 25, 95, and 10 CFR 50.37, are necessary to ensure that access to classified information is adequately controlled by all entities applying for NRC certifications.

g. *Section 52.63, Finality of standard design certifications.* The proposed rule would amend the special backfit requirement in § 52.63(a)(1) to provide the Commission with the ability to make changes to the design certification rules or the certification information in the generic design control documents that reduce unnecessary regulatory burdens. Section 52.63(a)(1) currently states that the Commission may not modify, rescind, or impose new requirements on the certification unless the change is: (1) Necessary for compliance with Commission regulations applicable and in effect at the time the certification was issued; or (2) necessary to provide adequate protection of the public health and safety or common defense and security. The regulation does not appear to permit changes to the certification which reduce unnecessary regulatory burdens in circumstances where the change continues to maintain protection to public health and safety and common defense and security. An example of a change which may not be able to be made under the current § 52.63(a)(1) is a proposed change to the three design certification rules in appendices A, B, and C of part 52, to incorporate into the Tier 2 change process the revised change criteria in 10 CFR 50.59. Section 50.59 was revised in 1999 to provide new criteria for, *inter alia,* making changes to a facility, as described in the final safety analysis report, without prior NRC approval, to reduce unnecessary regulatory burden (64 FR 53582, October 4, 1999).

Section 52.63(a)(1) would include a new provision that explicitly allows the Commission to change the design certification rules in part 52 to make future changes to reduce unnecessary regulatory burden, incorporate the revised § 50.59 change criteria, or change the certification information if the change provides a reduction in regulatory burden and maintains protection to public health and safety and common defense and security. Maintaining protection generally embodies the same safety principles used by the NRC in applying risk-informed decision-making, *e.g.*, ensuring that adequate protection is provided, applicable regulations are met, sufficient safety margins are maintained, defense-in-depth is maintained, and that any changes in risk are small and consistent with the Commission's Safety Goal Policy Statement (refer to NRC's Regulatory Guide 1.174). Changes to the design certification rules must be accomplished through rulemaking, with opportunity for public comment. Once a design certification rule is changed through rulemaking, under proposed § 52.63(a)(2), the provisions would apply to all applications referencing the design certification rule as well as all current plants referencing the design certification, unless the change has been rendered ''technically irrelevant'' through other action taken under §§ 52.63(a)(3) or (b)(1). Thus, standardization is maintained by ensuring that any changes to a design certification rule intended to reduce regulatory burden are imposed upon all nuclear power plants referencing the design certification rule.

Section 52.63(a)(1) would be modified to replace ''a modification'' with ''the change,'' to clarify that the three criteria for changes apply to modifications, rescissions, or imposition of new requirements. Also, proposed § 52.63 is amended to be consistent with its original intent (refer to 54 FR 15372; April 18, 1989) that the special backfit requirements apply to the certification information in the generic design control documents, not to the provisions in the design certification rules, *e.g.*, Section VI.E of appendix A to part 52. Any proposed changes to these provisions that set forth how the design certification regulations are to be used are controlled by the normal backfit requirements in 10 CFR 50.109.

The proposed rule would amend the current § 52.63(a)(2) to delete the reference to § 52.63(a)(4). The reference to § 52.63(a)(4) was in error because this paragraph discusses the finality of the findings required for issuance of a combined license or operating license, whereas § 52.63(a)(2) deals with modifications that the NRC may impose on a design certification rule under §§ 52.63(a)(3) or 52.63(b)(1). No substantive change is intended by the amendment which merely clarifies the original intent of the rule.

6. Subpart C, Combined Licenses

a. *Emergency Preparedness Requirements for a Combined License Applicant Referencing an Early Site Permit.* The Commission proposes to modify current §§ 52.39 and 52.79 to require a license applicant referencing an early site permit to update and correct the emergency preparedness information provided under § 52.17(b). The issue of updating an early site permit was first raised by the Illinois Department of Nuclear Safety, who suggested in a September 28, 1994, letter that emergency plans and/or offsite certifications approved as part of an early site permit review be kept up-to-date throughout the duration of an early site permit and the construction phase of a combined license.

In SECY–95–090, ''Emergency Planning Under 10 CFR Part 52'' (April 11, 1995), the NRC staff stated that 10 CFR part 52 does not clearly require an applicant referencing an early site permit to submit updated information on changes in emergency preparedness information or in any emergency plans that were approved as part of the early site permit in accordance with § 52.18. SECY–95–090 indicated (p. 4) that, in view of the lack of industry interest in pursuing an early site permit, resolution of this matter could be deferred until a ''lessons learned'' rulemaking updating 10 CFR part 52 was conducted after the first design certification rulemakings were issued. Following public release of a draft SECY paper setting forth the NRC staff's preliminary views on the licensing process for a combined license, NEI submitted a letter dated September 8, 1998 (comment 2.d), which expressed opposition to a requirement for updating emergency preparedness information throughout the duration of an early site permit, absent an application referencing the early site permit. As an alternative to updating throughout the duration of an early site permit, NEI proposed that emergency planning information be updated when an application for a license referencing the early site permit is filed; portions of the emergency plans that are unchanged would continue to have finality under 10 CFR 52.39. In a September 3, 1999, letter, the NRC staff identified updating of emergency preparedness information in early site permits as a possible subject for the part 52 rulemaking.

The Commission agrees in part with the Illinois Department of Nuclear

Safety. Emergency plans and/or offsite certificates in support of emergency plans, approved as part of an early site permit review, should be updated. However, emergency plans do not need to be kept up-to-date throughout the duration of an early site permit. There is no need to update the emergency plans approved in an early site permit until the time the permit is referenced in a combined license application. At that time, the emergency plans would have to be reviewed to confirm that they are up-to-date and to provide any new information that may materially affect the Commission's earlier determination on emergency preparedness, or correct inaccuracies in the emergency preparedness information approved in the early site permit in support of a reasonable assurance determination, in accordance with § 50.47 and appendix E to part 50. In addition, the Commission agrees with NEI that a ''continuous'' early site permit update requirement would impose burdens upon the early site permit holder without any commensurate benefit if the early site permit is not subsequently referenced. Accordingly, the Commission has determined that §§ 52.39 and 52.79 should contain an updating requirement to be imposed upon the applicant referencing an early site permit.

A new § 52.39(b) would be added to require an applicant for a construction permit, operating license, or combined license, whose application references an early site permit, to update and correct the emergency preparedness information provided under § 52.17(b). In addition, the applicant must discuss whether the new information could materially change the bases for compliance with the applicable NRC requirements. A parallel requirement is included in proposed § 52.79 to ensure that applicants for combined licenses referencing an early site permit will submit the updated emergency preparedness information. Section 52.39(a)(1)(iii) would also be added stating that the Commission may modify an early site permit if it determines that a modification is necessary based on updated emergency preparedness information provided in a referencing license application. New information that materially changes the bases for compliance includes: (1) Information that substantially alters the bases for a previous NRC conclusion with respect to the acceptability of a material aspect of emergency preparedness or an emergency preparedness plan; and (2) Information that would constitute a basis for the Commission to modify or impose new terms and conditions on the early site permit related to emergency preparedness in accordance with § 52.39(a)(1). New information that materially changes the Commission's determination of the matters in § 52.17(b), or results in modifications of existing terms and conditions under § 52.39(a)(1) would be subject to litigation during the construction permit, operating license, or combined license proceedings in accordance with § 52.39(c).

Not all new information on emergency preparedness would be subject to challenge in a hearing under § 52.39(c). For example, an emergency plan may have to be updated to reflect current telephone numbers, names of governmental officials whose positions and responsibilities are defined in the plan (*e.g.*, the name of the current police chief for a municipality), or current names of hospital facilities. These corrections do not materially change the NRC's previously-stated bases for accepting the early site permit emergency plan, and a hearing contention would not be admitted under § 52.39(c) in a proceeding for a license referencing the early site permit. In contrast, if an emergency plan submitted as part of an early site permit relies upon a bridge to provide the primary path of evacuation, and that bridge no longer exists, the change could materially affect the NRC's previous determination that the emergency plan complied with the Commission's emergency preparedness regulations in effect at the time of the issuance of the early site permit. This type of information might be the basis for a change in the early site permit's terms and conditions related to emergency preparedness under § 52.39(a)(1), as well as the basis for a hearing contention under § 52.39(c), assuming that the requirements in 10 CFR part 2 for admission of a contention are met.

b. *Resolution of ITAAC.* Sections 52.79(c), 52.85, 52.97(a), 52.99, and 52.103(a) and (g) would be amended to provide an applicant for a combined license with a process for resolving certain acceptance criteria in one or more of the inspection, test, analysis, and acceptance criteria (ITAAC) required by the proposed § 52.79(c) before issuance of the combined license. In a letter dated November 13, 2001 (comment 20 on draft proposed rule text), NEI recommended that subpart C be revised to allow for completion of design acceptance criteria (DAC) at the combined license application stage. NEI made this recommendation because applicants might want to complete certain DAC before construction. DAC are special design certification rule ITAAC. DAC set forth processes and criteria for completing certain detailed design information, such as information about the digital instrumentation and control system. DAC were originally written to be verified as part of the normal, post-combined license, ITAAC verification process; as such, DAC are in essence specialized ITAAC.

The Commission agrees with NEI's recommendation that combined license applicants be permitted to demonstrate DAC completion as part of the combined license application, for several reasons. First, completion of the detailed design matters covered by DAC before the issuance of a combined license is consistent with the Commission's original concept for design certification and issuance of a combined license. When 10 CFR part 52 was adopted, the Commission intended that a design certification contain final and complete design information. Allowing a finding of acceptable completion of DAC before issuance of a combined license is, therefore, consistent with the Commission's original intent. Second, completion of DAC before issuance of the combined license is consistent with the Commission's goal of resolving issues before construction. Determining whether DAC have been successfully completed before issuance of the combined license avoids the possibility that improperly completed DAC will result in the construction of improperly designed structures, systems, and components. Finally, the Commission believes that completion of DAC before issuance of the combined license will enhance public confidence in the overall licensing process because the public will have an opportunity to challenge whether the detailed design has been properly completed before construction begins. Accordingly, the Commission proposes that a finding of successful completion of DAC may be made when a combined license is issued if the combined license applicant demonstrates that the DAC have been successfully completed. This new process would also allow findings on successful completion of inspections or tests of components procured before the issuance of the combined license. These matters would not be revisited after issuance of the combined license.

Section 52.79(c) would be amended to provide a new provision that states that, if the application references an early site permit or a certified design, 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. Sections 52.79(c) and 52.85 would be amended to require that the **Federal Register** notification required by § 52.85 indicate that the application includes this notification, thereby ensuring that the public has adequate notice of the scope and nature of the application which the Commission is being requested to review.

Sections 52.99 and 52.103 would be amended to incorporate rule language from the design certification regulations in 10 CFR part 52 regarding the completion of ITAAC (see paragraphs IX.A and IX.B.3 of appendix A to part 52). During the preparation of the design certification rules for the ABWR and System 80+ designs, the NRC staff and nuclear industry representatives agreed on certain requirements for the performance and completion of the inspections, tests, or analyses in ITAAC. In the design certification rulemakings, the Commission codified these ITAAC requirements into Section IX of the regulations. The purpose of the requirement in proposed § 52.99(b) is to clarify that an applicant may proceed at its own risk with design and procurement activities subject to ITAAC, and that a licensee may proceed at its own risk with design, procurement, construction, and preoperational testing activities subject to an ITAAC, even though the NRC may not have found that any particular ITAAC has been met. Proposed § 52.99(c) would require the licensee to notify the NRC that the required inspections, tests, and analyses in the ITAAC have been completed and that the acceptance criteria have been met. For those inspections, tests, or analyses that are completed within 180 days before the scheduled date for initial loading of fuel, § 52.99(c) would require that the licensee notify the NRC within 10 days of the successful completion of ITAAC. This immediate notification is necessary to ensure the NRC has sufficient time to verify successful completion of the ITAAC prior to the licensee's scheduled date for fuel load. Section 52.99(d) would state the options that a licensee will have in the event that it is determined that any of the acceptance criteria in the ITAAC have not been met. Section 52.99(e) requires the NRC to ensure that the required inspections, tests, and analyses in the ITAAC are performed and also requires the NRC to publish, at appropriate intervals, notice in the **Federal Register** of the NRC staff's determination of the successful completion of inspections, tests, and analyses. Finally, § 52.103(h) states that ITAAC do not, by virtue of their inclusion in the combined license, constitute regulatory requirements after the licensee has received authorization to load fuel or for renewal of the license. However, subsequent modifications must comply with the design descriptions in the design control document unless the applicable requirements in the current § 52.97 (proposed § 52.98) and Section VIII of the design certification rules have been complied with.

In a letter dated April 3, 2001 (item 23), NEI requested that the NRC ''consider incorporating DCR [Design Certification Rule] general provisions into Subpart C as appropriate.'' The NRC has decided to add these ITAAC requirements to proposed § 52.99, consistent with NEI's proposal, because it believes that these provisions embody general principles that are applicable to all holders of combined licenses.

c. *Section 52.73, Relationship to other subparts.* Section 52.73 would clarify that a design approval issued under proposed subpart E or a site report issued under proposed subpart B of part 52 may also be referenced in an application for a combined license application filed under 10 CFR part 52. This amendment would also add the requirements in the current § 52.63(c) to the new § 52.73(b) to clarify that this requirement applies to applicants for a combined license. This provision requires that, before granting a combined license which references a standard design certification, information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if the information is necessary for the NRC to make its safety determinations, including the determination that the application is consistent with the certified design. No substantive change is intended by the restatement of this requirement. In a letter dated April 3, 2001 (items 3 and 3.a), NEI agreed with the proposed change but recommended that the last sentence of § 52.63(c) be deleted and the remaining provision be added to the current § 52.79 rather than the current § 52.73. The NRC agrees with NEI that 10 CFR part 52 should be modified to clarify that the requirement in current § 52.63(c) applies to applicants for a combined license, and that the last sentence be deleted. However, the Commission is adding the remaining provision to what was § 52.73(b) and not to § 52.79 as recommended by NEI.

d. *Section 52.75, Filing of applications.* Section 52.75 provides requirements for the filing of combined license applications. The NRC proposes to reformat this section for consistency with the other subparts in 10 CFR part 52 and to replace the references to specific paragraphs within §§ 50.4 and 50.30 with general references to those sections. The specific references are no longer needed because the NRC proposes conforming changes to §§ 50.4 and 50.30 that clarify which provisions are applicable to combined license applications.

e. *Section 52.78, Content of applications; training and qualification of nuclear power plant personnel.* Section 52.78 would be deleted, and the requirements applicable to an applicant for, and holder of, a combined license with respect to the training program would be relocated to § 50.120, where the requirements currently exist for holders of operating licenses.

f. *Section 52.79, Contents of applications; technical information in final safety analysis report; and Section 52.80, Contents of application; additional technical information.* Section 52.79 would be reformatted to divide the requirements for the technical contents of a combined license application into two separate provisions. Section 52.79 would cover requirements for the contents of the FSAR, and § 52.80 would cover requirements for the remainder of the technical content of a combined license application.

Current § 52.79 states that a combined license application must contain the technically relevant information required of applicants for an operating license by 10 CFR 50.34. The reference to 10 CFR 50.34 would be removed and replaced with § 52.79(a), which contains all of the relevant requirements from 10 CFR 50.34 that describe what must be included in the FSAR for a combined license application, including requirements that are currently applicable to both construction permit and operating license applications. In addition, requirements from other sections of 10 CFR part 50 (*e.g.*, §§ 50.48 and 50.63) would be included. These requirements were issued after the current fleet of operating reactors were licensed and, therefore, were not required contents for these earlier FSARs. In proposing these modifications, the NRC has attempted to capture all relevant requirements regarding contents of the FSAR for a combined license application.

In addition, the proposed § 52.79(a) contains requirements for descriptions of operational programs that need to be included in the FSAR to allow a reasonable assurance finding of acceptability. This proposed amendment is in support of the

Commission's direction to the staff in SRM–SECY–02–0067 dated September 11, 2002, ''Inspections, Tests, Analyses, and Acceptance Criteria for Operational Programs (Programmatic ITAAC),'' that a combined license applicant was not required to have ITAAC for operational programs if the applicant fully described the operational program and its implementation in the combined license application. In this SRM, the Commission stated:

> [a]n ITAAC for a program should not be necessary if the program and its implementation are fully described in the application and found to be acceptable by the NRC at the COL stage. The burden is on the applicant to provide the necessary and sufficient programmatic information for approval of the COL without ITAAC.

The Commission clarified its definition of *fully described* in SRM–SECY–04–0032, ''Programmatic Information Needed for Approval of a Combined License Application Without Inspections, Tests, Analyses, and Acceptance Criteria,'' dated May 14, 2004, as follows:

> In this context, *fully described* should be understood to mean that the program is clearly and sufficiently described in terms of the scope and level of detail to allow a reasonable assurance finding of acceptability. Required programs should always be described at a functional level and at an increased level of detail where implementation choices could materially and negatively affect the program effectiveness and acceptability.

Accordingly, the Commission proposes to add requirements for descriptions of operational programs. In doing so, the Commission has taken into account NEI's proposal in its letter dated August 31, 2005, to address SRM–SECY–04–0032.

Section 52.79(b) would describe the variant on the requirements in § 52.79(a) for a combined license application that references an early site permit. Section 52.79(a) does not explicitly require the application to address whether the terms and conditions specified in the early site permit under § 52.24 have been or will be met by the combined license holder, although this is implicit by the inclusion of any terms and conditions in the early site permit. To remove any ambiguity in this matter, § 52.79(b)(3) would require that the FSAR 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. The NRC's intent, as reflected in the words, ''have been met,'' is that all terms and conditions will be met before issuance of the combined license.

Section 52.79(c) would describe the requirements for combined license applications that reference a standard design approval. Previously, no guidance was provided regarding a combined license application that referenced a standard design approval. The proposed requirements in § 52.79(c) are essentially the same as those for a combined license application that references a standard design certification in proposed § 52.79(d).

Section 52.79(d) would describe the requirements for combined license applications that reference a standard design certification. Section 52.79(d) would state that the FSAR for a combined license application referencing a standard design certification 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. Section 52.79(d) would require that the FSAR demonstrate that the interface requirements established for the design under § 52.47 have been met and that all requirements and restrictions that may have been set forth in the referenced design certification rule be satisfied by the date of issuance of the combined license.

Section 52.79(e) would describe the requirements for a combined license application that references a manufactured reactor. Previously, no guidance was provided regarding a combined license application that referenced a manufactured reactor. These requirements are similar to those for the content of an FSAR for a combined license referencing a design certification. Specifically, § 52.79(e) states that the FSAR 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. Section 52.79(e) also would require that the FSAR demonstrate that the interface requirements established for the design have been met and that all terms and conditions that have been included in the manufacturing license be satisfied by the date of issuance of the combined license.

Section 52.79 would require that emergency plans submitted with a combined license application be included in the FSAR (proposed § 52.79(a)). This modification is proposed for consistency with current § 50.34 which requires that emergency plans be included in the FSAR for operating license applications.

Section 52.80 would be added to cover the required technical contents of a combined license application that are not contained in the FSAR. These application contents include the PRA, ITAAC, and the environmental report.

The NRC proposes to add a requirement in § 52.80(a) that an applicant submit a plant-specific PRA as part of an application for a combined license. The current § 52.79(b) references § 52.47(a)(1)(v), which requires a design-specific PRA within a design certification application. This amendment would add new § 52.80(a) to require that if an application for a combined license 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. In a letter dated April 3, 2001 (item 11.1a), NEI stated ''we agree on the NRC vision for a plant-specific PRA at COL that supplements the DC PRA with any changes that affect the DC PRA plus site-specific (interface) design information.'' A requirement would be added to § 52.80(a) that a combined license application that does not reference a certified design must contain a plant-specific PRA.

The purpose of the requirement for a plant-specific PRA is to identify and address potential design and operational vulnerabilities; gain insights about the risk of the design; assess the balance between preventive and mitigative features in the design; determine quantitatively whether the design represents a reduction in risk over current operating plants; and, determine how the risk associated with the new design relates to the Commission's safety goals.

g. *Section 52.81, Standards for review of applications.* 10 CFR parts 54 and 140 would be added to the list of standards that the NRC will use to review combined license applications. Part 54 would address applications for renewal of combined licenses and part 140 would include the requirements applicable to nuclear reactor licensees

with respect to financial protection and Indemnity Agreements to implement Section 170 of the AEA, commonly referred to as the Price-Anderson Act.

h. *Section 52.83, Finality of referenced NRC approvals.* The current § 52.83, Applicability of part 50 provisions, would be removed and would be replaced by a new section addressing the finality of NRC approvals which are referenced in a combined license application. Current § 52.83 provides that, unless otherwise specifically provided for in subpart C to Part 52, all provisions of 10 CFR part 50 and its appendices applicable to holders of construction permits for nuclear power reactors also apply to holders of combined licenses. Similarly, § 52.83 provides that all provisions of 10 CFR part 50 and its appendices applicable to holders of operating licenses also apply to holders of combined licenses issued under this subpart, once the Commission has made the findings required under § 52.99. The Commission believes that the current § 52.83 is not necessary because this proposed rulemaking will provide conforming changes throughout 10 CFR part 50 (as well as all other parts in Title 10 Chapter 1) to identify which requirements are applicable to combined license applicants and holders. Current § 52.83 also provides provisions that address the duration of a combined license and these provisions would be moved to proposed § 52.104, Duration of combined license.

The proposed revision to § 52.83 would state that, if an application for a combined license references an early site permit, design certification rule, standard design approval, or manufacturing license, the scope and nature of matters resolved for the application and any combined license issued are governed by the relevant provisions addressing finality, including §§ 52.39, 52.63, 52.98, 52.145, and 52.171. This provision would clarify the relationship between a combined license application and any other license or regulatory approval that an applicant may reference in the combined license application as far as issue resolution is concerned.

i. *Section 52.89, Environmental review.* Section 52.89 would be removed and reserved for future use. Current § 52.89 requires that, if a combined license application references an early site permit or a certified standard design, the environmental review must focus on whether the design of the facility falls within the parameters specified in the early site permit and any other significant environmental issue not considered in any previous proceeding on the site or the design. Current § 52.89 states further that, if the application does not reference an early site permit or a certified standard design, the environmental review procedures set out in 10 CFR part 51 must be followed, including the issuance of a final environmental impact statement, but excluding the issuance of a supplement under § 51.95(a). This provision would be removed because the requirements are captured in proposed § 52.79(a) and in the proposed revisions to part 51.

j. *Section 52.91, Authorization to conduct site activities.* Section 52.91(a)(2) currently provides requirements for a combined license application that does not reference an early site permit, but that contains a site redress plan and states that the applicant may not perform the site preparation activities allowed by 10 CFR 50.10(e)(1) without first submitting a site redress plan in accordance with § 52.79(a)(3), and obtaining the separate authorization required by 10 CFR 50.10(e)(1). This provision further states that authorization must be granted only after the presiding officer in the proceeding on the application has made the findings and determination required by 10 CFR 50.10(e)(2), and has determined that the site redress plan meets the criteria in § 52.17(c). This provision would be amended to state that authorization *may* [emphasis added] be granted only after the presiding officer in the proceeding on the application has made the findings and determination required by 10 CFR 50.10(e)(2), and has determined that the site redress plan meets the criteria in § 52.17(c). This amendment would be consistent with § 52.91(a)(3), which states that authorization to conduct the activities described in 10 CFR 50.10(e)(3)(i) may be granted only after the presiding officer in the combined license proceeding makes the additional finding required by 10 CFR 50.10(e)(3)(ii). The NRC believes that may is the proper term to use in both of these provisions.

k. *Section 52.93, Exemptions and variances.* Section 52.93 would include a discussion of the requirements regarding requests for an exemption from any part of a referenced design certification rule. The proposed § 52.93 states that, if the request is for an exemption from any part of a referenced design certification rule, the Commission may grant the request if it determines that the exemption complies with any exemption provisions of the referenced design certification rule, or with § 52.63 if there are no applicable exemption provisions in the referenced design certification rule.

l. *Section 52.97, Issuance of combined licenses.* The NRC would modify § 52.97 to be more consistent with the parallel provision in § 50.50, Issuance of licenses and construction permits, by including requirements that, after conducting a hearing and receiving the report submitted by the ACRS, the NRC finds that there is reasonable assurance that the applicant is technically and financially qualified to engage in activities authorized; and that issuance of the license will not be inimical to the common defense and security or to the health and safety of the public. Section 52.97(c) would be added, consistent with § 50.50, which states that a combined license shall contain conditions and limitations, including technical specifications, as the Commission deems necessary and appropriate. Existing § 52.97(b)(2) would be moved to new § 52.98, because the issues addressed in this section are issues associated with finality of combined license provisions.

m. *Section 52.98, Finality of combined licenses; information requests.* Section 52.98 would be added to subpart C, consistent with the other subparts in 10 CFR part 52. Section 52.98 would provide provisions for the finality of combined license provisions. Section 52.98(a) states that, after issuance of a combined license, the Commission may not modify, add, or delete any term or condition of the combined license, the design of the facility, the inspections, tests, analyses, and acceptance criteria contained in the license which are not derived from a referenced standard design certification or manufacturing license, except in accordance with the provisions of §§ 52.103 or 50.109, as applicable.

Section 52.98 would include provisions to clarify the applicability of the change processes in 10 CFR part 50 and Section VIII of the design certification rules in 10 CFR part 52 to a combined license. Section 52.98(b) states that the change processes in 10 CFR part 50 apply to a combined license that does not reference a design certification rule or a reactor manufactured under a manufacturing license. Section 52.98(c) states that the change processes in Section VIII of the design certification rules apply to changes within the scope of the referenced certified design. However, if the proposed change affects the design information that is outside of the scope of the design certification rule, the part 50 change processes apply unless the change also affects the design certification information. For that

situation, both change processes may apply.

Section 52.98(d) would be added to address changes to a combined license that references a reactor manufactured under a manufacturing license. Section 52.98(d)(1) states that, if the combined license references a reactor manufactured under a subpart F manufacturing license, then changes to or variances from information within the scope of the manufactured reactor's design are subject to the change processes in § 52.171. Section 52.98(d)(2) states that changes that are not within the scope of the manufactured reactor's design are subject to the applicable change processes in 10 CFR part 50 (e.g., §§ 50.54, 50.59, and 50.90). The NRC proposes all of these requirements to clarify, in one location, the finality provisions applicable to all portions of a combined license.

Finally, the Commission proposes to add a new paragraph (g) to the ''finality'' section in each subpart of part 52, including § 52.98, entitled ''Information requests,'' which would delineate the restrictions on the NRC for information requests to the holder of the combined license. This provision is analogous to the current provision on information requests in paragraph 8 of appendix O to parts 50 and 52, and is based upon the language of § 50.54(f). For combined licenses, this proposed provision would be contained in § 52.98(g), and would require the NRC to evaluate each information request of the holder of a combined license to determine that the burden imposed by the information request is justified in light of the potential safety significance of the issue to be addressed in the information request. The only exceptions would be for information requests seeking to verify compliance with the current licensing basis of the facility. If the request is from the NRC staff, the request would first have to be approved by the Executive Director for Operations (EDO) or his or her designee.

n. *Section 52.103, Operation under a combined license.* Section 52.103(g) currently requires the NRC to find that the acceptance criteria in the combined license are met before operation of the facility, but does not refer to loading of fuel. However, current § 52.103(f) states that fuel loading and operation under the combined license will not be affected by the granting of a petition to modify the terms and conditions of the combined license unless a Commission order is made immediately effective. It was the Commission's intent in the 1989 rulemaking that it find that the acceptance criteria have been met before fuel is loaded, and the failure to include the reference to loading of fuel was an inadvertent oversight. Therefore, this section would be amended to require the NRC to find that the acceptance criteria in the combined license are met before fuel load and operation of the facility. In addition, Section IX in each of appendices A, B, and C of part 52 requires that the Commission find that the acceptance criteria in the ITAAC for the license are met before fuel load. The NRC believes that this is the common interpretation of § 52.103(g).

o. *Section 52.104, Duration of combined license; Section 52.105, Transfer of combined license; Section 52.107, Application for renewal; Section 52.109, Continuation of combined license; and Section 52.110, Termination of license.* Five new provisions would be added to Part C for consistency with the other subparts in 10 CFR part 52 and to parallel requirements in 10 CFR part 50 for operating licenses. Section 52.104, would address the duration of a combined license and contains requirements that currently exist in § 52.83. In addition, the Commission proposes to amend these requirements to indicate that, where the Commission has allowed operation under a combined license during an interim period under § 52.103(c), the period of operation is not to exceed 40 years from the date allowing operation during the interim period.

Section 52.105 would provide requirements for the transfer of a combined license that refer the applicant to § 50.80. Section 52.107 would provide a reference to 10 CFR part 54 for the renewal of a combined license.

Section 52.109 would provide provisions for the continuation of a combined license and § 52.110 would provide requirements for the termination of a combined license. Currently, part 52 does not address decommissioning of combined licenses (reactors that are manufactured under a part 52 manufacturing license do not raise decommissioning concerns until they are emplaced at a site, inasmuch as a manufacturing license does not permit loading of fuel or operation) and the termination of the combined license. By contrast, §§ 50.51 and 50.82 would address the permanent shutdown of a nuclear power plant, its decommissioning, and the termination of the part 50 operating license. There are two possible ways of addressing this omission: §§ 50.51 and 50.82 could be modified to reference combined licenses under part 52, or the provisions analogous to these sections could be added to part 52. The NRC believes that the second alternative is the best approach. The combined license holder's responsibilities upon expiration of its license is more a matter of regulatory authority and therefore is best placed in part 52. While the question is closer with respect to decommissioning, the NRC believes that most users would likely turn to part 52 rather than part 50 to determine the requirements for decommissioning, inasmuch as decommissioning involves questions of both procedure and technical requirements.

7. Subpart D, Reserved

8. Subpart E, Standard Design Approvals (§§ 52.131 Through 52.147)

Appendix O to part 52 currently sets forth the NRC's requirements for approval of standard designs for nuclear plants or a major portion of a nuclear plant. This licensing process was first adopted by the NRC in 1975 and has been used many times, including issuance of four final design approvals (FDAs) under appendix O to part 52 from 1994 through 2004. These FDAs were issued as part of four design certification reviews where the FDAs were a prerequisite to certification of the standard design. As part of this rulemaking, the NRC proposes to remove the requirement that FDAs are a prerequisite to a design certification under subpart B of part 52 (see the discussion on 10 CFR 52.43).

When the NRC adopted part 52 in 1989, the Commission did not re-examine the regulatory scheme for standard design approvals to determine if the bases for adopting part 52 and the licensing processes codified in part 52 would also be an impetus for reorganizing the design approval process. However, the NRC did undertake a re-examination of appendix O to part 52 and proposed certain changes in the 2003 proposed rule. In view of the substantial reorganization and rewriting of part 52 proposed in this rulemaking, the Commission has given further consideration to the licensing process in appendix O to part 52 and proposes additional changes to enhance the regulatory effectiveness and efficiency of that process.

The NRC continues to believe that the best approach for obtaining early resolution of design issues is through the design certification process in subpart B of part 52. Design certification will provide greater finality and standardization than the design approval process. Consequently, the NRC favors the use of the design certification process, which suggests

that the design approval process could be eliminated. However, given the frequent use of appendix O to part 52 in the past, the NRC proposes to retain this process and to reorganize and reformat the design approval process to be consistent with the other subparts.

The language that is currently in appendix O of part 52 has been relocated to a new subpart and formatted to be consistent with the other subparts. A new section (§ 52.133) would be created to describe the relationship of the design approval process with the other subparts. The proposed filing requirements are consistent with the other subparts. The applications may still request approval of either the entire facility or major portions thereof, but the applications are limited to final design information.

There are several reasons for this change. First, the Commission's recent experience with FDAs and design certifications demonstrates that nuclear power plant designers are technically capable of developing essentially complete and final design information for Commission review and approval. Furthermore, the economic incentives with respect to design certification also apply to final design approvals. In addition, approval of a final reactor design removes the unpredictability of issuing a construction permit that references only preliminary design information and initiating construction while the final design information is being completed. Approval of a final standard design ensures early consideration and resolution of technical matters before there is any substantial commitment of resources associated with the construction of the plant, which will greatly enhance regulatory stability and predictability.

The NRC also proposes that applications for standard design approvals provide essentially the same technical information that is required for design certification applications (e.g., demonstration of compliance with any technically relevant Three Mile Island (TMI) requirement, proposed technical resolutions of unresolved safety issues and medium- and high-priority generic safety issues, and a design-specific probabilistic risk assessment). This proposal is consistent with past practice regarding applications for future designs and would implement the Commission's Policy Statements on Severe Reactor Accidents (50 FR 32138; August 8, 1985) and Nuclear Power Plant Standardization (52 FR 34884; September 15, 1987). However, this proposal would not require applicants for standard design approvals to submit ITAACs because FDAs may be referenced in applications for construction permits or operating licenses under 10 CFR part 50, and the verification process used for part 50 applications does not use ITAAC. In addition, this proposal would not require applicants to consider severe accident mitigation design alternatives.

A new § 52.139, which specifies the standards that will be used to review applications for standard design approvals and new §§ 52.145 and 52.147, which specify the finality and duration of standard design approvals consistent with other subparts would be added. In a letter dated November 13, 2001, NEI commented that ''Industry recommends FDAs be valid for 15 years.'' The NRC agrees with the industry's recommendation. The Commission has decided that the duration of standard design approvals should correspond to the duration of design certifications, inasmuch as both standard design approvals and design certifications constitute approvals of nuclear power plants designs, and the period of effectiveness of the approval from a technical standpoint is not a function of whether the approval is granted by the NRC staff or the Commission.

9. Subpart F, Manufacturing Licenses

The following discussion explains the requirements in subpart F generically and covers §§ 52.151, 52.153, 52.155, 52.156, 52.157, 52.159, 52.161, 52.163, 52.165, 52.167, 52.169, 52.171, 52.173, 52.175, 52.177, 52.179, and 52.181.

Appendix M of part 52 currently sets forth the NRC's requirements governing manufacturing licenses. Appendix M of part 52, which was first adopted by the NRC in 1973, provides for issuance of a license authorizing the manufacture of a nuclear power reactor to be incorporated into a nuclear power plant under a construction permit and operated under an operating license at a different location from the place of manufacture. Under the current licensing regime in appendix M of part 52, the NRC does not approve a final reactor design to be manufactured before issuance of the manufacturing license. Rather, analogous to the two-step process, the NRC issues a manufacturing license based upon the review of a preliminary design equivalent to that provided in a construction permit application. Upon approval of the preliminary design and associated information, the NRC issues a manufacturing license authorizing the manufacture—but not the removal from the manufacturing site—of one or more nuclear power reactors. Thereafter, manufacturing can commence, although the NRC must approve the final design of the manufactured reactor by license amendment (see appendix M of part 52, paragraph 7, Note). Under paragraph 8 of Appendix M of part 52, the manufactured reactor may not be removed from the place of manufacture until approval of the final design under paragraph 7 of appendix M of part 52.

When the NRC adopted part 52 in 1989, the NRC did not re-examine the regulatory scheme for manufacturing licenses to determine if the bases for adopting part 52 and the licensing concepts used in part 52 also would be an impetus for proposing changes to the regulatory scheme for manufacturing licenses. Nor did the NRC undertake such a re-examination as part of the process leading to the 2003 proposed rule. However, in view of the substantial reorganization and rewriting of 10 CFR Chapter 1 generally, the NRC has reconsidered the efficacy of the current manufacturing license process in appendix M of part 52 and proposes substantial changes to enhance regulatory effectiveness and efficiency.

The most important shift in the manufacturing license concept proposed by the NRC is that a final reactor design, equivalent to that required for a standard design certification under part 52 or an operating license under part 50, must be submitted and approved before issuance of a manufacturing license. There are several reasons for this shift. First, the Commission's experience with standard design certifications demonstrates that nuclear power plant designers are technically capable of developing a complete reactor design for Commission review. Furthermore, the economic incentives and limitations with respect to approval of a standard reactor design certification also apply to the approval of a design of a manufactured reactor. Indeed, one could argue that the holder of a manufacturing license may structure the commercial transaction to reduce the economic risk associated with the application for a manufacturing license for a final reactor design, as compared to the economic risk associated with a standard design certification. Second, approval of a final reactor design removes the current awkward regulatory process of issuing a manufacturing license, and subsequently amending the license when a final design is submitted. Approval of a final design ensures early consideration and resolution of technical matters before there is any substantial commitment of resources associated with the actual manufacture of the reactor, which will greatly enhance regulatory stability and

predictability. Finally, Commission approval of standardized manufacturing processes, coupled together with the potential for a stable workforce and the application of manufacturing process feedback, has great opportunities for maintaining and even improving the quality and consistency of manufacture, as compared to the traditional method of constructing reactors onsite by a variety of contractors and subcontractors.

The technical information required to be included in an application for a manufacturing license, as set forth in proposed §§ 52.157 and 51.158, reflects both the expansion of the scope of approval to include the final design of the reactor to be manufactured, as well as lessons learned with respect to early site permits. Section 52.157 would require the standard information to be submitted in support of the design of a reactor (derived from the existing requirements in current part 52, subparts B and C) for a standard design certification and combined license. In addition, the application must address the provisions with respect to the demonstration by test, analysis, experience, or a combination thereof of simplified, inherent, passive, or other innovative means to accomplish safety functions, or the results of testing of a prototype plant, as set forth in proposed revisions to § 50.40 (as discussed separately with respect to § 50.40, these testing and prototype requirements proposed to be incorporated into § 50.40 were derived from the current requirements in § 52.47(b)). Information which must be submitted as part of an application, but is not typically considered part of a final safety analysis report, is identified in § 52.158. This includes a PRA, proposed ITAAC to be used by the licensee who will construct and operate a nuclear power plant at its site using the manufactured reactor, and an environmental report for the manufactured reactor.

The environmental report must address severe accident mitigation design alternatives (SAMDAs), similar to standard design certifications, because the design approval stage is usually the most cost-effective opportunity for incorporating design features for addressing severe accidents. The NRC notes that the environmental report need not address environmental impacts associated with the actual manufacture of the reactor at any manufacturing location, inasmuch as a manufacturing license does not represent NRC approval of any specific location, facility, or appurtenance for manufacturing. Rather, the NRC is approving a reactor design for manufacture and the ITAAC for verifying that it has been acceptably manufactured and integrated into a nuclear power facility so that it can be safely operated in accordance with the approved manufactured reactor design, the NRC's regulations, and the requirements of the AEA.

In light of the Commission's review and approval of a final design, the NRC proposes to provide a greater degree of finality to a manufacturing license. Under § 52.171(a)(1) of the proposed rule, the same degree of issue finality accorded to the ''certified design'' would apply throughout the term of the manufacturing license. Under this provision, the approved design for the manufacturing license could not be changed or modified unless the NRC determines it is necessary either for adequate protection or for compliance with requirements applicable and in effect at the time the manufacturing license was issued. A comparable requirement is also included in § 52.171(a)(4) which would restrict changes to the design of the manufactured reactor if it is referenced for use in a construction permit, operating license, or combined license. The NRC proposes not to provide the ability of the manufacturing license holder to make changes to the design, site parameters, design characteristics, or terms and conditions under the provisions of 10 CFR 50.59, which is comparable to the design certification process. The NRC believes that one of the key reasons for licensing manufactured reactors is to enhance standardization, one of the original objectives of the 1989 part 52 rulemaking. Unlike design certification, which is an approval of a ''paper design,'' the NRC's proposed concept of a manufacturing license is pre-approval of the procurement, manufacturing, and quality assurance processes that translates the approved reactor design into a manufactured assembly in a controlled environment, with the capability to optimize techniques and procedures based upon feedback. Some of these advantages may be lost if each ''manufactured'' reactor were treated as a ''one-off'' custom product.

The NRC proposes that the term of a manufacturing license be for no less than 5 or more than 15 years from the date of issuance. The licensee may not commence manufacturing of a reactor less than 3 years before the expiration date, but may continue the manufacturing of a reactor whose manufacture commenced before the 3 year deadline up to license expiration. If, however, an application for renewal is timely-filed with the NRC, manufacturing of a reactor whose manufacture commenced before the 3-year deadline may continue until the time that the NRC completes action on the renewal application in accordance with the Timely Renewal Doctrine of the Administrative Procedure Act (APA). The NRC selected the 3-year deadline as a reasonable period for completing the manufacture of a nuclear power reactor, based in large part upon public statements by various reactor vendors that they have set goals for constructing complete nuclear power plants onsite within 3 years. It seems reasonable, therefore, that a manufactured reactor, built in a controlled environment using industrial manufacturing processes, would be able to be manufactured in the same 3-year period as the construction of an entire facility onsite. The NRC does not propose to specify, as a separate matter, an earliest and latest date for completion of manufacture of any individual reactor. Section 185 of the AEA directs that ''[t]he construction permit shall state the earliest and latest date for completion of the construction or modification.'' Inasmuch as a manufacturing license is not a construction permit nor does it authorize ''construction,'' there does not appear to be any legal need for the manufacturing license to specify, apart from its term, the earliest and latest date of completion of manufacture.

10. Subpart G, Reserved

11. Appendices A, B, and C—Design Certifications for ABWR, System 80+, and AP600

The NRC proposes to amend paragraphs VI.B.4, 5, and 6 of the three design certification rules in appendices A, B, and C to part 52 for the U.S. ABWR, System 80+, and AP600 designs, respectively, by substituting the phrase ''but only for that *plant*'' for the erroneous phrase ''but only for that *proceeding*'' (emphasis added). The new phrase correctly characterizes the scope of issue resolution in three situations. Paragraph VI.B.4 describes how issues associated with a design certification rule are resolved when an exemption has been granted for a plant referencing the design certification rule. Paragraph VI.B.5 describes how issues are resolved when a plant referencing the design certification rule obtains a license amendment for a departure from Tier 2 information. Paragraph VI.B.6 describes how issues are resolved when the applicant or licensee departs from the Tier 2 information on the basis of paragraph VIII.B.5, which waives the requirement to obtain NRC approval.

Thus, once a matter (*e.g.*, an exemption in the case of paragraph VI.B.4) is addressed for a specific plant referencing a design certification rule, the adequacy of that matter for that plant would not ordinarily be subject to challenge in any subsequent proceeding or action (such as an enforcement action) listed in the introductory portion of paragraph IV.B, but there would not be any issue resolution on that subject matter for any other plant. Unfortunately, the three design certification rules use the phrase ''but only for that proceeding,'' which may lead to the erroneous conclusion that issue resolution exists only in the proceeding in which the matter was approved and/or adjudicated, and not in all subsequent proceedings for that plant.

In letters dated November 12, 2001, and November 13, 2001, respectively, General Electric Company and Westinghouse Electric Company reiterated earlier recommendations the two companies had made that Sections VI.B.4 and 5 of the design certification rules state that exemptions and license amendments have finality ''but only for that plant.'' For the reasons previously discussed, the NRC proposes to substitute the phrase ''but only for that plant,'' to clarify that issue resolution on a matter applies in subsequent proceedings for that plant.

Each of the design certification rules in appendices A, B, and C to part 52 includes a Section VIII on change processes. These processes apply to changes depending upon the category of design information affected. For plant-specific Tier 2 information, the change process established in the rule mirrors, in large part, that in the former 10 CFR 50.59. The proposed rule would amend paragraph VIII.B.5 of the design certification rules to conform the terminology in the § 50.59-like change process to that used in the current § 50.59. This amendment deletes references to unreviewed safety question and safety evaluation, and conforms the evaluation criteria concerning when prior NRC approval is needed. Also, a definition has been added to the design certification rules (paragraph II.G) for ''departure from a method of evaluation'' to support the evaluation criterion in Paragraph VIII.B.5.b(8).

In an earlier rulemaking (see 64 FR 53582; October 4, 1999), the NRC revised § 50.59 to incorporate new thresholds for permitting changes to a plant as described in the FSAR without NRC approval. For consistency and clarity, similar changes are being proposed for 10 CFR part 52 applicants or licensees. Because of some differences in how the change control requirements are structured in the design certification rules, certain definitions contained in § 50.59 are not necessary for or applicable to 10 CFR part 52 and are not being included in this proposed rule. One definition that the NRC is including, is from § 50.59 for a ''Departure from a method of evaluation,'' which is appropriate to include in this rulemaking so that the eighth criterion in Paragraph VIII.B.5.b of the design certification rules will be implemented as intended.

Each of the design certification rules in appendices A, B, and C to part 52 includes a section on records and reporting. The NRC proposes to amend paragraph X.B.3.b to change the reporting frequency from quarterly to semi-annually, and to extend the period of increased reporting frequency, relative to the frequency of 10 CFR 50.59(d) and 50.71(e)(4), from the date of a license application that references a design certification rule to the date that the Commission makes its finding under 10 CFR 52.103(g). The requirement to report plant-specific departures from and updates to the design control document during the interval from the application for a combined license until the Commission makes its finding under § 52.103(g) is to facilitate NRC's monitoring of changes to the nuclear power plant, to achieve a common understanding of how the as-built facility conforms to the design certification information, and to adjust the inspection program to reflect the design changes.

The proposed amendment to paragraph X.B.3.b reduces the frequency of reporting during the period of construction and increases the frequency of reporting during the application review period. The Commission believes that these changes in the reporting burden balance each other and provide the information needed by the NRC to fulfill its responsibilities in the licensing of future nuclear power plants. In order to make the finding under § 52.103(g), the NRC must monitor the design changes made under Section VIII of the design certification rules. Frequent reporting of design changes will be particularly important in times when the number of design changes could be significant, such as during the procurement of components and equipment, detailed design of the plant before and during construction, and during preoperational testing. After the facility begins operation, the frequency of reporting would revert to the requirement in paragraph X.B.3.c, which is consistent with the requirements for operating plants.

D. Proposed Changes to 10 CFR Part 50

1. General Provisions, § 50.2, Definitions

The Commission proposes to add new definitions as conforming changes to § 50.2. The definition of an *applicant* would be added to clarify that a person or entity applying for Commission ''permission or approval'' is an applicant. This would ensure that part 50 requirements for applicants would apply to a person or entity seeking an NRC approval not constituting a license, such as a standard design approval under part 52.

The definitions for *license* and *licensee* would be added to clarify that early site permits and combined licenses under part 52 are licenses, and that holders of these types of licenses are licensees for purposes of part 50.

The definition for *prototype plant* would be added to explain the type of nuclear reactor that the NRC intends in the proposed § 50.43(e). A prototype plant is a licensed nuclear reactor test facility that is similar to and representative of the first-of-a-kind nuclear plant in all features and size, but may have additional safety features. The purpose of the prototype plant is to perform testing of new or innovative design features for the first-of-a-kind nuclear plant design, as well as being used as a commercial nuclear power facility.

2. Requirement of License, Exceptions, § 50.10, License Required

Section 50.10 addresses the circumstances under which a license for a production or utilization facility is required, and describes activities which do not constitute ''construction'' for purposes of obtaining a license for a nuclear power plant. Section 50.10(b) currently prohibits a person from beginning construction of a production or utilization facility unless a construction permit has been issued. Inasmuch as activities constituting construction (as defined in § 50.10(b)) are authorized under a combined license, § 50.10(b) would be revised to refer to combined licenses.

Currently, § 52.17(c) authorizes an early site permit applicant to request authority to perform the activities allowed under § 50.10(e)(1). The NRC notes that the current regulation does not provide for the holder of an early site permit to request authority to conduct § 50.10(e)(1) activities after the early site permit has been issued, and the NRC does not propose to change the current restriction. It will conserve the

NRC's resources to consider the safety and environmental issues associated with § 50.10(e)(1) activities during the agency's consideration of the early site permit application. Late consideration of these requests after completion of the NRC's consideration of the application could entail substantial diversion of resources from other application reviews. For these reasons, the NRC does not propose to allow an early site permit holder to request authority to perform activities allowed under § 50.10(e)(1) after issuance of the early site permit (the Commission notes that under existing part 52, early site permit holders may not seek authority to perform activities allowed under § 50.10(e)(3) after issuance of the early site permit).

3. Classification and Description of Licenses

a. *Section 50.23, Construction permits.* This section currently provides that a construction permit for the construction of a production or utilization facility must be issued before issuance of a license for the facility, and then only upon ''due completion'' of the facility. The revised section clarifies that if the NRC issues a combined license for a nuclear power plant under part 52, the construction permit and operating license are issued simultaneously (*i.e.*, are merged into a ''combined license'' under Part C of part 52). This is consistent with Section 185.b of the AEA, which provides the NRC with explicit statutory authority to combine a construction permit and an operating license for a nuclear power plant into a single combined license. The NRC notes that § 50.23 does not preclude the NRC from combining a construction permit and operating license with respect to production facilities or utilization facilities other than nuclear power plants under Section 161.h of the AEA.

b. *Section 50.30, Filing of application; oath or affirmation.* Section 50.30 establishes the NRC's general procedural requirements on filing of applications for licenses (including construction permits) for production and utilization facilities. The NRC proposes to make conforming changes throughout § 50.30 to include necessary references to part 52 processes other than design certification (Part H of part 2 governs the filing of standard design certification applications), viz., early site permits, combined licenses, standard design approvals, and manufacturing licenses. In addition, § 50.30(a) would be revised to ensure that the submission requirements governing applications (and amendments to these applications) in § 52.3 apply to part 52 processes other than design certification.

c. *Section 50.33, Contents of applications; general information.* Section 50.33 identifies the general information that must be included in applications for licenses (including construction permits) for production and utilization facilities. Section 50.33(f) requires certain applicants for nuclear power plant licenses to submit information sufficient to determine whether the applicant has the financial qualification to carry out, in accordance with the NRC's regulations, the activities for which a license or permit is sought. Section 50.33 would be amended to require applicants for combined licenses to submit financial qualifications information. The proposed rule would not require financial qualifications information to be submitted by applicants for early site permits, standard design approvals, and manufacturing licenses. An NRC review to determine whether an applicant has adequate financial qualifications to conduct the activities authorized by an early site permit would contribute little, if anything, to providing reasonable assurance of adequate protection with respect to early site permit activities. Ordinarily, an early site permit authorizes no activities, unless the early site permit application requested authority to conduct the activities permitted under § 50.10(e)(1). The NRC has determined that no safety finding per se is necessary to authorize the licensee to conduct these activities; the NRC's review of a § 50.10(e)(1) application is focused on siting and environmental matters.

With respect to a standard design approval, the argument applies with even more force, inasmuch as a design approval authorizes no activities of any kind, and the finality associated with a design approval is significantly less than for an early site permit. The NRC concludes that no regulatory purpose appears to be served by a financial qualifications review for early site permits and standard design approvals. The NRC believes that there is little additional regulatory value in requiring a financial qualifications review for a manufacturing license. While it is true that a lack of sufficient financial resources could result in inadequate manufacture of a reactor, under the NRC's proposed concept of a manufacturing license under subpart F of part 52, each manufactured reactor cannot be operated until ITAAC specified in the manufacturing license are successfully completed by the licensee authorized to construct the nuclear power facility using the manufactured reactor. Successful completion of the manufactured reactor's ITAAC should ensure that any problems with manufacture attributable to lack of financial resources of the manufacturing license holder can be identified before operation. Moreover, the licensee authorized to construct the facility (either under a construction permit or a combined license) using a manufactured reactor would have been subject to a financial qualifications review under the proposed rule. This review should be sufficient to determine if the applicant has sufficient financial resources to carry out facility construction and the completion of the manufactured reactor's inspections, tests, and acceptance criteria. Finally, the NRC notes that it does not require the fabricators of safety-related and important to safety structures, systems, and components (SSCs) to be licensed and subject to a financial qualifications review. The NRC believes that a holder of a manufacturing license conducts activities which appear to be, in large part, analogous to these current non-licensed fabricators. Accordingly, the NRC concludes that a financial qualifications review of the applicant for a manufacturing license will not add significant regulatory value to justify the cost of such a review.

Section 50.33(g) currently addresses radiological emergency response plans for State and local government entities that must be submitted in applications for operating licenses. The proposed rule would make a conforming change to ensure that applicants for combined licenses must also submit this information, as well as applicants for early site permits who decide under § 52.17(b)(2)(iii) to seek NRC review and approval of complete emergency plans.

Section 50.33(k) currently requires applicants for operating licenses to provide a report, as described in § 50.75, indicating how reasonable assurance that funds will be available for the decommissioning process will be provided. The proposed rule would make a conforming change to add a reference to combined licenses. The content of this report, reflecting the unique considerations of a combined license, is addressed separately in the NRC's proposed revision to § 50.75.

d. *Section 50.34, Contents of construction permit and operating license applications; technical information.* The NRC is proposing to retitle § 50.34 from Contents of applications; technical information to Contents of construction permit and operating license applications; technical information. Section 50.34(a) currently

provides the requirements for the technical contents of an application for a stationary power reactor construction permit, design certification or combined license, and § 50.34(b) provides the requirements for the technical contents of an application for a stationary power reactor operating license application. However, the current version of 10 CFR part 52 provides requirements for design certification and combined license applications that are not consistent with the current version of § 50.34. For example, the current § 52.47 states that an application for design certification must contain the technical information which is required of applicants for construction permits and operating licenses by part 50 which is technically relevant to the design and not site-specific. This would encompass requirements in both §§ 50.34(a) and (b). Also, current § 52.79 states that applications for combined licenses must contain the technically relevant information required of applicants for an operating license by 10 CFR 50.34, which are found in § 50.34(b). In addition to the requirements for technical information in §§ 50.34(a) and (b), §§ 50.34(c) through (h) provide requirements for the contents of licensing applications related to security plans, compliance with Three Mile Island (TMI) related requirements, combustible gas control, and conformance with the Standard Review Plan. Finally, the Commission notes that the subject of contents of an application is an administrative matter, rather than a strictly technical matter. Therefore, these administrative requirements for part 52 processes are more properly located in part 52, rather than in § 50.34. To provide maximum clarity in the requirements for the content of each of the different types of licensing applications, the NRC proposes to revise § 50.34 to make it applicable to construction permit and operating license applications only and to provide separate sections for the technical contents of applications for the other types of licenses or regulatory approvals in 10 CFR part 52 (early site permits in § 52.17, design certifications in § 52.47, combined licenses in § 52.79, design approvals in § 52.137, and manufacturing licenses in § 52.157). In its proposed revisions to 10 CFR part 52, the NRC has brought forward the requirements from § 50.34 that are applicable to each of the licensing and approval processes in 10 CFR part 52. One exception to this structure is the provisions in § 50.34(f) related to compliance with TMI related requirements. Due to the length and complexity of the requirements in this paragraph, § 50.34(f) would be amended to indicate that each applicant for a design certification, design approval, or combined license under part 52 of this chapter must demonstrate compliance with any technically relevant portions of the requirements in § 50.34(f)(1) through (3), rather than repeating the requirements in each of the relevant sections in part 52.

e. *Section 50.34a, Design objectives for equipment to control releases of radioactive material in effluents—nuclear power reactors; and Section 50.36a, Technical specifications on effluents from nuclear power reactors.* Section 50.34a currently requires that construction permit and operating license applications include a description of the equipment and procedures for the control of gaseous and liquid effluents and for the maintenance and use of equipment installed in radioactive waste systems. Section 50.34a also requires these applications to include an estimate of (1) the quantity of each of the principal radionuclides expected to be released annually to unrestricted areas in liquid effluents produced during normal reactor operations; and (2) the quantity of each of the principal radionuclides of the gases, halides, and particulates expected to be released annually to unrestricted areas in gaseous effluents produced during normal reactor operations. In addition, § 50.34a requires a general description of the provisions for packaging, storage, and shipment offsite of solid waste containing radioactive materials resulting from treatment of gaseous and liquid effluents and from other sources. Section 50.34a would be amended to clarify its applicability to the 10 CFR part 52 licensing and approval processes. Section 50.34a currently applies to combined licenses by virtue of the provision in current § 52.83, Applicability of Part 50 provisions, which states that all provisions of 10 CFR part 50 and its appendices applicable to holders of construction permits and operating licenses also apply to holders of combined licenses. Current applicants for design certification are also required to include the information required by § 50.34a in their applications by virtue of the provision in current § 52.47(a)(1)(i), which states that an application for design certification must contain the technical information which is required of applicants for construction permits and operating licenses by 10 CFR part 50 which is technically relevant to the design and not site-specific. Current appendix O to 10 CFR part 52, section O.3, explicitly requires applicants for design approvals to include the applicable technical information required by § 50.34a. Finally, current appendix M to 10 CFR part 52, section M.1, states that the provisions in part 50 applicable to construction permits apply in context, with respect to matters of radiological health and safety, environmental protection, and the common defense and security, to manufacturing licenses. Therefore, new provisions in § 50.34a(d) are proposed to address the applicable requirements for combined license applications that parallel the requirements for an operating license application. New provisions in § 50.34a(e) are proposed to address the applicable requirements for applications for design approvals, design certifications, and manufacturing licenses to include: (1) a description of the equipment for the control of gaseous and liquid effluents and for the maintenance and use of equipment installed in radioactive waste systems; and (2) an estimate of the quantity of each of the principal radionuclides expected to be released annually to unrestricted areas in liquid effluents produced during normal reactor operations, and the quantity of each of the principal radionuclides of the gases, halides, and particulates expected to be released annually to unrestricted areas in gaseous effluents produced during normal reactor operations.

f. *Section 50.36, Technical specifications.* Section 50.36(a) currently requires that each applicant for a license authorizing operation of a production or utilization facility include in its application proposed technical specifications in accordance with the requirements of § 50.36. The existing language in § 50.36(a) encompasses combined license applicants. However, applicants for design certification are also required to include proposed technical specifications in their applications by virtue of the provision in current § 52.47(a)(1)(i) stating that an application for design certification must contain the technical information required of applicants for construction permits and operating licenses by 10 CFR part 50 that is technically relevant to the design and not site-specific. Similarly, applicants for design approvals are also required to include proposed technical specifications in their applications by virtue of the provision in current appendix O, section O.3, which states that the submittal for review of a standard design shall include the applicable

technical information under §§ 50.34 (a) and (b), as appropriate.

Section 50.36 would be revised to clarify that design approval and design certification applications must also include proposed technical specifications. The new proposed provisions in § 50.36(c) would require each applicant for a design approval or a design certification to include proposed generic technical specifications in its application for the portion of the plant that is within the scope of the design approval or design certification application.

g. *Section 50.36a, Technical specifications on effluents from nuclear power reactors.* Section 50.36a(a) currently requires each licensee of a nuclear power reactor to include technical specifications to keep releases of radioactive materials to unrestricted areas during normal conditions, including expected occurrences, as low as is reasonably achievable. The existing language in § 50.36a(a) encompasses combined license holders. However, applicants for design certification are also required to include proposed technical specifications on effluents in their applications by virtue of the provision in current § 52.47(a)(1)(i) which states that an application for design certification must contain the technical information which is required of applicants for construction permits and operating licenses by 10 CFR part 50 which is technically relevant to the design and not site-specific. Section 50.36a(a) would be amended to state that each licensee of a nuclear power reactor and each applicant for a design certification will include technical specifications to keep releases of radioactive materials to unrestricted areas during normal conditions, including expected occurrences, as low as is reasonably achievable.

The NRC is proposing to make conforming changes to appendix I to 10 CFR part 50. These proposed changes parallel the proposed changes to §§ 50.34a and 50.36a.

h. *Section 50.37, Agreement limiting access to Classified Information.* Section 50.37 currently requires that a license or construction permit applicant agree in writing that it will not permit any individual to have access to or any facility to possess Restricted Data or classified National Security Information until the individual and/or facility has been approved for access under the provisions of 10 CFR parts 25 and/or 95. Current § 50.37 also requires that this agreement be part of the application for a license or construction permit and that the agreement of the applicant shall be deemed part of the license or construction permit, whether so stated therein or not. The existing language in § 50.37 encompasses early site permit, combined license, and manufacturing license applicants under 10 CFR part 52 because these products are all licenses. However, the NRC proposes to modify § 50.37 to encompass applicants for design certification and for standard design approvals under 10 CFR part 52 for consistency with the proposed changes to 10 CFR part 25, Access Authorization for Licensee Personnel. Part 25 sets forth the Commission's requirements governing the grant of access authorization to classified information to certain individuals, and the Commission is proposing modifications to part 25 to reflect the licensing and regulatory approval processes in part 52. Accordingly, the Commission proposes to make consistent changes to § 50.37. The proposed § 50.37 would require that an applicant for a license, construction permit, design certification, or design approval under part 52 agree in writing that it will not permit any individual to have access to or any facility to possess Restricted Data or classified National Security Information until the individual and/or facility has been approved for access under the provisions of 10 CFR parts 25 and/or 95. Proposed § 50.37 would also require that this agreement be part of the application and be deemed part of the license, or construction permit, or NRC standard design approval whether so stated therein or not. The NRC proposes to modify § 52.54, Issuance of standard design certification, to include a new provision which requires that every standard design certification rule issued contain a provision that states that, after the Commission has adopted the final standard design certification rule, the applicant will not permit any individual to have access to or any facility to possess Restricted Data or classified National Security Information until the individual and/or facility has been approved for access under the provisions of 10 CFR parts 25 and/or 95. The NRC believes that these proposed changes, along with the proposed changes to parts 25 and 95, are necessary to ensure that access to classified information is adequately controlled by all entities applying for NRC licenses, design certifications, or design approvals.

4. Standards for Licenses, Certifications, and Approvals

a. *Section 50.40, Common standards.* This section sets forth standards for issuance of a license. Sections 50.40(a), (b), and (c) would be revised to add conforming references to the additional licensing processes issued under 10 CFR part 52 that are applicable to these standards.

b. *Section 50.43, Additional standards and provisions affecting class 103 licenses and certifications for commercial power.* The text and heading of this section would be revised to clarify that certain additional standards and provisions for class 103 licenses apply to applications for combined licenses, design certifications, and manufacturing licenses issued under part 52, in addition to applications for construction permits and operating licenses issued under part 50. Section 50.43(e) would be added to clarify that the requirements to demonstrate new safety features by testing, which were previously set forth in part 52, apply to applicants for operating licenses issued under part 50 and applicants for combined licenses, design certifications, and manufacturing licenses issued under part 52. This amendment would conform to the goal of having reactor safety requirements in part 50 and procedural requirements in part 52. Only the requirements in § 50.43(e) apply to applications for design certification. Refer to the generic discussion on testing requirements for advanced reactors in Section IV.B of this document.

c. *Section 50.45, Standards for construction permits, operating licenses, and combined licenses.* This section would be revised to clarify that the standards for authorizing construction or alteration of a facility also apply to applications for combined licenses issued under part 52.

d. *Section 50.46, Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors.* Section 50.46(a)(3) contains reporting requirements for changes to or errors in emergency core cooling systems (ECCS) evaluation models. The proposed rule would add conforming references to design approvals, design certifications, and licenses issued under part 52 so that the NRC will be notified of changes to or errors in acceptable evaluation models that were used in licenses, certifications, and approvals issued under part 52.

e. *Section 50.47, Emergency plans, Section 50.54(gg), and Appendix E to part 50, Emergency planning and preparedness for production and utilization facilities.* Section 50.47 and Appendix E to 10 CFR part 50 contain emergency planning requirements for nuclear power plants. These regulations do not clearly address early site permit or combined license applicants or holders. Accordingly, the NRC proposes

to make a number of changes in these regulations. Section 50.47(a)(1) currently states that no initial operating license for a nuclear power reactor will be issued unless a finding is made by the NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, and that no finding under § 50.47 is necessary for issuance of a renewed nuclear power reactor operating license. Section 50.47(a)(1) would be revised to include combined licenses in these applicability statements. A new § 50.47(a)(1)(ii) would be added to include similar requirements for early site permit applicants that submit complete and integrated emergency plans.

Section 50.47(c)(1) provides a process for operating license applicants that fail to meet the applicable standards of § 50.47(b). Section 50.47(c)(1) would be revised to clarify that this process is applicable to combined license applicants as well.

Section 50.47(d) currently provides that no NRC or Federal Emergency Management Agency (FEMA) review, findings, or determinations concerning the state of offsite emergency preparedness or the adequacy of and capability to implement State and local or utility offsite emergency plans are required before issuance of an operating license authorizing only fuel loading or low-power testing and training (up to 5 percent of the rated power). Section 50.47(d) further states that a license authorizing fuel loading and/or low-power testing and training may be issued after a finding is made by the NRC that the state of onsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency and provides the standards by which the NRC will base such a finding. A new § 50.47(e) would be added to provide essentially parallel provisions for a combined license holder by stating that a combined license holder may not load fuel or operate except as provided in accordance with appendix E to part 50 and, because of the nature of the combined license process, the NRC proposed new § 50.54(gg) that would add a condition to all combined licenses. This is necessary to account for the fact that the combined license will already be issued at the time of the first full or partial participation exercise.

The NRC's findings regarding the state of emergency preparedness for a combined license holder will be taken into account in the NRC's review under § 52.103(g), when it determines whether to authorize fuel loading and operation. The NRC will make its determination by judging whether the licensee has met the acceptance criteria in the combined license for the inspections, tests, and analyses related to the conduct of the first full or partial participation exercise under paragraph IV.F.2.a of appendix E to part 50. Proposed § 50.54(gg) states that if, following the conduct of the exercise required by paragraph IV.F.2.a of appendix E to part 50, FEMA identifies one or more deficiencies in the state of offsite emergency preparedness, the holder of a combined license may operate at up to 5 percent of rated thermal power only if the Commission finds that the state of onsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. Proposed § 50.54(gg) would also provide the standards by which the NRC will base such a finding.

Appendix E to part 50 would be revised to conform to the changes proposed for §§ 50.47 and 50.54. The introduction to Appendix E to part 50 states that each applicant for an operating license is required by § 50.34(b) to include in the final safety analysis report plans for coping with emergencies. The NRC proposes to add a parallel statement for combined license applicants, and to add a statement that an early site permit applicant may submit emergency plans. Similar modifications are proposed in Section III of Appendix E to part 50 regarding the content of final safety analysis reports and early site permit applications. In Section IV of Appendix E to part 50, Content of Emergency Plans, the NRC proposes to modify paragraph F.2.a, to address combined licenses in addition to operating licenses. Paragraph F.2.a currently provides requirements regarding the conduct of full participation exercises and states that a full participation exercise shall be conducted within 2 years before the issuance of the first operating license for full power of the first reactor. Paragraph F.2.a also requires that, if the full participation exercise is conducted more than 1 year before issuance of an operating licensee for full power, an exercise which tests the licensee's onsite emergency plans shall be conducted within 1 year before issuance of an operating license for full power. The NRC proposes to designate the requirements for operating licenses as paragraph F.2.a.i, and to add a new paragraph F.2.a.ii that contains the requirements for combined licenses. Proposed paragraph F.2.a.ii states that, for a combined license, the first full participation exercise must be conducted within 2 years of the scheduled date for initial loading of fuel and operation under § 52.103. Paragraph F.2.a.ii also requires that, if the first full participation exercise is conducted more than 1 year before the scheduled date for initial loading of fuel and operation under § 52.103, an exercise which tests the licensee's onsite emergency plans must be conducted within 1 year before the scheduled date for initial loading of fuel and operation under § 52.103. The NRC further proposes that, if FEMA identifies one or more deficiencies in the state of offsite emergency preparedness as the result of the first full participation exercise, or if the NRC finds that the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, the provisions of § 50.54(gg) will apply, as previously discussed.

A new paragraph IV.F.2.a.iii would be added to appendix E to part 50 to require that, if the applicant has an operating reactor at the site, an exercise, either full or partial participation, be conducted for each subsequent reactor constructed on the site. This exercise may be incorporated in the exercise requirements of paragraphs (2)(b) and (2)(c) of section IV.F. If FEMA identifies one or more deficiencies in the state of offsite emergency preparedness as the result of this exercise for the new reactor, or if the NRC finds that the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, the provisions of § 50.54(gg) would apply just as they do for the first reactor at a site. This new provision is desirable because of the nature of ITAAC for emergency preparedness requirements. The emergency preparedness ITAAC, specifically ITAAC that will be demonstrated through an exercise, provide the necessary reasonable assurance for programs and facilities associated with the yet-unbuilt reactor. Recent agreements between the NRC and external stakeholders on emergency preparedness ITAAC are based on the understanding that ITAAC on the emergency preparedness exercise would serve to demonstrate various aspects of emergency preparedness (e.g., programs and facilities) that did not warrant their own specific/detailed ITAAC. For example, there is no ITAAC for determining whether an adequate

staffing roster exists for the technical support center or emergency offsite facility, but its existence and adequacy could be demonstrated during an exercise. Therefore, appendix E to part 50 requirements for emergency preparedness exercises must be included for the current concepts regarding emergency preparedness ITAAC to be viable. With regard to subsequent reactors, those aspects of an exercise which address currently untested (i.e., unexercised) aspects of emergency preparedness for the proposed new reactor must be addressed in new emergency preparedness ITAAC for the subsequent reactor. If various generic exercise-related aspects of emergency preparedness for the site have been previously addressed and satisfied, then there would be no ITAAC for those emergency preparedness aspects for subsequent reactors.

The NRC also proposes to modify section V of appendix E to part 50, Implementing Procedures, which states that no less than 180 days before the scheduled issuance of an operating license for a nuclear power reactor or a license to possess nuclear material, the applicant's detailed implementing procedures for its emergency plan shall be submitted to the Commission. Paragraph V also requires that licensees submit any changes to the emergency plan or procedures to the NRC within 30 days of these changes. The NRC proposes to clarify that paragraph V is also applicable to combined license holders by stating that they must submit their detailed implementing procedures for their emergency plans to the NRC no less than 180 days before the date that the Commission authorizes fuel load and operation under § 52.103.

f. *Section 50.48, Fire protection.* Section 50.48(a)(1) would be revised to clarify that holders of an operating license issued under part 50 and a combined license issued under part 52 must have a fire protection plan. Section 50.48(a)(4) would be added to clarify that applications for design approvals, design certifications, and manufacturing licenses issued under part 52 must meet the fire protection design requirements set forth in General Design Criterion 3 of appendix A to part 50.

g. *Section 50.49, Environmental qualification of electric equipment important to safety for nuclear power plants.* Section 50.49(a) and (k) would be revised to clarify that these programmatic requirements apply to applicants for and holders of operating licenses issued under part 50 and combined licenses under part 52.

h. *Section 50.54, Conditions of licenses; and Section 50.55, Conditions of construction permits, early site permits, combined licenses, and manufacturing licenses.* Section 50.54 sets forth various provisions that are deemed to be conditions ''in every license issued,'' while § 50.55 sets forth the provisions deemed to be conditions of every construction permit. In making the conforming changes to these regulations to reflect part 52, the NRC has decided to maintain this dichotomy. Conditions applicable to part 52 processes which are either licenses or prerequisites to licenses, and do not address activities analogous to construction for which a construction permit license is required under the AEA, are proposed to be addressed in § 50.54. By contrast, conditions applicable to part 52 processes which address construction activities, or activities analogous to construction for which a construction permit license is required under the AEA, are proposed to be covered in § 50.55. Combined licenses represent a special case, inasmuch as they address both construction and operation. The NRC proposes to address combined licenses by placing the conditions applicable to construction in § 50.55, which would indicate that these conditions are applicable until the date that the NRC authorizes fuel load and operation under § 52.103. Conditions which are applicable during operation would be set forth in § 50.54, and indicate that these conditions are applicable on the date that the NRC authorizes fuel load and operation under § 52.103.

The introductory paragraph of § 50.54 would be revised to refer to combined licenses, and to exclude manufacturing licenses from its provisions. Section 50.54(a)(1) would be revised to indicate that the quality assurance (QA) requirements applicable to operation, as described in a combined license holder's SAR, become effective 30 days before the scheduled date for the initial loading of fuel.

The NRC proposes to revise § 50.54(i–1) to indicate its applicability to combined licenses. Specifically, § 50.54(i–1) would require that within three months after the date that the Commission makes the finding under § 52.103(g) for a combined license, the licensee shall have in effect an operator requalification program that must, as a minimum, meet the requirements of § 55.59(c) of this chapter.

The NRC proposes to add § 50.54(gg). These revisions are discussed with related requirements in section IV.D.4.f of this **Federal Register** document, ''Section 50.47, Emergency plans, Section 50.54(gg), and appendix E to part 50, Emergency planning and preparedness for production and utilization facilities.''

Although the NRC generally views § 50.55 as the appropriate section in part 50 for specifying the conditions applicable to construction permits and part 52 processes analogous to construction permits, the NRC does not believe that all of the conditions in § 50.55 should apply equally to all of the part 52 processes. Accordingly, the introductory text to § 50.55 would be revised to specify which paragraphs apply to a construction permit, early site permit, combined license, and manufacturing license.

Sections 50.55(a) and (b) would be revised to require a combined license and manufacturing license to state the earliest and latest dates for completion of construction or modification, and to provide for forfeiture of the combined license or manufacturing license if construction, manufacture, or modification is not completed by the stated date. In the case of a manufacturing license, the license would be required to state the earliest and latest date of manufacture for each reactor. The NRC believes that Section 185.a of the AEA requires that a construction permit state the earliest and latest date for completion of construction, and applies to a combined license because a combined license includes the authority granted under a construction permit. The NRC believes that the 1992 amendment of Section 185.b of the AEA addressing combined licenses did not supercede and render nugatory the provisions of § 50.54a. The NRC believes that the provisions of Section 185 of the AEA do not apply to a manufacturing license, inasmuch as a manufacturing license is not, per se, a construction permit. Nonetheless, because a manufacturing license authorizes activities which are analogous to those in a construction permit, it makes sense from a regulatory standpoint to treat manufacturing licenses similar to construction permits.

Section 50.55(c) makes the conditions in § 50.54 also apply to construction permits, unless otherwise modified. The NRC proposes to retain this paragraph and add a reference to combined licenses. Manufacturing licenses would not be referenced, because there does not appear to be any regulatory need to apply any of the conditions in § 50.54 to manufacturing licenses.

Section 50.55(e) addresses the obligation of holders of construction permits and their contractors and subcontractors, to report defects constituting a substantial safety hazard.

These requirements, which implement Section 206 of the ERA, as amended, are comparable to the requirements in 10 CFR part 21. As discussed with respect to the NRC's proposed changes to part 21, the NRC proposes to retain the current regulatory structure, whereby persons and entities engaged in activities constituting construction (and their contractors and subcontractors) are subject to § 50.55(e), and persons and licensees who are authorized to operate a nuclear power plant (and their contractors and subcontractors) are subject to part 21. Inasmuch as a combined license under part 52 authorizes both construction and operation, a combined license holder would be subject to the reporting requirements in § 50.55(e) from the date of issuance of the combined license until the Commission makes the finding under § 52.103. Thereafter, the combined license holder would be governed by the reporting requirements in part 21. The manufacture of a nuclear power reactor under a manufacturing license is the functional equivalent of construction (albeit limited to the reactor as opposed to the entire facility in the case of a construction permit or combined license). Accordingly, the NRC's view is that the holder of a manufacturing license should be subject to reporting under § 50.55(e). Standard design approvals under proposed subpart E (current appendix M to part 52) and design certifications under subpart B of part 52 are not directly associated with construction, and the NRC believes that their reporting should be addressed under part 21. Accordingly, the NRC proposes to revise § 50.55(e)(1) to provide that the reporting requirements in § 50.55(e) apply to a holder for a combined license (until the NRC makes the finding under § 52.103(g)), and a manufacturing license under part 52. As discussed below in section J on part 21, early site permits do not authorize ''construction'' or its functional equivalent. Therefore, early site permits would be subject to the requirements of part 21 rather than § 50.55(e) under the proposed rule.

Section 50.55(f) sets forth the NRC's requirements with respect to compliance with the QA requirements in 10 CFR part 50, appendix B, and implementation of the construction permit holder's QA program as described in its SAR. Comparable provisions applicable to holders of operating licenses are contained in § 50.54(a); requirements governing the SAR's description of the QA program are contained in § 50.34. A detailed discussion of all changes related to QA requirements can be found in Section IV.D.12.b, ''Appendix B to Part 50—Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants.''

i. *Section 50.55a, Codes and standards.* Section 50.55a currently provides requirements relating to codes and standards for construction permits and operating licenses for boiling or pressurized water-cooled nuclear power facilities. The proposed rule would amend § 50.55a to clarify how the regulations in § 50.55a apply to approvals, certifications, and licenses issued under 10 CFR part 52. Section 50.55a currently applies to combined licenses by virtue of the provision in current § 52.83, Applicability of part 50 provisions, which states that all provisions of 10 CFR part 50 and its appendices applicable to holders of construction permits and operating licenses also apply to holders of combined licenses. Also, § 50.55a currently applies to design certifications by virtue of the provision in current § 52.48, Standards for review of applications, which states that design certification applications will be reviewed for compliance with the standards set out in 10 CFR part 50 as it applies to applications for construction permits and operating licenses for nuclear power plants, and as those standards are technically relevant to the design proposed for the facility. Although current appendix O to part 52 does not explicitly require applicants for design approvals to comply with the requirements of § 50.55a, the NRC is proposing to require design approval holders to comply with § 50.55a because the NRC believes that the requirements for a design approval should be the same as the requirements for design certification, given that the reviews performed by the NRC staff for the two products are essentially identical. Finally, current appendix M to part 52, section M.1, states that the provisions in part 50 applicable to construction permits apply in context, with respect to matters of radiological health and safety, environmental protection, and the common defense and security, to manufacturing licenses. Therefore, the NRC proposes to modify § 50.55a to state that each combined license for a utilization facility is subject to the conditions in § 50.55a, but is only subject to the conditions in §§ 50.55a(f) and (g) after the NRC makes the finding under § 52.103. The proposed modifications to § 50.55a also state that each manufacturing license, design approval, and design certification application is subject to the conditions in §§ 50.55a(a), (b)(1), (b)(4), (c), (d), (e), (f)(3), and (g)(3), which are the provisions related to nuclear power facility design.

j. *Section 50.59, Changes, tests, and experiments.* This section presents a change process for information contained in the FSAR. Section 50.59(b) would be revised to clarify that this change process is applicable to holders of operating licenses issued under part 50 and combined licenses issued under part 52. If the combined license references a design certification rule, then the information in the design control document is controlled by the change process in the applicable design certification rule. Section 50.59(d)(2) would be revised to conform the frequency that summary reports are submitted for holders of combined licenses with the frequency set forth in the design certification rules. Section 50.59(d)(3) would be revised to clarify that the requirement for maintaining records applies to holders of operating licenses issued under part 50 and combined licenses issued under part 52.

k. *Section 50.61, Fracture toughness requirements for protection against pressurized thermal shock events.* This section would be revised to clarify that the fracture toughness requirements apply to an operating license for a pressurized water reactor issued under part 50 or a combined license for a pressurized water reactor issued under 10 CFR part 52.

l. *Section 50.62, Requirements for reduction of risk from anticipated transients without scram (ATWS) events for light-water-cooled nuclear power plants.* Paragraph (d) of § 50.62 provides implementation requirements for the requirements of the section. This paragraph would be revised to indicate that these implementation requirements only apply to light-water-cooled nuclear power plant operating licenses issued before the effective date of this final rule. The proposed § 50.62 would require each light-water-cooled nuclear power plant operating license application submitted after the effective date of this final rule to submit information in its final safety analysis report demonstrating how it will comply with paragraphs (c)(1) through (c)(5) of § 50.62. Similarly, the Commission is proposing to add provisions to §§ 52.47, 52.79, 52.137, and 52.157 requiring that applicants for standard design certifications, combined licenses, standard design approvals, and manufacturing licenses include this information in their final safety analysis reports.

m. *Section 50.63, Loss of all alternating current power.* Conforming changes would be made to this section to clarify that the requirements for station blackout apply to applications for construction permits, combined licenses, design approvals, design certifications, manufacturing licenses, and operating licenses.

n. *Section 50.65, Requirements for monitoring the effectiveness of maintenance at nuclear power plants.* This section presents the requirements for a maintenance program at nuclear plants. Section 50.65(a) would be revised to clarify that holders of operating licenses issued under part 50 and combined licenses issued under part 52 must have a maintenance program. Section 50.65(c) would be revised to specify that for new licenses issued after the effective date of this regulation, the maintenance program must be implemented before the initial fuel loading of the reactor.

5. Inspections, Records, Reports, Notifications

a. *Section 50.70, Inspections.* Section 50.70(a) currently requires that each licensee and each holder of a construction permit allow inspection, by duly authorized representatives of the Commission, of its records, premises, activities, and of licensed materials in possession or use, related to the license or construction permit as may be necessary to effectuate the purposes of the AEA. The existing language in § 50.70(a) encompasses combined license holders and manufacturing license holders because they are licensees. In addition, the provision in current § 52.83, Applicability of part 50 provisions, states that all provisions of 10 CFR part 50 and its appendices applicable to holders of construction permits and operating licenses also apply to holders of combined licenses. Also, current section M.1 of appendix M to part 52, states that the provisions in part 50 applicable to construction permits apply in context, with respect to matters of radiological health and safety, environmental protection, and the common defense and security, to manufacturing licenses. The proposed rule would amend § 50.70(a) to clarify that these inspection requirements also apply to holders of early site permits under 10 CFR part 52. An early site permit is a partial construction permit and therefore should be subject to the same inspection requirements as a construction permit. In addition, the NRC is proposing to clarify that the inspection requirements also apply to applicants for licenses, construction permits, and early site permits. It is common for applicants to perform activities related to NRC regulations before issuance of the license or permit for which they are applying and it has been the NRC's practice to inspect these activities whenever they are performed. Therefore, the proposed modification to require that the inspection requirements in § 50.70(a) apply to applicants is simply a codification of the NRC's current practices.

Section 50.70(b)(1) currently requires that each licensee and each holder of a construction permit provide rent-free office space for the exclusive use of NRC inspection personnel. The current language in this provision encompasses combined license holders and manufacturing license holders. Section 50.70(b)(2) provides requirements regarding the space to be provided for a site with a single power reactor facility licensed under 10 CFR part 50 and for sites containing multiple power reactor units. The NRC proposes to revise § 50.70(b)(2) to clarify that these requirements also apply to sites for combined license holders under 10 CFR part 52 and to facilities issued manufacturing licenses under 10 CFR part 52.

b. *Section 50.71, Maintenance of records, making of reports.* Section 50.71 establishes the NRC's requirements for maintenance and retention of records and reports, and updating of FSARs. Section 50.71(a) currently requires each licensee and each holder of a construction permit to maintain all records and make all reports as may be required by license, or by the NRC's regulations. The current language does not apply to non-licensees, such as holders of standard design approvals and applicants for standard design certifications, even though it would appear that these requirements should apply. Accordingly, the NRC proposes to modify § 50.71(a) to make its provisions applicable to holders of standard design approvals and all applicants for design certification during the period of NRC consideration of the application for design certification, and those applicants for design certification whose designs are certified via rulemaking in accordance with subpart B of 10 CFR part 52.

Section 50.71(c) specifies that the default record retention period (i.e., the period that applies if a record retention period is not specified by the regulation requiring the record) ends when the NRC ''terminates the facility license.'' A manufacturing license is not a ''facility'' license, inasmuch as subpart F is limited to the manufacture of reactors, not a ''facility.'' Finally, some licenses (e.g., early site permits and manufacturing licenses) may either be terminated by the NRC, or ''expire'' as a matter of law at the end of their term. Accordingly, the NRC proposes to amend § 50.71(c) to establish the records retention period and to properly refer to manufacturing licenses, early site permits, and construction permits.

Section 50.71(e) establishes the updating requirements for the FSAR, including the information that must be included in each update. The current regulation, however is deficient in two respects. First, it does not address the updating requirements for combined license holders where the combined license references a standard design certification. Second, the current regulation, if applied to manufacturing licenses as proposed under subpart F, would impose unnecessary regulatory burden with respect to periodic updating. The NRC's concept of a manufacturing license under subpart F is for a relatively stable, unchanging design. Hence, there should be no need for periodic updating. Rather, the updating should occur only as the result of Commission-approved changes to the design.

Accordingly, the NRC proposes to amend § 50.71(e) to specify the FSAR updating requirements for combined license holders where the license references a standard design certification. In addition, current § 50.71(f) would be redesignated as § 50.71(g), and add a new § 50.71(f), addressing the FSAR update requirements for a manufacturing license. Proposed § 50.71(f) would require the holder of the manufacturing license to update the FSAR to reflect any modifications to the design of the reactor authorized to be manufactured which have been approved by the NRC under proposed § 52.171, or any new analyses requested to be performed by the NRC. Periodic updating of a FSAR for a manufacturing license is not required by § 50.71(f), inasmuch as the NRC's concept for a manufacturing license is for the design of the reactor authorized to be manufactured to be stable with no changes except as specifically approved by the NRC as necessary for adequate protection to public health and safety or common defense and security, or to ensure compliance with the NRC's requirements in effect at the time of issuance of the manufacturing license. The provision in § 50.71(f) requiring the FSAR for a manufacturing license to be updated to reflect new safety analyses required by the NRC is analogous to the existing updating requirement in

§ 50.71(e). This assures that new analyses performed to demonstrate the continuing adequacy of the unchanged manufactured reactor design are appropriately reflected in the FSAR.

c. *Section 50.73, Licensee event report system.* Section 50.73 currently requires holders of operating licenses under part 50 for nuclear power plants to submit licensee event reports (LERs) on the occurrence of certain operating events to the NRC. LERs facilitate the NRC's oversight of operating nuclear power plants, by alerting the NRC to the occurrence and underlying causes of events having potential safety implications. The NRC's regulatory interest in these events also extends to nuclear power plants operating under a combined license under subpart C of part 52, but the current language does not impose the LER requirement on combined license holders. Accordingly, in a conforming change, the NRC proposes to extend the LER reporting requirements to holders of combined licenses under part 52 after the Commission has made the finding under § 52.103(g). The proposed rule does not extend the LER requirement to other part 52 processes for similar reasons, viz., the events to be reported under the existing rule concern events which can only occur upon fuel load and operation, and the remaining part 52 licensing and regulatory approval processes do not authorize fuel load or operation.

d. *Section 50.75, Reporting and recordkeeping for decommissioning planning.* The requirements in § 50.75 are intended to ensure that entities who construct and ultimately operate a nuclear power plant will have sufficient funds at the end of the operational life of the plant to complete the decommissioning of the plant. In brief, § 50.75 currently requires a nuclear power plant operating license application to: (i) address the predicted costs of decommissioning; (ii) describe the method(s) for adjusting the cost prediction throughout the life of the plant to address the effects of inflation; and (iii) provide financial assurance by one of the alternatives specified in the regulation, and to submit evidence that one or more of these means has been established. The regulation also establishes a requirement to update the cost estimates for decommissioning, and to describe any adjustments to the amount of funds collected annually to reflect any changes in projected decommissioning cost.

The current requirements are directed at the two phase construction permit followed by operating license patterns in part 50, and are not well-suited to address the licensing process associated with a combined license under part 52. For example, requiring the combined license applicant to comply with the current requirement in § 50.75(b)(1) that the operating license applicant submit a copy of the financial instrument obtained to satisfy the requirements of § 50.75(e), would in essence place a more stringent requirement on the combined license applicant inasmuch as it would be required to fund decommissioning assurance at an earlier date as compared with the operating license applicant. To address these discrepancies, the NRC proposes to revise §§ 50.75(b) and 50.75(e)(1) to address decommissioning funding assurance for combined licenses. Under the proposed rule, the combined license applicant must submit a decommissioning report as required by § 50.33(k), but it need not provide a financial instrument to fund decommissioning or to submit a copy to the NRC. Instead, under proposed § 50.75(b)(1) and (4), the combined license must contain a certification that the financial assurance would be provided no later than 30 days after the NRC publishes notice in the **Federal Register** under § 52.103(a). Following the issuance of a combined license, the holder must submit, by March 31 of each year until the date that the NRC authorizes fuel load under § 52.103(g), an updated certification of the information required by paragraph (b)(1). No later than 30 days after the Commission publishes notice in the **Federal Register** under § 52.103(a), the holder is required to submit a certification that financial assurance is being provided in the relevant amount together with a copy of the financial instrument obtained to satisfy the requirements of § 50.75(e). Once authorization to load fuel and operate is provided to the license holder under § 52.103, the combined license holder is subject to the reporting and updating requirements as an operating license holder under part 50, including the requirements applicable when the plant is within 5 years of the projected end of operation.

The § 50.75 decommissioning funding requirements could be interpreted as applying to an applicant for, and holder of a manufacturing license under part 52. The NRC did not have such intent when it adopted § 50.75. A manufacturing license by itself does not authorize either fuel load or operation, which are the activities necessitating the expenditure of funds for decommissioning. Therefore, there is no need for a holder of a manufacturing license, who does not intend to operate the reactor being manufactured to provide funding. Accordingly, a conforming change is proposed for §§ 50.33(k) and 50.75(a) to exclude the applicants for and holders of manufacturing licenses under part 52 from compliance with the requirements of that section.

6. US/IAEA Safeguards Agreement

a. *Section 50.78, Installation information and verification.* Since 1980, the United States International Atomic Energy Agency (IAEA) Safeguards Agreement has allowed IAEA inspection and verification activities at U.S. facilities that the IAEA selects from the U.S. Eligible Facilities List. The safeguards agreement is implemented under the Nuclear Non-Proliferation Treaty, which provides assurance that all nuclear materials declared to be in peaceful use are not diverted to potential use in nuclear explosives. Although 10 CFR part 75 contains most of the NRC requirements intended to implement the installation, inspection, and verification provisions of the Safeguards Agreement with IAEA, § 50.78 currently requires each holder of a construction permit to submit certain information on Form N–71, permit verification by representatives of the IAEA, and take any other action necessary to implement the Safeguards Agreement. Inasmuch as combined licenses authorize construction of a nuclear power plant at a fixed site, the provisions of § 50.78 should also apply to a holder of a combined license under part 52. Accordingly, the NRC proposes to revise § 50.78 to specify that holders of combined licenses must, if requested by the NRC, submit installation information on Form N–71, permit verification of that information by the IAEA, and take other action as may be necessary to implement the Safeguards Agreement, in the manner set forth in § 75.6, and §§ 75.11 through 75.14.

7. Transfers of Licenses—Creditors' Rights—Surrender of Licenses

a. *Section 50.80, Transfer of licenses.* Section 50.80 implements Sections 101 and 184 of the AEA, which require Commission approval for the transfer of a license for a production or utilization facility, including a nuclear power reactor. Section 50.80(a) explicitly refers to transfers of a ''license for a production or utilization facility * * *,'' which would include construction permits under part 50, as well as all licenses and permits issued under part 52. However, to explicitly recognize the applicability of § 50.80(a) to both permits under parts 50 and 52

and all licenses under part 52, § 50.80(a) would be revised to explicitly refer to permits under parts 50 and 52, and licenses under part 52.

b. *Section 50.81, Creditor regulations.* Section 50.81 implements Section 184 of the AEA, which requires the consent of the Commission for the creation of any mortgage, pledge or other lien upon any Commission-licensed facility or special nuclear material. To ensure that the reach of § 50.81 is as broad as the statutory requirement, the NRC proposes to revise the definition of license and facility. The definition of license in this section would be revised to explicitly refer to all licenses under 10 CFR, and early site permits under part 52. The definition of facility would be revised to add a new paragraph which would explicitly refer to an early site permit under part 52, and a reactor manufactured under a manufacturing license under part 52.

8. Amendment of License or Construction Permit at Request of Holder

a. *Section 50.90, Application for amendment of license or construction permit; Section 50.91, Notice for public comment; State consultation; and Section 50.92, Issuance of amendment.* Sections 50.90, 50.91, and 50.92 govern the procedures and criteria for NRC consideration and issuance of amendments to licenses and construction permits. The regulations do not clearly address early site permits, combined licenses or manufacturing licenses. Accordingly, the NRC proposes to make a number of changes in these regulations.

Section 50.90 provides that applicants for amendment of a license or construction permit must file their application with the NRC as described in § 50.4, following the form prescribed for the original application. Although the term, license, as proposed to be amended in § 50.2 would include combined licenses, manufacturing licenses, and early site permits under part 52, § 50.92 would be revised to explicitly refer to these part 52 licenses to eliminate any confusion with respect to the applicability of this section to part 52 licenses. A similar change is made in the introductory paragraph of § 50.91.

Sections 50.92 and 50.91(a)(4) implement the Commission's authority under Section 189 of the AEA to dispense with the advance publication of a **Federal Register** document requesting a hearing with respect to license amendments, and to make operating license and combined license amendments immediately effective upon issuance, if the NRC finds that the amendment involves no significant hazards consideration. The NRC proposes to amend § 50.92(c) to clarify that, consistent with Section 189 of the AEA, the NRC may make a no significant hazards consideration determination for amendments of combined licenses and manufacturing licenses under part 52. Combined licenses are explicitly mentioned in Section 189.a.(2)(A) of the AEA with respect to immediate effectiveness following a Commission determination of a no significant hazards consideration. In addition, a combined license merges into a single license the authority otherwise contained in a construction permit and an operating license, and the language of Section 189.a.(1)(A) of the AEA which refers to both amendments of construction permits and operating licenses also applies to amendments of combined licenses.

Finally, § 50.92(a) would be revised to provide that a separate application for a construction permit is not required even where a holder of a combined license or a manufacturing license must seek a license amendment because of a material alteration. There is no safety or regulatory benefit in requiring the licensee to concurrently obtain a new construction permit in addition to a license amendment, inasmuch as NRC review of the alteration is assured.

9. Revocation, Suspension, Modification, Amendment of Licenses and Construction Permits, Emergency Operations by the Commission

a. *Section 50.100, Revocation, suspension, modification of licenses, permits, and approvals for cause.* Section 50.100 authorizes the NRC to suspend, modify or revoke any license or construction permit issued under part 50 for any material false statement in the application for the license or permit, or because of any statement in any report, record, inspection, or condition revealed by the application, or by other means, which would warrant the NRC to refuse to grant a license on an original application, or for failure to construct or operate a facility in accordance with the applicable license or permit. While this language applies to early site permits, combined licenses and manufacturing licenses, by virtue of their status as licenses under the AEA, it does not clearly apply to standard design approvals as these are not licenses. Nonetheless, the Commission possesses authority to modify, suspend or revoke the regulatory approvals. Accordingly, the Commission proposes to revise § 50.100 by adding a new paragraph (b) explicitly addressing the Commission's authority.

10. Backfitting

a. *Section 50.109, Backfitting.* The backfit rule provides certain protection to licensees against changes in the NRC requirements and NRC staff positions on those requirements. The backfitting provisions in § 50.109 currently apply to standard design approvals, construction permits, and operating licenses, see § 50.109(a)(1)(i)–(iv), but do not address combined licenses, or manufacturing licenses. Part 52 contains special backfitting requirements on early site permits, design certification rules, but neither § 50.109 or part 52 currently address backfitting of a combined license, although the NRC recognizes that backfitting restraints for an early site permit and a design certification rule would apply to a combined license referencing either or both. To address these gaps in backfitting, and to clarify the application of special backfitting provisions, the Commission is proposing to revise § 50.109(a)(1) by establishing the date that backfitting protection begins for a manufacturing license, a construction permit for a duplicate design license, and a combined license. Moreover, with respect to a part 50 construction permit, a part 50 operating license, and a part 52 combined license, the proposed rule would reference the specific backfitting restrictions that apply if an early site permit, standard design approval, or standard design certification rule is referenced, or if a nuclear power reactor manufactured under a part 52 manufacturing license is used.

11. Enforcement

a. *Section 50.120, Training and qualification of nuclear power plant personnel.* This section sets forth the requirements for training and qualifying nuclear power plant personnel. The NRC proposes a conforming amendment to add applicants for and holders of combined licenses as being subject to this provision.

12. Appendices

a. *Appendix A to part 50—General design criteria for nuclear power plants.* The first paragraph of the Introduction to appendix A to part 50 would be revised to clarify that the general design criteria in appendix A to part 50 apply to applications for combined licenses, design approvals, design certification, and manufacturing licenses, as well as for construction permits. Also, General Design Criterion (GDC) 19 of appendix A to part 50 sets forth requirements for a main control room in a nuclear power

plant. The NRC proposes to clarify that the radiation protection requirements in GDC 19 for applications filed after January 10, 1997, apply to design approvals and manufacturing licenses issued under part 52, in addition to design certifications and combined licenses.

b. *Appendix B to part 50—Quality assurance criteria for nuclear power plants and fuel reprocessing plants.* Appendix B to part 50 states that every applicant for a construction permit is required to include in its preliminary safety analysis report a description of the quality assurance program to be applied to the design, fabrication, construction, and testing of the structures, systems, and components (SSCs) of the facility and every applicant for an operating license is required to include, in its FSAR, information pertaining to the managerial and administrative controls to be used to assure safe operation. The NRC proposes to revise appendix B to part 50 to clarify that these requirements also apply to early site permits, design approvals, design certifications, combined licenses, and manufacturing licenses under 10 CFR part 52. Specifically, the introduction to appendix B would state that every applicant for a combined license is required by the provisions of § 52.79 to include in its final safety analysis report a description of the quality assurance program to be applied to the design, fabrication, construction, and testing of the SSCs of the facility and to the managerial and administrative controls to be used to assure safe operation. The introduction would also state that, for applications submitted after the effective date of the final rule, every applicant for an early site permit is required by the provisions of § 52.17 to include in its site safety analysis report a description of the quality assurance program applied to site activities related to the design, fabrication, construction, and testing of the SSCs of a facility or facilities that may be constructed on the site. Finally, the introduction would state that every applicant for a design approval, design certification, or manufacturing license is required by the provisions of §§ 52.137, 52.47, and 52.157, respectively, to include in its final safety analysis report a description of the quality assurance program to be applied to the design, fabrication, construction, and testing of the SSCs of the facility.

The NRC proposes to maintain the current regulatory structure for requirements that implement Appendix B whereby QA for construction activities is governed by § 50.55(f), and QA for operation is governed by § 50.54(a). Because a combined license under part 52 authorizes both construction and operation, a combined license holder should be subject to the QA requirements in § 50.55(f) from the date of issuance of the combined license until the Commission makes the finding under § 52.103(g) that allows the licensee to load fuel and operate. Thereafter, the combined license holder should be governed by the QA requirements in § 50.54(a). The manufacture of a nuclear power reactor under a manufacturing license is the functional equivalent of construction. Accordingly, the NRC proposes to revise § 50.55(f) to refer to holders of manufacturing licenses under part 52. Early site permits under subpart A precede construction and are considered partial construction permits. Hence the NRC believes that they should be subject to QA under § 50.55(f).

Appendix B to part 50 is currently applicable to combined licenses under the provisions of § 52.83, Applicability of part 50 provisions, which states that all provisions of 10 CFR part 50 and its appendices applicable to holders of operating licenses also apply to holders of combined licenses. Appendix B to part 50 currently applies to design certifications by virtue of the provision in current § 52.48, Standards for review of applications, which states that design certification applications will be reviewed for compliance with the standards set out in 10 CFR part 50 as they apply to applications for construction permits and operating licenses for nuclear power plants, and as those standards are technically relevant to the design proposed for the facility. Appendix O to part 52, section O.3, requires applicants for design approvals to include the information required by §§ 50.34(a) and (b), as appropriate, and states that the information required by § 50.34(a)(7) (a description of the quality assurance program and a discussion of how the applicable requirements of appendix B to part 50 will be satisfied), shall be limited to the QA program to be applied to the design, procurement and fabrication of the SSCs for which design review has been requested. Appendix B to part 50 currently applies to manufacturing licenses by virtue of the provision in current appendix M to part 52, section M.1, which states that the provisions in part 50 applicable to construction permits apply in context, with respect to matters of radiological health and safety, environmental protection, and the common defense and security, to manufacturing licenses.

Early site permits are considered partial construction permits; therefore, the Commission believes that they should be subject to the QA requirements of appendix B to part 50. Section 52.39, with certain specific exceptions, requires the Commission to treat matters resolved in an early site permit proceeding as resolved in making findings for issuance of a construction permit, operating license, or combined license. Because of this finality, conclusions made during the early site permit phase will be relied upon for use in subsequent design, construction, fabrication, and operation of a reactor that might be constructed on the site for which an early site permit is issued. Therefore, the Commission believes that the level of quality used to control activities related to safety-related SSCs should be equivalent in the early site permit and combined license phases. For these reasons, applicants must apply quality controls to each early site permit activity associated with the generation of design information for safety-related SSCs that meet the criteria in appendix B to part 50. Therefore, the Commission proposes to modify appendix B to make it applicable to early site permits.

c. *Appendix C to part 50—A guide for the financial data and related information required to establish financial qualifications for construction permits, combined licenses, and manufacturing licenses.*

The title of Appendix C to part 50 would be revised. Section 182.a of the AEA requires an applicant for a license for a production or utilization facility to submit information in its application * * * as the Commission, regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant * * * as the Commission may deem appropriate for the license.'' The NRC has long determined the need for non-utility applicants for nuclear power plant construction permits and operating licenses to establish their financial qualifications, see 10 CFR 50.33(f), and has set forth the specific information on financial qualifications to be provided by applicants for construction permits in appendix C to part 50. Inasmuch as holders of combined licenses under part 52 are authorized to perform the same construction activities with respect to a nuclear power plant as a holder of a construction permit under part 50, the NRC believes that applicants for combined licenses should be subject to the requirements of appendix C to part 50.

With the exception of manufacturing licenses, none of the other regulatory

processes under part 52, e.g., early site permits, standard design certifications, and standard design approvals, authorize any activities constituting ''construction'' under the AEA and the Commission's regulations.[3] Therefore, the proposed rule does not refer to early site permits, design certifications, or design approvals under part 52. With respect to a reactor manufacturing license, the NRC does not believe that a financial qualifications review is necessary for several reasons. A financial qualifications review at the manufacturing license stage would appear to be redundant to the financial qualifications review that is already necessary at the construction permit and operating license stages, or combined license stage. Sufficient safety and quality assurance reviews, including the use of ITAAC in the case of a combined license, should be sufficient to address any adverse impacts on safety as the result of inadequate financial resources to properly manufacture the reactor. Furthermore, the NRC notes that manufacture of a reactor is, in many respects, no different than fabrication of components and systems by third party vendors, who are not required to obtain an NRC license and demonstrate financial qualifications. There seems to be no regulatory value to mandate a financial qualifications review of manufacturing license applicants, when no such review is conducted by the NRC for fabricators of nuclear power plant systems and components.

d. *Appendix E to Part 50—Emergency planning and preparedness for production and utilization facilities.* See discussion in Section IV.D.4.f of this **Federal Register** notice.

e. *Appendix I to Part 50—Numerical guides for design objectives and limiting conditions for operation to meet the criterion ''as low as is reasonably achievable'' for radioactive material in light-water-cooled nuclear power reactor effluents.* The Commission is proposing changes to Appendix I that conform to the changes being proposed in §§ 50.34a and 50.36a. Specifically, a statement would be added in Section I that states that §§ 52.47, 52.79, 52.137, and 52.157 provide that applications for design certification, combined license, design approval, or manufacturing license, respectively, shall include a description of the equipment and procedures for the control of gaseous and liquid effluents and for the maintenance and use of equipment installed in radioactive waste systems. In addition, Section II would be revised to state that the guides on design objectives set forth in Appendix I may be used by an applicant for a combined license as guidance in meeting the requirements of § 50.34a(d) or by an applicant for a design approval, a design certification, or a manufacturing license as guidance in meeting the requirements of § 50.34a(e). Finally, Section IV would be revised to state that the guides on limiting conditions for operation for light-water-cooled nuclear power reactors in Appendix I may be used by an applicant for an operating license or a design certification or combined license, or a licensee who has submitted a certification of permanent cessation of operations under § 50.82(a)(1) or § 52.110 as guidance in developing technical specifications under § 50.36a(a) to keep levels of radioactive materials in effluents to unrestricted areas as low as is reasonably achievable.

f. *Appendix J to part 50—Primary reactor containment leakage testing for water-cooled power reactors.* Section 50.54(o) provides a condition for all operating licenses for water-cooled power reactors that primary reactor containments must meet the containment leakage test requirements set forth in Appendix J to part 50. These test requirements provide for preoperational and periodic verification by test of the leak-tight integrity of the primary reactor containment, and systems and components which penetrate containment of water-cooled power reactors, and establish the acceptance criteria for these tests. The purpose of the tests are to assure that (1) leakage through the primary reactor containment systems and components penetrating primary containment shall not exceed allowable leakage rate values as specified in the technical specifications or associated bases; and (2) periodic surveillance of reactor containment penetrations and isolation valves is performed so that proper maintenance and repairs are made during the service life of the containment, and systems and components penetrating primary containment. The Commission proposes to amend appendix J to part 50 to clarify that these requirements also apply to combined licenses under 10 CFR part 52, as is currently indicated by § 52.83, Applicability of part 50 provisions, which states that all provisions of 10 CFR part 50 and its appendices applicable to holders of operating licenses also apply to holders of combined licenses.

g. *Appendices M and O to part 50 [Removed].* The proposed rule would remove appendices M and O from 10 CFR part 50. Appendix M addresses Appendix M provides for issuance of a license authorizing the manufacture of a nuclear power reactor to be incorporated into a nuclear power plant under a construction permit and operated under an operating license at a different location from the place of manufacture. Appendix O addresses the early review of site suitability issues. These appendices were transferred to 10 CFR part 52 when it was first issued (54 FR 15372; April 18, 1989). However, the NRC failed to remove those appendices from 10 CFR part 50, though the NRC intended to do so (see 54 FR 15385; April 18, 1989).

h. *Appendix S to part 50—Earthquake engineering criteria for nuclear power plants.* Appendix S to part 50 provides earthquake engineering criteria for nuclear power plants and applies to applicants for a design certification or combined license under part 52 or a construction permit or operating license under part 50. The proposed rule would amend appendix S to part 50 to clarify that the requirements in appendix S to part 50 also apply to applicants for design approvals and manufacturing licenses issued under 10 CFR part 52. Although current appendix O to part 52 does not explicitly require applicants for design approvals to comply with the requirements of appendix S to part 50, the NRC is proposing to require design approval holders to comply with appendix S to part 50 because the NRC believes that the requirements for a design approval should be the same as the requirements for a design certification, given that the reviews performed by the NRC staff for the two products are essentially identical. Finally, current appendix M to part 52, section M.1, states that the provisions in part 50 applicable to construction permits apply in context, with respect to matters of radiological health and safety, environmental protection, and the common defense and security, to manufacturing licenses. Therefore, the Commission proposes to modify the General Information section of appendix S to part 50 to state that the appendix applies to applicants for a design certification, design approval, combined license, or manufacturing license under 10 CFR part 52 or a construction permit or operating license under 10 CFR part 50. The NRC also proposes conforming changes to the Introduction, paragraph (a) to appendix S to part 50, and proposes to add definitions for design approval and manufacturing license to Section III, Definitions, of appendix S to

[3] Although early site permit applicants may seek the authority to conduct activities allowed under 10 CFR 50.10(e)(1) (but not activities allowed under § 50.10(e)(3), see § 52.17(c)), these activities are not considered ''construction.''

part 50, consistent with the definitions in proposed part 52.

E. Proposed Change to 10 CFR Part 1

Section 1.43, Office of Nuclear Reactor Regulation

Section 1.43 describes the responsibilities of the Office of Nuclear Reactor Regulation (NRR), which includes the development and implementation of regulations, policies, programs and procedures for the receipt, possession or ownership of source, byproduct and special nuclear material that is used or produced at nuclear power plants. Inasmuch as power plants may be licensed under part 52 as well as part 50, § 1.43(a)(2) would be revised to clarify that NRR has authority over the development and implementation of regulations, policies, programs and procedures for the receipt, possession or ownership of source, byproduct and special nuclear material that is used or produced at nuclear power plants licensed under part 52. In addition, a correction has been made to reference part 54, to clarify that NRR has the same authority with respect to renewed operating licenses for nuclear power plants.

F. Proposed Changes to 10 CFR Part 2

1. Section 2.1, Scope

The procedures in 10 CFR part 2 apply to, *inter alia,* proceedings concerning standard design approvals and standard design certifications under part 52. Moreover, subpart H of part 2 applied to rulemakings. Accordingly, the statement of scope for part 2 would be revised by adding a reference to rulemaking and standard design approvals.

2. Section 2.4, Definitions

The definitions of *contested proceeding, license,* and *licensee,* would be revised in part 2 by adding conforming references, as appropriate, to the licensing processes in part 52. The revised definition of *contested proceeding* would clarify that contested proceedings include those involving permits, such as early site permits and construction permits. The revised definition of license, would ensure that early site permits and construction permits, as well as part 52 combined licenses and manufacturing licenses, are considered to be licenses for purposes of part 2. Similarly, the definition of *licensee* would be revised to ensure that holders of early site permits and construction permits, as well as combined licenses and manufacturing licenses, are considered to be licensees for purposes of part 2.

3. Section 2.100, Scope of Part

This section would be revised by adding conforming references to issuance of a standard design approval under subpart E of part 52.

4. Section 2.101, Filing of Application

This section is revised by adding conforming references to combined licenses, early site permits and standard design approvals. The Commission notes that the former language of § 2.101 already applied to combined licenses, as well as early site permits, inasmuch as they are both licenses. Nonetheless, as discussed in the discussion on § 2.4, the definitions of ''license'' and ''licensee'' have been revised to explicitly refer to early site permits.

5. Section 2.102, Administrative Review of Application

This section would be revised by adding conforming references in § 2.102(a) to applications for early site permits, standard design approvals, and combined licenses and manufacturing licenses under part 52. Under the revised section, the NRC staff would establish a review schedule for an application for these processes, thereby treating the applications the same as applications for construction permits or operating licenses.

6. Section 2.104, Notice of Hearing

Section 2.104(a) identifies in general the content for notices of hearing published in the **Federal Register**. Section 2.104(a) would be revised by adding conforming references to a combined license and early site permit, to indicate that the NRC will provide at least 30 days notice in the **Federal Register** of a hearing.

Currently, § 2.104(b) establishes the minimum content of the notice of (mandatory) hearing for a construction permit, and § 2.104(c) establishes the minimum content of the notice of opportunity for hearing for an operating license under part 50. The NRC believes that there is some benefit, in terms of public transparency and regulatory efficiency and consistency, in establishing the minimum content for notices of hearing for part 52 licensing processes. Accordingly, current § 2.104(d) would be redesignated as § 2.104(l), and § 2.104(e) would be redesignated as § 2.104(m); new §§ 2.104(d), (e), and (f), would be added to establish the content of notices of hearing for early site permits, combined licenses, and manufacturing licenses, respectively. Each of these paragraphs is modeled on the notice of hearing for construction permit, but modified to reflect the criteria for determining the application, as reflected in §§ 52.24, 52.97, and 52.167, for early site permits, combined licenses, and manufacturing licenses, respectively. The NRC notes that manufacturing licenses do not, per se, authorize construction of a nuclear power plant. Therefore, a mandatory hearing for a manufacturing license is not required under Section 189.a.(1)(A) of the AEA. The NRC proposes to provide a mandatory hearing as a matter of discretion, in large part because the NRC has never issued a manufacturing license of the type contemplated in proposed subpart F of part 52. Once the NRC has gained experience in the issuance of manufacturing licenses and their oversight, the NRC may in the future remove the requirement for a mandatory hearing associated with a manufacturing license.

Section 2.104(e) currently requires the NRC to transmit a notice of a hearing on an initial application of a license for a production or utilization facility to an appropriate State official and the chief executive of the municipality or county in which the facility is to be located or an activity is to be conducted. As previously noted, the NRC proposes redesignating the § 2.104(e) notice provisions as § 2.104(m). In addition, § 2.104(m)(1) would be revised to clarify that the notice would be provided for applications for early site permits, combined licenses, but not for manufacturing licenses. Manufacturing licenses are excluded from the notification provisions because the NRC is not licensing any particular location or site where manufacturing may occur (see discussion of the manufacturing license concept in Section II.C.9). Because part 52 also provides an opportunity for hearing with respect to its finding under § 52.103, the NRC proposes to place the language in § 2.104(e)(2) in § 2.104(m)(3), and to add § 2.104(m)(2) which indicates that notice of opportunity for hearing will be provided to the appropriate State official, and the chief executive of the municipality or county as applicable.

7. Section 2.105, Notice of Proposed Action

Section 2.105 contains the NRC's procedures for notices of proposed actions where a hearing is not required by law and if the Commission has determined that a hearing is in the public interest. Inasmuch as amendments to combined licenses and manufacturing licenses do not require a mandatory hearing, § 2.105(a)(4) would be revised to clarify that the procedures in § 2.105 also apply to applications for amendments of combined licenses and manufacturing licenses.

Under current § 52.103(a), the NRC publishes in the **Federal Register** a notice of intended operation and an opportunity to request a hearing with respect to compliance of the facility with inspections, tests, and acceptance criteria in a part 52 combined license. Accordingly, the NRC proposes to revise § 2.105 by adding § 2.105(a)(12) which addresses the notice required by § 52.103(a). Finally, because the Commission's authorization for a combined license holder to operate under § 52.103 does not constitute ''issuance'' of a license or amendment under § 2.106, § 2.105(b)(3) is added indicating that the Commission will publish a notice of intended operation that identifies the proposed Agency action as making the finding under § 52.103(g).

8. Section 2.106, Notice of Issuance

Section 2.106(a) currently provides that the NRC will publish in the **Federal Register** a notice of issuance of a license or amendment of a license where a notice of proposed action has been previously published, and notice of amendment of a nuclear power plant license. However, this section does not require publication of the document in the **Federal Register** that the Commission has made the finding under § 52.103(g). The NRC proposes to revise § 2.106(a) to require publication of such document in the **Federal Register**.

The NRC also proposes to establish in § 2.106(b)(2), the minimum requirements for the contents of such notice, viz., the manner in which copies of the safety analyses, if any, may be obtained and examined, and a finding that the prescribed inspections, tests, and analyses have been performed and that the acceptance criteria prescribed in the combined license have been met, and that the license complies with the requirements of the AEA and the NRC's regulations. These provisions are the same as the existing requirements with respect to notices of issuance for licenses and license amendments, but adds the requirements with respect to ITAAC mandated by Section 185 of the AEA and part 52. The NRC disagrees with the contention raised by the nuclear industry that Section 185 of the AEA limits the NRC to a finding of compliance with respect to ITAAC in determining whether to authorize fuel load and operation for a combined license under part 52. Nothing in the legislative history suggests that by adopting Section 185 of the AEA, Congress intended to override the NRC's long-standing practice of making these findings in connection with all of its regulatory and licensing approvals.

9. Section 2.109, Effect of Timely Renewal Application

Section 2.109 would be revised to add conforming references to a combined license under subpart C of part 52. The revised language would clarify that an application for a combined license filed no later than 5 years before its expiration will not be deemed to have expired until the renewal application has been finally determined.

10. Section 2.110, Filing and Administrative Action on Submittals for Standard Design Approval or Early Review of Site Suitability Issues

In a conforming change, §§ 2.110(a) and (b) would be revised to refer to subpart E of part 52 and appendix Q of part 50. Section 2.110(c) would be corrected by adding § 2.110(c)(2) to address the procedures applicable to administrative determinations of submittals for early review of site suitability issues; currently, paragraph (c) only refers to standard designs.

11. Section 2.111, Prohibition of Sex Discrimination

This section prohibits sex discrimination against certain persons with respect to, *inter alia*, a license under the AEA. This section would be revised to include standard design approvals under part 52, and petitions for rulemaking, including an application for a design certification under part 52.

12. Section 2.202, Orders

This section would be revised by redesignating § 2.202(e) as § 2.202(e)(1), and adding §§ 2.202(e)(2) through (5), to indicate the backfitting provisions in part 52 applicable to the various licensing processes under part 52. No provisions were deemed necessary to address issuance of orders representing backfitting of NRC approvals such as standard design approvals. These approvals, by themselves, do not authorize third party action. Therefore, any agency action to condition their use would not require an NRC order to the holder of a standard design approval.

13. Section 2.340, Initial Decisions; Immediate Effectiveness of Certain Decisions

Section 2.340, in paragraph (a), currently sets forth the Commission's provisions governing initial decisions in contested proceedings for facility operating licenses. Paragraph (a) reflects the Commission's longstanding determination that a presiding officer shall not address uncontested issues in operating license proceedings unless the presiding officer finds, and the Commission (upon referral of the matter) agrees with the presiding officer, that the issue represents a serious safety, environmental, or common defense and security matter. Paragraphs (b), (f) and (g) set forth the Commission's provisions governing the immediate effectiveness of initial decisions on issuance or amendment of construction permits and operating licenses. There are several apparent inadequacies with this section with respect to part 52. First, § 2.340(a) does not reflect the limits to the presiding officer's authority to decide issues that are not contested, and are not within the limited scope of hearings with respect to ITAAC under § 52.103(g), and the procedure for challenges to ITAAC under § 52.103(f). Second, paragraphs (b) and (f), read literally, do not apply to either an early site permit proceeding (which is a partial construction permit), and paragraphs (f) and (g) do not apply to issuance of a combined license (which constitutes both a construction permit and operating license). Finally, the language of this section does not address the immediate effectiveness of the Commission's finding under § 52.103(g) that a combined license's ITAAC have been met.

Accordingly, the Commission proposes to revise § 2.340 to address early site permits and combined licenses. The Commission proposes to simplify the title of this section, which the Commission regards as an editorial change. A new paragraph (a–1) would be adopted to reflect the procedure in § 52.103(f) with respect to consideration of issues not related to meeting acceptance criteria in ITAAC. Paragraph (b) would be revised by adding references to early site permits, issuance or amendment of combined licenses, and a decision under § 52.103(g) that acceptance criteria in an ITAAC for a combined license have been met. An editorial change is made to the last sentence of § 2.340(b) to make clear that Commission review provisions of § 2.341 are not applicable where the Commission itself is acting as the presiding officer.

Paragraph (c) would be revised to make clear that the Director of NRR is authorized to issue an early site permit and combined license within 10 days of the issuance of an initial decision. The Commission notes that under part 52, no licensing action by the Director of NRR is necessary following a § 52.103(g) finding that the combined license acceptance criteria have been met, in order for the combined license holder to commence fuel load and operation. Hence, no change to § 2.340 in this regard appears to be necessary.

New paragraphs (e), (h), and (i) would be adopted to address immediate effectiveness of initial decisions in early site permit proceedings, combined license issuance, and amendment proceedings, and the § 52.103(g) finding for a combined license, respectively. Each paragraph would also describe the Commission's consideration of a presiding officer's initial decision in such proceedings. Paragraph (e) on early site permits is modeled after current paragraph (f) which covers initial decisions in construction permit proceedings. Paragraph (h) is modeled on current paragraph (g) for issuance and amendment of operating licenses, but with changes to reflect the fact that issuance of a combined license does not, by itself, allow operation. Paragraph (i) is also modeled on current paragraph (g), but modified to focus on the § 52.103(g) finding.

Finally, existing paragraph (h) would be re-designated as a new paragraph (o), and the intervening paragraphs (j) through (n) would be reserved for future use to accommodate licensing and regulatory procedures that may be adopted by the Commission in the future.

14. Section 2.390, Public Inspections, Exemptions, Requests for Withholding

Section 2.390(a) contains the Commission's general rule that NRC records and documents regarding a license, permit or order shall ordinarily be made available to the public, unless one or more provisions in § 2.390 apply. This section would be revised to make clear that § 2.390 also applies to NRC records and documents regarding standard design approvals under part 52.

15. Section 2.500, Scope of Subpart

This section would be revised by adding a conforming reference to subpart F of part 52 on manufacturing licenses.

16. Section 2.501, Notice of Hearing on Application Under Subpart F of Part 52 for a License To Manufacture Nuclear Power Reactors

This section would be revised by adding a conforming reference to subpart F of part 52 on manufacturing licenses. In addition, paragraph (b) of this section would be revised by removing the detailed requirements governing the content of the notice of hearing published in the **Federal Register**, and instead referencing proposed § 2.104(f). As previously discussed, the Commission proposes to consolidate in § 2.104, the requirements governing the content of a notice of hearing with respect to all part 52 processes.

17. Sections 2.502, 2.503 and 2.504 are Removed and Reserved

The matters addressed in these sections are addressed with greater specificity in proposed subpart F of part 52, consistent with the Commission's proposed concept for manufacturing licenses and the Commission's proposed prohibition on part 50 license applications referencing the use of reactors manufactured under a manufacturing license issued under subpart F of part 52.

18. Section 2.800, Scope and Applicability

Subpart B of part 52 sets out the requirements applicable to Commission issuance of regulations granting standard design certification for nuclear power facilities. Standard design certifications are approved through a rulemaking proceeding, and, in concept, the applicant for a design certification may be considered as a petitioner for rulemaking. However, subpart H of part 2, which sets forth the Commission's procedures governing rulemaking, including petitions for rulemaking, does not specifically address design certification. Furthermore, based upon the Commission's experience with three final design certification rules and a proposed design certification rule, it is clear that some of the procedural requirements applicable to petitions for rulemaking are not well-suited to the administrative process for determining a design certification application, *e.g.*, the existing prohibition against pre-application consultation with the NRC. These consultations between potential license applicants and the NRC staff are not currently prohibited and indeed are encouraged by the Commission to enhance NRC resource planning and to facilitate early identification and resolution of technical and regulatory issues. An application for design certification is more like a license application than a traditional petition for rulemaking, and the current prohibition against pre-application consulting appears to be inconsistent with the Commission's strategic objectives of safety, effectiveness and management excellence. The Commission also believes, based upon its experience, that administrative provisions ordinarily applied in the context of licensing (*e.g.*, docketing and acceptance review, denial of application for failure to supply information), should also be available for application as appropriate in its determination of design certification applications.

For these reasons, the Commission proposes to revise § 2.800 to address standard design certifications. Section 2.800 would be revised to delineate which provisions of subpart H are applicable to all petitions for rulemaking, and which provisions are applicable only to initial applications for design certification and applications for amendments to existing design certification rules filed by the original applicant (or successors in interest). The title of § 2.800 would be revised to reflect the additional function of this section. Sections 2.811 through 2.819 would be added to address initial applications for design certification as well as applications for amendments to existing design certifications filed by the original applicant (or successors in interest), and are based upon §§ 2.101, 2.107, and 2.109. Petitions for amendment of existing design certification, which are filed by third parties other than the original applicant for that design certification (or successor in interest), would be treated as an amending petition for rulemaking under the provisions of §§ 2.801–2.810.

19. Section 2.801, Initiation of Rulemaking

A conforming change is proposed for § 2.801 to refer to applications for standard design certification rulemaking.

20. Section 2.811, Filing of Standard Design Certification Application; Required Copies

Section 2.811 would be added to clarify the requirements that are related to the filing of applications for standard design certifications, and derived from procedural requirements for license applications located in several different regulations in part 50. Section 2.811(a), which is analogous to § 50.4(a), identifies the NRC addresses where an application for a standard design certification must be filed, and provides the requirements for electronic submission of a design certification application. Section 2.811(b), which is analogous to § 50.30(a)(1) and (3), provides that a standard design certification application must meet the written communications requirements in § 2.813. Section 2.811(c), which is analogous to § 50.30(a)(2), requires the applicant to have the capability to make and supply additional copies of the application upon NRC request. Section 2.811(d), which is analogous to the requirement in § 50.30(a)(4), requires the applicant to make a copy of the updated application for use by any party in a hearing conducted under subpart O of part 2 (a legislative-style hearing).

Section 2.811(e), which addresses pre-application consultation with the NRC staff, provides that the potential applicant for a design certification may consult with the NRC on the subject matters listed in § 2.802(a)(1)(i) through (iii), including the procedure and process for filing and processing an application for a design certification. However, § 2.811(e) also allows the prospective standard design certification applicant to consult with the NRC staff on substantive technical and regulatory matters relevant to the design certification; the prohibitions in § 2.802(a)(2) do not apply to these consultations.

21. Section 2.813, Written Communications

New § 2.813 contains procedural and ''housekeeping'' requirements governing written communications with the NRC, and are derived from analogous requirements located in several different regulations in part 50. Section 2.813(a) is analogous to § 50.4(a). Section 2.813(b) is analogous to § 50.4(c), and sets forth the requirement that written copies be submitted in permanent form on unglazed paper. Section 2.813(c) is analogous to § 50.4(d), and expresses the Commission's preference that the upper right corner of the first page of the applicant's submission set forth the specific regulation or other basis which instigated the written communication.

22. Section 2.815, Docketing and Acceptance Review

New § 2.815 is analogous to § 2.101(a)(2), and permits the NRC to conduct a review to determine whether the application is complete (*i.e.*, addresses all matters specifically required by NRC regulation to be addressed in an application) and acceptable for docketing. Section 2.815(a) provides that the NRC may determine, in its discretion, the acceptability for docketing of an application based on the technical adequacy of the application, not just on the completeness of the application.

23. Section 2.817, Withdrawal of Application

New § 2.817 is analogous to § 2.107, and addresses the procedures that the NRC will follow if a design certification applicant withdraws its application. Section 2.817 also provides for a notice of action on the withdrawal on the NRC Web site if the notice of application was published on the NRC Web site.

24. Section 2.819, Denial of Application for Failure to Supply Information

New § 2.819 is analogous to § 2.108, and states in paragraph (a) that the NRC may deny an application for a standard design certification if the applicant fails to respond to an NRC request for additional information concerning its application within 30 days of the request. Section 2.819(b) provides that the NRC will publish in the **Federal Register** a document denying the application. Section 2.819(b) also states that the NRC will publish a notice on the NRC's Web site denying the application if the NRC previously published a notice of receipt of the application on the NRC Web site.

G. Proposed Change to 10 CFR Part 10

1. Section 10.1, Purpose; and Section 10.2, Scope

Part 10, which contains the NRC's requirements and procedures for determining eligibility for granting access to Restricted Data and National Security Information, does not reflect the licensing and approval processes in part 52. Accordingly, the NRC proposes to make several changes to ensure that there are defined criteria and procedures governing requests for access to Restricted Data and National Security Information by individuals with respect to a license or approval under part 52.

The NRC proposes to add § 10.1(a)(3) which refers to the eligibility of individuals for employment with NRC licensees and applicants, and holders of standard design approvals under part 52, and revise § 10.2(b) to refer to standard design approvals under part 52 and applicants for consultants (to address the provision of services associated with design approvals, who may not be ''employees'' *per se*).

H. Proposed Changes to 10 CFR Part 19

Part 19, entitled Notices, Instructions and Reports to Workers: Inspection and Investigations, establishes the NRC's requirements for notices, instructions and reports to persons participating in NRC licensed and other regulated activities. For example, it requires licensees and applicants for licenses to post a copy of, inter alia, the regulations in 10 CFR parts 19 and 20, and NRC Form 3. NRC Form 3 provides a statement of rights and responsibilities to employees with respect to NRC requirements. Part 19 also establishes the rights and responsibilities of the NRC and individuals during interviews compelled by subpoena as part of a NRC inspection or investigation under Section 161.c of the AEA. Finally, part 19 prohibits, on the grounds of sex, the exclusion from participation in, or being subjected to discrimination under any program or activity licensed by the NRC. The regulatory authority for part 19 stems from Sections 211 and 401 of the Energy Reorganization Act of 1974, as amended (1974 ERA).

The NRC has identified a number of weaknesses with the existing regulatory language in part 19. Currently, part 19's regulatory requirements and proscriptions apply only to licensees who receive, possess, use or transfer material licensed under the NRC's regulations, including persons licensed to operate a production or utilization facility under 10 CFR part 50, but do not cover holders of 10 CFR part 52 licenses such as combined licenses, early site permits, and manufacturing licenses. Moreover, part 19 applies only to licensees who receive, possess, use or transfer materials licensed under 10 CFR parts 30 through 36, 39, 40, 60, 61, 63, 70 or 72 (including persons licensed to operate a production or utilization facility under part 50). Thus, the current regulations would not appear to address discrimination against an employee during ''non-operational'' activities such as manufacturing or construction of a nuclear power plant. Because the NRC's regulatory scheme relies upon the proper design, manufacture, siting, and/or construction of a production or utilization facility; discrimination against an employee at any of these stages could have significant adverse public health and safety or common defense and security implications and effects. One would therefore expect that part 19 would apply to such non-operational activities. Finally, part 19 applies only to a ''licensee'' and activities authorized by a ''license,'' see, *e.g.*, §§ 19.1, 19.2, 19.11, 19.20, 19.32, and does not extend to part 52's non-licensing regulatory approvals, *i.e.*, standard design approvals and standard design certifications. Inasmuch as these non-licensing activities regulated under part 52 are not different in kind from the licensing which are currently subject to part 19 requirements, the NRC concludes that they should also be subject to the requirements in part 19.

Accordingly, the NRC proposes to amend various provisions in part 19 to ensure that its provisions extend to applicants for and holders of part 50 construction permits, and combined licenses, early site permits and manufacturing licenses under part 52. In addition, the NRC proposes to extend part 19 to cover applicants for and holders of standard design approvals and standard design certifications. The NRC believes that its regulatory

authority under Section 211 and Section 401 of the 1974 ERA is much broader than the current scope of part 19. The anti-discrimination proscriptions in Section 211 of the ERA apply to any ''employer,'' which the NRC regards as including non-licensee entities otherwise regulated by the NRC, such as applicants for and holders of standard design approvals, and applicants for standard design certifications.[4] The provisions in Section 401of the ERA, prohibiting sex discrimination apply to ''any program or activity carried on * * * under any title of this Act.'' Accordingly, the NRC concludes that it has the authority to extend the current scope of part 19 to address the non-licensing regulatory approvals in part 52.

To implement the NRC's proposed broadening of the scope of part 19, §§ 19.1 and 19.2 would be revised to explicitly refer to: (1) Applicants for and holders of licenses and permits under part 52; (2) applicants for and holders of final design approvals; and (3) applicants for standard design certifications. The NRC notes that the existing provision in § 19.2 excluding part 19 from applying to NRC employees and contractors remains unchanged in the proposed rule. To provide a convenient term for referring to persons and entities applying for, or granting non-licensed regulatory approvals in part 52, as well as any future regulatory processes, the NRC proposes to amend § 19.3 to the terms, *regulated activities,* and *regulated entities.* Regulated entities would be defined to include (but not be limited to) applicants for and holders of standard design approvals under subpart E of part 52, and applicants for standard design certifications under subpart B of part 52.

Section 19.11 establishes requirements for posting of notices to workers. Because §§ 19.11(a)(2) and (a)(4) contain posting requirements which are not relevant to early site permits, manufacturing licenses, standard design approvals, and standard design certifications, the NRC proposes to delineate in § 19.11(b) the applicable posting requirements for those regulatory processes. Section 19.11(c) is reserved for future Commission use.

Sections 19.14 and 19.20 would be revised to apply to regulated entities, as well as licensees.

Section 19.31, governing exemptions from part 19, would be revised to use language consistent with § 50.12 and proposed § 52.6. Unlike the current regulation, which limits a request for exemption to a ''licensee,'' the proposed rule would allow ''interested persons,'' as well as licensees to request an exemption from one or more provisions of part 19. This would allow applicants for and holders of non-license regulatory vehicles in part 52 (standard design approvals and design certifications) to request exemptions from part 19. The broadened scope of persons that would be allowed to request an exemption is consistent with most of the exemption provisions throughout the NRC's regulations in Title 10 of the CFR, including the specific exemption provision in part 50 (i.e., § 50.12).

Section 19.32 would be revised to more closely track the broad scope of statutory language in Section 401 of the 1974 ERA, which is not limited to licensing, but extends the sex discrimination prohibition to ''any * * * activity carried on * * * under any title'' of the ERA. By using the statutory language in the proposed rule, the NRC believes that the regulations would cover not only the existing non-license regulatory vehicles in part 52, but any other regulatory approaches that the NRC may adopt in the future (Section 401 of the 1974 ERA applies to NRC regulatory activities under the AEA, inasmuch as the 1974 ERA transferred the AEA regulatory authority from the old AEC to the NRC, see 1974 ERA, Sec. 104(c)).

I. Proposed Changes to 10 CFR Part 20

1. Section 20.1002, Scope

10 CFR part 20 applies to persons licensed by the NRC to receive, possess, use, transfer, or dispose of byproduct, source, or special nuclear material or to operate a production or utilization facility. Accordingly, § 20.1002 would be revised by adding a conforming reference to part 52, which sets forth a process for licensing a utilization facility.

2. Section 20.1401, General Provisions and Scope

This section on decommissioning of facilities would be revised to add a conforming reference to facilities licensed under 10 CFR part 52.

3. Section 20.2203, Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Constraints or Limits

Sections 20.2203(c) and (d) would be revised to add a reference to holders of combined licenses to the procedures on submitting reports.

J. Proposed Changes to 10 CFR Part 21

Part 21 implements the reporting requirements in Section 206 of the ERA. The proposed part 52 rule published in 2003 sets forth the NRC's proposals as to how Section 206 reporting and, therefore, part 21 applicability should be extended to early site permits, standard design certifications, and combined licenses. However, the proposed rule did not address Section 206 reporting requirements with respect to standard design approvals or manufacturing licenses. Moreover, the NRC's proposals were developed without the benefit of the NRC's in-depth consideration of the issues as applied in the context of the early site permit applications that are currently before the NRC. Accordingly, the NRC withdraws its earlier proposal and has developed a more complete and integrated proposal on Section 206 reporting under part 21 and § 50.55(e) (as discussed previously, § 50.55(e) sets forth the Section 206 reporting requirements applicable to holders of construction permits).

Key principles of reporting under section 206 of the ERA. The NRC believes that the extension of NRC's reporting requirements implementing Section 206 of the ERA to part 52 licensing and approval processes should be consistent with three key principles: First, NRC regulatory requirements implementing Section 206 of the ERA should be a legal obligation throughout the entire ''regulatory life'' of a NRC license, a standard design approval, or standard design certification. Second, reporting of defects or failures to comply with associated substantial safety hazards should occur whenever the information on potential defects would be most effective in ensuring the integrity and adequacy of the NRC's regulatory activities under part 52 and the activities of entities[5] subject to the part 52 regulatory regime. Third, each entity conducting activities within the scope of part 52 should develop and implement procedures and practices to

[4] The Commission believes that the use of the term, ''includes,'' in paragraph (a)(2) of Section 211 of the 1974 ERA was not intended to be an exclusive list of the persons and entities subject to the anti-discrimination provisions in that section. The House Report on H.R. 776, which was adopted by Congress as the Energy Policy Act of 1992, states:

[Title V] also broadens the coverage of existing whistle blower protection provisions to include * * * *any other employer* engaged in *any activity* under the Energy Reorganization Act of the Atomic Energy Act of 1954.

H. Rep. No. 102–474, part 8, 102d Congress, 2d Sess., at 78–79 (1992)(emphasis added). There was no discussion of the statutory language in the conference report. H.R. Conf. Rep. No. 102–1018, 102d Cong., 2d Sess. (1992).

[5] Throughout this discussion, reference to entities, licensees and/or applicants includes the contractors and subcontractors of those entities, licensees and/or applicants.

ensure that it fulfills its Section 206 of the ERA reporting obligation in an accurate and timely manner.

First principle—Section 206 of the ERA applies throughout ''regulatory life.'' The first principle, that NRC regulatory requirements implementing Section 206 must extend throughout the entire ''regulatory life'' of a part 52 process, reflects the regulatory pattern inherent in part 52, whereby certain designated licenses or approvals—e.g., an early site permit, nuclear power reactor manufactured under a manufacturing license, or a design certification—are capable of being referenced in a subsequent nuclear power plant licensing application. Under the part 52 regulatory scheme, a referenced NRC approval constitutes the NRC's basis for the licensing action within the scope of the prior Commission approval, and becomes part of the ''licensing basis'' for that plant. However, if Section 206 of the ERA reflects that effective NRC decision-making and regulatory oversight require accurate and timely information about defects and failures to comply associated with substantial safety hazards, then Section 206 of the ERA should apply whenever necessary to support effective NRC decision-making and regulatory oversight of the referencing licenses and regulatory approvals. To put it in different terms, if the NRC decision that it may safely issue a license depends in part upon an earlier NRC safety determination for a referenced license, standard design approval or standard design certification, it follows that a safety issue with respect to the referenced license, design approval or design certification has safety implications for the referencing license or design certification, and the continuing validity of the NRC's licensing decision. Thus, the NRC concludes that the need for Section 206 reporting should not be limited to those licenses and approvals under part 52 which are referenced or ''relied upon'' in a subsequent nuclear power plant licensing application (viz., early site permits, standard design approvals, standard design certifications, and manufacturing licenses), but rather should extend to licenses and approvals that are capable of being referenced in a future licensing application. In other words, they must extend until there can be no further potential safety implications for a referencing license or approval.

The NRC believes that the beginning of the ''regulatory life'' of a referenced license, standard design approval or standard design certification under part 52 occurs when an application for a license, design approval or design certification is docketed. Docketing of an application marks the start of the NRC's formal safety and environmental review of the application, and therefore the initiation of the NRC's need for accurate and timely information to support its regulatory review and approval. However, the NRC cautions that this does not mean that an applicant is without Section 206 responsibilities for pre-application activities. As the NRC staff discussed in a June 22, 2004, letter to NEI (ML040430041) in the context of an early site permit, there are two aspects, namely, a ''backward looking'' or retrospective aspect with respect to existing information, and a ''forward looking'' or prospective aspect with respect to future information. The retrospective obligation is that the early site permit holder and its contractors, upon issuance of the early site permit, must report all known defects or failures to comply in ''basic components,'' as defined in part 21. The prospective obligation is that the early site permit holder and its contractors must report all defects or failures to comply in basic components discovered subsequent to early site permit issuance. The early site permit holder and its contractors are required to meet these requirements upon issuance of the early site permit, and must continue to meet them throughout the term of the early site permit. Accordingly, safety-related design and analysis or consulting services should be procured and controlled, or dedicated, in a manner sufficient to allow the early site permit holder and its contractors, as applicable, to comply with the above described reporting requirements of Section 206, as implemented by 10 CFR 50.55(e) and part 21.

The NRC believes that the end of regulatory life occurs at the later of: (1) The termination or expiration of the referenced license, standard design approval, or standard design certification; or (2) the termination or expiration of the last of the license or design certification *directly* or *indirectly referencing* the (referenced) license, design approval, or design certification. For example, if the NRC approves a standard design approval, which is subsequently referenced in a final standard design certification rule, and that standard design certification is, in turn referenced in a combined license issued by the NRC, the ''end'' of the regulatory life occurs when the authorization to operate under the combined license is terminated (ordinarily, under the provisions of § 52.110). As long as a referenced combined license continues to be effective, the ''regulatory life'' of a referenced license, standard design approval, standard design certification, or a manufactured reactor (as applicable) must also continue and cannot be deemed to have ended.

Some industry stakeholders have argued that the NRC's regulatory interests would be met if reporting under Section 206 of the ERA were limited to the referencing applicant/licensee, and that there should be no ongoing part 21 reporting obligation imposed on the early site permit holder, original applicant for a standard design certification, or holder of a part 52 regulatory approval. Under this proposal the referencing applicant and licensee would satisfy its obligation by an appropriate contractual provision between the referencing applicant/licensee and the entity ''supplying'' the referenced license or regulatory approval. Although this could be a viable alternative for some combined licenses, early site permits and standard design approvals, the approach would not be effective in at least three different contexts. This approach would not result in reporting of defects to the NRC by the applicant of the early site permit or standard design certification, which violates the NRC's second principle (discussed more fully in the next section). In addition, this approach would not result in reporting where there is no contractual relationship between the combined license applicant/licensee and the original applicant of the standard design certification. Because the approach suggested by these stakeholders does not satisfy the NRC's regulatory objectives, it is not adopted.

One of the original applicants for the current standard design certifications stated that any arguable Section 206 requirements must logically end upon expiration of the standard design certification, inasmuch as expiration marks the end time that the standard design certification may be referenced. The NRC disagrees with this position. Under § 52.55(b) of the current regulations, a standard design certification continues to be effective in a hearing for a combined license or operating license docketed before the expiration date, and in a hearing under § 52.103 for authority to load fuel and operate. At minimum, the original standard design certification applicant should be subject to Section 206 requirements until the proceeding is completed. Beyond the minimum requirements, the NRC also believes that the original design certification

applicant's Section 206 obligations should continue until operation is no longer authorized in accordance with § 50.82(a)(2) for the last operating license or combined license referencing that standard design certification. The NRC believes that the regulatory need for information concerning defects in a standard design certification continues throughout the operating life of a license referencing that design certification; the relevance of and the NRC's need for this information, if subsequently discovered by the original design certification applicant, does not diminish simply because the standard design certification may no longer be referenced.

Second principle—Notification occurs when information is needed. The second principle is focused on ensuring that the NRC, its licensees, and license applicants receive information on defects at the time when the information would be most useful to the NRC in carrying out its regulatory responsibilities under the AEA, and to the licensee or applicant when engaging in activities regulated by the NRC. A result of this principle is that reporting may be delayed if there is no immediate consequence or regulatory interest in prompt reporting, and that delayed reporting will actually occur when necessary to support effective, efficient, and timely action by the NRC, its licensees and applicants. Applying the second principle and its result to part 52 processes, the NRC believes that immediate reporting is required throughout the period of pendency of an application—be it a license, a standard design approval or a standard design certification. Allowing an applicant to delay the reporting of a defect would appear to be inconsistent with the NRC's statutory mandate to provide adequate protection to public health and safety and common defense and security. Even if delayed reporting would allow the NRC an opportunity to modify its prior safety finding with respect to the license, design approval or design certification, the delayed consideration is inconsistent with one of the fundamental purposes of part 52, viz., to provide for early consideration and resolution of issues in a manner that avoids the potential for delay during licensing of a facility. Accordingly, the NRC's view is that the NRC's reporting requirements implementing Section 206 of the ERA must extend to applicants (and their contractors and subcontractors) for all part 52 processes (licenses, early site permits, design approvals, and design certifications). Once an application has been granted, the NRC believes that immediate reporting of subsequently-discovered defects is not necessary in certain circumstances. For those part 52 processes which do not authorize continuing activities required to be licensed under the AEA, but are intended solely to provide early identification and resolution of issues in subsequent licensing or regulatory approvals, the NRC believes that reporting of defects or failures to comply associated with substantial safety hazards may be delayed until the time that the part 52 process is first referenced. The NRC's view is based upon its determination that a defect with respect to part 52 processes should not be regarded as a ''substantial safety hazard,'' because the possibility of a substantial safety hazard becomes a tangible possibility necessitating NRC regulatory interest only when those part 52 processes are referenced in an application for a license, early site permit, design approval or design certification. Upon initial referencing, the holder (or in the case of a design certification), the applicant who submitted the application leading to the final design certification regulation must make the necessary notifications to the NRC as well as provide final engineering. The notification must address the period from the Commission adoption of the final design certification regulation up to the filing of the application referencing the final design certification regulations. Thereafter, notice must be made in the ordinary manner. The notification obligation ends when the last license referencing the design certification is terminated.

Third principle—Procedures and practices must be implemented to ensure accurate and timely reporting. The third principle (viz., each entity conducting activities under the purview of part 52, should develop and implement procedures and practices to ensure that the entity accurately and timely fulfils its reporting obligation as delineated in the NRC's regulations), is intended to ensure the effectiveness of each entity's reporting processes. This is especially true where there is a potential for substantial passage of time between the discovery of a defect and the reporting of the defect, as may be allowed by the NRC consistent with the second principle. For example, following issuance of a final standard design certification regulation, if the original applicant determines that there is a substantial safety hazard, that applicant need not report the discovery until the time that the design certification rule is referenced—which may be as long as 15 years from the date of the final rule. Given the substantial time that may pass between the time of discovery and the date of reporting, it is imperative that the original standard design certification applicant develop and implement procedures from the time of effectiveness of the final design certification regulations.

The result of the third principle, consistent with part 21's current requirements, is that licensees, license applicants, and other entities seeking a design approval or design certification, must have contractual provisions with their contractors, subcontractors, consultants and other suppliers which notify them that they are subject to the NRC's regulatory requirements on reporting and the development and implementation of reporting procedures. This result is currently reflected in § 21.31; the NRC proposes to add the corresponding requirement to § 50.55(e)(7).

Division of implementing requirements between Part 21 and § 50.55(e). Under the Commission's current regulatory structure, persons and entities engaged in construction (or the functional equivalent of construction) are subject to reporting requirements under § 50.55(e). Persons and entities engaged in all other activities within the purview of Section 206 of the ERA are subject to the requirements in part 21 and/or § 50.55(e). The proposed changes to part 21 and § 50.55(e) reflect the NRC's determination to retain this divided regulatory structure. The NRC believes that the only part 52 processes that authorize ''construction'' or its functional equivalent are manufacturing licenses and combined licenses before the Commission makes the finding under § 52.103(g). Therefore, the proposed reporting requirements with respect to Section 206 of the ERA for manufacturing licenses and combined licenses before the Commission makes the finding under § 52.103(g) are contained in § 50.55(e). The requirements in part 21 apply after the Commission makes the finding under § 52.103(g) for a combined license. Part 21 would be revised to explicitly apply to the remaining part 52 processes, i.e., early site permits, standard design approvals, and standard design certifications. Table A–1 provides a summary of the NRC's proposed applicability of part 21 and § 50.55(e) to each of the various approvals under part 52. The NRC requests comments on whether the existing division between part 21 and § 50.55(e) should be maintained, or whether the substantive requirements of § 50.55(e) should be

incorporated into part 21, with § 50.55(e) (and/or perhaps another regulation in part 50) setting forth a cross-reference to part 21. Note that one of the principal differences between part 21 and § 50.55(e) is that § 50.55(e)(1)(iii)(C) requires reporting of QA breakdowns in addition to defects and failures to comply associated with substantial safety hazards. The other is that the requirement governing commercial grade dedication is only found in part 21.

Reporting requirements for early site permits. If the early site permit holder becomes aware of a significant safety concern with respect to its site (e.g., that the specified site parameter for seismic acceleration is less than the projected acceleration due to new information), the concern should be reported to the NRC so that it may be considered in the review of any future application referencing the early site permit. This reporting attains special importance given the NRC's proposal not to impose an updating requirement for early site permit information other than that related to emergency preparedness. In order for the applicant for an early site permit to have the capability to report to the NRC any known significant safety concerns with respect to its site, or any safety concerns of which it may subsequently become aware (i.e., to be able to report any defects or failures to comply associated with substantial safety hazards under part 21) the early site permit applicant would have to have a program in place for implementing the requirements of 10 CFR part 21. The applicant's program may be inspected by the NRC as part of the application review and approval of the early site permit application would be subject to approval of the part 21 program.

TABLE A–1.—APPLICABILITY OF NRC REQUIREMENTS IMPLEMENTING SECTION 206 OF THE ENERGY REORGANIZATION ACT TO PART 52 LICENSING AND APPROVAL PROCESSES

Part 52 Licensing or approval processes	Applicable NRC requirement implementing section 206 of the ERA	Sanctions	
		Civil	Criminal
Early Site Permit (SDA); Subpart A			
Application*	part 21	21.61	21.62
Issuance of ESP	part 21	21.61	21.62
Standard Design Approval (SDA); Subpart E			
Application*	part 21	21.61	21.62
Issuance of SDA	part 21	21.61	21.62
Standard Design Certification Rule (DCR); Subpart B			
Application*	part 21	21.61	21.62
Final DCR rulemaking	part 21	21.61	21.62
Combined License (COL); Subpart C			
Application*	50.55(e)	50.110	50.111
COL before § 52.103 authorization	50.55(e)	50.110	50.111
COL after § 52.103 authorization	part 21	21.61	21.62
Manufacturing License (ML); Subpart F			
Application*	50.55(e)	50.110	50.111
Issuance of ML	50.55(e)	50.110	50.111

* Currently, there is no explicit requirement imposing part 21 on an applicant for a construction permit (CP). However, as a practical matter the NRC has required these applicants to implement a part 21 program before approval of the CP. The Commission proposes to take the same approach with respect to applicants for a COL, DCR, ESP, FDA, or ML.

Applicability of Part 21 to contractors or subcontractors of an ESP applicant or holder. In accordance with 10 CFR 21.31, the purchaser of a basic component must state in the procurement documents for the basic component that part 21 is applicable to that procurement. As explained above, services that are required to support an early site permit application (e.g., geologic or seismic analyses, etc.) that are safety-related and could be relied upon in the siting, design, and construction of a nuclear power plant, are to be treated as basic components as defined in part 21. Therefore, these services must be either purchased as basic components, requiring the service provider to have an appendix B to part 50 QA program, as well as its own part 21 program, or the early site permit applicant could dedicate the service in accordance with part 21 and the standard review plan, which requires the dedication process itself to be controlled under an appendix B to part 50 QA program.

Reporting requirements for standard design approvals. A standard design approval represents the NRC staff's determination regarding the acceptability of the design for a nuclear power reactor (or major portions thereof). Although a standard design approval does not represent the NRC's final determination as to the acceptability of the design, it nonetheless represents a substantial expenditure of agency resources in reviewing the design. A standard design approval may be referenced in a subsequent application for a design certification, construction permit, operating license, combined license, or manufacturing license. Accordingly, consistent with the first principle, the NRC proposes to impose requirements implementing Section 206 of the ERA on applicants for and holders of standard design approvals.

A standard design approval does not authorize construction of a nuclear power plant; it merely constitutes the NRC staff's approval of the design of a nuclear power reactor (or major portion thereof). Therefore, the NRC proposes that the requirements implementing Section 206 of the ERA, which are applicable to standard design approvals, be placed in part 21, as opposed to § 50.55(e).

Reporting requirements for standard design certification regulations. A standard design certification represents the NRC's approval by rulemaking of an acceptable nuclear power reactor design, which may then be referenced in a subsequent combined license or manufacturing license application. Consistent with the first principle, the Commission proposes to impose Section 206 of the ERA reporting requirements on applicants for design certifications, including applicants whose designs are certified in a final design certification rulemaking. As with a standard design

approval, a design certification does not actually authorize construction. Accordingly, the NRC proposes to revise §§ 21.3, 21.21, 21.51, and 21.61 to explicitly refer to an applicant for a standard design certification, rather than to revise § 50.55(e).

Some industry stakeholders have asserted that because there is no ''holder'' or licensee, the NRC is without authority under Section 206 of the ERA to impose part 21 and/or § 50.55(e) evaluation and reporting requirements on applicants for standard design certification. The NRC disagrees with this assertion. The statute by its terms does not limit its reach to licensees; rather, the statute applies to any individual or responsible officer of a firm ''constructing, owning, operating, or supplying the components of any facility or activity which is licensed or otherwise regulated * * *'' The NRC believes that an applicant for a standard design certification, by submitting its application, is constructively ''supplying'' a ''component'' (the nuclear power reactor) for use in a future ''facility * * * licensed'' by the NRC. One of the consequences of the design certification provisions in part 52 is the ability of the applicant to subsequently offer its design with additional, value-added services. Thus, applying for and facilitating NRC adoption of a final standard design certification regulation is simply a partial step in the overall activity of ''supplying'' the certified design to potential nuclear power plant license applicants. Alternatively, one could treat the standard design certification applicant as supplying a component of an ''activity'' which is ''otherwise regulated'' by the NRC. Under this interpretation, the ''activity * * * otherwise regulated by the NRC'' can be viewed as the design certification rulemaking, and/or the entire part 52 regulatory regime whereby a design certification rule is referenced in a subsequent licensing application. The NRC concludes that under either interpretation, Section 206 of the ERA provides ample statutory authority for the NRC to impose regulations implementing Section 206 on design certification applicants, during the pendency of the application before the NRC, as well as after NRC adoption of a final design certification regulation (for those applicants whose application is granted).

As with standard design approvals, a standard design certification does not authorize construction of a nuclear power plant; it constitutes the NRC's approval of the design of a nuclear power reactor. Therefore, the NRC proposes that the requirements implementing Section 206 of the ERA which are applicable to standard design certifications be placed in part 21, as opposed to § 50.55(e).

Reporting requirements for combined licenses. A combined license authorizes both construction of a nuclear power plant, and loading of fuel and operation if the NRC makes the findings specified in § 52.103. As such, the application of the first and second principles to combined licenses is the most straightforward of all the part 52 processes. Under the proposed rule, the NRC's requirements implementing Section 206 of the ERA would apply throughout the regulatory life of the combined license, i.e., from docketing of the application until termination of the combined license.

To maintain the current division between § 50.55(e) and part 21 with respect to NRC requirements implementing Section 206 of the ERA, the NRC proposes to revise § 50.55(e) to make its provisions applicable to each holder of a combined license under part 52 before the effective date of the NRC's authorization of fuel load and operation under § 52.103, and to revise part 21 to clarify that its provisions apply to each holder of a combined license on the effective date of the Commission's authorization under § 52.103.

Reporting requirements for manufacturing licenses. Under proposed subpart F of part 52, a manufacturing license would constitute both the NRC's approval of a final nuclear power reactor design, as well as approval to manufacture one or more reactors in accordance with approved programs and procedures. The manufactured reactors would then be transported offsite and incorporate nuclear power facilities by holders of combined licenses—who may be different entities than the holder of a manufacturing license. Given the possibility that the manufacturing license holder is different from the combined license holder whose facility uses the manufacturing license, the NRC believes that the combined license holder using the manufactured reactor must be kept informed of any significant issue with design or manufacture of the reactor, to ensure that they evaluate the significance of these matters for their facility and undertake any necessary action to assure public health and safety and common defense and security. Furthermore, unlike a standard design certification, the financial resources necessary to obtain a manufacturing license will, as a practical matter, result in manufacturing beginning immediately after issuance of the manufacturing license. There will be no interim period similar to a design certification where there is no activity occurring under the manufacturing license. Accordingly, in compliance with the first and second principles, the NRC proposes that Section 206 of the ERA requirements should apply continuously from the filing of the application, until the manufacturing license expires or is otherwise terminated by the NRC.

A manufacturing license holder would essentially be conducting the same activities as a construction permit holder, albeit with several differences.[6] Nonetheless, the NRC believes that manufacturing is similar to construction such that the NRC's requirements implementing Section 206 of the ERA which are applicable to manufacturing licenses, should be contained in § 50.55(e). Accordingly, the NRC proposes to revise § 50.55(e) to specifically apply its provisions to holders of manufacturing licenses.

K. Proposed Change to 10 CFR Part 25

1. Section 25.35, Classified Visits

Part 25, which sets forth the NRC's requirements governing the granting of access authorization to classified information to certain individuals, does not currently reflect the licensing and approval processes in part 52. Accordingly, the NRC proposes to make changes to ensure that individuals who seek a license, standard design approval, or standard design certification under part 52 and require access authorization, are subject to the provisions of part 25. Because part 52 involves entities other than licensees, the NRC proposes to revise the title of part 25 to simply read, ''Access Authorization.'' The NRC also proposes to revise § 25.35 to refer to an applicant for a standard design certification under part 52 (including the applicant after the NRC adopts a final standard design certification rule), and the applicant for or holder of a standard design approval under part 52.

[6] These key differences are, first, the design of the manufactured plant would be approved before manufacturing commences, unlike the historical practice with construction permits. Second, a single manufacturing license may authorize the manufacture of multiple reactors, with the manufacturing process to be accomplished in a controlled setting rather than as a ''field'' operation. This is unlike the historical approach where non-standardized nuclear power facilities were constructed onsite using a ''roving'' workforce. Third, the manufacturing license will specify the inspections, tests, and acceptance criteria for determining successful manufacturing.

L. Proposed Changes to 10 CFR Part 26

1. Section 26.2, Scope, Section 26.10, General Performance Objectives; and Appendix A to Part 26

Part 26, which sets forth the NRC's requirements governing fitness-for-duty, currently uses a two-part regulatory regime for the application of fitness-for-duty requirements. A holder of an operating license for a nuclear power plant is required to implement all of the provisions in part 26. By contrast, a holder of a construction permit is required to implement a subset of part 26 requirements—§§ 26.10, 26.20, 26.23, 26.70, and 26.73—which excludes the drug testing provisions in part 26.

The NRC proposes to extend the applicability of parts 26 to 52, in keeping with the existing two-part regulatory regime, so that the full array of requirements in part 26 apply to a combined license holder after the date that the NRC authorizes fuel load and operation under § 52.103, analogous to holder of an operating license under part 50. By contrast, holders of combined licenses, before the date that the NRC authorizes fuel load and operation would be required to comply with the more limited set of part 26 provisions currently applicable to construction permit holders. Similarly, holders of manufacturing licenses under subpart F of part 52 would be treated the same as holders of construction permits. Finally, persons authorized to conduct the limited construction activities allowed under § 50.10(e)(3) would also be treated the same as a construction permit holder. The proposed rule would accomplish this by: (1) Revising § 26.2(a) to refer to combined license holders after the date that the NRC authorizes fuel load and operation under § 52.103; (2) revising § 26.2(c) to refer to a holder of a combined license before the date that the NRC makes the finding under § 52.103(g), a holder of a manufacturing license under subpart F of part 52, and a person authorized to conduct the activities under § 50.10(e)(3); (3) revising § 26.10(a) to refer to the personnel of a holder of a manufacturing license and those authorized to conduct the activities under § 50.10(e)(3); and (4) revising appendix A to part 26, paragraph 1.1(1) to include a reference to a holder of combined license after the date that the NRC makes the finding under § 52.103(g).

The NRC believes that part 26 need not be extended to cover applicants for and holders of early site permits, standard design approvals, and applicants for standard design certifications under part 52. These activities present less of a concern with respect to public health and safety, and common defense and security, as compared with construction permits, manufacturing licenses, operating licenses and combined licenses. None of these regulatory approvals or design certification regulations authorize the construction, manufacture, or operation of a facility, nor do they authorize possession of special nuclear material (SNM). The adverse impacts on public health and safety or common defense and security attributable to any fitness-for-duty issues are likely to be of a much lower level of significance, as compared to issues that may occur during construction, manufacture, operation, or possession of SNM. The NRC believes that the potential benefits of imposing the fitness-for-duty requirements are not justified in view of the regulatory burden to be imposed upon such applicants and holders. Accordingly, the proposed rule would not be imposed on applicants for and holders of standard design approvals, and applicants for standard design certifications under part 52.

M. Proposed Changes to 10 CFR Part 51

The proposed rule would make several conforming changes to part 51 to clarify the environmental protection regulations applicable to the various part 52 licensing processes.

NEPA Compliance for Design Certifications. For each of the three design certification rules in Appendices A, B, and C of part 52, as well as the proposed design certification rule for the AP1000 design, the NRC prepared an environmental assessment which: (1) Provides the bases for a Commission finding of no significant environmental impact (FONSI) for issuance of the design certification regulation; and (2) identifies and addresses the need for incorporating severe accident mitigation design alternatives (SAMDAs) into the design certification rule. Based upon this experience, the NRC proposes to make changes to part 51 to accomplish two objectives.

First, the NRC proposes to eliminate the need for the NRC to prepare essentially repetitive discussions in environmental assessments supporting a FONSI on issuance of a final standard design certification regulation. Each of the environmental assessments and FONSIs prepared to date conclude that there is no significant environmental impact associated with NRC issuance of a final design certification regulation because a design certification does not authorize either the construction or operation of a nuclear power facility. Design certification represents the NRC's pre-approval of the design for the nuclear power facility, but does not authorize manufacture or construction. For the design certification to have practical effect, it must be referenced in an application for a combined license. Therefore, the environmental effects of construction and operation of a nuclear power facility using the referenced design certification are to be addressed in the environmental impact statement (EIS) for the combined license. This is practical inasmuch as the full scope and details of the benefits and environmental impacts of constructing and operating a nuclear power reactor using the design approved in the design certification are most likely known at the time when the design certification is proposed to be used in a specific nuclear power facility at a particular site; this rationale will remain the same for all future design certifications. The NRC proposes to revise part 51 to eliminate the need for the NRC to make repetitive findings of no significant environmental impact for future design certifications and amendments to design certifications.

Second, the NRC proposes to require that SAMDAs be addressed at the design certification stage. SAMDAs are alternative design features for preventing and mitigating severe accidents, which may be considered for incorporation into the proposed design; the SAMDA analysis is that element of the SAMDA analysis dealing with design and hardware issues. At the design certification stage, the NRC's review is directed at determining if there are any cost beneficial SAMDAs that should be incorporated into the design, and if it is likely that future design changes would be identified and determined to be cost-justified in the future based on cost/benefit considerations. It is most cost effective to incorporate SAMDAs into the design at the design certification stage. Retrofitting a SAMDA into a design certification once site-specific design and engineering for a nuclear power facility has been completed would increase the cost of implementing a SAMDA. The retrofitting costs continue to increase in ensuing stages of facility construction and operation. For these reasons, the NRC believes that environmental assessments for design certifications should address SAMDAs. However, under the current provisions of part 51, both the environmental information submitted by the design certification applicant, and the environmental assessment prepared by the NRC, are directed either at

determining whether an EIS must be prepared, or that a FONSI is justified. Accordingly, the NRC proposes that SAMDAs be addressed in environmental reports and environmental assessments for design certifications.

The NRC proposes to make a number of changes to accomplish these two objectives. Existing § 51.55 would be redesignated as § 51.58, and§ 51.55 would be added to indicate that an environmental report submitted by the design certification applicant must be directed towards addressing the costs and benefits of possible SAMDAs, and presenting the bases for not incorporating identified SAMDAs into the design to be certified. The environmental report for an applicant seeking to amend an existing design certification would be somewhat narrower by focusing on if the design change, which is the subject of the amendment, renders a SAMDA previously rejected to become cost-beneficial; and if the design change results in the identification of new SAMDAs that may be reasonably incorporated into the design certification.

Section 51.30 would be revised to provide for a new § 51.30(d) establishing the scope of an environmental assessment for a design certification. Section 51.32 (b)(1) and (2) would be added to set forth the NRC's generic determination of no significant environmental impact associated with issuance of a final or amended design certification rule. This is, essentially, the legal equivalent of a categorical exclusion. The NRC proposes to include an explicit statement of no significant environmental impact in § 51.32. The NRC believes that external stakeholders will better understand the nature of the Commission's action by doing so. Section 51.31 would be modified by adding § 51.30(b) specifying the information on the environmental assessment to be included in the proposed rulemaking on the design certification published in the **Federal Register**.

Section 51.50(c)(2) would be revised to indicate that if a combined license application references a design certification then the combined license applicant's environmental report may reference the SAMDA discussion in the design certification environmental assessment as part of its SAMDA analysis, but must contain information demonstrating that the site characteristics for the combined license site falls within the site parameters in the design certification environmental assessment.[7]

Finally, § 52.75(c)(2) would be added to provide that if a combined license application references a design certification, then the combined license EIS will incorporate by reference the design certification environmental assessment, and summarize the SAMDA analysis and conclusions of the environmental assessment.

NEPA Compliance for Manufacturing Licenses. The NRC believes that its current approach for meeting the Commission's NEPA responsibilities for standard design certifications should be extended to manufacturing licenses for nuclear power reactors. Under proposed subpart F to part 52, a manufacturing license is similar to a standard design certification in that a final nuclear power reactor design would be approved. Therefore, the NRC proposes that the environmental effects of construction and operation of a nuclear power facility using a manufactured reactor would be addressed in the EIS for the combined license application for a nuclear power facility using a manufactured reactor, rather than in an environmental assessment or EIS at the manufacturing license stage.

Further, the NRC does not believe that NEPA requires the NRC to address the environmental impacts of actually manufacturing a nuclear power reactor licensed under subpart F of part 52, either at the manufacturing license stage or at the combined license stage where an application proposes to use a manufactured reactor. The manufacturing license approves the final design of the manufactured reactor, the organization and technical procedures for designing and manufacturing the reactor, and the ITAAC that are to be used by the licensee in determining whether the reactor has been properly manufactured in accordance with NRC requirements and the manufacturing license, and the possession (but not the use or transport offsite) of the manufactured reactor. The manufacturing license does not approve any specific location, building, or facility where the actual manufacture of the reactors may occur,[8] and the NRC does not require the applicant for the manufacturing license to submit any information on these matters as part of its application. These matters are commercial matters generally unrelated to the NRC's regulatory jurisdiction. The Federal Aviation Administration (FAA) does not prepare an EIS when issuing a production certificate under 14 CFR part 21, subpart G, authorizing the production of an aircraft or component in conformance with a type certificate. See Federal Aviation Agency Order 1050.1E, Sec. 308c (June 8, 2004). Because the NRC does not approve any specific location or facility in which to manufacture any component of or the reactor licensed under the manufacturing license, it would be speculative for the NRC to describe and assess the environmental impacts of manufacturing. NEPA does not require that an EIS address speculative impacts. The NRC also notes that EISs prepared in the past for construction permits and operating licenses under part 50, as well as current environmental assessments for nuclear power plant license amendments, have never considered the offsite environmental impacts of fabricating systems and components by vendors and subcontractors, even for circumstances where the fabrication activities are subject to NRC regulatory jurisdiction (e.g., under applicable provisions of parts 19 and 21). For these reasons, the NRC concludes that NEPA does not require the NRC to address, either at the manufacturing license stage or at the combined license stage where the application proposes to use a manufactured reactor, the speculative impacts of manufacturing a reactor offsite at a location or in a facility not specified or approved in the manufacturing license.

The NRC proposes to make a number of changes to part 51, in some cases parallel to those described above with respect to design certifications, consistent with its views on manufacturing licenses. Existing § 51.54 would be revised to clarify that an environmental report for a manufacturing license must address the costs and benefits of SAMDAs and the bases for not incorporating SAMDAs into the design of the reactor to be manufactured, and to state that the environmental report need not address the impacts of manufacturing a reactor under the manufacturing license. Section 51.20(b)(6), which currently

[7] The design certification applicant may have chosen to specify site parameters for the design certification safety review under § 52.79 which differ from the site parameters specified in the environmental report for its design. If such a design certification is referenced in a combined license application, the combined license applicant must demonstrate that the two differing sets of site parameters are met, in order for the full panoply of issue finality provisions in § 52.63 to apply in the combined license proceeding.

[8] A reactor manufactured outside of the United States would not be within the scope of a manufacturing license under subpart F of part 52, by virtue of proposed § 52.9, which states that no license shall be deemed to have been issued for activities which are not under or within the jurisdiction of the United States.

requires preparation of an EIS for issuance of a manufacturing license, and § 51.76, which currently addresses the subject matter of an EIS for a manufacturing license, would both be removed from part 51.

Section 51.30(e) would be revised to establish the scope of an environmental assessment prepared for a manufacturing license. Section 51.32(b)(3) and (4) would be added to state the NRC's generic determination of no significant environmental impact associated with issuance of a final or amended manufacturing license. As with the parallel provisions governing design certifications in § 50.32(b)(1) and (2), the NRC proposes to include an explicit statement of no significant environmental impact for manufacturing licenses in § 51.32(b)(3) and (4) to facilitate external stakeholder's understanding of the nature of the Commission's action. Section 51.31(c) would be added to describe the NRC's process for determining the manufacturing license with respect to environmental issues covered by NEPA.

Section 51.50(c)(3) would be added to provide that if a combined license application proposes using a manufactured reactor, then the combined license environmental report may incorporate by reference the environmental assessment for the manufacturing license under which the reactor is to be manufactured and, if so, must include information demonstrating that the site characteristics for the combined license site fall within the site parameters specified in the manufacturing license environmental assessment. This section also would state that the environmental report need not address the environmental impacts associated with manufacturing the reactor under the manufacturing license.

Finally, § 51.75(c)(3) would be added to indicate that if the combined license application proposed to use a manufactured reactor and the site characteristics of the combined license's site fall within the site parameters specified in the manufacturing license environmental assessment,[9] then the combined license EIS must incorporate by reference the manufacturing license environmental assessment. As in the case where the combined license application references a design certification, § 52.75(c)(3) requires the combined license EIS to summarize the findings and conclusions of the environmental assessment with respect to SAMDAs. Finally, § 51.75(c)(3) would explicitly provide that the combined license EIS will not address the environmental impacts of manufacturing the reactor under the manufacturing license.

NEPA obligations associated with § 52.103(g) findings on ITAAC. Currently, neither part 51 nor subpart C of part 52 explicitly addresses whether an environmental finding under NEPA is needed in connection with an NRC finding under § 52.103(g) that combined license ITAAC have been met. Nor does part 51 or subpart C of part 52 explicitly address whether contentions on environmental matters may be admitted in a hearing under § 52.103(b). The NRC never intended to make an environmental finding in connection with the § 52.103(g) finding on ITAAC, and the NRC does not believe that NEPA requires such a finding. The § 52.103(g) finding that ITAAC have been met is not a ''major Federal action significantly affecting the environment.'' The major Federal action occurs when the NRC issues the combined license, which includes the authority to operate the nuclear power plant—subject to an NRC finding of successful completion of ITAAC. This is the reason why the environmental impacts of operation under the combined license are evaluated and considered by the NRC in determining whether to issue the combined license even under the current provisions of part 52, see § 52.89. By contrast, the scope and nature of the NRC finding that ITAAC have been met is constrained by the ITAAC itself (indeed, the NRC has always recognized the possibility that ITAAC could be written such that the ''inspections and tests'' exception in Section 554(a)(3) of the APA could be invoked to preclude the need to provide an opportunity for hearing on § 52.103(g) findings). The safety consequences of operation are not considered when making the § 52.103(g) findings; these issues are addressed by the NRC in determining whether to issue the combined license in the first place. Therefore, the NRC does not view the § 52.103(g) finding as constituting a ''major Federal action,'' and makes no environmental findings in connection with that finding. It, therefore, follows that no contentions on environmental matters should be admitted in any hearing under § 52.103(b).

Accordingly, the NRC proposes adding § 51.108 to clarify that: (1) The Commission will not make any environmental findings in connection with the finding under § 52.103(g); and (2) contentions on any environmental matters, including the adequacy of the combined license EIS and any referenced environmental assessment, may not be admitted into any § 52.103(b) hearing on compliance with ITAAC. Those issues are essentially challenges to the continuing validity of the combined license or any referenced design certification, early site permit, or manufacturing license. Accordingly, these challenges should be raised with the Commission using relevant Commission-established processes for requesting Commission action. A challenge on environmental grounds with respect to the combined license, early site permit, or manufacturing license must be filed under the provisions of § 2.206. A challenge to an existing design certification on environmental grounds must be filed as a petition for rulemaking to modify the existing design certification under subpart H of part 2.

More specific changes to individual sections in part 51 are discussed below.

Section 51.20, Criteria for and identification of licensing and regulatory actions requiring environmental impact statements. Section 51.20(b) would be revised to identify the part 52 licensing processes that require an environmental impact statement or a supplement to an environmental impact statement. Specifically, § 51.20(b)(1) would be revised to indicate that issuance of an early site permit requires an EIS. Section 51.20(b)(2) would be revised to indicate that issuance of a combined license requires an EIS. Also, paragraph (b)(6) would be removed and reserved because, under the Commission's proposed revision to the requirements for manufacturing licenses, only an environmental assessment is required at this stage.

Section 51.22, Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review. Section 51.22(c) would be revised to identify part 52 licensing processes that are eligible for categorical exclusion or otherwise do not require environmental review.

Section 51.23, Temporary storage of spent fuel after cessation of reactor operation—generic determination of no significant environmental impact.

[9] Analogous to design certifications, it is possible that an applicant for a manufacturing license may have chosen to specify site parameters for the manufacturing license safety review under § 52.79 which differ from the site parameters specified in the environmental report for its design. If the combined license application proposes to use such a manufactured reactor, then the combined license applicant must demonstrate that the two differing sets of site parameters are met, in order for the full division of issue finality provisions in § 52.171 to apply in the combined license proceeding.

Sections 51.23(b) and (c) would be revised to indicate that the provisions of these paragraphs also apply to combined licenses.

Section 51.45, Environmental report. Section 51.45(c) would be revised to indicate that the analysis in an environmental report prepared for an early site permit need not include consideration of the economic, technical, and other benefits and costs of the proposed action and of energy alternatives. This change is proposed for consistency with the provisions of § 52.17(a)(2), which states that an environmental report included in an early site permit application need not include an assessment of the benefits (for example, need for power) of the proposed action and the Commission's denial of a Petition for Rulemaking (See PRM–52–02 (October 28, 2003; 68 FR 55905)).

Section 51.50, Environmental report—construction permit, early site permit, or combined license stage. The proposed rule would revise the title of § 51.50 to ''Environmental report—construction permit, early site permit, or combined license stage,'' and include separate paragraphs with specific requirements for environmental reports for early site permit and combined license applications which are based on existing requirements in part 51 for construction permits and operating licenses and requirements for early site permits and combined licenses in part 52.

Where a combined license applicant is referencing an early site permit, the NRC staff is proposing to add a requirement in § 51.50 that the applicant's environmental report need not contain information or analyses submitted to the Commission in the early site permit stage, but must contain, in addition to the environmental information and analyses otherwise required: (1) Information to demonstrate that the design of the facility falls within the site characteristics and design parameters specified in the early site permit; (2) information to resolve any other significant environmental issue not considered in the early site permit proceeding, either for the site or design; and (3) 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 EIS. The NRC staff is also proposing to add a requirement that the applicant must have a reasonable process for identifying any new and significant information regarding the NRC's conclusions in the early site permit EIS.

The NRC's regulations and the applicable case law interpreting the National Environment Policy Act of 1969, as amended (NEPA), support the NRC staff's belief that, inasmuch as an early site permit and a combined license are major Federal actions significantly affecting the quality of the human environment, both actions require the preparation of an EIS. However, 10 CFR part 52 does provide finality for previously resolved issues. Under NEPA, the combined license environmental review is informed by the EIS prepared at the early site permit stage and the NRC staff intends to use tiering and incorporation-by-reference whenever it is appropriate to do so. The combined license applicant must address any other significant environmental issue not considered in any previous proceeding, such as issues deferred from the early site permit stage to the combined license stage (*e.g.*, the benefits assessment).

For an early site permit, the NRC prepares an EIS that resolves numerous issues within certain bounding conditions. These issues are candidates for issue preclusion at the combined license, CP or OL stage. If the issue could be deferred and the combined license applicant elected to do so, *e.g.*, the benefits assessment, then the combined license applicant would be required to address the issue in its combined license, CP, or OL application. A combined license, CP, or OL application must also demonstrate that the design of the facility falls within the parameters specified in the early site permit. In addition, the application should indicate whether the site is in compliance with the terms of the early site permit. The information supporting a conclusion that the site is in compliance with the early site permit should be maintained in an auditable form by the applicant. While the NRC is ultimately responsible for completing any required NEPA review, for example, to ensure that the conclusions for a resolved early site permit environmental issue remain valid for a combined license action, the combined license applicant must identify whether there is new and significant information on such an issue. A combined license applicant should have a reasonable process to ensure it becomes aware of new and significant information that may have a bearing on the earlier NRC conclusion, and should document the results of this process in an auditable form for issues for which the combined license applicant does not identify any new and significant information.

Under 10 CFR 51.70(b), the NRC is required to independently evaluate and be responsible for the reliability of all information used in the EIS, including an EIS prepared for a combined license. In carrying out its responsibilities under 10 CFR 51.70(b), the NRC staff may (1) inquire into the continued validity of information disclosed in an EIS for an early site permit that is referenced in a combined license application; and (2) look for any new information that may affect the assumptions, analysis, or conclusions reached in the early site permit EIS.

The initial burden to assess newly identified information and those issues that were deferred to the combined license, CP, or OL application falls to the applicant. The applicant is required to provide information sufficient to resolve any other significant environmental issue not considered in the early site permit proceeding, either for the site or design, and the information contained in the application should be sufficient to aid the staff in its development of an independent analysis (see 10 CFR 51.45). Therefore, the environmental report must contain new and significant information on the site or design to the extent that it differs from, or is in addition to, that discussed in the early site permit EIS.

The NRC staff, in the context of a combined license application that references an early site permit, defines ''new'' in the phrase ''new and significant information'' as any information that was not contained or referenced in the early site permit application or the early site permit EIS. This new information may include (but is not limited to) specific design information that was not contained in the application, especially where the design interacts with the environment, or information that was in the early site permit application, but has changed by the time of the combined license application. This new information may or may not be significant.

In the past, the NRC staff has attempted to explain the relationship between the environmental review of an early site permit application to that of a combined license application referencing the early site permit by analogy to the license renewal environmental review process. The NRC staff believes the analogy especially useful because the license renewal process is well-established and clearly understood. Because there appears to be some confusion regarding this analogy, NRC believes a brief explanation of the similarities of the two processes is warranted.

For license renewal, the NRC prepared a generic EIS (GEIS) that

resolved more than 60 issues for all plants based on certain bounding assumptions; these were termed Category 1 issues. If a license renewal applicant identifies new and significant information with respect to a Category 1 issue, it documents its assessment of that information in its application. If the applicant determines that this new information is not significant, or that there is no new information, the applicant documents the bases for these determinations in an auditable form and makes the documentation available for staff inspection. If there is new and significant information on a Category 1 issue, the NRC staff limits its inquiry to determine if this information changes the Commission's earlier conclusion set forth in the GEIS. The NRC staff may inquire if the applicant has a reasonable process for identifying new and significant information on Category 1 issues.

Similarly, in the NRC environmental review process for a combined license application, the combined license EIS brings forward the Commission's earlier conclusions from the early site permit EIS and articulates the activities undertaken by the NRC staff to ensure that an issue that was resolved can remain resolved. If there is new and significant information on a previously resolved issue, then the staff will limit its inquiry to determine if the information changes the Commission's earlier conclusion. Environmental matters subject to litigation in a combined license proceeding mainly include (1) those issues that were not considered in the previous proceeding on the site or the design; (2) those issues for which there is new and significant information; and (3) those issues subject to the change or exemption processes in 10 CFR part 52.

Notwithstanding that, in the context of renewal, the GEIS resolves Category 1 issues through rulemaking and an early site permit resolves environmental issues through an individual licensing proceeding, the staff believes that the license renewal practice is similar to the part 52 process in which a combined license application references an early site permit.

In conclusion, the NRC staff has determined that a combined license is a major Federal action significantly affecting the quality of the human environment and, in accordance with 10 CFR 51.20, the NRC must prepare an EIS on that action. For matters resolved at the ESP stage, if there is no new and significant information that differs from that discussed in the ESP EIS, then the staff will rely upon (''tier off'') the early site permit EIS and disclose the NRC conclusion for matters covered in the early site permit review. Such matters will not be subject to litigation at the combined license stage.

Section 51.51, Uranium fuel cycle environmental data—Table S–3. Section 51.51 would be revised to require that every environmental report prepared for the early site permit stage or combined license stage of a light-water-cooled nuclear power reactor use Table S–3, Table of Uranium Fuel Cycle Environmental Data, as the basis for evaluating the contribution of the environmental effects of the uranium fuel cycle to the environmental costs of licensing light-water cooled nuclear power reactors.

Section 51.52, Environmental effects of transportation of fuel and waste—Table S–4. Section 51.52 would be amended to require that every environmental report prepared for the early site permit stage or combined license stage of a light-water-cooled nuclear power reactor contain a statement concerning transportation of fuel and radioactive wastes to and from the reactor.

Section 51.53, Postconstruction environmental reports. Section 51.53(a) would be revised to clarify that any postconstruction environmental report may incorporate by reference any information contained in a prior environmental report or supplement thereto that relates to the site or any information contained in a final environmental document previously prepared by the NRC staff that relates to the site. This change reflects the recognition that environmental documents will be prepared at the early site permit stage and may be referenced in environmental documents for future licensing actions. Section 51.53(a) also would be revised to clarify that documents that may be referenced in post construction environmental reports include those prepared in connection with an early site permit or a combined license. In addition, § 51.53(c)(3) would be revised to clarify that the requirements for the content of environmental reports submitted in applications for renewal of a combined license are the same as those for renewal of an operating license.

Section 51.54, Environmental report—manufacturing license. The proposed rule would amend this section by adding two paragraphs to delineate the difference in the matters with respect to SAMDAs that must be addressed in an environmental report for issuance of a manufacturing license under subpart F of part 52, versus that for an amendment to the manufacturing license. Section 51.54(a) provides that the environmental report for the manufacturing license must address the costs and benefits of SAMDAs, and the bases for not incorporating into the design of the manufactured reactor any SAMDAs identified during the applicant's review. Section 51.54(b) reflects the narrower scope of an environmental report submitted in connection with a proposed amendment to a manufacturing license, by providing that the report need only address whether the design change which is subject of a proposed amendment either renders a SAMDA previously identified and rejected to become cost beneficial, or results in the identification of new SAMDAs that may be reasonably incorporated into the design of the manufactured reactors.

As discussed earlier, the environmental impacts of manufacturing a reactor under a manufacturing license are not considered by the NRC, and § 51.54 indicates that the environmental report need not include a discussion of the environmental impacts of manufacturing a reactor.

Section 51.55, Environmental report—standard design certification. The provisions in current § 51.55 would be transferred to a new § 51.58 (discussed in § 51.58), and this section would be revised to address the contents of environmental reports for design certifications under subpart B of part 52. The structure of proposed § 51.55 is similar to that of § 51.54, reflecting the fact that the environmental review for either manufacturing licenses or design certifications is limited to SAMDAs. Section 51.55(a) provides that the environmental report for the design certification must address the costs and benefits of SAMDA, and the bases for not incorporating into the design certification any SAMDAs identified during the applicant's review. Section 51.55(b) provides that the environmental report submitted in support of a request to amend a design certification, need only address whether the design change which is the subject of a proposed amendment either renders a SAMDA previously identified and rejected to become cost beneficial, or results in the identification of new SAMDAs that may be reasonably incorporated into the design certification.

Section 51.58, Environmental report—number of copies; distribution. The matters previously addressed in § 51.55 would be addressed in a proposed new § 51.58. Section 51.58(a) would add conforming references for early site permits and combined licenses. Section

51.58(b) would make a conforming reference to subpart F of part 52.

Section 51.71, Draft environmental impact statement—contents. Section 51.71(d) and its associated Footnote 3 would be revised to include a separate discussion with specific requirements for the content of draft environmental impact statements at the early site permit and combined license stages.

Section 51.75, Draft environmental impact statement—construction permit, early site permit, or combined license. Sections 51.75(b) and (c) and a new Footnote 5 would be added to include separate requirements for the preparation of draft EISs at the early site permit and combined license stages. Section 51.75(c) would be organized into separate subparagraphs, which would address the contents of the combined license environmental impact statement if the combined license application references an early site permit or standard design certification or both, or proposes to use a manufactured reactor. For example, § 51.75(c)(3) would provide that the combined license EIS will not address the environmental impacts associated with manufacturing the reactor under the manufacturing license.

Section 51.95, Postconstruction environmental impact statements. Section 51.95(a) would be revised to indicate that documents that may be referenced in a supplement to a final environmental impact statement include documents prepared in connection with an early site permit or combined license. In addition, § 51.95(c) would be revised to correct the address for the NRC Public Document Room. Section 51.95 would be revised to indicate that the NRC will prepare a supplemental environmental impact statement in connection with the amendment of a combined license authorizing decommissioning activities or with the issuance, amendment, or renewal of a license to store spent fuel at a nuclear power reactor after expiration of the combined license, and that the supplement may incorporate by reference any information contained in the final environmental impact statement for the combined license or in the records of decision prepared in accordance with an early site permit or combined license. Finally, § 51.95(d) would be revised to indicate that, unless otherwise required by the Commission, in accordance with the provisions of § 51.23(b), a supplemental environmental impact statement for the post combined license stage will address the environmental impacts of spent fuel storage only for the term of the license, amendment, or renewal applied for.

Section 51.105, Public hearings in proceedings for issuance of construction permits or early site permits. The section heading and § 51.105(a) would be revised to indicate that the requirements for presiding officers in public hearings on construction permits also apply to public hearings on early site permits. In addition, § 51.105(b) would be added to indicate that the presiding officer in an early site permit hearing shall not admit contentions concerning the benefits assessment (e.g., need for power), or alternative energy sources if the applicant did not address those issues in the early site permit application. In accordance with § 52.17, applicants are not required to address the benefits assessment (e.g., need for power) or alternative energy sources at the early site permit stage.

Section 51.105a, Public hearings in proceedings for issuance of manufacturing licenses. Section 51.105a would be added to provide requirements for public hearings in proceedings for issuance of manufacturing licenses. Specifically, § 51.105a would establish that the presiding officer in a proceeding for the issuance of a manufacturing license will (1) Determine, in an uncontested proceeding, whether the NEPA review conducted by the NRC staff has been adequate to identify all reasonable SAMDAs for the design of the reactor to be manufactured, and evaluate the environmental, technical, economic, and other benefits and costs of each SAMDA; and (2) determine, in a contested proceeding, whether the manufacturing license should be issued as proposed by the NRC staff director (Director of Nuclear Reactor Regulation).

Section 51.107, Public hearings in proceedings for issuance of combined licenses. Section 51.107 would be added to set out the requirements for public hearings in proceedings for issuance of combined licenses. The requirements parallel the associated requirements for public hearings on construction permits and operating licenses, as appropriate, and provide requirements unique to the combined license process that are derived from various provisions in part 52, namely §§ 52.39 and 52.103.

N. Proposed Changes to 10 CFR Part 54

1. Section 54.1, Purpose

This part applies to renewed operating licenses for nuclear power plants. A conforming change would be made to this section to include renewed combined licenses.

2. Section 54.3, Definitions

The definition for *renewed combined license* would be added to explain the meaning of the new phrase as it is used in this part.

3. Section 54.17, Filing of Application

Section 54.17(c) would be revised to add a conforming reference to combined licenses issued under 10 CFR part 52.

4. Section 54.27, Hearings

This section would be revised to include a conforming reference to renewed combined license issued under 10 CFR part 52.

5. Section 54.31, Issuance of a Renewed License

Sections 54.31(a), (b), and (c) would be revised to include conforming references to combined licenses in this procedure on issuance of renewed licenses.

6. Section 54.35, Requirements During Term of Renewed License

This section would be revised to include conforming references to holders of combined licenses and the regulations in part 52 into the requirements for a renewed license.

7. Section 54.37, Additional Records and Recordkeeping Requirements

Section 54.37(a) would be revised to include a conforming reference to a renewed combined license.

O. Proposed Changes to 10 CFR Part 55

Part 55 establishes the NRC's requirements for licensing of operators of utilization facilities in accordance with the statutory requirements in Section 202 of the ERA. Currently, the provisions in part 55 refer only to utilization facilities licensed under part 50, and therefore, do not address utilization facilities licensed for operation under a combined license issued under subpart C of part 52. Section 202 of the ERA, however, does not limit its mandate to operators of facilities licensed under part 50; the statutory requirement would also appear to apply to operators of facilities licensed under part 52 (i.e., combined licenses under subpart C of part 52).

Accordingly, §§ 55.1 and 55.2 would be revised by adding a reference to part 52. This would clarify that each operator of a nuclear power reactor licensed under a part 52 combined license or renewed under part 54 must first obtain an operator's license under part 55. In addition, the conforming changes would clarify that these operators, as well as holders of combined licenses issued under part 52

or renewed under part 54, are subject to the requirements in part 55 (e.g., Part E of part 55, Written Examinations and Operating Tests, set forth requirements which are directed, for the most part, at the holders of operating licenses for utilization facilities).

P. Proposed Changes to 10 CFR Part 72

1. Section 72.210, General License Issued

Part 72 sets forth the requirements for independent spent fuel storage facilities. This section is revised to include a conforming reference to persons authorized to operate nuclear power reactors under 10 CFR part 52 (i.e., a combined license holder).

2. Section 72.218, Termination of Licenses

Section 72.218(b) would be revised to include a conforming reference to combined licenses issued under part 52.

Q. Proposed Changes to 10 CFR Part 73

Part 73 establishes the NRC's requirements for the physical protection of production and utilization facilities licensed by the NRC. It provides requirements for the physical protection of licensed activities, for personnel access authorization, and for criminal history checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information. Currently, the language of § 73.1, Purpose and scope, § 73.2, Definitions, § 73.50, Requirements for physical protection of licensed activities, § 73.56, Personnel access authorization requirements for nuclear power plants, and § 73.57, Requirements for criminal history checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information by power reactor licensees, and Appendix C, Licensee Safeguards Contingency Plans, do not refer to combined licenses issued under part 52. However, part 73 is currently applicable to combined licenses under the provisions of § 52.83, Applicability of part 50 provisions, which states that all provisions of 10 CFR Part 50 and its appendices applicable to holders of operating licenses also apply to holders of combined licenses. Accordingly, § 73.1 would be revised to clarify that the regulations in part 73 apply to persons who receive combined licenses under part 52, and § 73.2 would be revised to state that terms defined in part 52 have the same meaning when used in part 73. The NRC proposes to address combined licenses in § 73.57 by making the provisions that are required before receiving an operating license under part 50 applicable before the date that the Commission authorizes fuel load and operation under § 52.103 for a combined license. Additional conforming changes to include part 52 licenses are proposed for §§ 73.50 and 73.56, and Appendix C to part 73.

R. Proposed Change to 10 CFR Part 75

1. Section 75.6, Maintenance of Records and Delivery of Information, Reports, and Other Communications

Part 75 sets forth NRC requirements intended to implement the agreement between the United States and the International Atomic Energy Agency (IAEA) with respect to safeguards of nuclear material. Various provisions throughout part 75 require certain licensees and other individuals and entities regulated by the NRC to submit to the NRC various reports and communications. Section 75.6 specifies the NRC officials to whom these reports and communications are to be sent. However, § 75.6(b)—the provision applying to, *inter alia,* nuclear power plants—refers only to holders of a construction permit or an operating license, and does not include holders of combined licenses. Accordingly, § 75.6(b) would be revised to reference combined licenses. The NRC notes that early site permits and manufacturing licenses need not be referenced, inasmuch as the U.S.–IAEA Safeguards Agreement does not extend to early site permits or manufacturing licenses.

S. Proposed Changes to 10 CFR Part 95

The following discussion explains the requirements in part 95 generically and covers Sections 95.5, 95.13, 95.19, 95.20, 95.23, 95.31, 95.33–95.37, 95.39, 95.43, 95.45, 95.49, 95.51, 95.53, 95.57, and 95.59.

Part 95 sets forth the NRC requirements governing what individuals and entities may be provided access to National Security Information (NSI) and/or Restricted Data (RD) received or developed in connection with activities licensed, certified or regulated by the NRC, and how this information and data is to be protected by these individuals and entities against unauthorized disclosure.

Although requirements for protection of NSI and RD must, by statute, apply to all individuals and entities provided access to such information, various sections in part 95 use slightly different wording to delineate the relevant set of individuals and entities. To ensure consistency, the Commission proposes to revise its regulations to refer to ''licensee, certificate holder, or other person,'' to describe the individuals and entities subject to the applicable requirements. In adopting this phrase, the NRC intends to ensure that its regulatory requirements for protection of NSI and RD in part 95 extend as broadly as the NRC's authority provided under applicable law. The term, ''licensee,'' includes both holders of all NRC licenses, including (but not limited to) combined licenses, as well as holders of permits such as construction permits and early site permits. The term, ''certificate holder,'' includes (but is not limited to) all certificates of approval that the Commission may issue, such as a certificate of compliance for spent fuel casks under 10 CFR part 72. Finally, the term, ''or other person,'' is intended to include individuals and entities who are subject to the regulatory authority of the Commission, including applicants for standard design approvals and standard design certifications under part 52. For the same reasons, the Commission proposes to revise § 95.39 to use the phrase, ''NRC license, certificate, or standard design approval or standard design certification under part 52.''

T. Proposed Changes to 10 CFR Part 140

Part 140 addresses the NRC requirements applicable to nuclear reactor licensees with respect to financial protection and indemnity agreements to implement Section 170 of the AEA, commonly referred to as the Price-Anderson Act. In general, the indemnification and financial protection requirements in part 140 become applicable when a holder of a 10 CFR part 50 construction permit who also possesses a materials license under 10 CFR part 70 brings fuel onto the site. However, part 140 currently does not address the indemnification and financial protection requirements of combined license holders. Accordingly, various sections in part 140 are being revised to address combined licenses under part 52.

The NRC does not believe that part 140 must be revised to address any part 52 licensing process other than a combined license. Neither an early site permit nor a manufacturing license authorizes the possession or use of nuclear fuel or other nuclear materials, and the NRC would not issue these licenses with a materials license under part 70. The NRC also believes that part 140 need not be revised to address standard design approvals or standard design certifications, because neither of these processes authorizes the possession or use of nuclear fuel or other nuclear materials.

U. Proposed Changes to 10 CFR Part 170

Part 170 sets out the fees charged for licensing services performed by the NRC. Sections 170.2(g) and (k) would be revised to add conforming references to manufacturing licenses and standard design approvals issued under part 52, remove the reference to Appendix Q that will be returned to part 50, and delete the reference to a manufacturing license issued under part 50 (which is proposed to be removed from part 50 because of its transfer to part 52 in the 1989 rulemaking adopting part 52).

V. Specific Request for Comments

In addition to the general invitation to submit comments on the proposed rule, the NRC also requests comments on the following questions:

1. In response to several commenters' concerns about the clarity of the applicability of part 50 provisions to part 52, the Commission has added provisions to part 52 (§§ 52.0 through 52.11) that are analogues to comparable provisions in part 50. Another possible way of addressing the commenters' concerns would be to transfer all the provisions in part 52 to a new subpart (e.g., subpart M) of part 50, and retain the existing numbering sequence for the current part 52 with the addition of a prefix (e.g., proposed 50.1001 = current 52.1). The Commission is considering adopting this alternative proposal in the final rule and is interested in whether stakeholders regard this as a more desirable approach for minimizing the ambiguity of the relationship between part 50 and part 52.

2. Currently, § 52.17(b) of subpart A of 10 CFR part 52 requires that an early site permit application identify physical characteristics that could pose a significant impediment to the development of emergency plans. An early site permit application may also propose major features of the emergency plans or propose complete and integrated emergency plans in accordance with the applicable standards of § 50.47 and the requirements of appendix E of 10 CFR part 50. The requirements in § 52.17 do not further define major features of emergency plans. Section 52.18 of subpart A requires the Commission to determine, after consultation with the Federal Emergency Management Agency, whether any major features of emergency plans submitted by the applicant under § 52.17(b) are acceptable. Section 52.18 does not provide any further explanation of the Commission's criteria for judging the acceptability of major features of emergency plans.

The Commission has concluded, after undergoing the review of the first three early site permit applications, that the concept of Commission review and acceptance of major features of emergency plans may not achieve the same level of finality for emergency preparedness issues at the early site permit stage as that associated with a reasonable assurance finding of complete and integrated plans. Therefore, the Commission is considering modifying in the final rule the early site permit process in proposed subpart A to remove the option for applicants to propose major features of emergency plans in early site permit applications and requests public comment on this alternative. The NRC believes that, if the option for early site permit applicants to include major features of emergency plans is to be retained, it would be useful to further define in the final rule what a major feature is and establish a clearer level of finality associated with the NRC's review and acceptance of major features of emergency plans. If the option to include major features of emergency plans is retained in the final rule, the NRC would define major features of emergency plans as follows:

Major features of the emergency plans means the aspects of those plans necessary to: (i) Address one or more of the sixteen standards in § 50.47(b), and (ii) describe the emergency planning zones as required in §§ 50.33(g), 50.47(c)(2), and Appendix E to 10 CFR part 50.

In addition, the NRC is considering adopting in the final rule the requirement that major features of emergency plans 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, insofar as they relate to the major features under review.

The NRC believes that, under this alternative, the level of finality associated with each major feature that the Commission found acceptable would be equivalent, for that individual major feature, to the level of finality associated with a reasonable assurance finding by the NRC for a complete and integrated plan, including ITAAC, at the early site permit stage.

3. As indicated in Section IV, Discussion of Substantive Changes, the NRC is proposing to remove Appendix Q to part 52 entirely from part 52 and retain it in part 50. Currently, Appendix Q to part 52 provides for NRC staff issuance of a staff site report on site suitability issues with respect to a specific site, for which a person (most likely a potential applicant for a construction permit or combined license) seeks the NRC staff's views. The NRC is also considering removing, in the final rule, the early site review process in Appendix Q to part 52 in its entirety from the NRC's regulations and is interested in stakeholder feedback on this alternative. One possible reason for removing the early site review process in its entirety is that potential nuclear power plant applicants would use the early site permit process in subpart A of part 52, rather than the early site review process as it currently exists in appendix Q to parts 50 and 52. Also, in cases where a combined license applicant was interested in seeking NRC staff review of selected site suitability issues (as appendix Q to part 52 was designed for), the applicant could request a pre-application review of these issues. The use of pre-application reviews for selected issues has been successfully used by applicants for design certification. The NRC is especially interested in the views of potential applicants for nuclear power plant construction permits and combined licenses as to whether there is any value in retaining the early site review process.

4. Under subpart F of part 52 of the proposed rule, the NRC proposes to require approval of, and extend finality to, the final design for a reactor to be manufactured under a manufacturing license. While the NRC will also review the acceptability of the manufacturing license applicant's organization responsible for design and manufacturing, as well as the QA program for design and manufacturing, the proposed rule does not provide a regulatory structure for further extending the scope of NRC review and issue finality to the manufacturing process itself. The NRC is considering extending regulatory review approval, and consequently expand issue finality, to the manufacturing itself in the final rule. There are two models that the Commission is considering adopting if it were to move in this direction. The first would be an analogue to the subpart C of part 52 combined license process, whereby the NRC would review and approve manufacturing ITAAC to be included in the manufacturing license.

During the manufacturing of each reactor, the NRC would verify at the manufacturing location whether the ITAAC have been conducted and the acceptance criteria met. A NRC finding of successful completion of all the ITAAC would preclude any further inspection of the acceptability of the manufacture of the reactor at the site where the manufactured reactor is to be permanently sited and operated. The NRC's inspections and findings for the combined license or operating license would be limited to whether the reactor had been emplaced in undamaged condition (or damage had been appropriately repaired) and all interface requirements specified in the manufacturing license had been met. The NRC believes that it has authority to issue a manufacturing license under Section 161.h of the AEA.

The other model that the NRC could adopt would be a combination of the approval processes used by the Federal Communications Commission (FCC) and Federal Aviation Administration (FAA) in approving the manufacture of electronic devices and airplanes. The NRC's manufacturing license would approve: (1) The design of the nuclear power reactor to be manufactured; (2) the specific manufacturing and quality assurance/quality control processes and procedures to be used during manufacture; and (3) tests and acceptance criteria for demonstrating that the reactor has been properly manufactured. To be completely consistent with the FCC and FAA models, the NRC would issue a manufacturing license only after a prototype of the reactor had been constructed and tested to demonstrate that all performance requirements (i.e., compliance with NRC requirements and manufacturer's specifications) can be met by the design to be approved for manufacture.

The NRC requests public comment on whether the manufacturing license process in proposed subpart F of part 52 should be further extended in the final rule to provide an option for NRC approval of the manufacturing, and if so, which model of regulatory oversight, i.e., the combined license ITAAC model or the FCC/FAA approval model, should be used by the NRC. The NRC also seeks public comment on whether an opportunity for hearing is required by the AEA in connection with a NRC determination that the manufacturing ITAAC have been successfully completed.

5. Currently, part 52 allows an applicant for a construction permit to reference either an early site permit under subpart A of part 52 or a design certification under subpart B of part 52. Specifically, § 52.11 states that subpart A of part 52 sets out the requirements and procedures applicable to NRC issuance of early site permits for approval of a site or sites for one or more nuclear power facilities separate from the filing of an application for a construction permit or combined license for such a facility. Similarly, § 52.41 states that subpart B of part 52 sets out the requirements and procedures applicable to NRC issuance of regulations granting standard design certification for nuclear power facilities separate from the filing of an application for a construction permit or combined license for the facility. However, the current regulations in 10 CFR part 50 that address the application for and granting of construction permits do not make any reference to a construction permit applicant's ability to reference either an early site permit or a design certification. Also, the NRC has not developed any guidance on how the construction permit process would incorporate an early site permit or design certification, nor has the nuclear power industry made any proposals for the development of industry guidance on this subject. The NRC has not received any information from potential applicants stating an intention to seek a construction permit for the construction of a future nuclear power plant. In addition, the NRC recommends that future applicants who want to construct and operate a commercial nuclear power facility use the combined license process in subpart C of part 52. Therefore, the NRC is considering removing from part 52, in the final rule, the provisions allowing a construction permit applicant to reference an early site permit or a design certification and is interested in stakeholder feedback on this alternative.

6. The NRC is considering revising § 52.103(a) in the final rule to require the combined license holder to notify the NRC of the licensee's scheduled date for loading of fuel into a plant no later than 270 days before the scheduled date, and to advise the NRC every 30 days thereafter if the date has changed and if so, the revised scheduled date for loading of fuel. The initial notification would facilitate timely NRC publication of the notice required under § 52.103(a) and NRC staff scheduling of inspection and audit activities to support NRC staff determinations of the successful completion of ITAAC under § 52.99. The proposed updating would also facilitate NRC staff scheduling of those inspection and audit activities, Commission completion of hearings within the time frame allotted under § 52.103(e), and any Commission determinations on petitions as provided under § 52.103(f). The NRC requests public comment on the benefits and impacts (including information collection and reporting burdens) that would occur if the proposed requirement were adopted.

7. As discussed in Section IV.C.6.f of this proposed rule, the NRC is proposing to modify § 52.79(a) to add requirements for descriptions of operational programs that need to be included in the FSAR to allow a reasonable assurance finding of acceptability. This proposed amendment is in support of the Commission's direction to the staff in SRM–SECY–02–0067 dated September 11, 2002, ''Inspections, Tests, Analyses, and Acceptance Criteria for Operational Programs (Programmatic ITAAC),'' that a combined license applicant was not required to have ITAAC for operational programs if the applicant fully described the operational program and its implementation in the combined license application. In this SRM, the Commission stated:

> [a]n ITAAC for a program should not be necessary if the program and its implementation are fully described in the application and found to be acceptable by the NRC at the COL stage. The burden is on the applicant to provide the necessary and sufficient programmatic information for approval of the COL without ITAAC.

Accordingly, the NRC is proposing in the final part 52 rulemaking to add requirements to § 52.79 that combined license applications contain descriptions of operational programs. In doing so, the Commission has taken into account NEI's proposal to address SRM–SECY–04–0032 in its letter dated August 31, 2005 (ML052510037). However, the NRC is concerned that there may be operational program requirements that it has not captured in its proposed § 52.79. Therefore, the NRC is requesting public comment on whether there are additional required operational programs that should be described in a combined license application that are not identified in proposed § 52.79. If additional required operational programs are identified, the Commission is considering adding them to § 52.79 in the final rule.

8. The NRC notes that the backfitting provisions applicable to various part 52 processes are contained in both part 50 and part 52 and, therefore, the proposed language for § 50.109 cross-references to applicable provisions of part 52, which may be confusing. The NRC is considering adopting in the final rule an alternative which would remove from

§ 50.109 the backfitting provisions applicable to the licensing and approval processes in part 52, and place them in part 52. There are two possible approaches for doing so: the first would be for the NRC to establish a general backfitting provision in part 52 applicable exclusively to the licensing and approval processes in part 52. Under this approach, each licensing and approval process in part 52 would be the subject of a backfitting section in a new subpart of part 52 (*e.g.*, § 52.201 for standard design approvals, etc.). The existing backfitting provisions applicable to early site permits and design certification would be transferred to the relevant sections in the new subpart. The second approach would be to ensure that each subpart of part 52 contains the backfitting provisions applicable to the licensing or approval process in that subpart. The NRC is considering adopting these alternative approaches in the final rule and requests public comment on whether either of these administrative approaches is preferable to the approach in the proposed rule.

9. The Commission is considering adopting in the final part 52 rulemaking an alternative to the re-proposed rule's approach for addressing new and significant environmental information with respect to matters addressed in the ESP EIS which require supplementation.[10] As a separate matter, the Commission is also considering adopting in the final part 52 rulemaking an analogous requirement for addressing new information necessary to update and correct the emergency plan approved by the ESP, the ITAAC associated with emergency preparedness (EP), or the terms and conditions of the ESP with respect to emergency preparedness, or new information materially changing the Commission's determinations on emergency preparedness matters previously resolved in the ESP. To implement either or both of these alternatives, the Commission is also evaluating whether several additional concepts should be adopted in the final rulemaking. The two alternatives, as well as the additional implementing concepts, are described below. The Commission emphasizes that it may, with respect to the alternative addressing updating environmental information and emergency preparedness information, adopt either or both alternatives in the final part 52 rulemaking, in place of or in addition to the proposed rule's alternative of conducting the updating in each combined license proceeding. Under the option where multiple alternatives for updating environmental and emergency preparedness information would be allowed, the Commission proposes that the decision be left to the combined license applicant as to which alternative to pursue. Commenters are requested to address: (1) The advantages and disadvantages of adopting each alternative for updating environmental and emergency preparedness information in an ESP proceeding as opposed to the proposed rule's alternative of conducting the updating in each combined license proceeding; (2) whether the Commission should only allow updating of environmental and emergency preparedness information in an ESP proceeding or in a COL proceeding, but not both; and (3) if the Commission allows updating in either an ESP proceeding or in a COL proceeding, whether it should be an option for the COL applicant to decide which update process to pursue. The Commission believes it may allow COL applicants the option of deciding whether to update environmental and emergency preparedness information in either an ESP proceeding or in a COL proceeding in order to afford the COL applicant the determination which approach best satisfies their business and economic interests.

Environmental matters resolved in ESP. The Commission is considering requiring a combined license applicant planning to reference an ESP to submit a supplemental environmental report for the ESP. The supplemental environmental report must address whether there is any new and significant environmental information with respect to the environmental matters addressed in the ESP EIS. Based upon this information, the NRC will prepare a draft supplemental environmental assessment (EA) or EIS setting forth the agency's proposed determinations with respect to any new and significant information. In accordance with existing practice and procedure, the draft supplemental EA or EIS will be issued for public comment. After considering comments received from the public and relevant Federal and State agencies, the NRC will issue a final supplemental EA or EIS. Once the final supplemental EA or EIS is issued, the ESP finality provisions in proposed § 52.39 would apply to the matters addressed in the supplemental EA or EIS, and those matters need not be addressed in any combined license proceeding referencing the ESP. Thus, for example, if a new and significant environmental issue, for example, a newly-designated endangered species, is addressed in the supplemental ESP EIS, the matter would be resolved for all combined licenses referencing the ESP (unless, of course, there is new and significant information identified at the time of a subsequent referencing combined license with respect to that endangered species). There would be no updating of environmental information necessary in the combined license proceeding. The Commission considers this approach for updating the ESP as meeting the Agency's obligations under NEPA, without imposing undue burden on the ESP holder and the NRC through continuous or periodic updating, and preserving the distinction between the ESP and any referencing combined license proceeding. Since an ESP may be referenced more than once, this approach would provide for issue finality of the updated information and preclude the need for reconsideration of the same environmental issue in successive combined license proceedings referencing the ESP. The Commission requests public comment on this proposal, which would likely involve changes to §§ 52.39, 51.50(c), 51.75, and 51.107 (and possibly conforming changes in parts 2, 51, and 52).

Emergency preparedness information resolved in ESP. The Commission is separately considering requiring a combined license applicant referencing an ESP to provide to the NRC new EP information necessary to correct inaccurate information in the ESP emergency plan, EP ITAAC, or the terms and conditions of the ESP with respect to EP. Based upon the EP information submitted by the combined license applicant, the NRC will, as necessary, approve changes to the ESP emergency plan, the EP ITAAC, or the terms and conditions of the ESP with respect to EP. Once the Commission has resolved the EP updating matters, these matters would be accorded finality under § 52.39. There would be no separate updating necessary in the combined license proceeding. Thus, for example, if an EP ITAAC in an ESP were changed by virtue of this updating process, the changed ITAAC for EP would be applicable to any combined license referencing the ESP whose ITAAC have not yet been satisfied (*i.e.*, the amended

[10] The scope of environmental information that must be supplemented is limited to the matters which were addressed in the original EIS for the ESP. Thus, for example, if the ESP applicant chose not to address need for power (as is allowed under § 52.18), the combined license applicant need not address need for power in its environmental report (ER) to update the ESP EIS, and the NRC need not determine whether there is new and significant information with respect to need for power as part of the updating of the ESP EIS.

EP ITAAC would not be applicable to a combined license where the Commission has made the § 52.103(g) finding with respect to that EP ITAAC). The NRC's consideration of such EP information would be considered to be part of the ESP proceeding, and any necessary changes with respect to EP would therefore be deemed to be changes within the scope of the ESP. The Commission considers this proposal as a means for updating the ESP with respect to EP information in a timely fashion, without imposing undue burden on the ESP holder and the NRC through continuous or periodic updating, while preserving the distinction between the ESP and any referencing combined license proceeding.

Since an ESP may be referenced more than once, this approach would provide for issue finality of the updated information and preclude the need for reconsideration of the same issue in successive combined license proceedings referencing the ESP. The Commission requests comment whether this approach should be adopted by the Commission in the final rulemaking, which will likely involve changes to § 52.39 (and possible conforming changes in § 50.47, 50.54, and 10 CFR part 50, appendix E).

ESP updating in advance of combined license application submission. To minimize the possibility that the ESP updating process may adversely affect a combined license proceeding referencing that ESP, the Commission proposes to require the combined license applicant intending to reference an ESP to submit its application to update the ESP with respect to EP and/or environmental information no later than 18 months before the submission of its combined license application. The Commission believes that the 18-month lead time is sufficient to complete the NRC's regulatory consideration of the updating, such that the combined license applicant will be able to prepare its application to reflect the updated ESP. The Commission also recognizes that there may be increased regulatory complexity under this approach, as well as the possibility that resources may be unnecessarily expended if the potential combined license applicant ultimately decides not to proceed with its application. The Commission requests public comment on whether the 18-month lead time is appropriate, whether the time should be decreased or increased, or whether the Commission should simply require that the ESP update application be filed no later than simultaneously with the filing of the combined license application. Based upon the public comments, the Commission will adopt one of these alternatives, if it decides that updating of environmental and/or EP matters should be accomplished in an ESP proceeding, as opposed to the combined license proceeding in which the ESP is referenced.

Expanding the scope of resolved issues after ESP issuance. The Commission is also considering whether the final rule should include provisions addressing how the ESP holder may request, at any time after the issuance of the ESP, that additional issues be resolved and given finality under § 52.39. For example, the holder of the ESP which does not include an approved emergency plan, may wish to submit complete emergency plans for NRC review and approval. Such a request is not explicitly addressed in either the current or re-proposed subpart A to part 52, although it would be reasonable to treat that request as an application to amend the ESP.

The Commission requests public comment on whether the Commission should adopt in the final rule new provisions in subpart A to part 52 that would explicitly address requests by the ESP holder to amend the early site permit to expand the scope of issues which are resolved and given issue finality under § 52.39. The Commission is also considering whether, as part of the ESP updating process discussed above, the ESP holder/combined license applicant should be allowed to request an expansion of issues which are resolved and given issue finality.

If the Commission were to allow an ESP holder/combined license applicant to expand the scope of resolved issues in the ESP update proceeding, the Commission believes that the 18-month time period for filing the updating application in the ESP proceeding may be insufficient, and is considering adopting in the final rule a 24-month (2-year) period for filing the ESP updating application, where the ESP holder/combined license applicant seeks to expand the scope of resolved issues. The Commission seeks public comment on whether, in such cases, the Commission should require in the final rule an 18- or 24-month period, or some other period, for submitting its ESP updating application.

Approval in ESP of process and criteria for updating ESP after issuance. The Commission requests public comment whether the Commission should adopt in the final rulemaking provisions affording the ESP applicant the option of requesting NRC approval of procedures and criteria for identifying and assessing new and significant environmental information, and/or new information necessary to update and correct the emergency plan approved by the ESP, the ITAAC associated with emergency preparedness (EP), or the terms and conditions of the ESP with respect to emergency preparedness, or otherwise materially changing the Commission's determinations on emergency preparedness matters previously resolved in the ESP. These procedures and criteria, if approved as part of the ESP issuance, could be used by any combined license applicant referencing the ESP to identify the need to update the ESP with respect to environmental and/or emergency preparedness information. There would be no need for the NRC to review the adequacy of the ESP holder/combined license applicant's process and criteria for determining whether new information is of such importance or significance so as to require updating; the NRC review could thereby be focused solely on whether the ESP holder's updated information, or determination that there is no change in either an environmental or emergency preparedness matter, was correct and adequate. Under this proposal, § 52.17 and/or § 51.50(b) would be amended to incorporate such a process for ''pre-approval'' of ESP updating procedures and criteria.

While NRC approval of updating procedures and criteria would be reflected in the ESP, the Commission does not believe that the ESP itself must contain the procedures and criteria in order to be accorded finality under § 52.39. An ESP holder/combined license applicant need not comply with any or all of the updating process and criteria, and would be free to use (and justify) other procedures or criteria in the ESP updating proceeding. Naturally, there would be no finality associated with such departures from the ESP-approved procedures and criteria.

The Commission does not believe that either subpart A of part 52 or an ESP with the contemplated approved updating procedures and criteria should contain a ''change process'' akin to § 50.59, allowing the ESP holder to make changes to the approved updating procedures and criteria without NRC review and approval. Any change (other than typographic and administrative corrections) should require an amendment to the ESP. However, the Commission seeks public comment on whether a different course should be adopted in the final rule.

The Commission recognizes that any NRC-approved procedures and criteria for updating environmental and/or emergency preparedness information in

an ESP updating process as described above, would be equally valid for updating such information under the updating provisions in the re-proposed rule. The Commission requests comments on whether, if the Commission adopts in the final rulemaking the re-proposed rule's concept of updating in the combined license proceeding, the Commission should provide the ESP applicant with the option of seeking NRC approval of the procedures and criteria for updating environmental and/or emergency preparedness information in a combined license proceeding which references the ESP.

Public participation in ESP updating process. The Commission is considering two ways for allowing public participation in the updating process, if the updating alternative is adopted in the final rule. One approach would be to allow interested persons to challenge the proposed updating by submitting a petition, analogous to that in proposed § 52.39(c)(2), which would be processed in accordance with § 2.206. This approach would be most consistent with the existing provisions in § 52.39, inasmuch as updating of an ESP is roughly equivalent to a request that the terms and conditions of an ESP be modified. A consequence of this approach is that the potential scope of matters which may be raised is not limited to those ESP matters which the ESP holder/combined license applicant and the NRC conclude must be updated.

The other approach that the Commission may adopt is to treat any necessary updating as an amendment to the ESP, for which an opportunity to request a hearing is provided. This approach would limit the scope of the hearing to those matters for which an amendment is required. Where the ESP holder does not request an amendment on the basis that no updating is necessary with respect to a matter, an interested person could not intervene with respect to that matter. A consequence of this approach is that, under the Commission's regulations in 10 CFR part 2 and its current practice, a hearing granted on any amendment necessitated by the updating process would be more formalized than a hearing accorded under the § 2.206 petition process. The Commission requests public comment on the approach that the Commission should adopt, together with the reasons for the commenter's recommendation.

10. The Commission is considering adopting in the final part 52 rulemaking a new provision in § 50.71 that would require combined license holders to update the PRA submitted with the combined license application periodically throughout the life of the facility on a schedule similar to the schedule for final safety analysis report (FSAR) updates (*i.e.*, at least every 24 months) or, alternatively, on a schedule to coincide with every other refueling outage. Updates would be required to ensure that the information included in the PRA contains the latest information developed. The PRA update submittal would be required to contain all the changes necessary to reflect information and analyses submitted to the Commission by the licensee or prepared by the licensee pursuant to Commission requirement since the submittal of the original PRA, or as appropriate, the last update to the PRA under this section. The submittal would be required to include the effects of all changes made in the facility or procedures as reflected in the PRA; all safety analyses and evaluations performed by the licensee either in support of approved license amendments or in support of conclusions that changes did not require a license amendment in accordance with § 50.59(c)(2) or, in the case of a license that references a certified design, in accordance with § 52.98(c); and all analyses of new safety issues performed by or on behalf of the licensee at Commission request. The Commission requests stakeholder feedback on whether such a requirement should be added to the Commission's regulations and, if so, what is an appropriate update schedule.

11. In a letter dated July 5, 2005, the Nuclear Energy Institute (NEI) submitted comments on the proposed rule for the AP1000 design certification. Many of those comments have generic applicability to the three pre-existing design certification rules (DCRs) in appendices A–C of 10 CFR part 52. In the final AP1000 rulemaking (January 27, 2006; 71 FR 4464), the Commission adopted some of the NEI-recommended changes, while rejecting others (71 FR at 4465–4468). For those changes that were adopted in the final AP1000 design certification, the Commission indicated that it would consider making the same changes to the existing design certifications in appendices A–C. For those changes that were not adopted in the final AP1000 design certification, the Commission stated that it would reconsider the issues in the part 52 rulemaking, and if the Commission changes its position and the change is adopted, the Commission would make the change for all four design certifications, including the AP1000.

The Commission is considering amending the appropriate sections in each DCR based on the comments below. The Commission considers most of NEI's proposed changes to be consistent with proposed § 52.63(a)(1); in particular, the Commission believes that the proposed changes would satisfy the ''reduces unnecessary regulatory burden'' criterion in proposed § 52.63(a)(1)(iii). The few remaining changes, constituting editorial clarifications or corrections reflecting the Commission's original intent, are not subject to the existing change restrictions in § 52.63(a)(1). Accordingly, the Commission believes that it has authority to incorporate some or all of the NEI-proposed changes into appendices A–D in the final part 52 rulemaking.

The Commission also requests comments on whether some of NEI's proposed changes accepted in the AP1000 design certification and proposed for inclusion in appendices A–C should not be included in those appendices in the final part 52 rulemaking because they are unnecessary, or because they would not meet one or more of the change criteria in proposed § 52.63(a)(1). The Commission is also assessing whether NEI's proposed changes which were not adopted in the AP1000 final rulemaking should be adopted in the final part 52 rulemaking for all four design certifications, including the AP1000. The Commission is particularly interested in whether there are reasons, other than those presented by NEI, for adopting those changes, as well as commenter's views on the Commission's reasons for rejecting the NEI proposals as stated in the final AP1000 design certification rulemaking.

a. NEI recommended modification of the generic technical specification definition in Section II.B to clarify that bracketed information is not part the DCRs for purposes of the change processes in Section VIII.C, and an exemption is not required for plant-specific departures from bracketed information. The Commission stated in the section-by-section analysis for the AP1000 DCR (71 FR 4464) that some generic technical specifications and investment protection short-term availability controls contain values in brackets. The values in brackets are neither part of the DCR nor are they binding. Therefore, the replacement of bracketed values with final plant-specific values does not require an exemption from the generic technical specifications or investment protection short-term availability controls. The Commission believes that including this guidance in each DCR is not necessary. The Commission requests comment on whether there are countervailing

considerations that favor inclusion of this provision in the DCRs.

b. NEI recommended modification of the Tier 2 definition in Section II.E to clarify that bracketed information in the investment protection short-term availability controls is not part of Tier 2 and thus not subject to the Section VIII.B change controls. The Commission stated in the section-by-section analysis for the AP1000 DCR (71 FR 4464) that some generic technical specifications and investment protection short-term availability controls contain values in brackets. The values in brackets are neither part of the DCR nor are they binding. Therefore, the replacement of bracketed values with final plant-specific values does not require an exemption from the generic technical specifications or investment protection short-term availability controls. The Commission believes that including this guidance in each DCR is not necessary. The Commission requests comment on whether there are countervailing considerations that favor inclusion of this provision in the DCRs.

c. NEI recommended modification of the requirement in Section VIII.C.2 to delete the phrase ''or licensee'' because that phrase conflicted with the requirement in Section VIII.C.6. The Commission believes that generic technical specifications should not apply to holders of a combined license because the license will include plant-specific technical specifications. Therefore, the Commission is considering amending each of the DCRs to delete the phrase ''or licensee'' from Section VIII.C.2 and requests public comment on this approach.

d. NEI recommended modification of the requirement in Section VIII.C.6 to delete the last portion, which states ''changes to the plant-specific technical specifications will be treated as license amendments under 10 CFR 50.90.'' NEI stated that this sentence is not necessary because it is redundant with § 50.90. It is not necessary to include a provision in each DCR stating that a license amendment is necessary to make changes to technical specifications in order to render this a legally-binding requirement inasmuch as Section 182.a of the AEA requires that technical specifications be part of each license. The Commission believes that clarity and understanding by the reader is enhanced by repeating the statutory requirement in each DCR. The Commission requests comment on whether there are countervailing considerations that favor non-inclusion of this provision in the DCRs, and may decide to remove this provision in the final part 52 rulemaking.

e. NEI recommended modification of the requirement in Section X.A.1 to require the design certification applicant to include all generic changes to the generic technical specifications and other operational requirements in the generic DCD. The Commission believes that inclusion of changes to the generic technical specifications and other operational requirements will enhance the generic DCD and facilitate its use by referencing applicants. The Commission is considering amending each of the DCRs to include the generic technical specifications and other operational requirements in the generic DCD and requests public comment on this approach.

f. NEI recommended modification of the requirement in Sections IV.A.2 and IV.A.3 to be consistent with respect to inclusion of information in the plant-specific DCD, or explain the difference between ''include'' (IV.A.2) and ''physically include'' (IV.A.3). The Commission is considering amending each of the DCRs to use the same term in both provisions, and requests public comment on this approach.

g. NEI recommended modification of the definition in Section II.E.1 to exclude the design-specific probabilistic risk assessment (PRA) and the evaluation of the severe accident mitigation design alternatives (SAMDA) from Tier 2 information. The Commission believes that the PRA and SAMDA evaluations do not need to be included in Tier 2 information because they are not part of the design basis information. The Commission is considering amending each of the DCRs to modify the definition of Tier 2, and requests public comment on this approach.

h. NEI recommended modification of the requirement in Section III.E to use ''site characteristics'' consistently, instead of ''site-specific design parameters.'' The Commission intends to use the term ''characteristics'' to refer to actual values and ''parameters'' to refer to postulated values. The Commission has proposed amending Section III.E of each DCR to use ''site characteristics,'' and requests public comment on this approach.

i. NEI recommended modification of Section IV.A.2 to clarify the use of ''same information'' and ''generic DCD'' in that requirement. The Commission has proposed amending Section IV.A.2 of each DCR to use the phrase ''same type of information'' to avoid confusion, and requests public comment on this approach.

j. NEI recommended modification of the requirement in Section VIII.B.6.a to delete the sentence ''The departure will not be considered a resolved issue, within the meaning of Section VI of this appendix and 10 CFR 52.63(a)(4),'' in order to be consistent with the requirement in Section VI.B.5 of the DCRs. The Commission believes that departures from Tier 2* information should not receive finality or be treated as resolved issues within the meaning of section VI.B of the DCRs. The Commission requests comment on whether departures from Tier 2* information should be considered a resolved issue, and may decide to remove this provision from each DCR.

k. NEI recommended modification of Section VIII.C.3 to require the NRC to meet the backfit requirements of 10 CFR 50.109 in addition to the special circumstances in 10 CFR 2.758(b) in order to require plant-specific departures from operational requirements. The Commission believes that plant-specific departures should not have to meet the backfit requirement for generic changes. The Commission will have to demonstrate that special circumstances, as defined in § 2.335, are present in order to require a plant-specific departure. The Commission requests comment on whether there are countervailing considerations that would favor modification of this provision in the DCRs.

l. NEI recommended modification of the requirement in Section VIII.C.4 to include a requirement that operational requirements that were not completely reviewed and approved by the NRC should not be subject to any Tier 2 change controls, e.g. exemptions. However, NEI previously proposed that requested departures from Chapter 16 by an applicant for a COL require an exemption (62 FR 25808; May 12, 1997). The Commission believes that the requirement for an exemption applies to technical specifications and operational requirements that were completely reviewed and approved in the design certification rulemaking (see 62 FR 25825). The Commission requests comment on whether departures from technical specifications and operational requirements that were not completely reviewed and approved should also require an exemption.

m. NEI recommended modification of the requirement in Section VIII.C.4 to delete the sentence ''The grant of an exemption must be subject to litigation in the same manner as other issues material to the license hearing,'' in order to be consistent with the requirement in Section VI.B.5 of the DCRs. The Commission believes that exemptions from operational requirements should not receive finality or be treated as resolved issues (refer to section VI.C of

the DCRs). The Commission requests comment on whether exemptions from operational requirements should be considered a resolved issue, and may decide to modify this provision in each DCR.

n. NEI recommended modification of the requirement in Section IX.B.1 to better distinguish between NRC staff ITAAC conclusions under proposed Section 52.99(e) and the Commission's ITAAC finding under proposed Section 52.103(g). The Commission believes that individual DCRs should not address the scope of the NRC staff's activities with respect to ITAAC verification. This is a generic matter that, if it is to be addressed in a rulemaking, is more appropriate for inclusion in subpart C of part 52 dealing with combined licenses. The Commission requests comment on whether there are countervailing considerations that favor clarification of this provision in the DCRs.

o. NEI recommended modification of the language in Section IX.B.3 to make editorial changes for clarity, e.g. ''ITAAC will expire'' vs. ''their expiration will occur.'' The Commission believes that the original rule language is acceptable. The Commission requests comment on whether there are countervailing considerations that favor clarification of this provision in the DCRs.

p. NEI recommended modification of the language in Sections X.B.1 and X.B.3 to clarify references to the design control documents, e.g. ''plant-specific'' vs. ''generic.'' The Commission agrees that the references to plant-specific and generic DCD should be clarified in Sections X.B.1 and X.B.3 to ensure that the requirements in these sections are properly implemented by applicants referencing the design certification rules. The Commission requests public comment on this prospective modification.

12. The Commission is considering adopting in the final part 52 rulemaking a new provision that would either require combined license applicants to submit a detailed schedule for the licensee's completion of ITAAC or require the combined license holder to submit the schedule for ITAAC completion. Delaying submission of the schedule would allow the combined license holder to develop the schedules based on more accurate information regarding construction schedules and would allow the schedule to be submitted at a time when it would be most useful to the NRC for planning purposes. The Commission could require that applicants submit the schedule within a specified time prior to scheduled COL issuance, for example, 3 months prior to COL issuance, or within some time period (e.g., 6 months or 1 year) after COL issuance. In addition, the Commission is considering an additional element to this provision that would require that the licensee submit an update to the ITAAC schedule within 12 months after combined license issuance and that the licensee update the schedule every 6 months until 12 months before scheduled fuel load, and monthly thereafter until all ITAAC are complete. The Commission is considering adopting these requirements to support the NRC staff's inspection and oversight with respect to ITAAC completion, and to facilitate publication of the **Federal Register** notices of successful completion of ITAAC as required by proposed § 52.99(e). The Commission requests stakeholder comment on whether such a provision, with or without the update element, should be added to the Commission's regulations and which time frame for submission of the schedule would be most beneficial.

The Commission is also considering adopting a provision that would establish a specific time by which the licensee must complete all ITAAC to allow sufficient time for the NRC staff to verify successful completion of ITAAC, without adversely affecting the licensee's scheduled date for fuel load and operation. The Commission considers ''60 days prior to the schedule date for initial loading of fuel'' to be a reasonable time period by which all ITAAC must be completed. However, the Commission requests comments on whether this time period would provide too much or too little time prior to scheduled fuel load. Alternatively, the Commission is considering a 30-day or a 90-day time period prior to scheduled fuel load. The 30-day option would allow more flexibility for the licensee to complete ITAAC late in construction but would require immediate action on the part of the NRC (to determine if the final ITAAC were completed successfully and, if so, for the Commission to make its finding under § 52.103(g)) so as not to delay scheduled fuel load. The 90-day option would reduce licensee flexibility to complete ITAAC late in construction but would ensure that the NRC had ample time to make its determination on the final ITAAC for Commission review of all ITAAC under § 52.103(g). The Commission requests stakeholder comment on whether a provision requiring completion of ITAAC within a certain time period prior to scheduled fuel load should be added to the Commission's regulations.

13. As discussed in Section IV.F.6 of this statement of considerations, the Commission proposes in this rulemaking, as a matter of policy and discretion, that the Commission hold a ''mandatory'' hearing (i.e., a hearing which, under NRC requirements in 10 CFR part 2, is held regardless of whether the NRC receives any hearing requests or petitions to intervene) in connection with the initial issuance of every manufacturing license. The Commission believes that Section 189.a.(1)(A) of the AEA does not require that a hearing be held in connection with the initial issuance of a manufacturing license. Nonetheless, there are several reasons for the Commission to require by rule, as a matter of discretion, a mandatory hearing. A manufacturing license may be viewed as analogous to a construction permit—a regulatory approval for which Section 189 of the AEA specifically requires that a hearing be held. Even though the Commission's regulations did not address the hearing requirements for manufacturing licenses, the Commission noticed a ''mandatory'' hearing in connection with the only manufacturing license application ever received by the Agency. Offshore Power Systems (Floating Nuclear Power Plants), 38 FR 34008 (December 10, 1973). Accordingly, proposed §§ 2.104 and 52.163 require that a mandatory hearing be held in each proceeding for initial issuance of a manufacturing license. However, the Commission recognizes that there may be countervailing considerations weighing against Commission adoption of a rulemaking provision mandating that a hearing be held in connection with the initial issuance of every manufacturing license where there has been no stakeholder interest in a hearing. If there is no stakeholder interest in a hearing, transparency and public confidence would not appear to be relevant considerations in favor of holding a mandatory hearing. Considerations of regulatory efficiency and effectiveness would be paramount, and would weigh against holding of a mandatory hearing. The Commission requests comments on whether the Commission should exercise its discretion to provide by rule an opportunity for hearing, rather than a mandatory hearing, and the reasons in favor of providing an opportunity for hearing as opposed to holding a mandatory hearing. Based upon the public comments, the Commission may adopt a final rule which deletes § 2.104(f), revises § 2.105 (governing the content of a **Federal Register** notice of proposed action where a mandatory

hearing is not held under § 2.104) to add, as appropriate, references to issuance of manufacturing licenses, and revised § 52.163 to provide an opportunity for hearing rather than a mandatory hearing in connection with the initial issuance of a manufacturing license.

14. As discussed in Section IV.C.5.g of this SOC, the proposed rule would amend the special backfit requirement in 10 CFR 52.63(a)(1) to provide the Commission with the ability to make changes to the design certification rules (DCRs) or the certification information in the generic design control documents that reduce unnecessary regulatory burdens. The underlying rationale for this provision also forms the basis for amending the Tier 2 change process in the three DCRs (appendices A, B, and C of part 52) to incorporate the revised change criteria in 10 CFR 50.59.

The Commission is considering adopting an additional provision [§ 52.63(a)(1)(iv)] in the final rule that would allow amendments of design certification rules to incorporate generic resolutions of design acceptance criteria (DAC) or other design information without meeting the special backfit requirement in the current § 52.63(a)(1). The applicants for the current DCRs requested use of DAC in lieu of providing detailed design information for certain areas of their nuclear plant designs, for example, instrumentation and control systems. Under the proposed requirements, a generic change to design certification information would have to meet the special backfit requirement of § 52.63(a)(1) or reduce an unnecessary regulatory burden while maintaining protection to public health and safety and the common defense and security. The Commission adopted this special backfit requirement to restrict changes and to require that everyone meet the same backfit standard for generic changes, thereby ensuring that all plants built under a referenced DCR would be standardized. By allowing a DCR amendment to include generic resolutions of DAC or other design information, the Commission would enhance its goals for design certification, for example, early resolution of all design issues and finality for those issue resolutions, which would avoid repetitive consideration of design issues in individual combined license proceedings.

There are currently three ways of resolving generic design issues: (1) The combined license applicant that references a DCR could submit plant-specific resolutions in its application, which could result in loss of standardization; (2) a vendor could submit generic resolutions in topical reports that, if approved, could but would not be required to be referenced in a combined license application; or (3) the Commission could exempt itself from the special backfit requirement in § 52.63(a)(1) and amend the DCR to incorporate a generic resolution, which could result in multiple rulemakings to revise each DCR to incorporate each generic resolution. The Commission intends that any review of a proposed generic resolution would be performed under the regulations that are applicable and in effect at the time that the approval or amendment is completed.

Therefore, the NRC is requesting public comments on: (1) Whether a provision should be added to § 52.63(a)(1) to allow generic amendments to design certification information that meet applicable regulations in effect at the time that the rulemaking is completed; and (2) whether the generic resolutions should be incorporated into a DCR without meeting a backfit requirement, which would provide for completion of the design certification information and facilitate standardization, or whether an application for a generic amendment should be required to meet a backfit requirement (e.g., § 50.109).

15. In Section IV.J of the Supplementary Information of this **Federal Register** Notice, the NRC outlines key principles regarding its proposal for reporting requirements that implement Section 206 of the Energy Reorganization Act, as amended, for part 52 licenses, certifications, and approvals. The NRC discusses that the beginning of the ''regulatory life'' of a referenced license, standard design approval, or standard design certification under part 52 occurs when an application for a license, design approval, or design certification is docketed. The NRC also cautions, however, that this does not mean that an applicant is without Section 206 responsibilities for pre-application activities because there are two aspects to the reporting requirements, namely, a ''backward looking'' or retrospective aspect with respect to existing information, and a ''forward looking'' or prospective aspect with respect to future information. For an early site permit applicant, the retrospective obligation is that the early site permit holder and its contractors, upon issuance of the early site permit, must report all known defects or failures to comply in ''basic components,'' as defined in part 21. Under the proposed part 21 requirements presented in this rule, the early site permit holder and its contractors are required to meet these requirements upon issuance of the early site permit. Accordingly, applicants should procure and control safety-related design and analysis or consulting services in a manner sufficient to allow the early site permit holder and its contractors to comply with the above described reporting requirements of Section 206, as implemented by part 21. A similar argument applies to design certification applicants. Although the Commission has not proposed an explicit requirement imposing part 21 on applicants for an early site permit or design certification in this rule, it is considering adopting such a requirement in the final part 52 rulemaking because, as a practical matter, the NRC has to require these applicants to implement a part 21 program before approval of the early site permit or design certification. Therefore, providing explicit part 21 requirements for applicants would clarify the Commission's intent. The Commission requests stakeholder comment on whether it should, in the final rule, impose part 21 reporting requirements on applicants for early site permits and design certifications.

VI. 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 *www.nrc.gov/reading-rm.html.*

The NRC staff contact. Nanette V. Gilles, Mail Stop O–4D9A, Washington, DC 20555, 301–415–1180.

Document	PDR	Web	EPDR	NRC staff
Comments received	X	X	X	
Regulatory Analysis	X	X	ML	X
Regulatory History Index for July 2003 proposed rule			ML032810026	

VII. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' which became effective on September 3, 1997 (62 FR 46517), NRC program elements (including regulations) are placed into compatibility categories A, B, C, D, NRC or adequacy category, Health and Safety (H&S). Category A includes program elements that are basic radiation protection standards or related definitions, signs, labels or terms necessary for a common understanding of radiation protection principles and should be essentially identical to those of NRC. Category B includes program elements that have significant direct transboundary implications and should be essentially identical to those of the NRC. Compatibility Category C are those program elements that do not meet the criteria of Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. Compatibility Category D are those program elements that do not meet any of the criteria of Category A, B, or C, and do not need to be adopted by Agreement States. Compatibility Category NRC are those program elements that address areas of regulation that cannot be relinquished to Agreement States pursuant to the Atomic Energy Act, as amended, or provisions of Title 10 of the Code of Federal Regulations and should not be adopted by Agreement States. Category H&S are program elements that are not required for compatibility, but have a particular health and safety role in the regulation of agreement material and the State should adopt the essential objectives of the NRC program elements. The proposed revisions are categorized as follows:

LIST OF CHANGES 10 CFR PART 52 PROPOSED RULEMAKING

Proposed sections	Description—new, changes	Compatibility designation	Comments regarding compatibility designation
10 CFR Part 2—Rules of Practice for Domestic Licensing and Issuance of Orders			
2.1	Scope	[D]	Agreement States may adopt similar provisions as a part of their regulatory programs through a mechanism that is appropriate under the State's laws, but should not address areas of exclusive NRC jurisdiction.
2.4	Definitions.		
	Contested proceedings	[D]	Agreement States may adopt similar provisions as a part of their regulatory programs through a mechanism that is appropriate under the State's laws, but should not address areas of exclusive NRC jurisdiction.
	License	[D]	Agreement States adopt similar definition as a part of their regulatory programs. This definition appears in 10 CFR § 20.1003. For purposes of compatibility, Agreement States should use the language of the Part 20 definition, which is assigned a Compatibility Category D.
	Licensee	[D]	Agreement States adopt a similar definition as a part of their regulatory programs. This definition appears in 10 CFR § 20.1003. For purposes of compatibility, Agreement States should use the language of the Part 20 definition, which is assigned a Compatibility Category D.
Subpart A			
2.100	Scope of parts	[D]	Agreement States adopt similar provisions as a part of their regulatory programs through a mechanism that is appropriate under the State's laws, but should not address areas of exclusive NRC jurisdiction.
2.101	Filing of application	[D]	Agreement States adopt similar provisions as a part of their regulatory programs through a mechanism that is appropriate under the State's laws, but should not address areas of exclusive NRC jurisdiction.

LIST OF CHANGES 10 CFR PART 52 PROPOSED RULEMAKING—Continued

Proposed sections	Description—new, changes	Compatibility designation	Comments regarding compatibility designation
2.102	Administrative review of application.	[D]	Agreement States adopt similar provisions as a part of their regulatory programs through a mechanism that is appropriate under the State's laws, but should not address areas of exclusive NRC jurisdiction. These similar provisions appears in 10 CFR § 30. For purposes of compatibility, Agreement States should use the language in Part 30, which is assigned a Compatibility Category D.
2.104	Notice of hearing	[D]	Agreement States adopt similar provisions as a part of their regulatory programs through a mechanism that is appropriate under the State's laws, but should not address areas of exclusive NRC jurisdiction.
2.105	Notice of proposed action	[D]	Agreement States adopt similar provisions as a part of their regulatory programs through a mechanism that is appropriate under the State's laws, but should not address areas of exclusive NRC jurisdiction.
2.106	Notice of issuances. Added notice for COL in FR.	[D]	Agreement States adopt similar provisions as a part of their regulatory programs through a mechanism that is appropriate under the State's laws, but should not address areas of exclusive NRC jurisdiction.
2.109	Effect of timely renewal application.	[D]	Agreement States adopt similar provisions as a part of their regulatory programs through a mechanism that is appropriate under the State's laws, but should not address areas of exclusive NRC jurisdiction. These similar provisions appears in 10 CFR § 30. For purposes of compatibility, Agreement States should use the language in Part 30, which is assigned a Compatibility Category D.
2.110	Filing and administrative action on submittal for design review of site suitability.	[D]	Agreement States adopt similar provisions as a part of their regulatory programs through a mechanism that is appropriate under the State's laws, but should not address areas of exclusive NRC jurisdiction.
2.111	Prohibition of sex discrimination	[D]	Agreement States may adopt similar provisions as a part of their regulatory programs through a mechanism that is appropriate under the State's laws, but should not address areas of exclusive NRC jurisdiction.
Subpart B			
2.200	Scope of subpart	[D]	Agreement States may adopt similar provisions as a part of their regulatory programs through a mechanism that is appropriate under the State's laws, but should not address areas of exclusive NRC jurisdiction.
2.202	Orders	[D]	Agreement States adopt similar provisions as a part of their regulatory programs through a mechanism that is appropriate under the State's laws, but should not address areas of exclusive NRC jurisdiction.
Subpart C			
2.390	Public inspections, exemptions, requests for withholding.	[D]	Agreement States adopt similar provisions as a part of their regulatory programs through a mechanism that is appropriate under the State's laws, but should not address areas of exclusive NRC jurisdiction.
Subpart E			
2.500	Scope of subpart	NRC	This provision is designated a Compatibility Category NRC because it addresses activities reserved to the Commission.
2.501	Notice of hearing on application for license to manufacture nuclear power plants.	NRC	This provision is designated a Compatibility Category NRC because it addresses activities reserved to the Commission.

LIST OF CHANGES 10 CFR PART 52 PROPOSED RULEMAKING—Continued

Proposed sections	Description—new, changes	Compatibility designation	Comments regarding compatibility designation
2.502	Notice of hearing on application for a construction permit for a nuclear power reactor manufactured at the site at which the reactor is to be operated.	NRC	This provision is designated a Compatibility Category NRC because it addresses activities reserved to the Commission.
2.503	Finality of decisions on separate issues.	NRC	This provision is designated a Compatibility Category NRC because it addresses activities reserved to the Commission.
2.504	Applicability of other sections	NRC	This provision is designated a Compatibility Category NRC because it addresses activities reserved to the Commission.
Subpart H			
2.800	Scope of rulemaking	[D]	Agreement States adopt similar provisions as a part of their regulatory programs through a mechanism that is appropriate under the State's laws, but should not address areas of exclusive NRC jurisdiction.
2.801	Initiation of rulemaking	[D]	Agreement States adopt similar provisions as a part of their regulatory programs through a mechanism that is appropriate under the State's laws, but should not address areas of exclusive NRC jurisdiction.
2.811	Filing of standard design certification application required copies.	[D]	Agreement States adopt similar provisions as a part of their regulatory programs through a mechanism that is appropriate under the State's laws, but should not address areas of exclusive NRC jurisdiction.
2.813	Written communications	[D]	Agreement States adopt similar provisions as a part of their regulatory programs through a mechanism that is appropriate under the State's laws, but should not address areas of exclusive NRC jurisdiction.
2.815	Docketing and acceptance review.	[D]	Agreement States adopt similar provisions as a part of their regulatory programs through a mechanism that is appropriate under the State's laws, but should not address areas of exclusive NRC jurisdiction.
2.817	Withdrawal of application	[D]	Agreement States adopt similar provisions as a part of their regulatory programs through a mechanism that is appropriate under the State's laws, but should not address areas of exclusive NRC jurisdiction.
2.819	Denial of application for failure to supply information.	[D]	Agreement States adopt similar provisions as a part of their regulatory programs through a mechanism that is appropriate under the State's laws, but should not address areas of exclusive NRC jurisdiction.
10 CFR Part 10—Criteria and Procedures for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance			
10.1	Purpose	NRC	This provision is designated a Compatibility Category NRC because it addresses activities reserved to the Commission.
10.2	Scope	NRC	This provision is designated a Compatibility Category NRC because it addresses activities reserved to the Commission.
10 CFR Part 19—Notices, Instructions and Reports to Workers; Inspection and Investigations			
19.1	Purpose	D	Agreement States may adopt similar provisions consistent with their regulatory authority, but should not address areas of exclusive NRC jurisdiction.
19.2	Scope	D	Agreement States may adopt similar provisions consistent with their regulatory authority, but should not address areas of exclusive NRC jurisdiction.
19.3	Definitions.		

LIST OF CHANGES 10 CFR PART 52 PROPOSED RULEMAKING—Continued

Proposed sections	Description—new, changes	Compatibility designation	Comments regarding compatibility designation
	Regulated activities	D	Agreement States may adopt a similar definition consistent with their regulatory authority, but should not address areas of exclusive NRC jurisdiction.
	Regulated entities	D	Agreement States may adopt a similar definition consistent with their regulatory authority, but should not address areas of exclusive NRC jurisdiction.
	Worker	C	This provision is currently designated a Compatibility Category C. However, since the proposed revisions address areas of exclusive NRC jurisdiction, Agreement States should not adopt these amendments.
19.11	Posting of notices to workers	C	This provision is currently designated a Compatibility Category C. However, since the proposed revisions address areas of exclusive NRC jurisdiction, Agreement States should not adopt these amendments.
19.14	Presence of representatives of licensees and workers during inspections.	C	This provision is currently designated a Compatibility Category C. However, since the proposed revisions address areas of exclusive NRC jurisdiction, Agreement States should not adopt these amendments.
19.20	Employee protection	D	Agreement States may adopt similar provisions consistent with their regulatory authority, but should not address areas of exclusive NRC jurisdiction.
19.31	Application for exemptions	D	Agreement States may adopt similar provisions consistent with their regulatory authority, but should not address areas of exclusive NRC jurisdiction.
19.32	Discrimination prohibited	D	Agreement States may adopt similar provisions consistent with their regulatory authority, but should not address areas of exclusive NRC jurisdiction.
10 CFR Part 20—Standards of Protection			
20.1002	Scope	D	Agreement States may adopt similar provisions consistent with their regulatory authority, but should not address areas of exclusive NRC jurisdiction.
20.1401	General provisions and scope	C	This provision is currently designated a Compatibility Category C. However, since the proposed revisions address areas of exclusive NRC jurisdiction, Agreement States should not adopt these amendments.
20.2203	Reports of exposures, etc., exceeding the limits.	C—paragraphs (a), (b) D—paragraph (d) NRC—paragraph (c)	Portions of this provision is currently designated a Compatibility Category C. However, since the proposed revisions address areas of exclusive NRC jurisdiction, Agreement States should not adopt these amendments.
10 CFR Part 21—Reporting of Defects and Noncompliance			
21.2	Scope	N/A	The provisions in Part 21 are derived from statutory authority in the Energy Reorganization Act, not the Atomic Energy Act, which does not apply to Agreement States. Therefore, this part cannot be addressed under either compatibility or adequacy. While it may be argued that there are health and safety reasons to require States to adopt the provisions of Part 21, States may not have the statutory authority to do so. States that have the statutory authority to implement provisions similar to those in Part 21 may adopt similar provisions consistent with their regulatory authority but should not address areas of exclusive NRC jurisdiction.

LIST OF CHANGES 10 CFR PART 52 PROPOSED RULEMAKING—Continued

Proposed sections	Description—new, changes	Compatibility designation	Comments regarding compatibility designation
21.3	Definitions	N/A	The provisions in Part 21 are derived from statutory authority in the Energy Reorganization Act, not the Atomic Energy Act, which does not apply to Agreement States. Therefore, this part cannot be addressed under either compatibility or adequacy. While it may be argued that there are health and safety reasons to require States to adopt the provisions of Part 21, States may not have the statutory authority to do so. States that have the statutory authority to implement provisions similar to those in Part 21 may adopt similar provisions consistent with their regulatory authority but should not address areas of exclusive NRC jurisdiction.
21.5	Communication	N/A	The provisions in Part 21 are derived from statutory authority in the Energy Reorganization Act, not the Atomic Energy Act, which does not apply to Agreement States. Therefore, this part cannot be addressed under either compatibility or adequacy. While it may be argued that there are health and safety reasons to require States to adopt the provisions of Part 21, States may not have the statutory authority to do so. States that have the statutory authority to implement provisions similar to those in Part 21 may adopt similar provisions consistent with their regulatory authority but should not address areas of exclusive NRC jurisdiction.
21.21	Notification of failure to comply or existence of a defect.	N/A	The provisions in Part 21 are derived from statutory authority in the Energy Reorganization Act, not the Atomic Energy Act, which does not apply to Agreement States. Therefore, this part cannot be addressed under either compatibility or adequacy. While it may be argued that there are health and safety reasons to require States to adopt the provisions of Part 21, States may not have the statutory authority to do so. States that have the statutory authority to implement provisions similar to those in Part 21 may adopt similar provisions consistent with their regulatory authority but should not address areas of exclusive NRC jurisdiction.
21.51	Maintenance and inspections of records.	N/A	The provisions in Part 21 are derived from statutory authority in the Energy Reorganization Act, not the Atomic Energy Act, which does not apply to Agreement States. Therefore, this part cannot be addressed under either compatibility or adequacy. While it may be argued that there are health and safety reasons to require States to adopt the provisions of Part 21, States may not have the statutory authority to do so. States that have the statutory authority to implement provisions similar to those in Part 21 may adopt similar provisions consistent with their regulatory authority but should not address areas of exclusive NRC jurisdiction.
21.61	Failure to notify	N/A	The provisions in Part 21 are derived from statutory authority in the Energy Reorganization Act, not the Atomic Energy Act, which does not apply to Agreement States. Therefore, this part cannot be addressed under either compatibility or adequacy. While it may be argued that there are health and safety reasons to require States to adopt the provisions of Part 21, States may not have the statutory authority to do so. States that have the statutory authority to implement provisions similar to those in Part 21 may adopt similar provisions consistent with their regulatory authority but should not address areas of exclusive NRC jurisdiction.

LIST OF CHANGES 10 CFR PART 52 PROPOSED RULEMAKING—Continued

Proposed sections	Description—new, changes	Compatibility designation	Comments regarding compatibility designation
10 CFR Part 25—Access Authorization			
25.35	Classified visits	NRC	This provision is designated a Compatibility Category NRC because it addresses activities reserved to the Commission.
10 CFR Part 26—Fitness for Duty Programs			
26.2	Scope	[D]	Agreement States adopt similar provisions as a part of their regulatory programs through a mechanism that is appropriate under the State's laws, but should not address areas of exclusive NRC jurisdiction.
26.10	General performance objectives	[D]	Agreement States adopt similar provisions as a part of their regulatory programs through a mechanism that is appropriate under the State's laws, but should not address areas of exclusive NRC jurisdiction.
10 CFR Part 50	Domestic licensing of production and utilization facilities.	NRC for all sections	These provisions are designated a Compatibility Category NRC because they address activities reserved to the Commission.
10 CFR Part 51	Environmental protection regulation for domestic licensing and related regulatory functions.	NRC for all sections	These provisions are designated a Compatibility Category NRC because they address activities reserved to the Commission.
10 CFR Part 52	Licenses, certifications, and approvals for nuclear power plants.	NRC for all sections	These provisions are designated a Compatibility Category NRC because they address activities reserved to the Commission.
10 CFR Part 54	Requirements for renewal of operating licenses for nuclear power plants.	NRC for all sections	These provisions are designated a Compatibility Category NRC because they address activities reserved to the Commission.
10 CFR Part 55	Operators' licenses	NRC for all sections	These provisions are designated a Compatibility Category NRC because they address activities reserved to the Commission.
10 CFR Part 72	Licensing requirements for ISFSI, HLW, and greater than class C.	NRC for all sections	These provisions are designated a Compatibility Category NRC because they address activities reserved to the Commission.
10 CFR Part 73	Physical protection of plants and materials.	NRC for all sections	These provisions are designated a Compatibility Category NRC because they address activities reserved to the Commission.
10 CFR Part 75	Safeguards on nuclear material	NRC for all sections	These provisions are designated a Compatibility Category NRC because they address activities reserved to the Commission.
10 CFR Part 95	Facility security clearance and safeguarding of national security information and restricted data.	NRC for all sections	These provisions are designated a Compatibility Category NRC because they address activities reserved to the Commission.
10 CFR Part 140	Financial protection requirements and indemnity agreements.	NRC for all sections	These provisions are designated a Compatibility Category NRC because they address activities reserved to the Commission.
10 CFR Part 170	Annual fees	[D]	Agreement States adopt similar provisions as a part of their regulatory programs through a mechanism that is appropriate under the State's laws, but should not address areas of exclusive NRC jurisdiction.

VIII. 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 the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be submitted using one of the methods detailed under the **ADDRESSES** heading of the preamble to this proposed rule.

IX. Voluntary Consensus Standards

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 revise the procedural requirements for early site permits, standard design approvals, standard design certifications, combined licenses, and manufacturing licenses to make certain corrections and changes based on the experience of the previous design

certification reviews and on discussions with stakeholders on these licensing processes. This rulemaking does not establish standards or substantive the requirements with which all applicants and licensees must comply. In addition, this rule would amend certain portions of the three design certification regulations in 10 CFR part 52, appendices A, B, and C (for U.S. ABWR, System 80+, and AP600 designs, respectively). Design certifications are not generic rulemakings in the sense that design certifications do not establish standards or requirements with which all applicants and licensees must comply. Rather, design certifications are Commission approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certification rulemakings are initiated by an applicant for a design certification, rather than the NRC. For these reasons, the Commission concludes that this action would not constitute the establishment of a standard that contains generally applicable requirements.

X. 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 10 CFR 51.22(c)(1), (c)(2), and (c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.[11]

XI. Paperwork Reduction Act Statement

This proposed rule contains new or amended information collection requirements contained in 10 CFR parts 21, 25, 50, 52, and 54 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These information collection requirements have been submitted to the Office of Management and Budget for review and approval. The proposed changes to 10 CFR parts 19, 20, 26, 51, 55, 72, 73, 75, 95, and 140 do not contain new or amended information collection requirements. Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0044, 3150–0014, 3150–0146, 3150–0021, 3150–0018, 3150–0132, 3150–0002, 3150–0055, 3150–0047, and 3150–0039.

Type of submission, new or revision: New.

The title of the information collection: 10 CFR part 52 and Conforming Amendments to Parts 1, 2, 10, 19, 20, 21, 25, 26, 50, 51, 54, 55, 72, 73, 75, 95, 140, and 170, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' Revised Proposed Rule.

The form number if applicable: N/A.

How often the collection is required: On occasion and every 10 to 20 years for applications for renewal.

Who will be required or asked to report: Designers and manufacturers of commercial nuclear power plants, electric power companies, and any person eligible under the Atomic Energy Act to apply for a construction permit for a nuclear power plant.

An estimate of the number of annual responses: 20.333.

The estimated number of annual respondents: 4.33.

An estimate of the total number of hours needed annually to complete the requirement or request: 452,416 (448,946 hours reporting and 3470 hours recordkeeping).

Abstract: 10 CFR part 52 establishes requirements for the granting of early site permits, approvals and certifications of standard nuclear power plant designs, licenses which combine in a single license a construction permit and an operating license with conditions (combined licenses), and manufacturing licenses. Part 52 also establishes requirements for renewal of those approvals, permits, certifications, and licenses; amendments to them; and exemptions or variances from them.

NRC uses the information collected to assess the adequacy and suitability of an applicant's site, plant design, training and experience, and plans and procedures for the protection of public health and safety. The NRC review of such information and the findings derived from that information form the basis of NRC decisions and actions concerning the issuance, modification, or revocation of site permits, design approvals and certifications, combined licenses, and manufacturing licenses for nuclear power plants.

The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in this proposed rule (or proposed policy statement) 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?

A copy of the OMB clearance package may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. The OMB clearance package and rule are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 60 days after the signature date of this notice and are also available at the rule forum site, *http://ruleforum.llnl.gov.*

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by April 12, 2006 to the Records and FOIA/Privacy Services Branch (T–5 F53), 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, (3150–0151), 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.

XII. 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 draft analysis can be viewed in NRC's ADAMS system, Accession Number ML052840320. The Commission

[11] When 10 CFR part 52 was issued in 1989, the NRC determined that the regulation met the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(3). As stated in the **Federal Register** notice for the final rule (54 FR 15384; April 18, 1989), ''It makes no substantive difference for the purpose of the categorical exclusion that the amendments are in a new 10 CFR part 52 rather than in 10 CFR part 50. The amendments are, in fact, amendments to the 10 CFR part 50 procedures and could have been placed in that part.'' The categorical exclusion for the current proposed change to 10 CFR part 2 is consistent with the original categorical exclusion determination. To ensure that future changes in part 52 are categorically excluded, the proposed rule contains an appropriate change to § 51.22(c)(3).

requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

XIII. Regulatory Flexibility 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).

XIV. 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, combined licenses, or manufacturing licenses 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, standard design certifications, combined licenses, standard design approvals and manufacturing 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.

Other provisions in the proposed rule would apply to currently-approved standard design approvals and certifications, but these would not constitute backfitting because they are either corrections, administrative changes, or provide additional flexibility to applicants or licensees who might reference the design approvals or certifications, and thus constitute a voluntary alternative or relaxation.

Finally, some of the provisions in the proposed rule represent conforming changes throughout 10 CFR which are being made to reflect Commission adoption of design approvals and design certification processes which should have been made at the time the Commission first adopted these processes by rulemaking. While these conforming changes may, in some cases, affect the way in which a current design certification or design approval may be referenced, they do not directly affect the design approval or design certification itself. Accordingly, the Commission believes that these conforming changes with respect to design approvals and design certifications do not raise new backfitting considerations that must be addressed in this rulemaking.

List of Subjects

10 CFR Part 1

Organization and functions (Government Agencies).

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 10

Administrative practice and procedure, Classified information, Government employees, Security measures.

10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 21

Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 25

Classified information, Criminal penalties, Investigations, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power reactors, Protection of information, Reporting and recordkeeping requirements.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Emergency Planning, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

10 CFR Part 54

Administrative practice and procedure, Age-related degradation, Backfitting, Classified information, Criminal penalties, Environmental protection, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 55

Criminal penalties, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and

recordkeeping requirements, Security measures.

10 CFR Part 75

Criminal penalties, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 95

Classified information, Criminal penalties, Reporting and recordkeeping requirements Security measures.

10 CFR Part 140

Criminal penalties, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Nuclear power plants and reactors.

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. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 1, 2, 10, 19, 20, 21, 25, 26, 50, 51, 52, 54, 55, 72, 73, 75, 95, 140, 170, and 171.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat.1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

2. In § 1.43, paragraph (a)(2) is revised to read as follows:

§ 1.43 Office of Nuclear Reactor Regulation.

* * * * *

(a) * * *

(2) Receipt, possession, and ownership of source, byproduct, and special nuclear material used or produced at facilities licensed under 10 CFR parts 50, 52, and 54;

* * * * *

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

3. 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(o)), 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, 104, 105, 163, 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). Subpart C also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332).

Section 2.700a also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.754, 2.712 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). Subpart N also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–550, 84 Stat. 1473 (42 U.S.C. 2135).

4. In § 2.1, paragraphs (c) and (d) are revised and a new paragraph (e) is added to read as follows:

§ 2.1 Scope.

* * * * *

(c) Imposing civil penalties under section 234 of the Act;

(d) Rulemaking under the Act and the Administrative Procedure Act; and

(e) Standard design approvals under part 52 of this chapter.

5. In § 2.4, the definitions of contested proceeding, license and licensee are revised to read as follows:

§ 2.4 Definitions.

* * * * *

Contested proceeding means—

(1) A proceeding in which there is a controversy between the NRC staff and the applicant for a license or permit concerning the issuance of the license or permit or any of the terms or conditions thereof;

(2) A proceeding in which the NRC is imposing a civil penalty or other enforcement action, and the subject of the civil penalty or enforcement action; and

(3) A proceeding in which a petition for leave to intervene in opposition to an application for a license or permit has been granted or is pending before the Commission.

* * * * *

License means a license, including an early site permit, construction permit, operating license, combined license, manufacturing license, or renewed license issued by the Commission.

Licensee means a person who is authorized to conduct activities under a license.

* * * * *

6. The heading of subpart A is revised to read as follows:

Subpart A—Procedure for Issuance, Amendment, Transfer, or Renewal of a License, and Standard Design Approval

7. Section 2.100 is revised to read as follows:

§ 2.100 Scope of subpart.

This subpart prescribes the procedure for issuance of a license; amendment of a license at the request of the licensee; transfer and renewal of a license; and issuance of a standard design approval under subpart E of part 52 of this chapter.

8. In § 2.101, paragraphs (a)(1), (a)(2), the introductory text of paragraph (a)(3), paragraphs (a)(3)(ii), and paragraph (a)(4) are revised to read as follows:

§ 2.101 Filing of application.

(a)(1) An application for a permit, license, a license transfer, a license amendment, a license renewal, and 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.

* * * * *

9. In § 2.102, paragraph (a) is revised to read as follows:

§ 2.102 Administrative review of application.

(a) During review of an application by the NRC staff, an applicant may be required to supply additional information. The staff may request any one party to the proceeding to confer with the staff informally. In the case of a docketed application for a construction permit, operating license, early site permit, standard design approval, combined license, or manufacturing license of this chapter, the staff shall establish a schedule for its review of the application, specifying the key intermediate steps from the time of docketing until the completion of its review.

* * * * *

10. 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) shall be issued as soon as practicable after the application has been docketed; provided, that 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 shall 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 will, except as the Commission determines otherwise, 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 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) 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 (vii) of this section, and a negative finding on paragraph (d)(1)(vi) 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 will, except as the Commission determines otherwise, 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 issuance of the license will not be inimical to the common defense and security or to the health and safety of the public.

(vi) 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;

(vii) 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;

(viii) 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

(ix) 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 (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.

[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.

(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. Except as 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 51 of 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 (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:

(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, or in which the Commission finds that a hearing is required in the public interest to consider the antitrust aspects of the application, 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 the receipt of the Attorney General's advice and compliance with sections 105 and 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;

(3) That the presiding officer will consider and decide whether the activities under the proposed license would create or maintain a situation inconsistent with the antitrust laws described in section 105a of the Act; and

(4) 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, 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.

11. In § 2.105, the introductory text of paragraphs (a) and (a)(4) are revised, and paragraphs (a)(12) and (b)(3) are added to read as follows:

§ 2.105 Notice of proposed action.

(a) If a hearing is not required by the Act or this chapter, and if the Commission has not found that a hearing is in the public interest, it will, before acting thereon, publish in the **Federal Register**, as applicable, a document under § 52.103(a) of this chapter with respect to a finding that inspections, tests, analyses, and acceptance criteria for a combined license under subpart C of part 52 have been met, or a notice of proposed action with respect to an application for:

* * * * *

(4) An amendment to an operating license, combined license or manufacturing license for a facility licensed under §§ 50.21(b) or 50.22 of this chapter, or for a testing facility, as follows:

* * * * *

(12) An amendment to an early site permit issued under subpart A of part 52 of this chapter, as follows:

(i) If the early site permit does not provide authority to conduct the activities allowed under § 50.10(e)(1) of this chapter, the amendment will involve no significant hazards consideration, and though the NRC will provide notice of opportunity for a hearing under this section, it may make the amendment immediately effective and grant a hearing thereafter; and

(ii) If the early site permit provides authority to conduct the activities allowed under § 50.10(e)(1) and the Commission determines under §§ 50.58 and 50.91 of this chapter that an emergency situation exists or that exigent circumstances exist and that the amendment involves no significant hazards consideration, it will provide notice of opportunity for a hearing under § 2.106 of this chapter (if a hearing is requested, which will be held after issuance of the amendment).

(b) * * *

(3) For a notice of intended operation under § 52.103(a) of this chapter, the following information:

(i) The identification of the NRC action as making the finding required under § 52.103(g) of this chapter;

(ii) The manner in which copies of the safety analysis may be obtained and examined;

(iii) A finding that the application for the license or amendment complies with the requirements of the Act and this chapter, including successful completion of all inspections, tests, analyses, and acceptance criteria; and

(iv) Any conditions, limitations or restrictions to be placed on the license in connection with the finding under § 52.103(g) of this chapter, and the expiration date or circumstances (if any) under which the conditions, limitations or restrictions will no longer apply.

* * * * *

12. In § 2.106, paragraphs (a) and (b) are revised to read as follows:

§ 2.106 Notice of issuance.

(a) The Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will inform the State and local officials specified in § 2.104(e) and publish a document in the **Federal Register** announcing the issuance of:

(1) A license or an amendment of a license for which a notice of proposed action has been previously published;

(2) An amendment of a license for a facility of the type described in § 50.21(b) or § 50.22 of this chapter, or a testing facility, whether or not a notice of proposed action has been previously published; and

(3) The finding under § 52.103(g) of this chapter.

(b) The notice of issuance will set forth:

(1) In the case of a license or amendment:

(i) The nature of the license or amendment;

(ii) The manner in which copies of the safety analysis, if any, may be obtained and examined; and

(iii) A finding that the application for the license or amendment complies with the requirements of the Act and this chapter.

(2) In the case of a finding under § 52.103(g) of this chapter:

(i) The manner in which copies of the safety analysis, if any, may be obtained and examined; and

(ii) A finding that the prescribed inspections, tests, and analyses have been performed, the prescribed acceptance criteria have been met, and that the license complies with the requirements of the Act and this chapter.

* * * * *

13. Section 2.109 is revised to read as follows:

§ 2.109 Effect of timely renewal application.

(a) Except for the renewal of an operating license for a nuclear power plant under 10 CFR 50.21(b) or 50.22, an early site permit under subpart A of part 52 of this chapter, a manufacturing license under subpart F of part 52 of this chapter, or a combined license under subpart C of part 52 of this chapter, if at least 30 days before the expiration of an existing license authorizing any activity of a continuing nature, the licensee files an application for a renewal or for a new license for the activity so authorized, the existing license will not be deemed to have expired until the application has been finally determined.

(b) If the licensee of a nuclear power plant licensed under 10 CFR 50.21(b) or 50.22 files a sufficient application for renewal of either an operating license or a combined license at least 5 years before the expiration of the existing license, the existing license will not be deemed to have expired until the application has been finally determined.

(c) If the holder of an early site permit licensed under subpart A of part 52 of this chapter files a sufficient application for renewal under § 52.29 of this chapter at least 12 months before the expiration of the existing early site permit, the existing permit will not be deemed to have expired until the application has been finally determined.

(d) If the licensee of a manufacturing license under subpart F of part 52 of this chapter files a sufficient application for renewal under § 52.177 of this chapter at least 12 months before the expiration of the existing license, the existing license will not be deemed to have expired until the application has been finally determined.

14. Section 2.110 is revised to read as follows:

§ 2.110 Filing and administrative action on submittals for standard design approval or early review of site suitability issues.

(a)(1) A submittal for a standard design approval under subpart E of part 52 of this chapter shall be subject to §§ 2.101(a) and 2.390 to the same extent as if it were an application for a permit or license.

(2) Except as specifically provided otherwise by the provisions of appendix Q to part 50 of this chapter, a submittal for early review of site suitability issues under appendix Q to part 50 of this

chapter shall be subject to §§ 2.101(a)(2) through (4) to the same extent as if it were an application for a permit or license.

(b) Upon initiation of review by the NRC staff of a submittal for an early review of site suitability issues under appendix Q of part 50 of this chapter, or for a standard design approval under subpart E of part 52 of this chapter, the Director of Nuclear Reactor Regulation shall publish in the **Federal Register** a notice of receipt of the submittal, inviting comments from interested persons within 60 days of publication or other time as may be specified, for consideration by the NRC staff and ACRS in their review.

(c)(1) Upon completion of review by the NRC staff and the ACRS of a submittal for a standard design approval, the Director of the Office of Nuclear Reactor Regulation shall publish in the **Federal Register** a determination as to whether or not the design is acceptable, subject to terms and conditions as may be appropriate, and shall make available at the NRC Web site, *http://www.nrc.gov*, a report that analyzes the design.

(2) Upon completion of review by the NRC staff and, if appropriate by the ACRS, of a submittal for early review of site suitability issues, the NRC staff shall prepare a staff site report which shall identify the location of the site, state the site suitability issues reviewed, explain the nature and scope of the review, state the conclusions of the staff regarding the issues reviewed and state the reasons for those conclusions. Upon issuance of an NRC staff site report, the NRC staff shall publish a notice of the availability of the report in the **Federal Register** and shall make the report available at the NRC Web site, *http://www.nrc.gov.* The NRC staff shall also send a copy of the report to the Governor or other appropriate official of the State in which the site is located, and to the chief executive of the municipality in which the site is located or, if the site is not located in a municipality, to the chief executive of the county.

15. Section 2.111 is revised to read as follows:

§ 2.111 Prohibition of sex discrimination.

No person shall on the grounds of sex be excluded from participation in, be denied a license, standard design approval, or petition for rulemaking (including a design certification), be denied the benefits of, or be subjected to discrimination under any program or activity carried on or receiving Federal assistance under the Act or the Energy Reorganization Act of 1974.

16. In § 2.202, paragraph (e) is revised to read as follows:

§ 2.202 Orders.

* * * * *

(e)(1) If the order involves the modification of a part 50 license and is a backfit, the requirements of § 50.109 of this chapter shall be followed, unless the licensee has consented to the action required.

(2) If the order involves the modification of combined license under subpart C of part 52 of this chapter, the requirements of § 52.98 of this chapter shall be followed unless the licensee has consented to the action required.

(3) If the order involves a change to an early site permit under subpart A of part 52 of this chapter, the requirements of § 52.39 of this chapter must be followed, unless the applicant or licensee has consented to the action required.

(4) If the order involves a change to a standard design certification rule referenced by that plant's application, the requirements, if any, in the referenced design certification rule with respect to changes must be followed, or, in the absence of these requirements, the requirements of § 52.63 of this chapter must be followed, unless the applicant or licensee has consented to follow the action required.

(5) If the order involves a change to a standard design approval referenced by that plant's application, the requirements of § 52.145 of this chapter must be followed unless the applicant or licensee has consented to follow the action required.

(6) If the order involves a modification of a manufacturing license under subpart F of part 52, the requirements of § 52.171 of this chapter must be followed, unless the applicant or licensee has consented to the action required.

17. In § 2.340, the section heading and paragraphs (b) and (c) are revised, paragraph (h) is redesignated as paragraph (o), paragraph (a) is redesignated as paragraph (a)(1), and paragraphs (a)(2), (e), (h), and (i) are added, and paragraphs (j) through (n) are added and reserved to read as follows:

§ 2.340 Initial decisions; immediate effectiveness of certain decisions.

(a)(1) * * *

(2) *Initial decisions on findings under 10 CFR 52.103 with respect to acceptance criteria in nuclear power reactor combined licenses.* In any initial decision under § 52.103(g) of this chapter with respect to acceptance criteria being met, the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties to the proceeding and on matters which have been determined to be the issues in the proceeding by the Commission or the presiding officer. Matters not put into controversy by the parties shall be referred to the Commission for its determination. The Commission may, in its discretion, treat the matter as a request for action under 10 CFR 2.206 and process the matter in accordance with § 52.103(f).

(b) *Immediate effectiveness of certain decisions.* Except as provided in paragraphs (d) through (i) of this section, or as otherwise ordered by the Commission in special circumstances, an initial decision directing the issuance or amendment of an early site permit, a construction permit, a construction authorization, an operating license, a combined license under part 52 of this chapter, or a license under 10 CFR part 72 to store spent fuel in an independent spent fuel storage installation (ISFSI) at a reactor site, or a decision making the finding under § 52.103(g) that acceptance criteria have been met, is effective immediately upon issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective. If any decision under this paragraph is not made by the Commission acting as the presiding officer, the decision is subject to review and further decision by the Commission upon petition for review filed by any party under § 2.341 or upon its own motion.

(c) Except as provided in paragraphs (d) through (i) of this section, or as otherwise ordered by the Commission in special circumstances, the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, notwithstanding the filing or granting of a petition for review, shall issue an early site permit, a construction permit, a construction authorization, an operating license, a combined license under part 52 of this chapter, or a license under 10 CFR part 72 to store spent fuel in an independent spent fuel storage installation at a reactor site, or amendments thereto, authorized by an initial decision, within ten (10) days from the date of issuance of the decision.

* * * * *

(e) *Nuclear power reactor early site permits.* (1) *Presiding officers.* Presiding officers shall hear and decide all issues that come before them, indicating in their decisions the type of licensing

action, if any, which their decision would authorize. The presiding officer's decisions concerning early site permits are not effective until the Commission actions outlined in paragraph (e)(2) of this section have taken place.

(2) *Commission.* Within sixty (60) days of the service of any presiding officer decision that would otherwise authorize issuance of an early site permit, the Commission will seek to issue a decision on any stay motions that are timely filed. These motions must be filed as provided by § 2.341. For the purpose of this paragraph, a stay motion is one that seeks to defer the effectiveness of a presiding officer decision beyond the period necessary for the Commission action described herein. If no stay papers are filed, the Commission will, within the same time period (or earlier if possible), analyze the record and early site permit decision below on its own motion and will seek to issue a decision on whether a stay is warranted. However, the Commission will not decide that a stay is warranted without giving the affected parties an opportunity to be heard. The initial decision will be considered stayed pending the Commission's decision. In deciding these stay questions, the Commission shall employ the procedures set out in § 2.342.

* * * * *

(h) Issuance of nuclear power reactor combined licenses under part 52 of this chapter. (1) *Presiding officers.* Presiding officers shall hear and decide all issues that come before them, indicating in their decisions the type of licensing action, if any, which their decision would authorize. A presiding officer's decision authorizing issuance of a combined license is immediately effective, and the Director shall issue the appropriate license in accordance with paragraph (c) of this section.

(2) *The Commission.* (i) Reserving the power to step in at an earlier time, the Commission will, upon receipt of the presiding officer's decision authorizing issuance of a combined license, review the matter on its own motion to determine whether to stay the effectiveness of the decision. A combined license decision will be stayed by the Commission only if it determines that it is in the public interest to do so, based on a consideration of the gravity of the substantive issue, the likelihood that it has been resolved incorrectly below, the degree to which correct resolution of the issue would be prejudiced by construction pending review, and other relevant public interest factors.

(ii) The parties may file brief comments with the Commission pointing out matters which, in their view, pertain to the immediate effectiveness issue. To be considered, these comments must be received within ten (10) days of the presiding officer's decision. However, the Commission may dispense with comments by so advising the parties. An extensive stay will not be issued without giving the affected parties an opportunity to be heard.

(iii) The Commission intends to issue a stay decision within thirty (30) days of receipt of the presiding officer's decision. The presiding officer's initial decision will be considered stayed pending the Commission's decision.

(iv) In announcing a stay decision, the Commission may allow the proceeding to run its ordinary course or give instructions as to the future handling of the proceeding. Furthermore, the Commission may, in a particular case, determine that compliance with existing regulations and policies may no longer be sufficient to warrant approval of a license application and may alter those regulations and policies.

(i) *Findings under § 52.103(g) of this chapter with respect to acceptance criteria in nuclear power reactor combined licenses.* (1) *Presiding officers.* Presiding officers shall hear and decide all issues that come before them with respect to whether acceptance criteria in the combined license have been met, in accordance with § 52.103(g) of this chapter. A presiding officer's decision may not become effective if it would otherwise allow operation at greater than five (5) percent of rated power until the Commission actions outlined in paragraph (i)(2) of this section have taken place. If a decision otherwise allows operation up to five (5) percent, the decision is immediately effective.

(2) *The Commission.* (i) Reserving the power to step in at an earlier time, the Commission will, upon receipt of the presiding officer's finding under § 52.103(g) with respect to whether acceptance criteria in the combined license have been met, other than a finding which would otherwise allow only fuel loading and low power (up to five (5) percent of rated power) testing, review the matter on its own motion to determine whether to stay the effectiveness of the finding. A presiding officer finding will be stayed by the Commission, insofar as it allows operations other than fuel loading and low power testing, if it determines that it is in the public interest to do so, based on a consideration of the gravity of the substantive issue, the likelihood that it has been resolved incorrectly below, the degree to which correct resolution of the issue would be prejudiced by operation pending review, and other relevant public interest factors.

(ii) For findings other than those authorizing only fuel loading and low power testing consistent with the target schedule set forth below, the parties may file brief comments with the Commission pointing out matters which, in their view, pertain to the immediate effectiveness issue. To be considered, these comments must be received within ten (10) days of the presiding officer's findings. However, the Commission may dispense with comments by so advising the parties. An extensive stay will not be issued without giving the affected parties an opportunity to be heard.

(iii) The Commission intends to issue a stay decision within thirty (30) days of receipt of the presiding officer's findings. The presiding officer's findings will be considered stayed pending the Commission's decision insofar as such findings may allow operations other than fuel loading and operation up to five (5) percent of rated power.

(iv) In announcing a stay decision, the Commission may allow the proceeding to run its ordinary course or give instructions as to the future handling of the proceeding. Furthermore, the Commission may, in a particular case, determine that compliance with existing regulations and policies may no longer be sufficient to warrant a finding that the acceptance criteria in the combined license have been met and may alter those regulations and policies.

(j)–(n) [Reserved]

* * * * *

18. In § 2.390, the introductory text of paragraph (a) is revised to read as follows:

§ 2.390 Public inspections, exemptions, requests for withholding.

(a) Subject to the provisions of paragraphs (b), (d), (e), and (f) of this section, final NRC records and documents, including but not limited to correspondence to and from the NRC regarding the issuance, denial, amendment, transfer, renewal, modification, suspension, revocation, or violation of a license, permit, order, or standard design approval, or regarding a rulemaking proceeding subject to this part shall not, in the absence of an NRC determination of a compelling reason for nondisclosure after a balancing of the interests of the person or agency urging nondisclosure and the public interest in disclosure, be exempt from disclosure and will be made available

for inspection and copying at the NRC Web site, *http://www.nrc.gov,* and/or at the NRC Public Document Room, except for matters that are:

* * * * *

19. Section 2.500 is revised to read as follows:

§ 2.500 Scope of subpart.

This subpart prescribes procedures applicable to licensing proceedings which involve the consideration in separate hearings of an application for a license to manufacture nuclear power reactors under subpart F of part 52 of this chapter.

20. In § 2.501, the section heading, the introductory language of paragraph (a), and paragraph (b) are revised to read as follows:

§ 2.501 Notice of hearing on application under subpart F of part 52 for a license to manufacture nuclear power reactors.

(a) In the case of an application under subpart F of part 52 of this chapter for a license to manufacture nuclear power reactors of the type described in § 50.22 of this chapter to be operated at sites not identified in the license application, the Secretary will issue a notice of hearing to be published in the **Federal Register** at least 30 days before the date set for hearing in the notice.[1] The notice shall be issued as soon as practicable after the application has been docketed. The notice will state:

* * * * *

(b) The notice of hearing shall comply with the requirements of § 2.104(f) of this chapter.

* * * * *

§ 2.502 [Removed and Reserved]

21. Remove and reserve § 2.502.

§ 2.503 [Removed and Reserved]

22. Remove and reserve § 2.503.

§ 2.504 [Removed and Reserved]

23. Remove and reserve § 2.504.

24. Section 2.800 is revised to read as follows:

§ 2.800 Scope and applicability.

(a) This subpart governs the issuance, amendment, and repeal of regulations in which participation by interested persons is prescribed under section 553 of title 5 of the U.S. Code.

(b) The procedures in §§ 2.804 through 2.810 apply to all rulemakings.

(c) The procedures in §§ 2.802 through 2.803 apply to all petitions for rulemaking except for initial applications for standard design certification rulemaking under subpart B of part 52 of this chapter, and subsequent petitions for amendment of an existing design certification rule filed by the original applicant for the design certification rule.

(d) The procedures in §§ 2.811 through 2.819, as supplemented by the provisions of subpart B of part 52, apply to standard design certification rulemaking.

25. Section 2.801 is revised to read as follows:

§ 2.801 Initiation of rulemaking.

Rulemaking may be initiated by the Commission at its own instance, on the recommendation of another agency of the United States, or on the petition of any other interested person, including an application for design certification under subpart B of part 52 of this chapter.

26. In subpart H, §§ 2.811, 2.813, 2.815, 2.817, and 2.819 are added to read as follows:

§ 2.811 Filing of standard design certification application; required copies.

(a) *Serving of applications.* The signed original of an application for a standard design certification, including all amendments to the applications must be sent either by mail addressed: ATTN: Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by facsimile; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland, between the hours of 7:30 a.m. and 4:15 p.m. eastern time; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, e-mail, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html,* by calling (301) 415–6030, by e-mail at *EIE@nrc.gov,* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information. If the communication is on paper, the signed original must be sent.

(b) *Form of application.* Each original of an application and an amendment of an application must meet the requirements in § 2.813.

(c) *Capability to provide additional copies.* The applicant shall maintain the capability to generate additional copies of the general information and the safety analysis report, or part thereof or amendment thereto, for subsequent distribution in accordance with the written instructions of the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as appropriate.

(d) *Public hearing copy.* In any hearing conducted under subpart O of this part for a design certification rulemaking, the applicant must make a copy of the updated application available at the public hearing for the use of any other parties to the proceeding, and shall certify that the updated copies of the application contain the current contents of the application submitted in accordance with the requirements of this part.

(e) *Pre-application consultation.* A prospective applicant for a standard design certification may consult with the NRC before filing an application by writing to the Chief, New Reactor Licensing Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, with respect to the subject matters listed in § 2.802(a)(1)(i) through (iii) of this chapter. A prospective petitioner also may telephone the Rules and Directives Branch on (301) 415–7163, or toll free on (800) 368–5642, or send e-mail to *NRCREP@nrc.gov* on these subject matters. In addition, a prospective applicant may confer informally with the NRC staff BEFORE filing an application for a standard design certification, and the limitations in § 2.802(a)(2) do not apply.

§ 2.813 Written communications.

(a) *General requirements.* All correspondence, reports, and other written communications from the applicant to the Nuclear Regulatory Commission concerning the regulations in this subpart, and parts 50, 52, and 100 of this chapter must be sent either by mail addressed: ATTN: Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland, between the hours of 7:30 a.m. and 4:15 p.m. eastern time; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, e-mail, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process

[1] The thirty-day (30) requirement of this paragraph is not applicable to a notice of the time and place of hearing published by the presiding officer after the notice of hearing described in this section has been published.

and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html,* by calling (301) 415–6030, by e-mail at *EIE@nrc.gov,* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information. If the communication is on paper, the signed original must be sent. If a submission due date falls on a Saturday, Sunday, or Federal holiday, the next Federal working day becomes the official due date.

(b) *Form of communications.* All paper copies submitted to meet the requirements set forth in paragraph (a) of this section must be typewritten, printed or otherwise reproduced in permanent form on unglazed paper. Exceptions to these requirements imposed on paper submissions may be granted for the submission of micrographic, photographic, or similar forms.

(c) *Regulation governing submission.* An applicant submitting correspondence, reports, and other written communications under the regulations of this chapter is requested but not required to cite whenever practical, in the upper right corner of the first page of the submission, the specific regulation or other basis requiring submission.

§ 2.815 Docketing and acceptance review.

(a) Each application for a standard design certification will be assigned a docket number. However, to allow a determination as to whether an application 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. The Commission may decide to determine acceptability on the basis of the technical adequacy of the application as well as its completeness.

(b) If the Commission determines that a tendered application is 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.

§ 2.817 Withdrawal of application.

(a) The Commission may permit an applicant to withdraw an application for a standard design certification before the issuance of a notice of proposed rulemaking on such terms and conditions as the Commission may prescribe, or may, on receiving a request for withdrawal of an application, deny the application or dismiss it without prejudice. The NRC will publish in the **Federal Register** a document withdrawing the application, if the notice of receipt of the application, an advance notice of proposed rulemaking, or a notice of proposed rulemaking for the standard design certification has been previously published in the **Federal Register**. If the notice of receipt, advance notice of proposed rulemaking or notice of proposed rulemaking was published on the NRC Web site, then the notice of action on the withdrawal will also be published on the NRC Web site.

(b) The withdrawal of an application does not authorize the removal of any document from the files of the Commission.

§ 2.819 Denial of application for failure to supply information.

(a) The Commission may deny an application for a standard design certification if an applicant fails to respond to a request for additional information within 30 days from the date of the request, or within such other time as may be specified.

(b) If the Commission denies an application because the applicant has failed to respond in a timely fashion to a request for additional information, the NRC will publish in the **Federal Register** a notice of denial and will notify the applicant with a simple statement of the grounds of denial. If a notice of receipt of application, advance notice of proposed rulemaking, or notice of proposed rulemaking for a standard design certification was published on the NRC Web site, then the notice of action on the denial will also be published on the NRC Web site.

PART 10—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR NATIONAL SECURITY INFORMATION OR AN EMPLOYMENT CLEARANCE

27. The authority citation for part 10 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10450, 3 CFR parts 1949–1953 COMP., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 COMP., p. 398, as amended; 3 CFR Table 4; E.O. 12968, 3 CFR 1995 COM., p. 396.

28. In § 10.1, paragraphs (a)(1) and (a)(2) are revised and paragraph (a)(3) is added to read as follows:

§ 10.1 Purpose.

(a) * * *

(1) The eligibility of individuals who are employed by or applicants for employment with NRC contractors, agents, and other individuals who are NRC employees or applicants for NRC employment, and other persons designated by the Deputy Executive Director for Information Services and Administration and Chief Information Officer of the NRC, for access to Restricted Data under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, or for access to national security information;

(2) The eligibility of NRC employees, or the eligibility of applicants for employment with the NRC, for employment clearance; and

(3) The eligibility of individuals who are employed by or are applicants for employment with NRC licensees, certificate holders, holders of standard design approvals under part 52 of this chapter, applicants for licenses, certificates, and NRC approvals, and others who may require access related to a license, certificate, or NRC approval, or other activities as the Commission may determine, for access to Restricted Data under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, or for access to national security information.

* * * * *

29. In § 10.2, paragraph (b) is revised to read as follows:

§ 10.2 Scope.

* * * * *

(b) NRC licensees, certificate holders and holders of standard design approvals under part 52 of this chapter, applicants for licenses, certificates, and standard design approvals under part 52 of this chapter, and their employees (including consultants) and applicants for employment (including consulting);

* * * * *

PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS; INSPECTION AND INVESTIGATIONS

30. The authority citation for part 19 is revised to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2111, 2133, 2134,

2201, 2236, 2282, 2297f); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 19.32 is also issued under sec. 401, 88 Stat. 1254 (42 U.S.C. 2000d, 42 U.S.C. 5891).

31. Section 19.1 is revised to read as follows:

§ 19.1 Purpose.

The regulations in this part establish requirements for notices, instructions, and reports by licensees and regulated entities to individuals participating in NRC-licensed and regulated activities and options available to these individuals in connection with Commission inspections of licensees and regulated entities, and to ascertain compliance with the provisions of the Atomic Energy Act of 1954, as amended, titles II and IV of the Energy Reorganization Act of 1974, and regulations, orders, and licenses thereunder. The regulations in this part also establish the rights and responsibilities of the Commission and individuals during interviews compelled by subpoena as part of agency inspections or investigations under section 161c of the Atomic Energy Act of 1954, as amended, on any matter within the Commission's jurisdiction.

32. Section 19.2 is revised to read as follows:

§ 19.2 Scope.

(a) The regulations in this part apply to:

(1) All persons who receive, possess, use, or transfer material licensed by the NRC under the regulations in parts 30 through 36, 39, 40, 60, 61, 63, 70, or 72 of this chapter, including persons licensed to operate a production or utilization facility under parts 50 or 52 of this chapter, persons licensed to possess power reactor spent fuel in an independent spent fuel storage installation (ISFSI) under part 72 of this chapter, and in accordance with 10 CFR 76.60 to persons required to obtain a certificate of compliance or an approved compliance plan under part 76 of this chapter;

(2) All applicants for and holders of licenses (including construction permits and early site permits) under parts 50, 52, and 54 of this chapter;

(3) All applicants for and holders of a standard design approval under subpart E of part 52; and

(4) All applicants for a standard design certification under subpart B of part 52 of this chapter, and those (former) applicants whose designs have been certified under that subpart.

(b) The regulations in this part regarding interviews of individuals under subpoena apply to all investigations and inspections within the jurisdiction of the NRC other than those involving NRC employees or NRC contractors. The regulations in this part do not apply to subpoenas issued under 10 CFR 2.702.

33. In § 19.3 the definitions of *License* and *Worker* are revised, and the definitions of *Regulated entities* and *Regulated activities* are added to read as follows:

§ 19.3 Definitions.

* * * * *

License means a license issued under the regulations in parts 30 through 36, 39, 40, 60, 61, 63, 70, or 72 of this chapter, including licenses to manufacture, construct and/or operate a production or utilization facility under parts 50, 52, or 54 of this chapter.

* * * * *

Regulated activities means any activity carried on which is under the jurisdiction of the NRC under the Atomic Energy Act of 1954, as amended, or any title of the Energy Reorganization Act of 1972, as amended.

Regulated entities means any individual, person, organization, or corporation that is subject to the regulatory jurisdiction of the NRC, including (but not limited to) an applicant for or holder of a standard design approval under subpart E of part 52 of this chapter or a standard design certification under subpart B of part 52 of this chapter.

* * * * *

Worker means an individual engaged in activities licensed or regulated by the Commission and controlled by a licensee or regulated entity, but does not include the licensee or regulated entity.

34. In § 19.11, paragraph (c) is removed and reserved, and the introductory text of paragraph (a), and paragraphs (b), (d), and (e) are revised, and paragraphs (f) and (g) are added to read as follows:

§ 19.11 Posting of notices to workers.

(a) Each licensee (except for a holder of an early site permit under subpart A of part 52 of this chapter, or a holder of a manufacturing license under subpart F of part 52 of this chapter) shall post current copies of the following documents:

* * * * *

(b) Each applicant for and holder of a standard design approval under subpart E of part 52 of this chapter, each applicant for an early site permit under subpart A of part 52 of this chapter, each applicant for a standard design certification under subpart B of part 52 of this chapter, and each applicant for and holder of a manufacturing license under subpart F of part 52 of this chapter shall post:

(1) The regulations in this part;

(2) The operating procedures applicable to the activities regulated by the NRC which are being conducted by the applicant or holder; and

(3) Any notice of violation, proposed imposition of civil penalty, or order issued under subpart B of part 2 of this chapter, and any response from the applicant or holder.

(c) [Reserved]

(d) If posting of a document specified in paragraphs (a)(1), (2) or (3), or (b)(1) or (2) of this section is not practicable, the licensee or regulated entity may post a notice which describes the document and states where it may be examined.

(e)(1) Each licensee, each applicant for a specific license, each applicant for or holder of a standard design approval under subpart E of part 52 of this chapter, each applicant for an early site permit under subpart A of part 52 of this chapter, and each applicant for a standard design certification under subpart B of part 52 of this chapter shall prominently post NRC Form 3, ''Notice to Employees,'' dated August 1997. Later versions of NRC Form 3 that supersede the August 1997 version shall replace the previously posted version within 30 days of receiving the revised NRC Form 3 from the Commission.

(2) Additional copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter, by calling (301) 415–5877, via e-mail to *forms@nrc.gov,* or by visiting the NRC's Web site at *http://www.nrc.gov* and selecting forms from the index found on the home page.

(f) Documents, notices, or forms posted under this section shall appear in a sufficient number of places to permit individuals engaged in NRC-licensed or regulated activities to observe them on the way to or from any particular licensed or regulated activity location to which the document applies, shall be conspicuous, and shall be replaced if defaced or altered.

(g) Commission documents posted under paragraphs (a)(4) or (b)(3) of this section shall be posted within 2 working days after receipt of the documents from the Commission; the licensee's or regulated entity's response, if any, shall be posted within 2 working days after dispatch by the licensee or regulated entity. These documents shall remain

posted for a minimum of 5 working days or until action correcting the violation has been completed, whichever is later.

35. Section 19.14 is revised to read as follows:

§ 19.14 Presence of representatives of licensees and regulated entities, and workers during inspections.

(a) Each licensee, applicant for a license, applicant for or holder of a standard design approval under subpart E of part 52, applicant for an early site permit under subpart A of part 52, and applicant for a standard design certification under subpart B of part 52 shall afford to the Commission at all reasonable times opportunity to inspect materials, activities, facilities, premises, and records under the regulations in this chapter.

(b) During an inspection, Commission inspectors may consult privately with workers as specified in § 19.15. The licensee, regulated entity, or the licensee's or regulated entity's representative may accompany Commission inspectors during other phrases of an inspection.

(c) If, at the time of inspection, an individual has been authorized by the workers to represent them during Commission inspections, the licensee or regulated entity shall notify the inspectors of such authorization and shall give the workers' representative an opportunity to accompany the inspectors during the inspection of physical working conditions.

(d) Each workers' representative shall be routinely engaged in NRC-licensed or regulated activities under control of the licensee or regulated entity, and shall have received instructions as specified in § 19.12.

(e) Different representatives of licensees or regulated entities, and workers may accompany the inspectors during different phases of an inspection if there is no resulting interference with the conduct of the inspection. However, only one workers' representative at a time may accompany the inspectors.

(f) With the approval of the licensee or regulated entity, and the workers' representative an individual who is not routinely engaged in licensed or regulated activities under control of the license or regulated entity (for example, a consultant to the licensee, the regulated entity, or the workers' representative), shall be afforded the opportunity to accompany Commission inspectors during the inspection of physical working conditions.

(g) Notwithstanding the other provisions of this section, Commission inspectors are authorized to refuse to permit accompaniment by any individual who deliberately interferes with a fair and orderly inspection. With regard to areas containing information classified by an agency of the U.S. Government in the interest of national security, an individual who accompanies an inspector may have access to such information only if authorized to do so. With regard to any area containing proprietary information, the workers' representative for that area shall be an individual previously authorized by the licensee or regulated entity to enter that area.

36. Section 19.20 is revised to read as follows:

§ 19.20 Employee protection.

Employment discrimination by a licensee, a holder of a certificate of compliance issued under part 76 or regulated entity subject to the requirements in this part as delineated in § 19.2(a), or a contractor or subcontractor of a licensee, a holder of a certificate of compliance issued under part 76, or regulated entity subject to the requirements in this part as delineated in § 19.2(a), against an employee for engaging in protected activities under this part or parts 30, 40, 50, 52, 54, 60, 61, 63, 70, 72, 76, or 150 of this chapter is prohibited.

37. Section 19.31 is revised to read as follows:

§ 19.31 Application for exemptions.

The Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law, will not result in undue hazard to life and property.

38. Section 19.32 is revised to read as follows:

§ 19.32 Discrimination prohibited.

No person shall on the grounds of sex be excluded from participation in, be denied a license, be denied the benefit of, or be subjected to discrimination under any program or activity carried on which is under the jurisdiction of the NRC under the Atomic Energy Act of 1954, as amended, or under any title of the Energy Reorganization Act of 1974, as amended. This provision will be enforced through agency provisions and regulations similar to those already established, with respect to racial and other discrimination, under Title VI of the Civil Rights Act of 1964. This remedy is not exclusive, however, and will not prejudice or cut off any other legal remedies available to a discriminatee.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

39. The authority citation for part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), 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).

40. Section 20.1002 is revised to read as follows:

§ 20.1002 Scope.

The regulations in this part apply to persons licensed by the Commission to receive, possess, use, transfer, or dispose of byproduct, source, or special nuclear material or to operate a production or utilization facility under parts 30 through 36, 39, 40, 50, 52, 60, 61, 63, 70, or 72 of this chapter, and in accordance with 10 CFR 76.60 to persons required to obtain a certificate of compliance or an approved compliance plan under part 76 of this chapter. The limits in this part do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, to exposure from individuals administered radioactive material and released under § 35.75, or to exposure from voluntary participation in medical research programs.

41. In § 20.1401 paragraph (a) is revised to read as follows:

§ 20.1401 General provisions and scope.

(a) The criteria in this subpart apply to the decommissioning of facilities licensed under parts 30, 40, 50, 52, 60, 61, 63, 70, and 72 of this chapter, and release of part of a facility or site for unrestricted use in accordance with § 50.83 of this chapter, as well as other facilities subject to the Commission's jurisdiction under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended. For high-level and low-level waste disposal facilities (10 CFR parts 60, 61, and 63), the criteria apply only to ancillary surface facilities that support radioactive waste disposal activities. The criteria do not apply to uranium and thorium recovery facilities already subject to appendix A to 10 CFR part 40 or the uranium solution extraction facilities.

* * * * *

42. In § 20.2203, paragraphs (c) and (d) are revised to read as follows:

§ 20.2203 Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the constraints or limits.

* * * * *

(c) For holders of an operating license or a combined license for a nuclear power plant, the occurrences included in paragraph (a) of this section must be reported in accordance with the procedures described in §§ 50.73(b), (c), (d), (e), and (g) of this chapter, and must include the information required by paragraph (b) of this section. Occurrences reported in accordance with § 50.73 of this chapter need not be reported by a duplicate report under paragraph (a) of this section.

(d) All licensees, other than those holding an operating license or a combined license for a nuclear power plant, who make reports under paragraph (a) of this section shall submit the report in writing either by mail addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html,* by calling (301) 415–6030, by e-mail to *EIE@nrc.gov,* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. A copy should be sent to the appropriate NRC Regional Office listed in appendix D to this part.

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

43. The authority citation for part 21 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2953 (42 U.S.C. 2201, 2282, 2297f); secs. 201, as amended, 206, 88 Stat. 1242, as amended 1246 (42 U.S.C. 5841, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 21.2 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

44. In § 21.2, paragraphs (a), (b), and (c) are revised to read as follows:

§ 21.2 Scope.

(a) The regulations in this part apply, except as specifically provided otherwise, in parts 31, 34, 35, 39, 40, 60, 61, 63, 70, or part 72 of this chapter, to:

(1) Each individual, partnership, corporation, or other entity applying for or holding a license or permit under the regulations in this chapter to possess, use, or transfer within the United States source material, byproduct material, special nuclear material, and/or spent fuel and high-level radioactive waste, or to construct, manufacture, possess, own, operate, or transfer within the United States, any production or utilization facility or independent spent fuel storage installation (ISFSI) or monitored retrievable storage installation (MRS); and each director and responsible officer of such a licensee;

(2) Each individual, corporation, partnership, or other entity doing business within the United States, and each director and responsible officer of such an organization, that constructs a production or utilization facility licensed for manufacture, construction, or operation under parts 50 or 52 of this chapter, an ISFSI for the storage of spent fuel licensed under part 72 of this chapter, an MRS for the storage of spent fuel or high-level radioactive waste under part 72 of this chapter, or a geologic repository for the disposal of high-level radioactive waste under part 60 or 63 of this chapter; or supplies basic components for a facility or activity licensed, other than for export, under parts 30, 40, 50, 52, 60, 61, 63, 70, 71, or part 72 of this chapter;

(3) Each individual, corporation, partnership, or other entity doing business within the United States, and each director and responsible officer of such an organization, applying for a design certification rule under part 52 of this chapter; or supplying basic components with respect to that design certification, and each individual, corporation, partnership, or other entity doing business within the United States, and each director and responsible officer of such an organization, whose application for design certification has been granted under part 52 of this chapter, or who has supplied or is supplying basic components with respect to that design certification;

(4) Each individual, corporation, partnership, or other entity doing business within the United States, and each director and responsible officer of such an organization, applying for or holding a standard design approval under part 52 of this chapter; or supplies basic components with respect to a regulatory approval under part 52 of this chapter;

(b) For persons licensed to construct a facility under either a construction permit issued under § 50.23 of this chapter or a combined license under part 52 of this chapter (for the period of construction until the date that the Commission authorizes fuel load and operation under § 52.103 of this chapter), or to manufacture a facility under part 52 of this chapter, evaluation of potential defects and failures to comply and reporting of defects and failures to comply under § 50.55(e) of this chapter satisfies each person's evaluation, notification, and reporting obligation to report defects and failures to comply under this part and the responsibility of individual directors and responsible officers of these licensees to report defects under section 206 of the Energy Reorganization Act of 1974.

(c) For persons licensed to operate a nuclear power plant under part 50 or part 52 of this chapter, evaluation of potential defects and appropriate reporting of defects under §§ 50.72, 50.73, or § 73.71 of this chapter, satisfies each person's evaluation, notification, and reporting obligation to report defects under this part, and the responsibility of individual directors and responsible officers of these licensees to report defects under section 206 of the Energy Reorganization Act of 1974.

* * * * *

45. In § 21.3 the definitions of *basic component, defect, deviation,* and *substantial safety hazard* are revised to read as follows:

§ 21.3 Definitions.

* * * * *

Basic component. (1)(i) When applied to nuclear power plants licensed under 10 CFR part 50 or part 52 of this chapter, basic component means a structure, system, or component, or part thereof that affects its safety function necessary to assure:

(A) The integrity of the reactor coolant pressure boundary;

(B) The capability to shut down the reactor and maintain it in a safe-shutdown condition; or

(C) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in § 50.34(a)(1), § 50.67(b)(2), or § 100.11 of this chapter, as applicable.

(ii) Basic components are items designed and manufactured under a quality assurance program complying with appendix B to part 50 of this chapter, or commercial grade items which have successfully completed the dedication process.

(2) When applied to standard design certifications under subpart C of part 52 of this chapter and standard design

approvals under part 52 of this chapter, basic component means the design or procurement information approved or to be approved within the scope of the design certification or regulatory approval for a structure, system, or component, or part thereof, that affects its safety function necessary to assure:

(i) The integrity of the reactor coolant pressure boundary;

(ii) The capability to shut down the reactor and maintain it in a safe-shutdown condition; or

(iii) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in §§ 50.34(a)(1), 50.67(b)(2), or 100.11 of this chapter, as applicable.

(3) When applied to other facilities and other activities licensed under 10 CFR parts 30, 40, 50 (other than nuclear power plants), 60, 61, 63, 70, 71, or 72 of this chapter, basic component means a structure, system, or component, or part thereof, that affects their safety function, that is directly procured by the licensee of a facility or activity subject to the regulations in this part and in which a defect or failure to comply with any applicable regulation in this chapter, order, or license issued by the Commission could create a substantial safety hazard.

(4) In all cases, basic component includes safety-related design, analysis, inspection, testing, fabrication, replacement of parts, or consulting services that are associated with the component hardware, design certification, design approval, or information in support of an ESP application under part 52 of this chapter, whether these services are performed by the component supplier or others.

* * * * *

Defect means:

(1) A deviation in a basic component delivered to a purchaser for use in a facility or an activity subject to the regulations in this part if, on the basis of an evaluation, the deviation could create a substantial safety hazard;

(2) The installation, use, or operation of a basic component containing a defect as defined in this section;

(3) A deviation in a portion of a facility subject to the early site permit, construction permit, combined license or manufacturing licensing requirements of part 50 or part 52 of this chapter, provided the deviation could, on the basis of an evaluation, create a substantial safety hazard and the portion of the facility containing the deviation has been offered to the purchaser for acceptance;

(4) A condition or circumstance involving a basic component that could contribute to the exceeding of a safety limit, as defined in the technical specifications of a license for operation issued under part 50 or part 52 of this chapter; or

(5) An error, omission or other circumstance in a design certification, or standard design approval that, on the basis of an evaluation, could create a substantial safety hazard.

Deviation means a departure from the technical requirements included in a procurement document, or specified in ESP information, a design certification or standard design approval.

* * * * *

Substantial safety hazard means a loss of safety function to the extent that there is a major reduction in the degree of protection provided to public health and safety for any facility or activity licensed or otherwise approved or regulated by the NRC, other than for export, under parts 30, 40, 50, 52, 60, 61, 63, 70, 71, or 72 of this chapter.

* * * * *

46. Section 21.5 is revised to read as follows:

§ 21.5 Communications.

Except where otherwise specified in this part, written communications and reports concerning the regulations in this part must be addressed to the NRC's Document Control Desk, and sent by mail to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information. In the case of a licensee or permit holder, a copy of the communication must also be sent to the appropriate Regional Administrator at the address specified in appendix D to part 20 of this chapter.

47. In § 21.21 paragraphs (a)(3) introductory text, (a)(3)(i), (d)(1)(i), (d)(1)(ii), and (d)(4)(vi) are revised and paragraph (d)(4)(ix) is added to read as follows:

§ 21.21 Notification of failure to comply or existence of a defect and its evaluation.

(a) * * *

(3) Ensure that a director or responsible officer subject to the regulations of this part is informed as soon as practicable, and, in all cases, within the 5 working days after completion of the evaluation described in paragraphs (a)(1) or (a)(2) of this section if the manufacture, construction or operation of a facility or activity, a basic component supplied for such facility or activity, or the design certification or regulatory approval under part 52 of this chapter—

(i) Fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable regulation, order, or license of the Commission or standard design approval under part 52 of this chapter, relating to a substantial safety hazard, or

* * * * *

(d)(1) * * *

(i) The manufacture, construction or operation of a facility or an activity within the United States that is subject to the licensing requirements under parts 30, 40, 50, 52, 60, 61, 63, 70, 71, or 72 of this chapter and that is within his or her organization's responsibility; or

(ii) A basic component that is within his or her organization's responsibility and is supplied for a facility or an activity within the United States that is subject to the licensing, design certification, or regulatory approval requirements under parts 30, 40, 50, 52, 60, 61, 63, 70, 71, or 72 of this chapter.

* * * * *

(4) * * *

(vi) In the case of a basic component which contains a defect or fails to comply, the number and location of these components in use at, supplied for, being supplied for, or may be supplied for, manufactured, or being manufactured for one or more facilities or activities subject to the regulations in this part.

* * * * *

(ix) In the case of an early site permit, the entities to whom an early site permit was transferred.

* * * * *

48. In § 21.51 paragraph (a)(4) is added and paragraph (b) is revised to read as follows:

§ 21.51 Maintenance and inspection of records.

(a) * * *

(4) Applicants for standard design certification under subpart C of part 52 of this chapter and others providing a design which is the subject of a design certification, during and following Commission adoption of a final design certification rule for that design, shall retain any notifications sent to purchasers and affected licensees for a minimum of 5 years after the date of the notification, and retain a record of the purchasers for 15 years after delivery of design which is the subject of the design certification rule or service associated with the design.

(b) Each individual, corporation, partnership, dedicating entity, or other entity subject to the regulations in this part shall permit the Commission the opportunity to inspect records pertaining to basic components that relate to the identification and evaluation of deviations, and the reporting of defects and failures to comply, including (but not limited to) any advice given to purchasers or licensees on the placement, erection, installation, operation, maintenance, modification, or inspection of a basic component.

49. In § 21.61, paragraph (b) is revised to read as follows:

§ 21.61 Failure to notify.

* * * * *

(b) Any NRC licensee (including a holder of a permit), applicant for a design certification under part 52 of this chapter during the pendency of its application, applicant for a design certification after Commission adoption of a final design certification rule for that design, or applicant for or holder of a standard design approval under part 52 of this chapter subject to the regulations in this part who fail to provide the notice required by § 21.21, or otherwise fails to comply with the applicable requirements of this part shall be subject to a civil penalty as provided by Section 234 of the Atomic Energy Act of 1954, as amended.

* * * * *

PART 25—ACCESS AUTHORIZATION

50. The authority citation for part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333 as amended by E.O. 13292, 3 CFR 2004 Comp., p. 196; E.O. 12968, 3 CFR, 1995 Comp, p. 396.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

51. The heading of Part 25 is revised to read as set forth above.

52. In § 25.35, paragraph (a) is revised to read as follows:

§ 25.35 Classified visits.

(a) The number of classified visits must be held to a minimum. The licensee, certificate holder, applicant for a standard design certification under part 52 of this chapter (including an applicant after the Commission has adopted a final standard design certification rule under part 52 of this chapter), or other facility, or an applicant for or holder of a standard design approval under part 52 of this chapter shall determine that the visit is necessary and that the purpose of the visit cannot be achieved without access to, or disclosure of, classified information. All classified visits require advance notification to, and approval of, the organization to be visited. In urgent cases, visit information may be furnished by telephone and confirmed in writing.

* * * * *

PART 26—FITNESS FOR DUTY PROGRAMS

53. The authority citation for part 26 continues to read as follows:

Authority: Secs. 53, 81, 103, 104, 107, 161, 68 Stat. 930, 935, 936, 937, 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201, 2297f); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

54. In § 26.2, the introductory text of paragraph (a), and paragraph (c) are revised to read as follows:

§ 26.2 Scope.

(a) The regulations in this part apply to licensees authorized to operate a nuclear power reactor, including a holder of a combined license after the Commission makes the finding under § 52.103(g) of this chapter, and licensees who are authorized to possess or use formula quantities of SSNM, or to transport formula quantities of SSNM. Each licensee shall implement a fitness-for-duty program which complies with this part. The provisions of the fitness-for-duty program must apply to all persons granted unescorted access to nuclear power plant protected areas, to licensee, vendor, or contractor personnel required to physically report to a licensee's Technical Support Center (TSC) or Emergency Operations Facility (EOF) in accordance with licensee emergency plans and procedures, and to SSNM licensee and transporter personnel who:

* * * * *

(c) Certain regulations in this part apply to licensees holding permits to construct a nuclear power plant, including a holder of a combined license before the date that the Commission makes the finding under § 52.103(g) of this chapter, holders of manufacturing licenses under part 52, and persons authorized to conduct the activities under § 50.10(e)(3) of this chapter. Each licensee with a construction permit, a combined license before the Commission makes the finding under § 52.103(g) of this chapter, a manufacturing license, or person authorized to conduct the activities under § 50.10(e)(3) of this chapter, with a plant or reactor under active construction or manufacture, shall—

(1) Comply with §§ 26.10, 26.20, 26.23, 26.70, and 26.73;

(2) Implement a chemical testing program, including random tests; and

(3) Make provisions for employee assistance programs, imposition of sanctions, appeals procedures, the protection of information, and recordkeeping.

* * * * *

55. In § 26.10, paragraph (a) is revised to read as follows:

§ 26.10 General performance objectives.

* * * * *

(a) Provide reasonable assurance that nuclear power plant personnel, personnel of a holder of a manufacturing license, personnel of a person authorized to conduct activities under § 50.10(e)(3) of this chapter, transporter personnel, and personnel of licensees authorized to possess or use formula quantities of SSNM, will perform their tasks in a reliable and trustworthy manner and are not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way adversely affects their ability to safely and competently perform their duties;

* * * * *

56. In Appendix A of part 26, paragraph (1) of section 1.1 of subpart A is revised to read as follows:

Appendix A to Part 26—Guidelines for Drug and Alcohol Testing Programs

1.1 Applicability.

(1) These guidelines apply to licensees authorized to operate nuclear power reactors, including a holder of a combined license after the Commission makes the finding under § 52.103(g) of this chapter, and licensees who are authorized to possess, use,

or transport formula quantities of strategic special nuclear material (SSNM).

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

57. 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).

58. In § 50.2, definitions of *applicant, license, licensee,* and *prototype plant*, are added to read as follows:

§ 50.2 Definitions.

* * * * *

Applicant means a person or an entity applying for a license, permit, or other form of Commission permission or approval under this part or part 52 of this chapter.

* * * * *

License means a license, including a construction permit or operating license under this part, an early site permit, combined license or manufacturing license under part 52 of this chapter, or a renewed license issued by the Commission under this part, part 52, or part 54 of this chapter.

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

* * * * *

Prototype plant means a nuclear reactor that is used to test design features, such as the testing required under § 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.

* * * * *

59. In § 50.10 the introductory text of paragraphs (b) and (c), and paragraphs (e)(1), (e)(2), and (e)(3) are revised to read as follows:

§ 50.10 License required.

* * * * *

(b) No person shall begin the construction of a production or utilization facility on a site on which the facility is to be operated until either a construction permit under this part, or a combined license under subpart C of part 52 of this chapter has been issued. As used in this paragraph, the term ''construction'' includes pouring the foundation for, or the installation of, any portion of the permanent facility on the site, but does not include:

* * * * *

(c) Notwithstanding the provisions of paragraph (b) of this section, and subject to paragraphs (d) and (e) of this section, no person shall effect commencement of construction of a production or utilization facility subject to the provisions of § 51.20(b) of this chapter on a site on which the facility is to be operated until an early site permit, construction permit, or combined license has been issued. As used in this paragraph, the term ''commencement of construction'' means any clearing of land, excavation or other substantial action that would adversely affect the environment of a site, but does not include:

* * * * *

(e)(1) The Director of Nuclear Reactor Regulation may authorize 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 or is a testing facility, or an applicant for a combined license to conduct the following activities:

(i) Preparation of the site for construction of the facility (including activities as clearing, grading, construction of temporary access roads and borrow areas);

(ii) Installation of temporary construction support facilities (including items such as warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and construction support buildings);

(iii) Excavation for facility structures;

(iv) Construction of service facilities (including facilities such as roadways, paving, railroad spurs, fencing, exterior utility and lighting systems, transmission lines, and sanitary sewerage treatment facilities); and

(v) The construction of structures, 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.

(2) No authorization shall be granted unless the staff has completed a final environmental impact statement on the issuance of the construction permit or combined license as required by subpart A of part 51 of this chapter. An authorization shall be granted only after the presiding officer in the proceeding on the construction permit or combined license application:

(i) Has made all the findings required by §§ 51.104(b), 51.105, and 51.107 of this chapter to be made before issuance of the construction permit, or combined license for the facility; and

(ii) Has determined that, based upon the available information and review to date, there is reasonable assurance that the proposed site is a suitable location for a reactor of the general size and type proposed from the standpoint of radiological health and safety considerations under the Act and regulations issued by the Commission.

(3)(i) The Director of Nuclear Reactor Regulation may authorize 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 or is a testing facility, or an applicant for a combined license to conduct, in addition to the activities described in paragraph (e)(1) of this section, the installation of structural foundations, including any necessary subsurface preparation, for structures, systems, and components which prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public.

(ii) Such an authorization, which may be combined with the authorization described in paragraph (e)(1) of this section, or may be granted at a later time, shall be granted only after the presiding officer in the proceeding on the construction permit or combined license application has, in addition to making the findings and determinations required by paragraph (e)(2) of this section, determined that there are no unresolved safety issues relating to the additional activities that may be authorized under this paragraph that would constitute good cause for withholding authorization.

* * * * *

60. Section 50.23 is revised to read as follows:

§ 50.23 Construction permits.

A construction permit for the construction of a production or utilization facility will be issued before the issuance of a license if the application is otherwise acceptable, and will be converted upon completion of the facility and Commission action, into a license as provided in § 50.56. However, if a combined license for a nuclear power reactor is issued under part 52 of this chapter, the construction permit and operating license are deemed to be combined in a single license. A construction permit for the alteration of a production or utilization facility will be issued before the issuance of an amendment of a license, if the application for amendment is otherwise acceptable, as provided in § 50.91.

61. In § 50.30, the section heading and paragraphs (a)(1), (a)(3), (a)(5), (a)(6), (b), (e), and (f) are revised to read as follows:

§ 50.30 Filing of application; oath or affirmation.

(a) * * *

(1) Each filing of an application for a standard design approval or license to construct and/or operate, or manufacture, a production or utilization facility (including an early site permit, combined license, and manufacturing license under part 52 of this chapter), and any amendments to the applications, must be submitted to the U.S. Nuclear Regulatory Commission in accordance with § 50.4 or § 52.3 of this chapter, as applicable.

* * * * *

(3) Each applicant for a construction permit under this part, or an early site permit, combined license, or manufacturing license under part 52 of this chapter, shall, upon notification by the Atomic Safety and Licensing Board appointed to conduct the public hearing required by the Atomic Energy Act, update the application and serve the updated copies of the application or parts of it, eliminating all superseded information, together with an index of the updated application, as directed by the Atomic Safety and Licensing Board. Any subsequent amendment to the application must be served on those served copies of the application and must be submitted to the U.S. Nuclear Regulatory Commission as specified in § 50.4 or § 52.3 of this chapter, as applicable.

* * * * *

(5) At the time of filing an application, the Commission will make available at the NRC Web site, *http://www.nrc.gov*, a copy of the application, subsequent amendments, and other records pertinent to the matter which is the subject of the application for public inspection and copying.

(6) The serving of copies required by this section must not occur until the application has been docketed under § 2.101(a) of this chapter. Copies must be submitted to the Commission, as specified in § 50.4 or § 52.3 of this chapter, as applicable, to enable the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as appropriate, to determine whether the application is sufficiently complete to permit docketing.

(b) *Oath or affirmation.* Each application for a standard design approval or license, including, whenever appropriate, a construction permit or early site permit, or amendment of it, and each amendment of each application must be executed in a signed original by the applicant or duly authorized officer thereof under oath or affirmation.

* * * * *

(e) *Filing Fees.* Each application for a standard design approval or production or utilization facility license, including, whenever appropriate, a construction permit or early site permit, other than a license exempted from part 170 of this chapter, shall be accompanied by the fee prescribed in part 170 of this chapter. No fee will be required to accompany an application for renewal, amendment, or termination of a construction permit, operating license, combined license, or manufacturing license, except as provided in § 170.21 of this chapter.

(f) *Environmental report.* An application for a construction permit, operating license, early site permit, combined license, or manufacturing license for a nuclear power reactor, testing facility, fuel reprocessing plant, or other production or utilization facility whose construction or operation may be determined by the Commission to have a significant impact in the environment, shall be accompanied by an Environmental Report required under subpart A of part 51 of this chapter.

62. In § 50.33, paragraphs (f)(3) and (f)(4) are redesignated as (f)(4)and (f)(5), respectively, and are revised, a new paragraph (f)(3) is added, and paragraphs (g) and (k)(1) are revised to read as follows:

§ 50.33 Contents of applications; general information.

* * * * *

(f) * * *

(3) If the application is for a combined license under subpart C of part 52 of this chapter, the applicant shall submit the information described in paragraphs (f)(1) and (f)(2) of this section.

(4) Each application for a construction permit, operating license, or combined license submitted by a newly-formed entity organized for the primary purpose of constructing and/or operating a facility must also include information showing:

(i) The legal and financial relationships it has or proposes to have with its stockholders or owners;

(ii) The stockholders' or owners' financial ability to meet any contractual obligation to the entity which they have incurred or proposed to incur; and

(iii) Any other information considered necessary by the Commission to enable it to determine the applicant's financial qualification.

(5) The Commission may request an established entity or newly-formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this information appropriate. This may include information regarding a licensee's ability to continue the conduct of the activities authorized by the license and to decommission the facility.

(g) If the application is for an operating license or combined license for a nuclear power reactor, or if the application is for an early site permit and contains plans for coping with emergencies under § 52.17(b)(2)(ii) of this chapter, the applicant shall submit radiological emergency response plans of State and local governmental entities in the United States that are wholly or partially within the plume exposure pathway Emergency Planning Zone (EPZ),[3] as well as the plans of State governments wholly or partially within the ingestion pathway EPZ.[4] Generally, the plume exposure pathway EPZ for nuclear power reactors shall consist of an area about 10 miles (16 km) in radius and the ingestion pathway EPZ shall consist of an area about 50 miles (80 km) in radius. The exact size and configuration of the EPZs surrounding a particular nuclear power reactor shall be determined in relation to the local

[3] Emergency Planning Zones (EPZs) are discussed in NUREG–0396, EPA 520/1–78–016, ''Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light-Water Nuclear Power Plants,'' December 1978.

[4] If the State and local emergency response plans have been previously provided to the NRC for inclusion in the facility docket, the applicant need only provide the appropriate reference to meet this requirement.

emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries. The size of the EPZs also may be determined on a case-by-case basis for gas-cooled reactors and for reactors with an authorized power level less than 250 MW thermal. The plans for the ingestion pathway shall focus on such actions as are appropriate to protect the food ingestion pathway.

* * * * *

(k)(1) For an application for an operating license or combined license for a production or utilization facility, information in the form of a report, as described in § 50.75, indicating how reasonable assurance will be provided that funds will be available to decommission the facility.

* * * * *

63. In § 50.34, the section heading, the introductory text of paragraph (a)(1), paragraphs (a)(1)(ii)(E) and (a)(12), the introductory text of paragraph (b), paragraphs (b)(10) and (b)(11), and paragraphs (c), (d), and (e), the introductory text of paragraphs (f) and(f)(1), and paragraphs (g), and (h)(1)(ii) are revised to read as follows:

§ 50.34 Contents of construction permit and operating license applications; technical information.

(a) * * *

(1) Stationary power reactor applicants for a construction permit who apply on or after January 10, 1997, shall comply with paragraph (a)(1)(ii) of this section. All other applicants for a construction permit shall comply with paragraph (a)(1)(i) of this section.

* * * * *

(ii) * * *

(E) With respect to operation at the projected initial power level, the applicant is required to submit information prescribed in paragraphs (a)(2) through (a)(8) of this section, as well as the information required by paragraph (a)(1)(i) of this section, in support of the application for a construction permit.

* * * * *

(12) On or after January 10, 1997, stationary power reactor applicants who apply for a construction permit, as partial conformance to General Design Criterion 2 of appendix A to this part, shall comply with the earthquake engineering criteria in appendix S to this part.

(b) *Final safety analysis report.* Each application for an operating license shall include a final safety analysis report. The final safety analysis report shall include information 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 and of the facility as a whole, and shall include the following:

* * * * *

(10) On or after January 10, 1997, stationary power reactor applicants who apply for an operating license, as partial conformance to General Design Criterion 2 of appendix A to this part, shall comply with the earthquake engineering criteria of appendix S to this part. However, for those operating license applicants and holders whose construction permit was issued before January 10, 1997, the earthquake engineering criteria in section VI of appendix A to part 100 of this chapter continues to apply.

(11) On or after January 10, 1997, stationary power reactor applicants who apply for an operating license, shall provide a description and safety assessment of the site and of the facility as in § 50.34(a)(1)(ii). However, for either an operating license applicant or holder whose construction permit was issued before January 10, 1997, the reactor site criteria in part 100 of this chapter and the seismic and geologic siting criteria in appendix A to part 100 of this chapter continues to apply.

(c) *Physical security plan.* Each application for an operating license for a production or utilization facility must include a physical security plan. The plan must describe how the applicant will meet the requirements of part 73 of this chapter (and part 11 of this chapter, 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.

(d) *Safeguards contingency plan.* Each application for an operating license for a production or utilization facility that will be subject to §§ 73.50, 73.55, or § 73.60 of this chapter, must include a licensee 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 such a license shall include the first four categories of information contained in the applicant's safeguards contingency plan. (The first four categories of information as set forth in appendix C to 10 CFR part 73 of this chapter are Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix. The fifth category of information, Procedures, does not have to be submitted for approval.)[9]

(e) *Protection against unauthorized disclosure.* Each applicant for an operating license for a production or utilization facility, 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.

(f) *Additional TMI-related requirements.* In addition to the requirements of paragraph (a) of this section, each applicant for a light-water-reactor construction permit or manufacturing license whose application was pending as of February 16, 1982, shall meet the requirements in paragraphs (f)(1) through (3) of this section. This regulation applies to the pending applications by Duke Power Company (Perkins Nuclear Station Units 1, 2, and 3), Houston Lighting & Power Company (Allens Creek Nuclear Generating Station, Unit 1), Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), Puget Sound Power & Light Company (Skagit/Hanford Nuclear Power Project, Units 1 and 2), and Offshore Power Systems (License to Manufacture Floating Nuclear Plants). The number of units that will be specified in the manufacturing license above, if issued, will be that number whose start of manufacture, as defined in the license application, can practically begin within a 10-year period commencing on the date of issuance of the manufacturing license, but in no event will that number be in excess of ten. The manufacturing license will require the plant design to be updated no later than 5 years after its approval. Paragraphs (f)(1)(xii), (2)(ix), and (3)(v) of this section, pertaining to hydrogen control measures, must be met by all applicants covered by this regulation. However, the Commission may decide to impose additional requirements and the issue of

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

whether compliance with these provisions, together with 10 CFR 50.44 and criterion 50 of appendix A to 10 CFR part 50, is sufficient for issuance of that manufacturing license which may be considered in the manufacturing license proceeding. In addition, each applicant for a design certification, design approval, combined license, or manufacturing license under part 52 of this chapter shall demonstrate compliance with the technically relevant portions of the requirements in paragraphs (f)(1) through (3) of this section.

(1) To satisfy the following requirements, the application shall provide sufficient information to describe the nature of the studies, how they are to be conducted, estimated submittal dates, and a program to ensure that the results of these studies are factored into the final design of the facility. For licensees identified in the introduction to paragraph (f) of this section, all studies must be completed no later than 2 years following the issuance of the construction permit or manufacturing license.[10] For all other applicants, the studies must be submitted as part of the final safety analysis report.

* * * * *

(g) *Combustible gas control.* All applicants for a reactor construction permit or operating license whose application is submitted after October 16, 2003, shall include the analyses, and the descriptions of the equipment and systems required by § 50.44 as a part of their application.

(h) * * *

(1) * * *

(ii) Applications for light-water-cooled nuclear power plant construction permits docketed after May 17, 1982, shall include an evaluation of the facility against the SRP in effect on May 17, 1982, or the SRP revision in effect six months before the docket date of the application, whichever is later.

* * * * *

64. Section 50.34a is revised to read as follows:

§ 50.34a Design objectives for equipment to control releases of radioactive material in effluents—nuclear power reactors.

(a) An application for a construction permit shall include a description of the preliminary design of equipment to be installed to maintain control over radioactive materials in gaseous and liquid effluents produced during normal reactor operations, including expected operational occurrences. In the case of an application filed on or after January 2, 1971, the application shall also identify the design objectives, and the means to be employed, for keeping levels of radioactive material in effluents to unrestricted areas as low as is reasonably achievable. The term ''as low as is reasonably achievable'' as used in this part means as low as is reasonably achievable taking into account the state of technology, and the economics of improvements in relation to benefits to the public health and safety and other societal and socioeconomic considerations, and in relation to the use of atomic energy in the public interest. The guides set out in appendix I to this part provide numerical guidance on design objectives for light-water-cooled nuclear power reactors to meet the requirements that radioactive material in effluents released to unrestricted areas be kept as low as is reasonably achievable. These numerical guides for design objectives and limiting conditions for operation are not to be construed as radiation protection standards.

(b) Each application for a construction permit shall include:

(1) A description of the preliminary design of equipment to be installed under paragraph (a) of this section;

(2) An estimate of:

(i) The quantity of each of the principal radionuclides expected to be released annually to unrestricted areas in liquid effluents produced during normal reactor operations; and

(ii) The quantity of each of the principal radionuclides of the gases, halides, and particulates expected to be released annually to unrestricted areas in gaseous effluents produced during normal reactor operations.

(3) A general description of the provisions for packaging, storage, and shipment offsite of solid waste containing radioactive materials resulting from treatment of gaseous and liquid effluents and from other sources.

(c) Each application for an operating license shall include:

(1) A description of the equipment and procedures for the control of gaseous and liquid effluents and for the maintenance and use of equipment installed in radioactive waste systems, under paragraph (a) of this section; and

(2) A revised estimate of the information required in paragraph (b)(2) of this section if the expected releases and exposures differ significantly from the estimates submitted in the application for a construction permit.

(d) Each application for a combined license under part 52 of this chapter shall include:

(1) A description of the equipment and procedures for the control of gaseous and liquid effluents and for the maintenance and use of equipment installed in radioactive waste systems, under paragraph (a) of this section; and

(2) An estimate of the information required in paragraph (b)(2) of this section.

(e) Each application for a design approval, a design certification, or a manufacturing license under part 52 of this chapter shall include:

(1) A description of the equipment for the control of gaseous and liquid effluents and for the maintenance and use of equipment installed in radioactive waste systems, under paragraph (a) of this section; and

(2) An estimate of the information required in paragraph (b)(2) of this section.

65. In § 50.36, current paragraphs (c), (d), and (e) are redesignated as paragraphs (d), (e), and (f), respectively, and a new paragraph (c) is added to read as follows:

§ 50.36 Technical specifications.

* * * * *

(c) Each applicant for a design certification under part 52 of this chapter shall include in its application proposed generic technical specifications in accordance with the requirements of this section for the portion of the plant that is within the scope of the design certification application.

* * * * *

66. In § 50.36a, the introductory text of paragraph (a) is revised to read as follows:

§ 50.36a Technical specifications on effluents from nuclear power reactors.

(a) To keep releases of radioactive materials to unrestricted areas during normal conditions, including expected occurrences, as low as is reasonably achievable, each licensee of a nuclear power reactor and each applicant for a design certification will include technical specifications that, in addition to requiring compliance with applicable provisions of § 20.1301 of this chapter, require that:

* * * * *

67. Section 50.37 is revised to read as follows:

§ 50.37 Agreement limiting access to Classified Information.

As part of its application and in any event before the receipt of Restricted Data or classified National Security

[10] Alphanumeric designations correspond to the related action plan items in NUREG 0718 and NUREG 0660, ''NRC Action Plan Developed as a Result of the TMI–2 Accident.'' They are provided herein for information only.

Information or the issuance of a license, construction permit, early site permit, or standard design approval, or before the Commission has adopted a final standard design certification rule under part 52, the applicant shall agree in writing that it will not permit any individual to have access to any facility to possess Restricted Data or classified National Security Information until the individual and/or facility has been approved for access under the provisions of 10 CFR parts 25 and/or 95. The agreement of the applicant becomes part of the license, or construction permit, or standard design approval.

68. The undesignated center heading before § 50.40 is revised as follows:

Standards for Licenses, Certifications, and Regulatory Approvals

69. Section 50.40 is revised to read as follows:

§ 50.40 Common standards.

In determining that a construction permit or operating license in this part, or early site permit, combined license, or manufacturing license in part 52 of this chapter will be issued to an applicant, the Commission will be guided by the following considerations:

(a) Except for an early site permit or manufacturing license, the processes to be performed, the operating procedures, the facility and equipment, the use of the facility, and other technical specifications, or the proposals, in regard to any of the foregoing collectively provide reasonable assurance that the applicant will comply with the regulations in this chapter, including the regulations in part 20 of this chapter, and that the health and safety of the public will not be endangered.

(b) The applicant for a construction permit, operating license, combined license, or manufacturing license is technically and financially qualified to engage in the proposed activities in accordance with the regulations in this chapter. However, no consideration of financial qualification is necessary for an electric utility applicant for an operating license for a utilization facility of the type described in § 50.21(b) or § 50.22 or for an applicant for a manufacturing license.

(c) The issuance of a construction permit, operating license, early site permit, combined license, or manufacturing license to the applicant will not, in the opinion of the Commission, be inimical to the common defense and security or to the health and safety of the public.

(d) Any applicable requirements of subpart A of 10 CFR part 51 have been satisfied.

70. In § 50.43, the section heading, the introductory paragraph, and paragraph (d) are revised, and paragraph (e) is added to read as follows:

§ 50.43 Additional standards and provisions affecting class 103 licenses and certifications for commercial power.

In addition to applying the standards set forth in §§ 50.40 and 50.42, paragraphs (a) through (e) of this section apply in the case of a class 103 license for a facility for the generation of commercial power. For a design certification under part 52 of this chapter, only paragraph (e) of this section applies.

* * * * *

(d) Nothing shall preclude any government agency, now or hereafter authorized by law to engage in the production, marketing, or distribution of electric energy, if otherwise qualified, from obtaining a construction permit or operating license under this part, or a combined license under part 52 of this chapter for a utilization facility for the primary purpose of producing electric energy for disposition for ultimate public consumption.

(e) Applications for a design certification, combined license, manufacturing license, or operating license that propose nuclear reactor designs which differ 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, will be approved only if:

(1)(i) The performance of each safety feature of the design has been demonstrated through either analysis, appropriate test programs, experience, or a combination thereof;

(ii) Interdependent effects among the safety features of the design are acceptable, as demonstrated by analysis, appropriate test programs, experience, or a combination thereof; and

(iii) Sufficient data exist on the safety features of the design to assess the analytical tools used for safety analyses over a sufficient range of normal operating conditions, transient conditions, and specified accident sequences, including equilibrium core conditions; or

(2) There has been acceptable testing of a prototype plant over a sufficient range of normal operating conditions, transient conditions, and specified accident sequences, including equilibrium core conditions. If a prototype plant is used to comply with the testing requirements, then the NRC may impose additional requirements on siting, safety features, or operational conditions for the prototype plant to protect the public and the plant staff from the possible consequences of accidents during the testing period.

71. Section 50.45 is revised to read as follows:

§ 50.45 Standards for construction permits, operating licenses, and combined licenses.

(a) An applicant for an operating license or an amendment of an operating license who proposes to construct or alter a production or utilization facility will be initially granted a construction permit if the application is in conformity with and acceptable under the criteria of §§ 50.31 through 50.38, and the standards of §§ 50.40 through 50.43, as applicable.

(b) An applicant for a combined license or an amendment of a combined license under part 52 of this chapter who proposes to construct a utilization facility will be granted the combined license or amendment if the application is in conformity with and acceptable under the criteria of §§ 50.31 through 50.38, and the standards of §§ 50.40 through 50.43, as applicable.

(c) A holder of a combined license who proposes, after the Commission makes the finding under § 52.103(g) of this chapter, to alter the licensed facility will be initially granted either a construction permit or combined license if the application is in conformity with and acceptable under the criteria of §§ 50.31 through 50.38, and the standards of §§ 50.40 through 50.43, as applicable.

72. In § 50.46, paragraph (a)(3) is revised to read as follows:

§ 50.46 Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors.

(a) * * *

(3)(i) Each applicant for or holder of an operating license or construction permit issued under this part, applicant for a standard design certification under part 52 of this chapter (including an applicant after the Commission has adopted a final design certification regulation), or an applicant for or holder of a standard design approval, a combined license or a manufacturing license issued under part 52 of this chapter, shall estimate the effect of any change to or error in an acceptable evaluation model or in the application of such a model to determine if the change or error is significant. For this purpose, a significant change or error is one which results in a calculated peak fuel cladding temperature different by

more than 50 °F from the temperature calculated for the limiting transient using the last acceptable model, or is a cumulation of changes and errors such that the sum of the absolute magnitudes of the respective temperature changes is greater than 50 °F.

(ii) For each change to or error discovered in an acceptable evaluation model or in the application of such a model that affects the temperature calculation, the applicant or holder of a construction permit, operating license, combined license, or manufacturing license shall report the nature of the change or error and its estimated effect on the limiting ECCS analysis to the Commission at least annually as specified in § 50.4 or § 52.3 of this chapter, as applicable. If the change or error is significant, the applicant or licensee shall provide this report within 30 days and include with the report a proposed schedule for providing a reanalysis or taking other action as may be needed to show compliance with § 50.46 requirements. This schedule may be developed using an integrated scheduling system previously approved for the facility by the NRC. For those facilities not using an NRC approved integrated scheduling system, a schedule will be established by the NRC staff within 60 days of receipt of the proposed schedule. Any change or error correction that results in a calculated ECCS performance that does not conform to the criteria set forth in paragraph (b) of this section is a reportable event as described in §§ 50.55(e), 50.72, and 50.73. The affected applicant or licensee shall propose immediate steps to demonstrate compliance or bring plant design or operation into compliance with § 50.46 requirements.

(iii) For each change to or error discovered in an acceptable evaluation model or in the application of such a model that affects the temperature calculation, the applicant or holder of a standard design approval or the applicant for a standard design certification (including an applicant after the Commission has adopted a final design certification rule) shall report the nature of the change or error and its estimated effect on the limiting ECCS analysis to the Commission and to any applicant or licensee referencing the design approval or design certification at least annually as specified in § 52.3 of this chapter. If the change or error is significant, the applicant or holder of the design approval or the applicant for the design certification shall provide this report within 30 days and include with the report a proposed schedule for providing a reanalysis or taking other action as may be needed to show compliance with § 50.46 requirements. The affected applicant or holder shall propose immediate steps to demonstrate compliance or bring plant design into compliance with § 50.46 requirements.

* * * * *

73. In § 50.47, paragraph (a)(1), the introductory text of paragraph (c)(1), paragraphs (c)(1)(i) and (c)(1)(iii)(B) are revised, and paragraph (e) is added to read as follows:

§ 50.47 Emergency plans.

(a)(1)(i) Except as provided in paragraph (d) of this section, no initial operating license for a nuclear power reactor will be issued unless a finding is made by the NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. No finding under this section is necessary for issuance of a renewed nuclear power reactor operating license.

(ii) Except as provided in paragraph (e) of this section, no initial combined license under part 52 of this chapter will be issued unless a finding is made by the NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. No finding under this section is necessary for issuance of a renewed combined license.

(iii) For emergency plans submitted by an applicant under 10 CFR 52.17(b)(2)(ii), no early site permit under subpart A of part 52 of this chapter will be issued unless a finding is made by the NRC that the emergency plans provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. No finding under this section is necessary for issuance of a renewed early site permit.

* * * * *

(c)(1) Failure to meet the applicable standards set forth in paragraph (b) of this section may result in the Commission declining to issue an operating license or combined license. However, the applicant will have an opportunity to demonstrate to the satisfaction of the Commission that deficiencies in the plans are not significant for the plant in question, that adequate interim compensating actions have been or will be taken promptly, or that there are other compelling reasons to permit plant operations. Where an applicant for an operating license or combined license asserts that its inability to demonstrate compliance with the requirements of paragraph (b) of this section results wholly or substantially from the decision of state and/or local governments not to participate further in emergency planning, or if an applicant cannot obtain the certifications required by § 52.79(a)(22) of this chapter, an operating license or combined license may be issued if the applicant demonstrates to the Commission's satisfaction that:

(i) The applicant's inability to comply with the requirements of paragraph (b) of this section or § 52.79(a)(22) of this chapter is wholly or substantially the result of the non-participation of state and/or local governments.

* * * * *

(iii) * * *

(B) The utility's measures designed to compensate for any deficiencies resulting from State and/or local non-participation. In making its determination on the adequacy of a utility plan, the NRC will recognize the reality that in an actual emergency, State and local government officials will exercise their best efforts to protect the health and safety of the public. The NRC will determine the adequacy of that expected response, in combination with the utility's compensating measures, on a case-by-case basis, subject to the following guidance. In addressing the circumstance where applicant's inability to comply with the requirements of paragraph (b) of this section or § 52.79(a)(22) of this chapter, is wholly or substantially the result of non-participation of state and/or local governments, it may be presumed that in the event of an actual radiological emergency State and local officials would generally follow the utility plan. However, this presumption may be rebutted by, for example, a good faith and timely proffer of an adequate and feasible State and/or local radiological emergency plan that would in fact be relied upon in a radiological emergency.

* * * * *

(e) Notwithstanding the requirements of paragraphs (a) and (b) of this section and the provisions of § 52.103 of this chapter, a holder of a combined license under part 52 of this chapter may not load fuel or operate except as provided in accordance with appendix E to part 50 and § 50.54(gg).

74. In § 50.48, the introductory text of paragraph (a)(1) is revised to read as follows:

§ 50.48 Fire protection.

(a)(1) Each holder of an operating license issued under this part or a combined license issued under part 52 of this chapter must have a fire

protection plan that satisfies Criterion 3 of appendix A to this part. This fire protection plan must:

* * * * *

75. In § 50.49, paragraph (a) is revised to read as follows:

§ 50.49 Environmental qualification of electric equipment important to safety for nuclear power plants.

(a) Each holder of or an applicant for an operating license issued under this part, or a combined license or manufacturing license issued under part 52 of this chapter, other than a nuclear power plant for which the certifications required under § 50.82(a)(1) have been submitted, shall establish a program for qualifying the electric equipment defined in paragraph (b) of this section. For a manufacturing license, only electric equipment defined in paragraph (b) which is within the scope of the manufactured reactor must be included in the program.

* * * * *

76. In § 50.54, the introductory text, and paragraphs (a)(1), (i–1), and (o) are revised and paragraph (gg) is added to read as follows:

§ 50.54 Conditions of licenses.

The following paragraphs with the exception of paragraphs (r) and (gg) of this section are conditions in every operating license issued under this part, and the following paragraphs with the exception of paragraph (s) of this section are conditions in every combined license issued under part 52 of this chapter.

(a)(1) Each nuclear power plant or fuel reprocessing plant licensee subject to the quality assurance criteria in appendix B of this part shall implement, under § 50.34(b)(6)(ii) of this part or § 52.79 of this chapter, the quality assurance program described or referenced in the safety analysis report, including changes to that report. However, a holder of a combined license under part 52 of this chapter shall implement the quality assurance program described or referenced in the safety analysis report applicable to operation 30 days prior to the scheduled date for the initial loading of fuel.

* * * * *

(i–1) Within three (3) months after either the issuance of an operating license or the date that the Commission makes the finding under § 52.103(g) of this chapter for a combined license, as applicable, the licensee shall have in effect an operator requalification program. The operator requalification program must, as a minimum, meet the requirements of § 55.59(c) of this chapter. Notwithstanding the provisions of § 50.59, the licensee may not, except as specifically authorized by the Commission decrease the scope of an approved operator requalification program.

* * * * *

(o) Primary reactor containments for water cooled power reactors, other than facilities for which the certifications required under §§ 50.82(a)(1) or 52.110(a)(1) of this chapter have been submitted, shall be subject to the requirements set forth in appendix J to this part.

* * * * *

(gg)(1) Notwithstanding 10 CFR 52.103, if, following the conduct of the exercise required by paragraph IV.f.2.a of appendix E to part 50 of this chapter, FEMA identifies one or more deficiencies in the state of offsite emergency preparedness, the holder of a combined license under 10 CFR 52 may operate at up to 5 percent of rated thermal power only if the Commission finds that the state of onsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. The NRC will base this finding on its assessment of the applicant's onsite emergency plans against the pertinent standards in § 50.47 and appendix E to this part. Review of the applicant's emergency plans will include the following standards with offsite aspects:

(i) Arrangements for requesting and effectively using offsite assistance onsite have been made, arrangements to accommodate State and local staff at the licensee's near-site Emergency Operations Facility have been made, and other organizations capable of augmenting the planned onsite response have been identified.

(ii) Procedures have been established for licensee communications with State and local response organizations, including initial notification of the declaration of emergency and periodic provision of plant and response status reports.

(iii) Provisions exist for prompt communications among principal response organizations to offsite emergency personnel who would be responding onsite.

(iv) Adequate emergency facilities and equipment to support the emergency response onsite are provided and maintained.

(v) Adequate methods, systems, and equipment for assessing and monitoring actual or potential offsite consequences of a radiological emergency condition are in use onsite.

(vi) Arrangements are made for medical services for contaminated and injured onsite individuals.

(vii) Radiological emergency response training has been made available to those offsite who may be called to assist in an emergency onsite.

(2) The condition in this paragraph, regarding operation at up to 5 percent power, ceases to apply 30 days after FEMA informs the NRC that the offsite deficiencies have been corrected, unless the NRC notifies the combined license holder before the expiration of the 30-day period that the Commission finds under paragraphs (s)(2) and (3) of this section that the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

77. In § 50.55, the heading, the introductory text and paragraphs (a), (b), (c), and (e) are revised, and a new paragraph (f)(4) is added to read as follows:

§ 50.55 Conditions of construction permits, early site permits, combined licenses, and manufacturing licenses.

Each construction permit is subject to the following terms and conditions; each early site permit is subject to the terms and conditions in paragraph (f) of this section; each manufacturing license is subject to the terms and conditions in paragraphs (e) and (f) of this section; and each combined license is subject to the terms and conditions in paragraphs (a), (b), (c), (e) and (f) of this section until the date that the Commission makes the finding under § 52.103(g) of this chapter:

(a) The construction permit and combined license shall state the earliest and latest dates for completion of the construction or modification.

(b) If the proposed construction or modification of the facility is not completed by the latest completion date, the permit or license expires and all rights are forfeited. However, upon good cause shown, the Commission will extend the completion date for a reasonable period of time. The Commission will recognize, among other things, developmental problems attributable to the experimental nature of the facility or fire, flood, explosion, strike, sabotage, domestic violence, enemy action, an act of the elements, and other acts beyond the control of the permit holder, as a basis for extending the completion date.

(c) Except as modified by this section and § 50.55a, the construction permit or

combined license is subject to the same conditions to which a license is subject.

* * * * *

(e)(1) *Definitions.* For purposes of this paragraph, the definitions in § 21.3 of this chapter apply.

(2) *Posting requirements.* (i) Each individual, partnership, corporation, dedicating entity, or other entity subject to the regulations in this part shall post current copies of the regulations in this part; Section 206 of the Energy Reorganization Act of 1974 (ERA); and procedures adopted under the regulations in this part. These documents must be posted in a conspicuous position on any premises within the United States where the activities subject to this part are conducted.

(ii) If posting of the regulations in this part or the procedures adopted under the regulations in this part is not practicable, the licensee or firm subject to the regulations in this part may, in addition to posting Section 206 of the ERA, post a notice which describes the regulations/procedures, including the name of the individual to whom reports may be made, and states where the regulation, procedures, and reports may be examined.

(3) *Procedures.* Each individual, corporation, partnership, or other entity holding a facility construction permit subject to this part, combined license (until the Commission makes the finding under 10 CFR 52.103(g)), and manufacturing license under 10 CFR part 52 must adopt appropriate procedures to—

(i) Evaluate deviations and failures to comply to identify defects and failures to comply associated with substantial safety hazards as soon as practicable, and, except as provided in paragraph (e)(3)(ii) of this section, in all cases within 60 days of discovery, to identify a reportable defect or failure to comply that could create a substantial safety hazard, were it to remain uncorrected.

(ii) Ensure that if an evaluation of an identified deviation or failure to comply potentially associated with a substantial safety hazard cannot be completed within 60 days from discovery of the deviation or failure to comply, an interim report is prepared and submitted to the Commission through a director or responsible officer or designated person as discussed in paragraph (e)(10) of this section. The interim report should describe the deviation or failure to comply that it is being evaluated and should also state when the evaluation will be completed. This interim report must be submitted in writing within 60 days of discovery of the deviation or failure to comply.

(iii) Ensure that a director or responsible officer of the holder of a facility construction permit subject to this part, combined license (until the Commission makes the finding under 10 CFR 52.103(g)), and manufacturing license under 10 CFR part 52 is informed as soon as practicable, and, in all cases, within the 5 working days after completion of the evaluation described in paragraph (e)(3)(i) or (e)(3)(ii) of this section, if the construction or manufacture of a facility or activity, or a basic component supplied for such facility or activity—

(A) Fails to comply with the AEA, as amended, or any applicable regulation, order, or license of the Commission, relating to a substantial safety hazard;

(B) Contains a defect; or

(C) Undergoes any significant breakdown in any portion of the quality assurance program conducted under the requirements of appendix B to 10 CFR part 50 which could have produced a defect in a basic component. These breakdowns in the quality assurance program are reportable whether or not the breakdown actually resulted in a defect in a design approved and released for construction, installation, or manufacture.

(4) *Notification.* (i) The holder of a facility construction permit subject to this part, combined license (until the Commission makes the finding under § 10 CFR 52.103(g)), and manufacturing license who obtains information reasonably indicating that the facility fails to comply with the AEA, as amended, or any applicable regulation, order, or license of the Commission relating to a substantial safety hazard must notify the Commission of the failure to comply through a director or responsible officer or designated person as discussed in paragraph (e)(10) of this section.

(ii) The holder of a facility construction permit subject to this part or combined license who obtains information reasonably indicating the existence of any defect found in the construction or any defect found in the final design of a facility as approved and released for construction must notify the Commission of the defect through a director or responsible officer or designated person as discussed in paragraph (e)(10) of this section.

(iii) The holder of a facility construction permit subject to this part or combined license, who obtains information reasonably indicating that the quality assurance program has undergone any significant breakdown discussed in paragraph (e)(3)(ii)(C) of this section must notify the Commission of the breakdown in the quality assurance program through a director or responsible officer or designated person as discussed in paragraph (e)(10) of this section.

(iv) A dedicating entity is responsible for identifying and evaluating deviations and reporting defects and failures to comply associated with substantial safety hazards for dedicated items; and maintaining auditable records for the dedication process.

(v) The notification requirements of this paragraph apply to all defects and failures to comply associated with a substantial safety hazard regardless of whether extensive evaluation, redesign, or repair is required to conform to the criteria and bases stated in the safety analysis report, construction permit, or manufacturing license. Evaluation of potential defects and failures to comply and reporting of defects and failures to comply under this section satisfies the construction permit holder's, combined license holder's, and manufacturing license holder's evaluation and notification obligations under part 21 of this chapter, and satisfies the responsibility of individual directors or responsible officers of holders of construction permits issued under § 50.23, holders of combined licenses (until the Commission makes the finding under § 52.103 of this chapter), and holders of manufacturing licenses to report defects, and failures to comply associated with substantial safety hazards under Section 206 of the ERA. The director or responsible officer may authorize an individual to provide the notification required by this section, provided that this must not relieve the director or responsible officer of his or her responsibility under this section.

(5) *Notification—timing and where sent.* The notification required by paragraph (e)(4) of this section must consist of—

(i) Initial notification by facsimile, which is the preferred method of notification, to the NRC Operations Center at (301) 816–5151 or by telephone at (301) 816–5100 within 2 days following receipt of information by the director or responsible corporate officer under paragraph (e)(3)(iii) of this section, on the identification of a defect or a failure to comply. Verification that the facsimile has been received should be made by calling the NRC Operations Center. This paragraph does not apply to interim reports described in paragraph (e)(3)(ii) of this section.

(ii) Written notification submitted to the Document Control Desk, U.S. Nuclear Regulatory Commission, by an appropriate method listed in § 50.4, with a copy to the appropriate Regional Administrator at the address specified

in appendix D to part 20 of this chapter and a copy to the appropriate NRC resident inspector within 30 days following receipt of information by the director or responsible corporate officer under paragraph (e)(3)(iii) of this section, on the identification of a defect or failure to comply.

(6) *Content of notification.* The written notification required by paragraph (e)(9)(ii) of this section must clearly indicate that the written notification is being submitted under § 50.55(e) and include the following information, to the extent known—

(i) Name and address of the individual or individuals informing the Commission.

(ii) Identification of the facility, the activity, or the basic component supplied for the facility or the activity within the United States which contains a defect or fails to comply.

(iii) Identification of the firm constructing or manufacturing the facility or supplying the basic component which fails to comply or contains a defect.

(iv) Nature of the defect or failure to comply and the safety hazard which is created or could be created by the defect or failure to comply.

(v) The date on which the information of a defect or failure to comply was obtained.

(vi) In the case of a basic component which contains a defect or fails to comply, the number and location of all the basic components in use at the facility subject to the regulations in this part.

(vii) In the case of a completed reactor manufactured under part 52 of this chapter, the entities to which the reactor was supplied.

(viii) The corrective action which has been, is being, or will be taken; the name of the individual or organization responsible for the action; and the length of time that has been or will be taken to complete the action.

(ix) Any advice related to the defect or failure to comply about the facility, activity, or basic component that has been, is being, or will be given to other entities.

(7) *Procurement documents.* Each individual, corporation, partnership, dedicating entity, or other entity subject to the regulations in this part shall ensure that each procurement document for a facility, or a basic component specifies or is issued by the entity subject to the regulations, when applicable, that the provisions of 10 CFR part 21 or 10 CFR 50.55(e) applies, as applicable.

(8) *Coordination with 10 CFR part 21.* The requirements of § 50.55(e) are satisfied when the defect or failure to comply associated with a substantial safety hazard has been previously reported under part 21 of this chapter, under § 73.71 of this chapter, or under §§ 50.55(e) or 50.73. For holders of construction permits issued before October 29, 1991, evaluation, reporting and recordkeeping requirements of § 50.55(e) may be met by complying with the comparable requirements of part 21 of this chapter.

(9) *Records retention.* The holder of a construction permit, combined operating license, and manufacturing license must prepare and maintain records necessary to accomplish the purposes of this section, specifically—

(i) Retain procurement documents, which define the requirements that facilities or basic components must meet in order to be considered acceptable, for the lifetime of the facility or basic component.

(ii) Retain records of evaluations of all deviations and failures to comply under paragraph (e)(3)(i) of this section for the longest of:

(A) Ten (10) years from the date of the evaluation;

(B) Five (5) years from the date that an early site permit is referenced in an application for a combined license; or

(C) Five (5) years from the date of delivery of a manufactured reactor.

(iii) Retain records of all interim reports to the Commission made under paragraph (e)(3)(ii) of this section, or notifications to the Commission made under paragraph (e)(4) of this section for the minimum time periods stated in paragraph (e)(9)(ii) of this section;

(iv) Suppliers of basic components must retain records of:

(A) All notifications sent to affected licensees or purchasers under paragraph (e)(4)(iv) of this section for a minimum of ten (10) years following the date of the notification;

(B) The facilities or other purchasers to whom basic components or associated services were supplied for a minimum of fifteen (15) years from the delivery of the basic component or associated services.

(v) Maintaining records in accordance with this section satisfies the recordkeeping obligations under part 21 of this chapter of the entities, including directors or responsible officers thereof, subject to this section.

(f) * * *

(4) Each holder of an early site permit or a manufacturing license under part 52 of this chapter shall implement the quality assurance program described or referenced in the safety analysis report, including changes to that report. Each holder of a combined license shall implement the quality assurance program for design and construction described or referenced in the safety analysis report, including changes to that report, provided, however, that the holder of a combined license is not subject to the terms and conditions in this paragraph after the Commission makes the finding under § 52.103(g) of this chapter.

(i) Each holder described in paragraph (f)(4) of this section may make a change to a previously accepted quality assurance program description included or referenced in the safety analysis report, if the change does not reduce the commitments in the program description previously accepted by the NRC. Changes to the quality assurance program description that do not reduce the commitments must be submitted to NRC within 90 days. Changes to the quality assurance program description that reduce the commitments must be submitted to NRC and receive NRC approval before implementation, as follows:

(A) Changes to the safety analysis report must be submitted for review as specified in § 50.4. Changes made to NRC-accepted quality assurance topical report descriptions must be submitted as specified in § 50.4.

(B) The submittal of a change to the safety analysis report quality assurance program description must include all pages affected by that change and must be accompanied by a forwarding letter identifying the change, the reason for the change, and the basis for concluding that the revised program incorporating the change continues to satisfy the criteria of appendix B of this part and the safety analysis report quality assurance program description commitments previously accepted by the NRC (the letter need not provide the basis for changes that correct spelling, punctuation, or editorial items).

(C) A copy of the forwarding letter identifying the changes must be maintained as a facility record for three (3) years.

(D) Changes to the quality assurance program description included or referenced in the safety analysis report shall be regarded as accepted by the Commission upon receipt of a letter to this effect from the appropriate reviewing office of the Commission or 60 days after submittal to the Commission, whichever occurs first.

(ii) [Reserved]

78. In Section 50.55a, the introductory paragraph, paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii), (b)(1)(v), the introductory text of paragraphs (b)(4) and (d)(1), paragraph (e)(1), the introductory text of paragraph (f)(3), paragraphs (f)(3)(iii),

(f)(3)(iv)(B), (f)(4)(i), the introductory text of paragraph (g)(3), paragraph (g)(4)(i), the introductory text of paragraph (g)(4)(v), and paragraph (h)(3) are revised to read as follows:

§ 50.55a Codes and standards.

Each construction permit for a utilization facility is subject to the following conditions in addition to those specified in § 50.55. Each combined license for a utilization facility is subject to the following conditions in addition to those specified in § 50.55, except that each combined license for a boiling or pressurized water-cooled nuclear power facility is subject to the conditions in paragraphs (f) and (g) of this section, but only after the Commission makes the finding under § 52.103(g) of this chapter. Each operating license for a boiling or pressurized water-cooled nuclear power facility is subject to the conditions in paragraphs (f) and (g) of this section in addition to those specified in § 50.55. Each manufacturing license, standard design approval, and standard design certification application under part 52 of this chapter is subject to the conditions in paragraphs (a), (b)(1), (b)(4), (c), (d), (e), (f)(3), and (g)(3) of this section.

* * * * *

(b) * * *

(1) * * *

(i) *Section III Materials.* When applying the 1992 Edition of Section III, applicants or licensees must apply the 1992 Edition with the 1992 Addenda of Section II of the ASME Boiler and Pressure Vessel Code.

(ii) *Weld leg dimensions.* When applying the 1989 Addenda through the latest edition, and addenda incorporated by reference in paragraph (b)(1) of this section, applicants or licensees may not apply paragraph NB–3683.4(c)(1), Footnote 11 to Figure NC–3673.2(b)–1, and Figure ND–3673.2(b)–1.

(iii) *Seismic design.* Applicants or licensees may use Articles NB–3200, NB–3600, NC–3600, and ND–3600 up to and including the 1993 Addenda, subject to the limitation specified in paragraph (b)(1)(ii) of this section. Applicants or licensees may not use these articles in the 1994 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(1) of this section.

* * * * *

(v) *Independence of inspection.* Applicants or licensees may not apply NCA–4134.10(a) of Section III, 1995 Edition, through the latest edition and addenda incorporated by reference in paragraph (b)(1) of this section.

* * * * *

(4) *Design, Fabrication, and Materials Code Cases.* Applicants or licensees may apply the ASME Boiler and Pressure Vessel Code cases listed in NRC Regulatory Guide 1.84, Revision 32, without prior NRC approval subject to the following:

* * * * *

(d) * * *

(1) For a nuclear power plant whose application for a construction permit under this part, or a combined license or manufacturing license under part 52 of this chapter is docketed after May 14, 1984, or for an application for a standard design approval or a standard design certification docketed after May 14, 1984, components classified Quality Group B 9 must meet the requirements for Class 2 Components in Section III of the ASME Boiler and Pressure Vessel Code.

* * * * *

(e) * * *

(1) For a nuclear power plant whose application for a construction permit under this part, or a combined license or manufacturing license under part 52 of this chapter is docketed after May 14, 1984, or for an application for a standard design approval or a standard design certification docketed after May 14, 1984, components classified Quality Group C 9 must meet the requirements for Class 3 components in Section III of the ASME Boiler and Pressure Vessel Code.

* * * * *

(f) * * *

(3) For a boiling or pressurized water-cooled nuclear power facility whose construction permit under this part or design approval, design certification, combined license, or manufacturing license under part 52 of this chapter, was issued on or after July 1, 1974:

* * * * *

(iii)(A) Pumps and valves, in facilities whose construction permit under this part, or design certification or design approval under part 52 of this chapter was issued before November 22, 1999, which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases that are listed in NRC Regulatory Guide 1.147, through Revision 13, that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular pump or valve or the summer 1973 Addenda, whichever is later.

(B) Pumps and valves, in facilities whose construction permit under this part, or design certification, design approval, combined license, or manufacturing license under part 52 of this chapter, is issued on or after November 22, 1999, which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in editions and addenda of the ASME OM Code (or the optional ASME Code cases listed in the NRC Regulatory Guide 1.192 that is incorporated by reference in paragraph (b) of this section) referenced in paragraph (b)(3) of this section at the time the construction permit is issued.

(iv) * * *

(B) Pumps and valves, in facilities whose construction permit under this part or design certification or combined license under part 52 of this chapter is issued on or after November 22, 1999, which are classified as ASME Code Class 2 and 3 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in editions and addenda of the ASME OM Code (or the optional ASME Code cases listed in the NRC Regulatory Guide 1.192 that is incorporated by reference in paragraph (b) of this section) referenced in paragraph (b)(3) of this section at the time the construction permit is issued.

* * * * *

(4) * * *

(i) Inservice tests to verify operational readiness of pumps and valves, whose function is required for safety, conducted during the initial 120-month interval must comply with the requirements in the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section on the date 12 months before the date of issuance of the operating license under this part, or 12 months before the date scheduled for initial loading fuel under a combined license under part 52 of this chapter (or the optional ASME Code cases listed in NRC Regulatory Guide 1.192, that is incorporated by reference in paragraph (b) of this section), subject to the limitations and modifications listed in paragraph (b) of this section.

* * * * *

(g) * * *

(3) For a boiling or pressurized water-cooled nuclear power facility whose

construction permit under this part, or design certification, design approval, combined license, or manufacturing license under part 52 of this chapter, was issued on or after July 1, 1974:

* * * * *

(4) * * *

(i) Inservice examinations of components and system pressure tests conducted during the initial 120-month inspection interval must comply with the requirements in the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section on the date 12 months before the date of issuance of the operating license under this part, or 12 months before the date scheduled for initial loading of fuel under a combined license under part 52 of this chapter (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, through Revision 13, that are incorporated by reference in paragraph (b) of this section), subject to the limitations and modifications listed in paragraph (b) of this section.

* * * * *

(v) For a boiling or pressurized water-cooled nuclear power facility whose construction permit under this part or combined license under part 52 of this chapter was issued after January 1, 1956:

* * * * *

(h) * * *

(3) Safety systems. Applications filed on or after May 13, 1999, for construction permits and operating licenses under this part, and for design approvals, design certifications, and combined licenses under part 52 of this chapter, must meet the requirements for safety systems in IEEE Std. 603–1991 and the correction sheet dated January 30, 1995.

79. In § 50.59, paragraphs (b), (d)(2), and (d)(3) are revised to read as follows:

§ 50.59 Changes, tests, and experiments.

* * * * *

(b) This section applies to each holder of an operating license issued under this part or a combined license issued under part 52 of this chapter, including the holder of a license authorizing operation of a nuclear power reactor that has submitted the certification of permanent cessation of operations required under § 50.82(a)(1) or § 50.110 or a reactor licensee whose license has been amended to allow possession of nuclear fuel but not operation of the facility.

* * * * *

(d) * * *

(2) The licensee shall submit, as specified in § 50.4 or § 52.3 of this chapter, as applicable, a report containing a brief description of any changes, tests, and experiments, including a summary of the evaluation of each. A report must be submitted at intervals not to exceed 24 months. For combined licenses, the report must be submitted at intervals not to exceed 6 months during the period from the date of application for a combined license to the date the Commission makes its findings under 10 CFR 52.103(g).

(3) The records of changes in the facility must be maintained until the termination of an operating license issued under this part, a combined license issued under part 52 of this chapter, or the termination of a license issued under 10 CFR part 54, whichever is later. Records of changes in procedures and records of tests and experiments must be maintained for a period of 5 years.

80. In § 50.61, paragraph (b)(1) is revised to read as follows:

§ 50.61 Fracture toughness requirements for protection against pressurized thermal shock events.

* * * * *

(b) * * *

(1) For each pressurized water nuclear power reactor for which an operating license has been issued under this part or a combined license has been issued under part 52 of this chapter, other than a nuclear power reactor facility for which the certifications required under § 50.82(a)(1) have been submitted, the licensee shall have projected values of RT_{PTS}, accepted by the NRC, for each reactor vessel beltline material for the EOL fluence of the material. The assessment of RT_{PTS} must use the calculation procedures given in paragraph (c)(1) of this section, except as provided in paragraphs (c)(2) and (c)(3) of this section. The assessment must specify the bases for the projected value of RT_{PTS} for each vessel beltline material, including the assumptions regarding core loading patterns, and must specify the copper and nickel contents and the fluence value used in the calculation for each beltline material. This assessment must be updated whenever there is a significant [2] change in projected values of RT_{PTS}, or upon request for a change in the expiration date for operation of the facility.

* * * * *

81. In § 50.62, paragraph (d) is revised to read as follows:

§ 50.62 Requirements for reduction of risk from anticipated transients without scram (ATWS) events for light-water-cooled nuclear power plants.

* * * * *

(d) *Implementation.* For each light-water-cooled nuclear power plant operating license issued before [INSERT EFFECTIVE DATE OF FINAL RULE], by 180 days after the issuance of the QA guidance for non-safety related components, each licensee shall develop and submit to the Commission, as specified in § 50.4, a proposed schedule for meeting the requirements of paragraphs (c)(1) through (c)(5) of this section. Each shall include an explanation of the schedule along with a justification if the schedule calls for final implementation later than the second refueling outage after July 26, 1984, or the date of issuance of a license authorizing operation above 5 percent of full power. A final schedule shall then be mutually agreed upon by the Commission and licensee. For each light-water-cooled nuclear power plant operating license application submitted after [INSERT EFFECTIVE DATE OF FINAL RULE], the applicant shall submit information in its final safety analysis report demonstrating how it will comply with paragraphs (c)(1) through (c)(5) of this section.

82. In § 50.63, the introductory text of paragraphs (a)(1) and (c)(1) are revised to read as follows:

§ 50.63 Loss of all alternating current power.

(a) * * *

(1) Each light-water-cooled nuclear power plant licensed to operate under this part, each light-water-cooled nuclear power plant licensed under subpart C of 10 CFR part 52 after the Commission makes the finding under § 52.103(g) of this chapter, and each design for a light-water-cooled nuclear power plant approved under a standard design approval, standard design certification, and manufacturing license under part 52 of this chapter must be able to withstand for a specified duration and recover from a station blackout as defined in § 50.2. The specified station blackout duration shall be based on the following factors:

* * * * *

(c) * * *

(1) *Information submittal.* For each light-water-cooled nuclear power plant licensed to operate on or before July 21, 1988, the licensee shall submit the information defined below to the Director of the Office of Nuclear Reactor Regulation by April 17, 1989. For each light-water-cooled nuclear power plant licensed to operate after July 21, 1988,

[2] Changes to RT_{PTS} values are considered significant if either the previous value or the current value, or both values, exceed the screening criterion before the expiration of the operating license or the combined license under part 52 of this chapter, including any renewed term, if applicable for the plant.

but before [INSERT EFFECTIVE DATE OF FINAL RULE], the licensee shall submit the information defined below to the Director of the Office of Nuclear Reactor Regulation, by 270 days after the date of license issuance. For each light-water-cooled nuclear power plant operating license application submitted after [INSERT EFFECTIVE DATE OF FINAL RULE], the applicant shall submit the information defined below in its final safety analysis report.

* * * * *

83. In § 50.65, paragraphs (a)(1) and (c) are revised to read as follows:

§ 50.65 Requirements for monitoring the effectiveness of maintenance at nuclear power plants.

* * * * *

(a)(1) Each holder of an operating license for a nuclear power plant under this part and each holder of a combined license under part 52 of this chapter after the Commission makes the finding under § 52.103(g), shall monitor the performance or condition of structures, systems, or components, against licensee-established goals, in a manner sufficient to provide reasonable assurance that these structures, systems, and components, as defined in paragraph (b) of this section, are capable of fulfilling their intended functions. These goals shall be established commensurate with safety and, where practical, take into account industry-wide operating experience. When the performance or condition of a structure, system, or component does not meet established goals, appropriate corrective action shall be taken. For a nuclear power plant for which the licensee has submitted the certifications specified in § 50.82(a)(1) or 52.110(a)(1) of this chapter, as applicable, this section only shall apply to the extent that the licensee shall monitor the performance or condition of all structures, systems, or components associated with the storage, control, and maintenance of spent fuel in a safe condition, in a manner sufficient to provide reasonable assurance that these structures, systems, and components are capable of fulfilling their intended functions.

* * * * *

(c) The requirements of this section shall be implemented by each licensee no later than July 10, 1996. For combined licenses under part 52, the requirements of this section shall be implemented by the licensee no later than 30 days before the scheduled date for initial loading of fuel.

84. In § 50.70 paragraphs (a) and (b)(2) are revised to read as follows:

§ 50.70 Inspections.

(a) Each applicant for or holder of a license, including a construction permit or an early site permit, shall permit inspection, by duly authorized representatives of the Commission, of his records, premises, activities, and of licensed materials in possession or use, related to the license or construction permit or early site permit as may be necessary to effectuate the purposes of the Act, as amended, including section 105 of the Act, and the Energy Reorganization Act of 1974, as amended.

(b) * * *

(2) For a site with a single power reactor or fuel facility licensed under part 50 or part 52 of this chapter, or a facility issued a manufacturing license under part 52, the space provided shall be adequate to accommodate a full-time inspector, a part-time secretary and transient NRC personnel and will be generally commensurate with other office facilities at the site. A space of 250 square feet either within the site's office complex or in an office trailer or other onsite space is suggested as a guide. For sites containing multiple power reactor units or fuel facilities, additional space may be requested to accommodate additional full-time inspector(s). The office space that is provided shall be subject to the approval of the Director, Office of Nuclear Reactor Regulation. All furniture, supplies and communication equipment will be furnished by the Commission.

* * * * *

85. In § 50.71, paragraphs (a), (c), (d)(1), and the introductory text of paragraph (e) are revised, paragraph (f) is redesignated as paragraph (g) and revised, and new paragraph (f) is added to read as follows:

§ 50.71 Maintenance of records, making of reports.

(a) Each licensee, including each holder of a construction permit or early site permit, shall maintain all records and make all reports, in connection with the activity, as may be required by the conditions of the license or permit or by the regulations, and orders of the Commission in effectuating the purposes of the Act, including Section 105 of the Act, and the Energy Reorganization Act of 1974, as amended. Reports must be submitted in accordance with § 50.4 or 10 CFR 52.3, as applicable.

* * * * *

(c) Records that are required by the regulations in this part or part 52 of this chapter, by license condition, or by technical specifications must be retained for the period specified by the appropriate regulation, license condition, or technical specification. If a retention period is not otherwise specified, these records must be retained until the Commission terminates the facility license or, in the case of an early site permit, until the permit expires.

(d)(1) Records which must be maintained under this part or part 52 of this chapter may be the original or a reproduced copy or microform if the reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability of producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with, and loss of records.

* * * * *

(e) Each person licensed to operate a nuclear power reactor under the provisions of § 50.21 or § 50.22 shall update periodically, as provided in paragraphs (e)(3) and (4) of this section, the final safety analysis report (FSAR) originally submitted as part of the application for the license, to assure that the information included in the report contains the latest information developed. This submittal shall contain all the changes necessary to reflect information and analyses submitted to the Commission by the licensee or prepared by the licensee pursuant to Commission requirement since the submittal of the original FSAR, or as appropriate, the last update to the FSAR under this section. The submittal shall include the effects [1] of all changes made in the facility or procedures as described in the FSAR; all safety analyses and evaluations performed by the licensee either in support of approved license amendments or in support of conclusions that changes did not require a license amendment in accordance with § 50.59(c)(2) or, in the case of a license that references a certified design, in accordance with § 52.98(c); and all analyses of new safety issues performed by or on behalf of the licensee at Commission request. The

[1] Effects of changes includes appropriate revisions of descriptions in the FSAR such that the FSAR (as updated) is complete and accurate.

updated information shall be appropriately located within the update to the FSAR.

* * * * *

(f) Each person licensed to manufacture a nuclear power reactor under subpart F of 10 CFR part 52 shall update the FSAR originally submitted as part of the application to reflect any modification to the design that is approved by the Commission under § 52.171 of this chapter, and any new analyses of the design performed by or on behalf of the licensee at the NRC's request. This submittal shall contain all the changes necessary to reflect information and analyses submitted to the Commission by the licensee or prepared by the licensee with respect to the modification approved under § 52.171 of this chapter or the analyses requested by the Commission under § 52.171 of this chapter. The updated information shall be appropriately located within the update to the FSAR.

(g) The provisions of this section apply to nuclear power reactor licensees that have submitted the certification of permanent cessation of operations required under §§ 50.82(a)(1)(i) or 52.110(a)(1) of this chapter. The provisions of paragraphs (a), (c), and (d) of this section also apply to non-power reactor licensees that are no longer authorized to operate.

86. In § 50.73, paragraph (a)(1) is revised to read as follows:

§ 50.73 Licensee event report system.

(a) * * *

(1) The holder of an operating license under this part or a combined license under part 52 of this chapter (after the Commission has made the finding under § 52.103(g) of this chapter) for a nuclear power plant (licensee) shall submit a Licensee Event Report (LER) for any event of the type described in this paragraph within 60 days after the discovery of the event. In the case of an invalid actuation reported under § 50.73(a)(2)(iv), other than actuation of the reactor protection system (RPS) when the reactor is critical, the licensee may, at its option, provide a telephone notification to the NRC Operations Center within 60 days after discovery of the event instead of submitting a written LER. Unless otherwise specified in this section, the licensee shall report an event if it occurred within 3 years of the date of discovery regardless of the plant mode or power level, and regardless of the significance of the structure, system, or component that initiated the event.

* * * * *

87. In § 50.75, paragraphs (a) and (b) are revised, paragraphs (f)(1), (f)(2), (f)(3), and (f)(4) are redesignated as paragraphs (f)(2), (f)(3), (f)(4), and (f)(5), respectively, and paragraphs (e)(3) and (f)(1) are added to read as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

(a) This section establishes requirements for indicating to NRC how a licensee will provide reasonable assurance that funds will be available for the decommissioning process. For power reactor licensees (except a holder of a manufacturing license under part 52 of this chapter), reasonable assurance consists of a series of steps as provided in paragraphs (b), (c), (e), and (f) of this section. Funding for the decommissioning of power reactors may also be subject to the regulation of Federal or State Government agencies (e.g., Federal Energy Regulatory Commission (FERC) and State Public Utility Commissions) that have jurisdiction over rate regulation. The requirements of this section, in particular paragraph (c) of this section, are in addition to, and not substitution for, other requirements, and are not intended to be used by themselves or by other agencies to establish rates.

(b) Each power reactor applicant for or holder of an operating license, and each applicant for a combined license under subpart C of 10 CFR part 52 for a production or utilization facility of the type and power level specified in paragraph (c) of this section shall submit a decommissioning report, as required by § 50.33(k).

(1) For an applicant for or holder of an operating license under part 50, the report must contain a certification that financial assurance for decommissioning will be (for a license applicant), or has been (for a license holder), provided in an amount which may be more, but not less, than the amount stated in the table in paragraph (c)(1) of this section adjusted using a rate at least equal to that stated in paragraph (c)(2) of this section. For an applicant for a combined license under subpart C of 10 CFR part 52, the report must contain a certification that financial assurance for decommissioning will be provided no later than 30 days after the Commission publishes notice in the **Federal Register** under § 52.103(a) in an amount which may be more, but not less, than the amount stated in the table in paragraph (c)(1) of this section, adjusted using a rate at least equal to that stated in paragraph (c)(2) of this section.

(2) The amount to be provided must be adjusted annually using a rate at least equal to that stated in paragraph (c)(2) of this section.

(3) The amount must use one or more of the methods described in paragraph (e) of this section as acceptable to the NRC.

(4) The amount stated in the applicant's or licensee's certification may be based on a cost estimate for decommissioning the facility. As part of the certification, a copy of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section must be submitted to NRC; provided, however, that an applicant for or holder of a combined license need not obtain such financial instrument or submit a copy to the Commission except as provided in paragraph (e)(3) of this section.

* * * * *

(e) * * *

(3) Each holder of a combined license under subpart C of 10 CFR part 52 shall, following issuance of the combined license until the date that the Commission makes the finding under 10 CFR 52.103(g), submit a report to the NRC, by March 31 of each year, containing an update to the certification described under paragraph (b)(1) of this section. No later than 30 days after the Commission publishes notice in the **Federal Register** under 10 CFR 52.103(a), the licensee shall submit a report containing a certification that financial assurance for decommissioning is being provided in an amount specified in the licensee's most recent updated certification; and a copy of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section.

(f)(1) Each power reactor licensee shall report, on a calendar-year basis, to the NRC by March 31, 1999, and at least once every 2 years on the status of its decommissioning funding for each reactor or part of a reactor that it owns. However, each holder of a combined license under part 52 of this chapter need not begin reporting until the date that the Commission has made the finding under § 52.103(g) of this chapter. The information in this report must include, at a minimum the amount of decommissioning funds estimated to be required under 10 CFR 50.75(b) and (c); the amount accumulated to the end of the calendar year preceding the date of the report; a schedule of the annual amounts remaining to be collected; the assumptions used regarding rates of escalation in decommissioning costs, rates of earnings on decommissioning funds, and rates of other factors used in funding projections; any contracts upon which the licensee is relying under paragraph (e)(1)(v) of this section; any modifications occurring to a licensee's

current method of providing financial assurance since the last submitted report; and any material changes to trust agreements. Any licensee for a plant that is within 5 years of the projected end of its operation, or where conditions have changed so that it will close within 5 years (before the end of its licensed life), or has already closed (before the end of its licensed life), or for plants involved in mergers or acquisitions shall submit this report annually.

* * * * *

88. Section 50.78 is revised to read as follows:

§ 50.78 Installation information and verification.

Each holder of a construction permit and each holder of a combined license shall, if requested by the Commission, submit installation information on Form–71, permit verification thereof by the International Atomic Energy Agency, and take other action as may be necessary to implement the US/IAEA Safeguards Agreement, in the manner set forth in § 75.6 and §§ 75.11 through 75.14 of this chapter.

89. In § 50.80, paragraph (a) is revised to read as follows:

§ 50.80 Transfer of licenses.

(a) No license for a production or utilization facility (including, but not limited to, permits under this part and part 52 of this chapter, and licenses under parts 50 and 52 of this chapter), or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

* * * * *

90. In § 50.81, paragraph (d)(1) is revised, and a new paragraph (d)(3) is added to read as follows:

§ 50.81 Creditor regulations.

(d) * * *

(1) *License* includes any license under this chapter, any construction permit under this part, and any early site permit under part 52 of this chapter, which may be issued by the Commission with regard to a facility;

* * * * *

(3) *Facility* includes but is not limited to, a site which is the subject of an early site permit under subpart A of part 52 of this chapter, and a reactor manufactured under a manufacturing license under subpart F of part 52.

91. Section 50.90 is revised to read as follows:

§ 50.90 Application for amendment of license or construction permit.

Whenever a holder of a license, including a construction permit and operating license under this part, and a combined license, and manufacturing license under part 52 of this chapter, desires to amend the license or permit, application for an amendment must be filed with the Commission, as specified in § 50.4 or § 52.3 of this chapter, as applicable, fully describing the changes desired, and following as far as applicable, the form prescribed for original applications.

92. In § 50.91, the introductory text is revised to read as follows:

§ 50.91 Notice for public comment; State consultation.

The Commission will use the following procedures for an application requesting an amendment to an operating license under this part or a combined licensed under part 52 of this chapter for a facility licensed under §§ 50.21(b) or 50.22, or for a testing facility, except for amendments subject to hearings governed by 10 CFR part 2, subpart L. For amendments subject to 10 CFR part 2, subpart L, the following procedures will apply only to the extent specifically referenced in § 2.309(b) of this chapter, except that notice of opportunity for hearing must be published in the **Federal Register** at least 30 days before the requested amendment is issued by the Commission:

* * * * *

93. Section 50.92 paragraph (a), and the introductory text of paragraph (c) are revised to read as follows:

§ 50.92 Issuance of amendment.

(a) In determining whether an amendment to a license or construction permit will be issued to the applicant, the Commission will be guided by the considerations which govern the issuance of initial licenses or construction permits to the extent applicable and appropriate. If the application involves the material alteration of a licensed facility, a construction permit will be issued before the issuance of the amendment to the license, provided however, that if the application involves a material alteration to a nuclear power reactor manufactured under part 52 of this chapter before its installation at a site, or a combined license before the date that the Commission makes the finding under § 52.103(g) of this chapter, no application for a construction permit is required. If the amendment involves a significant hazards consideration, the Commission will give notice of its proposed action:

(1) Under § 2.105 of this chapter before acting thereon; and

(2) As soon as practicable after the application has been docketed.

* * * * *

(c) The Commission may make a final determination, under the procedures in § 50.91, that a proposed amendment to an operating license, combined license or manufacturing license for a facility or reactor licensed under § 50.21(b) or § 50.22, or for a testing facility involves no significant hazards consideration, if operation of the facility in accordance with the proposed amendment would not:

* * * * *

94. Section 50.100 is revised to read as follows:

§ 50.100 Revocation, suspension, modification of licenses, permits, and approvals for cause.

A license, permit, or standard design approval under part 52 of this chapter may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application or in the supplemental or other statement of fact required of the applicant; or because of conditions revealed by the application or statement of fact of any report, record, inspection, or other means which would warrant the Commission to refuse to grant a license, permit, or approval on an original application (other than those relating to §§ 50.51, 50.42(a), and 50.43(b)); or for failure to manufacture a reactor, or construct or operate a facility in accordance with the terms of the permit or license, provided that failure to make timely completion of the proposed construction or alteration of a facility under a construction permit shall be governed by the provisions of § 50.55(b); or for violation of, or failure to observe, any of the terms and provisions of the act, regulations, license, permit, approval, or order of the Commission.

95. In § 50.109, paragraph (a)(1) is revised to read as follows:

§ 50.109 Backfitting.

(a)(1) Backfitting is defined as the modification of or addition to systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility; any of which may result from a new or amended provision in the Commission's regulations or the imposition of a regulatory staff position interpreting the Commission's regulations that is either

new or different from a previously applicable staff position after:

(i) The date of issuance of the construction permit for the facility for facilities having construction permits issued after October 21, 1985;

(ii) Six (6) months before the date of docketing of the operating license application for the facility for facilities having construction permits issued before October 21, 1985;

(iii) The date of issuance of the operating license for the facility for facilities having operating licenses;

(iv) The date of issuance of the design approval under subpart E of part 52 of this chapter;

(v) The date of issuance of a manufacturing license under subpart F of part 52 of this chapter;

(vi) The date of issuance of the first construction permit issued for a duplicate design under appendix N of this part; or

(vii) The date of issuance of a combined license under subpart C of part 52 of this chapter, provided that if the combined license references an early site permit, the provisions in § 52.39 of this chapter apply with respect to the site characteristics, design parameters, and terms and conditions specified in the early site permit. If the combined license references a standard design certification rule under subpart B of 10 CFR part 52, the provisions in § 52.63 of this chapter apply with respect to the design matters resolved in the standard design certification rule, *provided however,* that if any specific backfitting limitations are included in a referenced design certification rule, those limitations shall govern. If the combined license references a standard design approval under subpart E of 10 CFR part 52, the provisions in § 52.145 of this chapter apply with respect to the design matters resolved in the standard design approval. If the combined license uses a reactor manufactured under a manufacturing license under subpart F of 10 CFR part 52, the provisions of § 52.171 of this chapter apply with respect to matters resolved in the manufacturing license proceeding.

* * * * *

96. Section 50.120 is revised to read as follows:

§ 50.120 Training and qualification of nuclear power plant personnel.

(a) *Applicability.* The requirements of this section apply to each applicant for and each holder of an operating license issued under this part and each holder of a combined license issued under part 52 of this chapter for a nuclear power plant of the type specified in § 50.21(b) or § 50.22.

(b) *Requirements.* (1)(i) Each nuclear power plant operating license applicant, by 18 months prior to fuel load, and each holder of an operating license shall establish, implement, and maintain a training program that meets the requirements of paragraphs (b)(2) and (b)(3) of this section.

(ii) Each holder of a combined license shall establish, implement, and maintain the training program that meets the requirements of paragraphs (b)(2) and (b)(3) of this section, as described in the final safety analysis report no later than 18 months before the scheduled date for initial loading of fuel.

(2) The training program must be derived from a systems approach to training as defined in 10 CFR 55.4, and must provide for the training and qualification of the following categories of nuclear power plant personnel:

(i) Non-licensed operator.

(ii) Shift supervisor.

(iii) Shift technical advisor.

(iv) Instrument and control technician.

(v) Electrical maintenance personnel.

(vi) Mechanical maintenance personnel.

(vii) Radiological protection technician.

(viii) Chemistry technician.

(ix) Engineering support personnel.

(3) The training program must incorporate the instructional requirements necessary to provide qualified personnel to operate and maintain the facility in a safe manner in all modes of operation. The training program must be developed to be in compliance with the facility license, including all technical specifications and applicable regulations. The training program must be periodically evaluated and revised as appropriate to reflect industry experience as well as changes to the facility, procedures, regulations, and quality assurance requirements. The training program must be periodically reviewed by licensee management for effectiveness. Sufficient records must be maintained by the licensee to maintain program integrity and kept available for NRC inspection to verify the adequacy of the program.

97. In Appendix A to Part 50, the first paragraph under the introduction and the second paragraph under Criterion 19 are revised to read as follows:

Appendix A to Part 50—General Design Criteria for Nuclear Power Plants

* * * * *

Introduction

Under the provisions of § 50.34, an application for a construction permit must include the principal design criteria for a proposed facility. Under the provisions of 10 CFR 52.47, 52.79, 52.137, and 52.157, an application for a design certification, combined license, design approval, or manufacturing license, respectively, must include the principal design criteria for a proposed facility. The principal design criteria establish the necessary design, fabrication, construction, testing, and performance requirements for structures, systems, and components important to safety; that is, structures, systems, and components that provide reasonable assurance that the facility can be operated without undue risk to the health and safety of the public.

* * * * *

Criterion 19—Control Room.

* * * * *

Applicants for and holders of construction permits and operating licenses under this part who apply on or after January 10, 1997, applicants for design approvals or certifications under part 52 of this chapter who apply on or after January 10, 1997, applicants for and holders of combined licenses or manufacturing licenses under part 52 of this chapter who do not reference a standard design approval or certification, or holders of operating licenses using an alternative source term under § 50.67, shall meet the requirements of this criterion, except that with regard to control room access and occupancy, adequate radiation protection shall be provided to ensure that radiation exposures shall not exceed 0.05 Sv (5 rem) total effective dose equivalent (TEDE) as defined in § 50.2 for the duration of the accident.

* * * * *

98. In Appendix B to Part 50, the Introduction and Section I are revised to read as follows:

Appendix B to Part 50—Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants

Introduction. Every applicant for a construction permit is required by the provisions of § 50.34 to include in its preliminary safety analysis report 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. Every applicant for an operating license is required to include, in its final safety analysis report, information pertaining to the managerial and administrative controls to be used to assure safe operation. Every applicant for a combined license under part 52 of this chapter is required by the provisions of § 52.79 of this chapter to include in its final safety analysis report 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 and to the managerial and administrative controls to be used to assure safe operation. For applications submitted after [INSERT DATE OF FINAL RULE], every applicant for an early site permit under part 52 of this chapter is required by the provisions of § 52.17 to

include in its site safety analysis report a description of the quality assurance program applied to site activities related to the design, fabrication, construction, and testing of the structures, systems, and components of a facility or facilities that may be constructed on the site. Every applicant for a design approval, design certification, or manufacturing license under part 52 of this chapter is required by the provisions of 10 CFR 52.137, 52.47, and 52.157, respectively, to include in its final safety analysis report 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. Nuclear power plants and fuel reprocessing plants include structures, systems, and components that prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public. This appendix establishes quality assurance requirements for the design, manufacture, construction, and operation of those structures, systems, and components. The pertinent requirements of this appendix apply to all activities affecting the safety-related functions of those structures, systems, and components; these activities include designing, purchasing, fabricating, handling, shipping, storing, cleaning, erecting, installing, inspecting, testing, operating, maintaining, repairing, refueling, and modifying.

As used in this appendix, ''quality assurance'' comprises all those planned and systematic actions necessary to provide adequate confidence that a structure, system, or component will perform satisfactorily in service. Quality assurance includes quality control, which comprises those quality assurance actions related to the physical characteristics of a material, structure, component, or system which provide a means to control the quality of the material, structure, component, or system to predetermined requirements.

I. Organization

The applicant [1] shall be responsible for the establishment and execution of the quality assurance program. The applicant may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part thereof, but shall retain responsibility for the quality assurance program. The authority and duties of persons and organizations performing activities affecting the safety-related functions of structures, systems, and components shall be clearly established and delineated in writing. These activities include both the performing functions of attaining quality objectives and the quality assurance functions. The quality assurance functions are those of (1) assuring that an appropriate quality assurance program is established and effectively executed; and (2) verifying, such as by checking, auditing, and inspecting, that activities affecting the safety-related functions have been correctly performed. The persons and organizations performing quality assurance functions shall have sufficient authority and organizational freedom to identify quality problems; to initiate, recommend, or provide solutions; and to verify implementation of solutions. There persons and organizations performing quality assurance functions shall report to a management level so that the required authority and organizational freedom, including sufficient independence from cost and schedule when opposed to safety considerations, are provided. Because of the many variables involved, such as the number of personnel, the type of activity being performed, and the location or locations where activities are performed, the organizational structure for executing the quality assurance program may take various forms, provided that the persons and organizations assigned the quality assurance functions have the required authority and organizational freedom. Irrespective of the organizational structure, the individual(s) assigned the responsibility for assuring effective execution of any portion of the quality assurance program at any location where activities subject to this appendix are being performed, shall have direct access to the levels of management necessary to perform this function.

* * * * *

99. In Appendix C to Part 50, the heading, the first paragraph of General Information, and the headings of Sections I.A and II.A, and Section III are revised to read as follows:

Appendix C to Part 50—A Guide for the Financial Data and Related Information Required to Establish Financial Qualifications for Construction Permits and Combined Licenses

General Information

This appendix is intended to apprise applicants for construction permits and combined licenses for production or utilization facilities of the types described in § 50.21(b) or § 50.22, or testing facilities, of the general kinds of financial data and other related information that will demonstrate the financial qualification of the applicant to carry out the activities for which the permit or license is sought. The kind and depth of information described in this guide is not intended to be a rigid and absolute requirement. In some instances, additional pertinent material may be needed. In any case, the applicant should include information other than that specified, if the information is pertinent to establishing the applicant's financial ability to carry out the activities for which the permit or license is sought.

* * * * *

I. * * *

A. Applications for Construction Permits or Combined Licenses

* * * * *

II. * * *

A. Applications for Construction Permits or Combined Licenses

* * * * *

III. Annual Financial Statement

Each holder of a construction permit for a production or utilization facility of a type described in § 50.21(b) or § 50.22 or a testing facility, and each holder of a combined license issued under part 52 of this chapter, is required by § 50.71(b) to file its annual financial report with the Commission at the time of issuance. This requirement does not apply to licensees or holders of construction permits for medical and research reactors.

* * * * *

100. In Appendix E to Part 50, Sections I, III, IV.F.2.a, IV.F.2.c, and V are revised, and footnotes 6, 7, 8, 9, and 10 are redesignated as 7, 8, 9, 10, and 11, respectively, and a new footnote 6 is added to read as follows:

Appendix E to Part 50—Emergency Planning and Preparedness for Production and Utilization Facilities

* * * * *

I. Introduction

Each applicant for a construction permit is required by § 50.34(a) to include in the preliminary safety analysis report a discussion of preliminary plans for coping with emergencies. Each applicant for an operating license is required by § 50.34(b) to include in the final safety analysis report plans for coping with emergencies. Each applicant for a combined license under subpart C of part 52 of this chapter is required by § 52.79 of this chapter to include in the application plans for coping with emergencies. Each applicant for an early site permit under subpart A of part 52 of this chapter may submit plans for coping with emergencies under § 52.17 of this chapter.

* * * * *

III. The Final Safety Analysis Report or Early Site Permit Application

The final safety analysis report shall contain the plans for coping with emergencies. Early site permit applications may contain plans for coping with emergencies under § 52.17(b) of this chapter. The plans shall be an expression of the overall concept of operation; they shall describe the essential elements of advance planning that have been considered and the provisions that have been made to cope with emergency situations. The plans shall incorporate information about the emergency response roles of supporting organizations and offsite agencies. That information shall be sufficient to provide assurance of coordination among the supporting groups and with the licensee.

[1] While the term ''applicant'' is used in these criteria, the requirements are, of course, applicable after such a person has received a license to construct and operate a nuclear power plant or a fuel reprocessing plant or has received an early site permit, design approval, design certification, or manufacturing license, as applicable. These criteria will also be used for guidance in evaluating the adequacy of quality assurance programs in use by holders of construction permits, operating licenses, early site permits, design approvals, combined licenses, and manufacturing licenses.

The plans submitted must include a description of the elements set out in Section IV for the emergency planning zones (EPZs) to an extent sufficient to demonstrate that the plans provide reasonable assurance that adequate protective measures can and will be taken in the event of an emergency.

IV. Content of Emergency Plans

* * * * *

F. * * *

2. * * *

a. A full participation[4] exercise which tests as much of the licensee, State, and local emergency plans as is reasonably achievable without mandatory public participation shall be conducted for each site at which a power reactor is located.

(i) For an operating license issued under this part, this exercise must be conducted within two years before the issuance of the first operating license for full power (one authorizing operation above 5 percent of rated power) of the first reactor and shall include participation by each State and local government within the plume exposure pathway EPZ and each state within the ingestion exposure pathway EPZ. If the full participation exercise is conducted more than one year prior to issuance of an operating licensee for full power, an exercise which tests the licensee's onsite emergency plans must be conducted within one year before issuance of an operating license for full power. This exercise need not have State or local government participation.

(ii) For a combined license issued under part 52 of this chapter, this exercise must be conducted within two years of the scheduled date for initial loading of fuel. If the first full participation exercise is conducted more than one year before the scheduled date for initial loading of fuel, an exercise which tests the licensee's onsite emergency plans must be conducted within one year before the scheduled date for initial loading of fuel. This exercise need not have State or local government participation. If FEMA identifies one or more deficiencies in the state of offsite emergency preparedness as the result of the first full participation exercise, or if the Commission finds that the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, the provisions of § 50.54(gg) apply.

(iii) For a combined licensee issued under part 52 of this chapter, if the applicant currently has an operating reactor at the site, an exercise, either full or partial participation,[5] shall be conducted for each subsequent reactor constructed on the site. This exercise may be incorporated in the exercise requirements of sections IV.F.2.b. and c. of this appendix. If FEMA identifies one or more deficiencies in the state of offsite emergency preparedness as the result of this exercise for the new reactor, or if the Commission finds that the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, the provisions of § 50.54(gg) apply.

* * * * *

c. Offsite plans for each site shall be exercised biennially with full participation by each offsite authority having a role under the radiological response plan. Where the offsite authority has a role under a radiological response plan for more than one site, it shall fully participate in one exercise every two years and shall, at least, partially participate in other offsite plan exercises in this period. If two different licensees whose licensed facilities are located either on the same site or on adjacent, contiguous sites, and that share most of the elements defining co-located licensees,[6] each licensee shall:

(1) Conduct an exercise biennially of its onsite emergency plan; and

(2) Participate quadrennially in an offsite biennial full or partial participation exercise; and

(3) Conduct emergency preparedness activities and interactions in the years between its participation in the offsite full or partial participation exercise with offsite authorities, to test and maintain interface among the affected State and local authorities and the licensee. Co-located licensees shall also participate in emergency preparedness activities and interaction with offsite authorities for the period between exercises.

* * * * *

V. Implementing Procedures

No less than 180 days before the scheduled issuance of an operating license for a nuclear power reactor or a license to possess nuclear material or the date that the Commission makes the finding under § 52.103 of this chapter, the applicant's or licensee's detailed implementing procedures for its emergency plan shall be submitted to the Commission as specified in § 50.4. Licensees who are authorized to operate a nuclear power facility shall submit any changes to the emergency plan or procedures to the Commission, as specified in § 50.4, within 30 days of such changes.

* * * * *

101. In Appendix I to Part 50, the first paragraphs of Sections I, II, IV, V, and the introductory paragraph of Sections A.3 of the Concluding Statement of Position of the Regulatory Staff (Docket–RM–50–2) are revised to read as follows:

Appendix I to Part 50—Numerical Guides for Design Objectives and Limiting Conditions for Operation To Meet the Criterion ''As Low As Is Reasonably Achievable'' for Radioactive Material in Light-Water-Cooled Nuclear Power Reactor Effluents

SECTION I. *Introduction.* Section 50.34a provides that an application for a construction permit shall include a description of the preliminary design of equipment to be installed to maintain control over radioactive materials in gaseous and liquid effluents produced during normal conditions, including expected occurrences. In the case of an application filed on or after January 2, 1971, the application must also identify the design objectives, and the means to be employed, for keeping levels of radioactive material in effluents to unrestricted areas as low as practicable. Sections 52.47, 52.79, 52.137, and 52.157 of this chapter provide that applications for design certification, combined license, design approval, or manufacturing license, respectively, shall include a description of the equipment and procedures for the control of gaseous and liquid effluents and for the maintenance and use of equipment installed in radioactive waste systems.

* * * * *

SECTION II. *Guides on design objectives for light-water-cooled nuclear power reactors licensed under 10 CFR part 50 or part 52 of this chapter.* The guides on design objectives set forth in this section may be used by an applicant for a construction permit as guidance in meeting the requirements of § 50.34a(a), or by an applicant for a combined license under part 52 of this chapter as guidance in meeting the requirements of § 50.34a(d), or by an applicant for a design approval, a design certification, or a manufacturing license as guidance in meeting the requirements of § 50.34a(e). The applicant shall provide reasonable assurance that the following design objectives will be met.

* * * * *

SECTION IV. *Guides on technical specifications for limiting conditions for operation for light-water-cooled nuclear power reactors licensed under 10 CFR part 50 or part 52 of this chapter.* The guides on limiting conditions for operation for light-water-cooled nuclear power reactors set forth below may be used by an applicant for an operating license under this part or a design certification or combined license under part 52 of this chapter, or a licensee who has submitted a certification of permanent cessation of operations under § 50.82(a)(1) or

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[4] *Full participation* when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite local and State authorities and licensee personnel physically and actively take part in testing their integrated capability to adequately assess and respond to an accident at a commercial nuclear power plant. *Full participation* includes testing major observable portions of the onsite and offsite emergency plans and mobilization of State, local and licensee personnel and other resources in sufficient numbers to verify the capability to respond to the accident scenario.

[5] *Partial participation* when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite authorities shall actively take part in the exercise sufficient to test direction and control functions; i.e., (a) protective action decision making related to emergency action levels, and (b) communication capabilities among affected State and local authorities and the licensee.

[6] Co-located licensees are two different licensees whose licensed facilities are located either on the same site or on adjacent, contiguous sites, and that share most of the following emergency planning and siting elements:

a. Plume exposure and ingestion emergency planning zones;

b. Offsite governmental authorities;

c. Offsite emergency response organizations;

d. Public notification system; and/or

e. Emergency facilities.

§ 52.110 of this chapter as guidance in developing technical specifications under § 50.36a(a) to keep levels of radioactive materials in effluents to unrestricted areas as low as is reasonably achievable.

* * * * *

SECTION V. *Effective dates.* A. The guides for limiting conditions for operation set forth in this appendix shall be applicable in any case in which an application was filed on or after January 2, 1971, for construction permit under this part or a design certification, a combined license, or a manufacturing license under part 52 of this chapter.

* * * * *

Concluding Statement of Position of the Regulatory Staff (Docket–RM–50–2) Guides on Design Objectives for Light-Water-Cooled Nuclear Power Reactors

A.* * *

3. Notwithstanding the guidance in paragraph A.2, for a particular site, if an applicant for a construction permit under this part or a design approval, a design certification, a combined license, or a manufacturing license under part 52 of this chapter has proposed baseline in-plant control measures [2] to reduce the possible sources of radioactive material in liquid effluent releases and the calculated quantity exceeds the quantity set forth in paragraph A.2, the requirements for design objectives for radioactive material in liquid effluents may be deemed to have been met provided:

* * * * *

102. In Appendix J to Part 50 in Option A, Section I, and paragraph II.k are revised and in Option B, Section I, and paragraphs V.B.2 and 3 are revised to read as follows:

Appendix J to Part 50—Primary Reactor Containment Leakage Testing for Water-Cooled Reactors

* * * * *

Option A—Prescriptive Requirements

* * * * *

I. Introduction

One of the conditions of all operating licenses under this part and combined licenses under part 52 of this chapter for water-cooled power reactors as specified in § 50.54(o) is that primary reactor containments shall meet the containment leakage test requirements set forth in this appendix. These test requirements provide for preoperational and periodic verification by tests of the leak-tight integrity of the primary reactor containment, and systems and components which penetrate containment of water-cooled power reactors, and establish the acceptance criteria for these tests. The purposes of the tests are to assure that (a) leakage through the primary reactor containment and systems and components penetrating primary containment shall not exceed allowable leakage rate values as specified in the technical specifications or associated bases; and (b) periodic surveillance of reactor containment penetrations and isolation valves is performed so that proper maintenance and repairs are made during the service life of the containment, and systems and components penetrating primary containment. These test requirements may also be used for guidance in establishing appropriate containment leakage test requirements in technical specifications or associated bases for other types of nuclear power reactors.

II. * * *

K. La (percent/24 hours) means the maximum allowable leakage rate at pressure Pa as specified for preoperational tests in the technical specifications or associated bases, and as specified for periodic tests in the operating license or combined license, including the technical specifications in any referenced design certification or manufactured reactor used at the facility.

* * * * *

Option B—Performance-Based Requirements

* * * * *

I. Introduction

One of the conditions required of all operating licenses and combined licenses for light-water-cooled power reactors as specified in § 50.54(o) is that primary reactor containments meet the leakage-rate test requirements in either Option A or B of this appendix. These test requirements ensure that (a) leakage through these containments or systems and components penetrating these containments does not exceed allowable leakage rates specified in the technical specifications; and (b) integrity of the containment structure is maintained during its service life. Option B of this appendix identifies the performance-based requirements and criteria for preoperational and subsequent periodic leakage-rate testing.[3]

* * * * *

V. * * *

B. * * *

2. A licensee or applicant for an operating license under this part or a combined license under part 52 of this chapter may adopt Option B, or parts thereof, as specified in Section V.A of this appendix, by submitting its implementation plan and request for revision to technical specifications (see paragraph B.3 of this section) to the Director of the Office of Nuclear Reactor Regulation.

3. The regulatory guide or other implementation document used by a licensee or applicant for an operating license under this part or a combined license under part 52 of this chapter to develop a performance-based leakage-testing program must be included, by general reference, in the plant technical specifications. The submittal for technical specification revisions must contain justification, including supporting analyses, if the licensee chooses to deviate from methods approved by the Commission and endorsed in a regulatory guide.

* * * * *

Appendix M to Part 50 [Removed and Reserved]

103. Appendix M to Part 50 is removed and reserved.

Appendix O to Part 50 [Removed and Reserved]

104. Appendix O to Part 50 is removed and reserved.

105. In Appendix S to Part 50, the first paragraph titled ''General Information,'' Section I(a), and Section III are revised to read as follows:

Appendix S to Part 50—Earthquake Engineering Criteria for Nuclear Power Plants

General Information

This appendix applies to applicants for a construction permit or operating license under part 50, or a design certification, combined license, design approval, or manufacturing license under part 52 of this chapter, on or after January 10, 1997. However, for either an operating license applicant or holder whose construction permit was issued before January 10, 1997, the earthquake engineering criteria in Section VI of appendix A to 10 CFR part 100 continue to apply. Paragraphs IV.a.1.i, IV.a.1.ii, IV.4.b, and IV.4.c of this appendix apply to applicants for an early site permit under part 52.

I. Introduction

(a) Each applicant for a construction permit, operating license, design certification, combined license, design approval, or manufacturing license is required by §§ 50.34(a)(12), 50.34(b)(10), or 10 CFR 52.47, 52.79, 52.137, or 52.157, and General Design Criterion 2 of appendix A to this part, to design nuclear power plant structures, systems, and components important to safety to withstand the effects of natural phenomena, such as earthquakes, without loss of capability to perform their safety functions. Also, as specified in § 50.54(ff), nuclear power plants that have implemented the earthquake engineering criteria described herein must shut down if the criteria in paragraph IV(a)(3) of this appendix are exceeded.

* * * * *

III. Definitions

As used in these criteria:

Combined license means a combined construction permit and operating license with conditions for a nuclear power facility issued under subpart C of part 52 of this chapter.

Design Approval means an NRC staff approval, issued under subpart E of part 52

[2] These measures may include treatment of clear liquid waste streams (normally tritiated, nonaerated, low conductivity equipment drains and pump seal leakoff), dirty liquid waste streams (normally nontritiated, aerated, high conductivity building sumps, floor and sample station drains), steam generator blowdown streams, chemical waste streams, low purity and high purity liquid streams (resin regenerate and laboratory wastes), as appropriate for the type of reactor.

[3] Specific guidance concerning a performance-based leakage-test program, acceptable leakage-rate test methods, procedures, and analyses that may be used to implement these requirements and criteria are provided in Regulatory Guide 1.163, ''Performance-Based Containment Leak-Test Program.''

of this chapter, of a final standard design for a nuclear power reactor of the type described in 10 CFR 50.22.

Design Certification means a Commission approval, issued under subpart B of part 52 of this chapter, of a standard design for a nuclear power facility.

Manufacturing license means a license, issued under subpart F of part 52 of this chapter, authorizing the manufacture of nuclear power reactors but not their installation into facilities located at the sites on which the facilities are to be operated.

Operating basis earthquake ground motion (OBE) is the vibratory ground motion for which those features of the nuclear power plant necessary for continued operation without undue risk to the health and safety of the public will remain functional. The operating basis earthquake ground motion is only associated with plant shutdown and inspection unless specifically selected by the applicant as a design input.

Response spectrum is a plot of the maximum responses (acceleration, velocity, or displacement) of idealized single-degree-of-freedom oscillators as a function of the natural frequencies of the oscillators for a given damping value. The response spectrum is calculated for a specified vibratory motion input at the oscillators' supports.

Safe-shutdown earthquake ground motion (SSE) is the vibratory ground motion for which certain structures, systems, and components must be designed to remain functional.

Structures, systems, and components required to withstand the effects of the safe-shutdown earthquake ground motion or surface deformation are those necessary to assure:

(1) The integrity of the reactor coolant pressure boundary;

(2) The capability to shut down the reactor and maintain it in a safe-shutdown condition; or

(3) The capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposures comparable to the guideline exposures of § 50.34(a)(1).

Surface deformation is distortion of geologic strata at or near the ground surface by the processes of folding or faulting as a result of various earth forces. Tectonic surface deformation is associated with earthquake processes.

* * * * *

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

106. 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)).

107. 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, 51.50, 51.51, 51.52, 51.53, 51.54, 51.58, 51.60, 51.61, 51.62, 51.66, 51.68, and 51.69.

108. In § 51.20, paragraph (b)(6) is removed and reserved, and paragraphs (b)(1) and (b)(2) are revised to read as follows:

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

* * * * *

(b) * * *

(1) Issuance of a limited work authorization or a permit to construct a nuclear power reactor, testing facility, or fuel reprocessing plant under part 50 of this chapter, or issuance of an early site permit under part 52 of this chapter.

(2) Issuance or renewal of a full power or design capacity license to operate a nuclear power reactor, testing facility, or fuel reprocessing plant under part 50 of this chapter, or a combined license under part 52 of this chapter.

* * * * *

(6) [Reserved]

* * * * *

109. In § 51.22, the introductory text of paragraph (c)(3), paragraphs (c)(3)(i), (c)(9), the introductory text of paragraphs (c)(10) and (c)(12), and paragraph (c)(17) are revised, and paragraphs (c)(22) and (c)(23) are added to read as follows:

§ 51.22 Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.

* * * * *

(c) * * *

(3) Amendments to parts 20, 30, 31, 32, 33, 34, 35, 39, 40, 50, 51, 52, 54, 60, 61, 63, 70, 71, 72, 73, 74, 81, and 100 of this chapter which relate to—

(i) Procedures for filing and reviewing applications for licenses or construction permits or early site permits or other forms of permission or for amendments to or renewals of licenses or construction permits or early site permits or other forms of permission;

* * * * *

(9) Issuance of an amendment to a permit or license for a reactor under part 50 or part 52 of this chapter, which changes a requirement with respect to installation or use of a facility component located within the restricted area, as defined in part 20 of this chapter, or which changes an inspection or a surveillance requirement, provided that—

(i) The amendment involves no significant hazards consideration;

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; and

(iii) There is no significant increase in individual or cumulative occupational radiation exposure.

(10) Issuance of an amendment to a permit or license under parts 30, 31, 32, 33, 34, 35, 36, 39, 40, 50, 52, 60, 61, 63, 70, or part 72 of this chapter which—

* * * * *

(12) Issuance of an amendment to a license under parts 50, 52, 60, 61, 63, 70, 72, or 75 of this chapter relating solely to safeguards matters (*i.e.*, protection against sabotage or loss or diversion of special nuclear material) or issuance of an approval of a safeguards plan submitted under parts 50, 52, 70, 72, and 73 of this chapter, provided that the amendment or approval does not involve any significant construction impacts. These amendments and approvals are confined to—

* * * * *

(17) Issuance of an amendment to a permit or license under parts 30, 40, 50, 52, or part 70 of this chapter which deletes any limiting condition of operation or monitoring requirement based on or applicable to any matter subject to the provisions of the Federal Water Pollution Control Act.

* * * * *

(22) Issuance of a standard design approval under part 52 of this chapter.

(23) The Commission finding for a combined license under § 52.103(g) of this chapter.

* * * * *

110. In § 51.23 paragraphs (b) and (c) are revised to read as follows:

§ 51.23 Temporary storage of spent fuel after cessation of reactor operation—generic determination of no significant environmental impact.

* * * * *

(b) Accordingly, as provided in §§ 51.30(b), 51.53, 51.61, 51.80(b), 51.95 and 51.97(a), and within the scope of the generic determination in paragraph (a) of this section, no discussion of any environmental impact of spent fuel storage in reactor facility storage pools or independent spent fuel storage installations (ISFSI) for the period following the term of the reactor operating license or amendment, reactor combined license or amendment, or initial ISFSI license or amendment for which application is made, is required in any environmental report, environmental impact statement, environmental assessment or other analysis prepared in connection with the issuance or amendment of an operating license for a nuclear power reactor under parts 50 and 54 of this chapter, or issuance or amendment of a combined license for a nuclear power reactor under parts 52 and 54 of this chapter, or the issuance of an initial license for storage of spent fuel at an ISFSI, or any amendment thereto.

(c) This section does not alter any requirements to consider the environmental impacts of spent fuel storage during the term of a reactor operating license or combined license, or a license for an ISFSI in a licensing proceeding.

111. In § 51.30, paragraph (a) is revised, and paragraphs (d) and (e) are added to read as follows:

§ 51.30 Environmental assessment.

(a) An environmental assessment for proposed actions, other than those for a standard design certification or a manufacturing license under part 52 of this chapter, shall identify the proposed action and include:

(1) A brief discussion of:

(i) The need for the proposed action;

(ii) Alternatives as required by section 102(2)(E) of NEPA;

(iii) The environmental impacts of the proposed action and alternatives as appropriate; and

(2) A list of agencies and persons consulted, and identification of sources used.

* * * * *

(d) An environmental assessment for a standard design certification under subpart B of part 52 of this chapter must identify the proposed action, and will be limited to the consideration of the costs and benefits of severe accident mitigation design alternatives (SAMDAs) and the bases for not incorporating SAMDAs in the design certification. An environmental assessment for an amendment to a design certification will be limited to the consideration of whether the design change which is the subject of the proposed amendment renders a SAMDA previously rejected in the earlier environmental assessment to become cost beneficial, or results in the identification of new SAMDAs, in which case the costs and benefits of new SAMDAs and the bases for not incorporating new SAMDAs in the design certification must be addressed.

(e) An environmental assessment for a manufacturing license under subpart F of part 52 of this chapter must identify the proposed action, and will be limited to the consideration of the costs and benefits of SAMDAs and the bases for not incorporating SAMDAs in the manufacturing license. An environmental assessment for an amendment to a manufacturing license will be limited to consideration whether the design change which is the subject of the proposed amendment either renders a SAMDA previously rejected in an environmental assessment to become cost beneficial, or results in the identification of new SAMDAs, in which case the costs and benefits of new SAMDAs and the bases for not incorporating new SAMDAs in the manufacturing license must be addressed. In either case, the environmental assessment will not address the environmental impacts associated with manufacturing the reactor under the manufacturing license.

112. Section 51.31 is revised to read as follows:

§ 51.31 Determinations based on environmental assessment.

(a) *General.* Upon completion of an environmental assessment for proposed actions other than those involving a standard design certification or a manufacturing license under part 52 of this chapter, the appropriate NRC staff director will determine whether to prepare an environmental impact statement or a finding of no significant impact on the proposed action. As provided in § 51.33, a determination to prepare a draft finding of no significant impact may be made.

(b) *Standard design certification.* (1) For actions involving the issuance or amendment of a standard design certification, the Commission shall prepare a draft environmental assessment for public comment as part of the proposed rule. The proposed rule must state that:

(i) The Commission has determined that in § 51.32 there is no significant environmental impact associated with the issuance of the standard design certification or its amendment, as applicable; and

(ii) Comments on the environmental assessment will be limited to the consideration of SAMDAs as required by § 51.30(d) or (e), as applicable.

(2) The Commission will prepare a final environmental assessment following the close of the public comment period for the proposed standard design certification.

(c) *Manufacturing license.* (1) Upon completion of the environmental assessment for actions involving issuance or amendment of a manufacturing license (manufacturing license environmental assessment), the NRC's Director of Nuclear Reactor Regulation (staff director) will determine the costs and benefits of severe accident mitigation design alternatives (SAMDAs) and the bases for not incorporating SAMDAs in the design of the reactor to be manufactured under the manufacturing license. The NRC staff director may determine to prepare a draft environmental assessment.

(2) The manufacturing license environmental assessment must state that:

(i) The Commission has determined that in § 51.32 there is no significant environmental impact associated with the issuance of a manufacturing license or an amendment to a manufacturing license, as applicable;

(ii) The environmental assessment will not address the environmental impacts associated with manufacturing the reactor under the manufacturing license; and

(iii) Comments on the environmental assessment will be limited to the consideration of SAMDAs as required by § 51.30(d) or (e), as applicable.

(3) If the NRC staff director makes a determination to prepare and issue a draft environmental assessment for public review and comment before making a final determination on the manufacturing license application, the assessment will be marked, ''Draft.'' The NRC notice of availability on the draft environmental assessment will include a request for comments which specifies where comments should be submitted and when the comment period expires. The notice will state that copies of the environmental assessment and any related environmental documents are available for public inspection and where inspections can be made. A copy of the final environmental assessment will be sent to the U.S. Environmental Protection Agency, the applicant, any party to a proceeding, each commenter, and any other Federal, State, and local agencies, and Indian tribes, State, regional, and metropolitan clearinghouses expressing an interest in

the action. Additional copies will be made available in accordance with § 51.123.

(4) When a hearing is held under the regulations in part 2 of this chapter on the proposed issuance of the manufacturing license or amendment, the NRC staff director will prepare a final environmental assessment which may be subject to modification as a result of review and decision as appropriate to the nature and scope of the proceeding. The presiding officer will issue the final environmental assessment.

(5) Only a party admitted into the proceeding with respect to a contention on the environmental assessment, or an entity participating in the proceeding pursuant to § 2.315(c), may take a position and offer evidence on the matters within the scope of the environmental assessment.

113. In § 51.32, paragraph (b) is added to read as follows:

§ 51.32 Finding of no significant impact.

* * * * *

(b) The Commission finds that there is no significant environmental impact associated with the issuance of:

(1) A standard design certification under subpart B of part 52 of this chapter;

(2) An amendment to a design certification;

(3) A manufacturing license under subpart F of part 52 of this chapter; or

(4) An amendment to a manufacturing license.

114. In § 51.45 paragraph (c) is revised to read as follows:

§ 51.45 Environmental report.

* * * * *

(c) *Analysis.* The environmental report shall include an analysis that considers and balances 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. Except for environmental reports prepared at the early site permit stage under § 51.50(b), or environmental reports prepared at the license renewal stage under § 51.53(c), the analysis in the environmental report should also include consideration of the economic, technical, and other benefits and costs of the proposed action and of alternatives. Environmental reports prepared at the license renewal stage under § 51.53(c) need not discuss the economic or technical benefits and costs of either the proposed action or alternatives except insofar as these 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, environmental reports prepared under to § 51.53(c) need not discuss issues not related to the environmental effects of the proposed action and its alternatives. The analyses for environmental reports shall, 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, those considerations or factors shall be discussed in qualitative terms. The environmental report should contain sufficient data to aid the Commission in its development of an independent analysis.

* * * * *

115. 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. If the applicant seeks to perform the activities at the site allowed by § 50.10(e)(1) of this chapter, the environmental report must include a plan for redress of the site that will achieve an environmentally stable and aesthetically acceptable site suitable for whatever non-nuclear use may conform with local zoning laws. 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.

(4) *Application requesting authority to conduct activities under § 50.10(e) of this chapter.* If the applicant seeks to perform activities at the site allowed by § 50.10(e) of this chapter, then the environmental report must include a plan for redress of the site that will achieve an environmentally stable and aesthetically acceptable site suitable for whatever non-nuclear use may conform with local zoning laws.

116. In § 51.51 paragraph (a) is revised to read as follows:

§ 51.51 Uranium fuel cycle environmental data—Table S–3.

(a) Under § 51.50, every environmental report prepared for the construction permit stage or early site permit stage or combined license stage of a light-water-cooled nuclear power reactor, and submitted on or after September 4, 1979, shall take Table S–3, Table of Uranium Fuel Cycle Environmental Data, as the basis for evaluating the contribution of the environmental effects of uranium mining and milling, the production of uranium hexafluoride, isotopic enrichment, fuel fabrication, reprocessing of irradiated fuel, transportation of radioactive materials and management of low-level wastes and high-level wastes related to uranium fuel cycle activities to the environmental costs of licensing the nuclear power reactor. Table S–3 shall be included in the environmental report and may be supplemented by a discussion of the environmental significance of the data set forth in the table as weighed in the analysis for the proposed facility.

* * * * *

117. In § 51.52, the introductory paragraph is revised to read as follows:

§ 51.52 Environmental effects of transportation of fuel and waste—Table S–4.

Under § 51.50, every environmental report prepared for the construction permit stage or early site permit stage or combined license stage of a light-water-cooled nuclear power reactor, and submitted after February 4, 1975, shall contain a statement concerning transportation of fuel and radioactive wastes to and from the reactor. That statement shall indicate that the reactor and this transportation either meet all of the conditions in paragraph (a) of this section or all of the conditions of paragraph (b) of this section.

* * * * *

118. In § 51.53 paragraph (a) and the introductory text of paragraph (c)(3) are revised to read as follows:

§ 51.53 Postconstruction environmental reports.

(a) *General.* Any environmental report prepared under the provisions of this section may incorporate by reference any information contained in a prior environmental report or supplement thereto that relates to the production or utilization facility or site, or any information contained in a final environmental document previously prepared by the NRC staff that relates to the production or utilization facility or site. Documents that may be referenced include, but are not limited to, the final environmental impact statement; supplements to the final environmental impact statement, including supplements prepared at the license renewal stage; NRC staff-prepared final generic environmental impact statements; and environmental assessments and records of decisions prepared in connection with the construction permit, operating license, early site permit, combined license and any license amendment for that facility.

* * * * *

(c) * * *

(3) For those applicants seeking an initial renewal license and holding an operating license, construction permit, or combined license as of June 30, 1995, the environmental report shall include the information required in paragraph (c)(2) of this section subject to the following conditions and considerations:

* * * * *

119. Section 51.54 is revised to read as follows:

§ 51.54 Environmental report—manufacturing license.

(a) Each applicant for a manufacturing license under subpart F of part 52 of this chapter shall submit with its application a separate document entitled, ''Applicant's Environmental Report—Manufacturing License.'' The environmental report must address the costs and benefits of severe accident mitigation design alternatives (SAMDAs), and the bases for not incorporating SAMDAs into the design of the reactor to be manufactured. The environmental report need not address the environmental impacts associated with manufacturing the reactor under the manufacturing license.

(b) Each applicant for an amendment to a manufacturing license shall submit with its application a separate document entitled, ''Applicant's Supplemental Environmental Report—Amendment to Manufacturing License.'' The environmental report must address whether the design change which is the subject of the proposed amendment either renders a SAMDA previously rejected in an environmental assessment to become cost beneficial, or results in the identification of new SAMDAs that may be reasonably incorporated into the design of the manufactured reactor. The environmental report need not address the environmental impacts associated with manufacturing the reactor under the manufacturing license.

120. Section 51.55 is redesignated as § 51.58, and is revised to read as follows:

§ 51.58 Environmental report—number of copies; distribution.

(a) Each applicant for a license or permit to site, construct or operate a

production or utilization facility covered by §§ 51.20(b)(1), (b)(2), (b)(3), or (b)(4), each applicant for renewal of an operating or combined license for a nuclear power plant, each applicant for a license amendment authorizing the decommissioning of a production or utilization facility covered by § 51.20, and each applicant for a license or license amendment to store spent fuel at a nuclear power plant after expiration of the operating license for the nuclear power plant shall submit a copy to the Director of the Office of Nuclear Reactor Regulation, or a copy to the Director of the Office of Nuclear Material Safety and Safeguards, as appropriate, of an environmental report or any supplement to an environmental report. These reports must be sent either by mail addressed: ATTN: Document Control Desk; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland, between the hours of 7:30 a.m. and 4:15 p.m. eastern time; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail to *EIE@nrc.gov*, or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information. If the communication is on paper, the signed original must be sent. If a submission due date falls on a Saturday, Sunday, or Federal holiday, the next Federal working day becomes the official due date. The applicant shall maintain the capability to generate additional copies of the environmental report or any supplement to the environmental report for subsequent distribution to parties and Boards in the NRC proceedings; Federal, State, and local officials; and any affected Indian tribes, in accordance with written instructions issued by the Director of the Office of Nuclear Reactor Regulation or the Director of the Office of Nuclear Material Safety and Safeguards, as appropriate.

(b) Each applicant for a license to manufacture a nuclear power reactor, or for an amendment to a license to manufacture, seeking approval of the final design of the nuclear power reactor, under subpart F of part 52 of this chapter shall submit to the Commission an environmental report or any supplement to an environmental report in the manner specified in § 50.4 of this chapter. The applicant shall maintain the capability to generate additional copies of the environmental report or any supplement to the environmental report for subsequent distribution to parties and Boards in the NRC proceeding; Federal, State, and local officials; and any affected Indian tribes, in accordance with written instructions issued by the Director of Nuclear Reactor Regulation.

121. Section 51.55 is added to read as follows:

§ 51.55 Environmental report-standard design certification.

(a) Each applicant for a standard design certification under subpart B of part 52 of this chapter shall submit with its application a separate document entitled, ''Applicant's Environmental Report-Standard Design Certification.'' The environmental report must address the costs and benefits of severe accident mitigation design alternatives (SAMDAs), and the basis for not incorporating SAMDAs in the design to be certified.

(b) Each applicant for an amendment to a design certification shall submit with its application a separate document entitled, ''Applicant's Supplemental Environmental Report-Amendment to Standard Design Certification.'' The environmental report must address whether the design change which is the subject of the proposed amendment either renders a SAMDA previously rejected in an environmental assessment to become cost beneficial, or results in the identification of new SAMDAs that may be reasonably incorporated into the design certification.

122. Section 51.66 is revised to read as follows:

§ 51.66 Environmental report-number of copies; distribution.

Each applicant for a license or other form of permission, or an amendment to or renewal of a license or other form of permission issued under parts 30, 32, 33, 34, 35, 36, 39, 40, 61, 70 and/or 72 of this chapter, and covered by §§ 51.60(b)(1) through (6); or by § 51.61 or § 51.62 shall submit to the Director of Nuclear Material Safety and Safeguards an environmental report or any supplement to an environmental report in the manner specified in § 51.58(a). The applicant shall maintain the capability to generate additional copies of the environmental report or any supplement to the environmental report for subsequent distribution to Federal, State, and local officials, and any affected Indian tribes in accordance with written instructions issued by the Director of Nuclear Material Safety and Safeguards.

123. In § 51.71 paragraph (d) and Footnote 3 are revised to read as follows:

§ 51.71 Draft environmental impact statement-contents.

* * * * *

(d) *Analysis.* 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. 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 alternative to the site proposed. 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, provided that the design of the facility falls within the design parameters specified in the early site permit, the site falls within the site characteristics specified within the early site permit, and 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. 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. 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. 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.[3] 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.

* * * * *

124. Section 51.75 is revised to read as follows:

§ 51.75 Draft environmental impact statement—construction permit, early site permit, or combined license.

(a) *Construction permit stage.* A draft environmental impact statement relating to issuance of a construction permit for a production or utilization facility will be prepared in accordance with the procedures and measures described in §§ 51.70, 51.71, 51.72, and 51.73. The contribution of the environmental effects of the uranium fuel cycle activities specified in § 51.51 shall be evaluated on the basis of impact values set forth in Table S–3, Table of Uranium Fuel Cycle Environmental Data, which shall be set out in the draft environmental impact statement. With the exception of radon-222 and technetium-99 releases, no further discussion of fuel cycle release values and other numerical data that appear explicitly in the Table shall be required.[5] The impact statement shall take account of dose commitments and health effects from fuel cycle effluents set forth in Table S–3 and shall in addition take account of economic, socioeconomic, and possible cumulative impacts and other fuel cycle impacts as may reasonably appear significant.

(b) *Early site permit stage.* A draft environmental impact statement relating to issuance of an early site permit for a production or utilization facility will be prepared in accordance with the procedures and measures described in §§ 51.70, 51.71, 51.72, and 51.73. The contribution of the environmental effects of the uranium fuel cycle activities specified in § 51.51 shall be evaluated on the basis of impact values set forth in Table S–3, Table of Uranium Fuel Cycle Environmental Data, which shall be set out in the draft environmental impact statement. With the exception of radon-222 and technetium-99 releases, no further discussion of fuel cycle release values and other numerical data that appear explicitly in the table shall be required.[5] The impact statement shall take account of dose commitments and health effects from fuel cycle effluents set forth in Table S–3 and shall in addition take account of economic, socioeconomic, and possible cumulative impacts and other fuel cycle impacts as may reasonably appear significant.

(c) *Combined license stage.* A draft environmental impact statement relating to issuance of a combined license that does not reference an early site permit will be prepared in accordance with the procedures and measures described in §§ 51.70, 51.71, 51.72, and 51.73. The contribution of the environmental effects of the uranium fuel cycle activities specified in § 51.51 shall be evaluated on the basis of impact values set forth in Table S–3, Table of Uranium Fuel Cycle Environmental Data, which shall be set out in the draft environmental impact statement. With the exception of radon-222 and technetium-99 releases, no further discussion of fuel cycle release values and other numerical data that appear explicitly in the Table shall be required.[5] The impact statement shall take account of dose commitments and health effects from fuel cycle effluents set forth in Table S–3 and shall in addition take account of economic, socioeconomic, and possible cumulative impacts and other fuel cycle impacts as may reasonably appear significant. The impact statement will include a discussion of the storage of spent fuel for the nuclear power plant within the scope of the generic determination in § 51.23(a) and in accordance with § 51.23(b).

(1) *Combined license application referencing an early site permit.* If the combined license application references an early site permit and the design of

[3] 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 no longer 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.

[5] Values for releases of Rn-222 and TC–99 are not given in the Table. The amount and significance of Rn-222 releases from the fuel cycle and TC–99 releases from waste management or reprocessing activities shall be considered in the draft environmental impact statement and may be the subject of litigation in individual licensing proceedings.

the facility falls within the site characteristics and design parameters specified in the early site permit, then the draft supplemental combined license environmental impact statement shall incorporate by reference the early site permit final environmental impact statement, and summarize the findings and conclusions of the early site permit final environmental impact statement.

(2) *Combined license application referencing a standard design certification.* If the combined license application references a standard design certification and the site characteristics of the combined license's site falls within the site parameters specified in the design certification environmental assessment, then the draft combined license environmental impact statement shall incorporate by reference the design certification environmental assessment, and summarize the findings and conclusions of the environmental assessment with respect to severe accident mitigation design alternatives.

(3) *Combined license application referencing a manufactured reactor.* If the combined license application proposes to use a manufactured reactor and the site characteristics of the combined license's site falls within the site parameters specified in the manufacturing license environmental assessment, then the draft combined license environmental impact statement shall incorporate by reference the manufacturing license environmental assessment, and summarize the findings and conclusions of the environmental assessment with respect to SAMDAs. The combined license environmental impact statement report will not address the environmental impacts associated with manufacturing the reactor under the manufacturing license.

§ 51.76 [Removed and Reserved]

125. Section 51.76 is removed and reserved.

126. In § 51.95, paragraph (a), the introductory text of paragraph (c), and paragraph (d) are revised to read as follows:

§ 51.95 Postconstruction environmental impact statements.

(a) *General.* Any supplement to a final environmental impact statement or any environmental assessment prepared under the provisions of this section may incorporate by reference any information contained in a final environmental document previously prepared by the NRC staff that relates to the same production or utilization facility. Documents that may be referenced include, but are not limited to, the final environmental impact statement; supplements to the final environmental impact statement, including supplements prepared at the operating license stage; NRC staff-prepared final generic environmental impact statements; environmental assessments and records of decisions prepared in connection with the construction permit, the operating license, the early site permit, or the combined license and any license amendment for that facility. A supplement to a final environmental impact statement will include a request for comments as provided in § 51.73.

* * * * *

(c) *Operating license renewal stage.* In connection with the renewal of an operating license for a nuclear power plant under parts 52 or 54 of this chapter, the Commission shall prepare an EIS, which is a supplement to the Commission's NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants'' (May 1996) which is available in the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland.

* * * * *

(d) *Postoperating license stage.* In connection with the amendment of an operating or combined license authorizing decommissioning activities at a production or utilization facility covered by § 51.20, either for unrestricted use or based on continuing use restrictions applicable to the site, or with the issuance, amendment or renewal of a license to store spent fuel at a nuclear power reactor after expiration of the operating or combined license for the nuclear power reactor, the NRC staff will prepare a supplemental environmental impact statement for the postoperating or post combined license stage or an environmental assessment, as appropriate, which will update the prior environmental review. The supplement or assessment may incorporate by reference any information contained in the final environmental impact statement—for the operating or combined license stage, as appropriate, or in the records of decision prepared in connection with the early site permit, construction permit, operating license, or combined license for that facility. The supplement will include a request for comments as provided in § 51.73. Unless otherwise required by the Commission in accordance with the generic determination in § 51.23(a) and the provisions of § 51.23(b), a supplemental environmental impact statement for the postoperating or post combined license stage or an environmental assessment, as appropriate, will address the environmental impacts of spent fuel storage only for the term of the license, license amendment or license renewal applied for.

127. Section 51.105 is revised to read as follows:

§ 51.105 Public hearings in proceedings for issuance of construction permits or early site permits.

(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 by the NRC's Director of Nuclear Reactor Regulation.

(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.

128. Section 51.105a is added to read as follows:

§ 51.105a Public hearings in proceedings for issuance of manufacturing licenses.

In addition to complying with applicable requirements of § 51.31(c), in a proceeding for the issuance of a manufacturing license, the presiding officer will:

(a) Determine, in an uncontested proceeding, whether the NEPA review conducted by the NRC staff has been

adequate to identify all reasonable SAMDAs for the design of the reactor to be manufactured and evaluate the environmental, technical, economic, and other benefits and costs of each SAMDA; and

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

129. Section 51.107 is added to read as follows:

§ 51.107 Public hearings in proceedings for issuance of combined licenses.

(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 shall 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.

130. Section 51.108 is added under the undesignated center heading ''Production and Utilization Facilities,'' to read as follows:

§ 51.108 Public hearings on a Commission findings that inspections, tests, and acceptance criteria of combined licenses are met.

In any public hearing requested under 10 CFR 52.103(b), the Commission will not admit any contentions on environmental issues, the adequacy of the environmental impact statement for the combined license issued under subpart C of part 52, or the adequacy of any other environmental impact statement or environmental assessment referenced in the combined license application. The Commission will not make any environmental findings in connection with the finding under 10 CFR 52.103(g).

131. Part 52 is revised to read as follows:

PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

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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 (42 U.S.C. 5841, 5842, 5846).

General Provisions

§ 52.0 Scope; applicability of 10 CFR Chapter I provisions.

(a) This part governs the issuance of early site permits, standard design certifications, combined licenses, standard design approvals, and manufacturing licenses for nuclear power facilities licensed under Section 103 of the Atomic Energy Act of 1954, as amended (68 Stat. 919), and Title II of the Energy Reorganization Act of 1974 (88 Stat. 1242). This part also gives notice to all persons who knowingly provide to any holder of or applicant for an approval, certification, permit, or license, or to a contractor, subcontractor, or consultant of any of them, components, equipment, materials, or other goods or services that relate to the activities of a holder of or applicant for an approval, certification, permit, or license, subject to this part, that they may be individually subject to NRC enforcement action for violation of the provisions in 10 CFR 50.5.

(b) Unless otherwise specifically provided for in this part, the regulations in 10 CFR chapter I apply to a holder of or applicant for an approval, certification, permit, or license. A holder of or applicant for an approval, certification, permit, or license issued under this part shall comply with all requirements in 10 CFR chapter I that are applicable. A license, approval, certification, or permit issued under this part is subject to all requirements in 10 CFR chapter I which, by their terms, are applicable to early site permits, design certifications, combined licenses, design approvals, or manufacturing licenses.

§ 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.

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.

§ 52.2 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§ 52.3 Written communications.

(a) *General requirements.* All correspondence, reports, applications, and other written communications from an applicant, licensee, or holder of a standard design approval to the Nuclear Regulatory Commission concerning the regulations in this part, individual license conditions, or the terms and conditions of an early site permit, must be sent either by mail addressed: ATTN: Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland, between the hours of 7:30 a.m. and 4:15 p.m. eastern time; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, e-mail, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html,* by calling (301) 415–6030, by e-mail at EIE@nrc.gov, or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information. If the communication is on paper, the signed original must be sent. If a submission due date falls on a Saturday, Sunday, or Federal holiday, the next Federal working day becomes the official due date.

(b) *Distribution requirements.* Copies of all correspondence, reports, and other written communications concerning the regulations in this part or individual license conditions, or the terms and conditions of an early site permit, must be submitted to the persons listed in paragraph (b)(1) of this section (addresses for the NRC Regional Offices are listed in appendix D to part 20 of this chapter).

(1) *Applications for amendment of permits and licenses; reports; and other communications.* All written communications (including responses to: generic letters, bulletins, information notices, regulatory information summaries, inspection reports, and miscellaneous requests for additional information) that are required of holders of combined licenses or manufacturing licenses issued under this part must be submitted as follows, except as otherwise specified in paragraphs (b)(2) through (b)(7) of this section: to the NRC's Document Control Desk (if on paper, the signed original), with a copy to the appropriate Regional Office, and a copy to the appropriate NRC Resident Inspector, if one has been assigned to the site of the facility or the place of manufacture of a reactor licensed under subpart F of this part.

(2) *Applications and amendments to applications.* Applications for early site permits, combined licenses, manufacturing licenses and amendments to any of these types of applications must be submitted to the NRC's Document Control Desk, with a copy to the appropriate Regional Office, and a copy to the appropriate NRC Resident Inspector, if one has been assigned to the site of the facility or the place of manufacture of a reactor licensed under subpart F of this part, except as otherwise specified in paragraphs (b)(3) through (b)(7) of this section. If the application or amendment is on paper, the submission to the Document Control Desk must be the signed original.

(3) *Acceptance review application.* Written communications required for an application for determination of suitability for docketing must be submitted to the NRC's Document Control Desk, with a copy to the appropriate Regional Office. If the communication is on paper, the submission to the Document Control Desk must be the signed original.

(4) *Security plan and related submissions.* Written communications, as defined in paragraphs (b)(4)(i) through (iv) of this section, must be submitted to the NRC's Document Control Desk, with a copy to the appropriate Regional Office. If the communication is on paper, the submission to the Document Control Desk must be the signed original.

(i) Physical security plan under § 52.79 of this chapter;

(ii) Safeguards contingency plan under § 52.79 of this chapter;

(iii) Change to security plan, guard training and qualification plan, or safeguards contingency plan made without prior Commission approval under § 50.54(p) of this chapter;

(iv) Application for amendment of physical security plan, guard training and qualification plan, or safeguards contingency plan under § 50.90 of this chapter.

(5) *Emergency plan and related submissions.* Written communications as defined in paragraphs (b)(5)(i) through (iii) of this section must be submitted to the NRC's Document Control Desk, with a copy to the appropriate Regional Office, and a copy to the appropriate NRC Resident Inspector if one has been assigned to the site of the facility. If the communication is on paper, the submission to the Document Control Desk must be the signed original.

(i) Emergency plan under § 50.34 of this chapter;

(ii) Change to an emergency plan under § 50.54(q) of this chapter;

(iii) Emergency implementing procedures under appendix E, Section V of this part.

(6) Updated FSAR. An updated final safety analysis report (FSAR) or replacement pages under § 50.71(e) of this chapter, or the regulations in this part must be submitted to the NRC's Document Control Desk, with a copy to the appropriate Regional Office, and a copy to the appropriate NRC Resident Inspector if one has been assigned to the site of the facility or the place of manufacture of a reactor licensed under subpart F of this part. Paper copy submissions may be made using replacement pages; however, if a licensee chooses to use electronic submission, all subsequent updates or submissions must be performed electronically on a total replacement basis. If the communication is on paper, the submission to the Document Control Desk must be the signed original. If the communications are submitted electronically, see Guidance for Electronic Submissions to the Commission.

(7) *Quality assurance related submissions.* (i) A change to the safety analysis report quality assurance program description under § 50.54(a)(3) or § 50.55(f)(3) of this chapter, or a change to a licensee's NRC-accepted quality assurance topical report under § 50.54(a)(3) or § 50.55(f)(3) of this chapter, must be submitted to the NRC's Document Control Desk, with a copy to

the appropriate Regional Office, and a copy to the appropriate NRC Resident Inspector if one has been assigned to the site of the facility. If the communication is on paper, the submission to the Document Control Desk must be the signed original.

(ii) A change to an NRC-accepted quality assurance topical report from nonlicensees (i.e., architect/engineers, NSSS suppliers, fuel suppliers, constructors, etc.) must be submitted to the NRC's Document Control Desk. If the communication is on paper, the signed original must be sent.

(8) *Certification of permanent cessation of operations.* The licensee's certification of permanent cessation of operations under § 52.110(a)(1), must state the date on which operations have ceased or will cease, and must be submitted to the NRC's Document Control Desk. This submission must be under oath or affirmation.

(9) *Certification of permanent fuel removal.* The licensee's certification of permanent fuel removal under § 52.110(a)(1), must state the date on which the fuel was removed from the reactor vessel and the disposition of the fuel, and must be submitted to the NRC's Document Control Desk. This submission must be under oath or affirmation.

(c) *Form of communications.* All paper copies submitted to meet the requirements set forth in paragraph (b) of this section must be typewritten, printed or otherwise reproduced in permanent form on unglazed paper. Exceptions to these requirements imposed on paper submissions may be granted for the submission of micrographic, photographic, or similar forms.

(d) *Regulation governing submission.* Applicants, licensees, and holders of standard design approvals submitting correspondence, reports, and other written communications under the regulations of this part are requested but not required to cite whenever practical, in the upper right corner of the first page of the submission, the specific regulation or other basis requiring submission.

§ 52.4 Deliberate misconduct.

(a) *Applicability.* This section applies to any:

(1) Licensee;

(2) Applicant for a standard design certification;

(3) Applicant for a license;

(4) Applicant for a standard design approval;

(5) Employee of a licensee.

(6) Employee of an applicant for a license, a standard design certification, or a standard design approval;

(7) Any contractor (including a supplier or consultant), subcontractor, or employee of a contractor or subcontractor of any licensee; or

(8) Any contractor (including a supplier or consultant), subcontractor, or employee of a contractor or subcontractor of any applicant for a license, a standard design certification, or a standard design approval.

(b) *Definitions.* For purposes of this section:

Deliberate misconduct means an intentional act or omission that a person or entity knows:

(i) Would cause a licensee or an applicant for a license, standard design certification, or standard design approval to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license, standard design certification, or standard design approval; or

(ii) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, holder of a standard design approval, applicant for a license, standard design certification, or standard design approval, or contractor, or subcontractor.

License means a license issued under this part, including an early site permit.

Licensee means any person holding a license issued under this part, including an early site permit.

(c) Prohibition against deliberate misconduct. Any person or entity subject to this section, who knowingly provides to any licensee, any applicant for a license, standard design certification or standard design approval, or a contractor, or subcontractor of a person or entity subject to this section, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities under this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, holder of a standard design approval, or applicant to be in violation of any regulation or order; or any term, condition, or limitation of any license issued by the Commission, any standard design approval, or standard design certification; or

(2) Deliberately submit to the NRC; a licensee, an applicant for a license, standard design certification or standard design approval; or a licensee's, standard design approval holder's, or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(d) A person or entity who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

§ 52.5 Employee protection.

(a) Discrimination by a Commission licensee, holder of a standard design approval, an applicant for a license, standard design certification, or standard design approval, a contractor or subcontractor of a Commission licensee, holder of a standard design approval, applicant for a license, standard design certification, or standard design approval, against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in Section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in the introductory text of paragraph (a) of this section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in the introductory text of paragraph (a) of this section or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any ederal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in the introductory text of paragraph (a) of this section; and

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination

prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraph (a), (e), or (f) of this section by a Commission licensee, a holder of a standard design approval, an applicant for a Commission license, standard design certification, or a standard design approval, or a contractor or subcontractor of a Commission licensee, holder of a standard design approval, or any applicant may be grounds for—

(1) Denial, revocation, or suspension of the license or standard design approval;

(2) Withdrawal or revocation of a proposed or final rule;

(3) Imposition of a civil penalty on the licensee, holder of a standard design approval, or applicant; or

(4) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e)(1) Each licensee, each holder of a standard design approval, and each applicant for a license, standard design certification, or standard design approval, shall prominently post the revision of NRC Form 3, ''Notice to Employees,'' referenced in 10 CFR 19.11(c). This form must be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than thirty (30) days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, standard design certification, or standard design approval under part 52, and for 30 days following license termination or the expiration or termination of the standard design certification or standard design approval under part 52.

(2) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter, by calling (301) 415–5877, via e-mail to forms@nrc.gov, or by visiting the NRC's Web site at *http://www.nrc.gov* and selecting forms from the index found on the NRC's home page.

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor under Section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

(g) Part 19 of this chapter sets forth requirements and regulatory provisions applicable to licensees, holders of a standard design approval, applicants for a license, standard design certification, or standard design approval, and contractors or subcontractors of a Commission licensee, or holder of a standard design approval, and are in addition to the requirements in this section.

§ 52.6 Completeness and accuracy of information.

(a) Information provided to the Commission by a licensee (including a construction permit holder, and a combined license holder), a holder of a standard design approval under this part, and an applicant for a license or an applicant for a standard design certification or a standard design approval under this part, and information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the licensee, the holder of a standard design approval under this part, the applicant for a standard design certification under this part following Commission adoption of a final design certification rule, and an applicant for a license, a standard design certification, or a standard design approval under this part shall be complete and accurate in all material respects.

(b) Each applicant or licensee, each holder of a standard design approval under this part, and each applicant for a standard design certification under this part following Commission adoption of a final design certification regulation, shall notify the Commission of information identified by the applicant or the licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant, licensee, or holder violates this paragraph only if the applicant, licensee, or holder fails to notify the Commission of information that the applicant, licensee, or holder has been identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within 2 working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

§ 52.7 Specific exemptions.

The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part. The Commission's consideration will be governed by § 50.12 of this chapter, unless other criteria are provided for in this part, in which case the Commission's consideration will be governed by the criteria in this part. Only if those criteria are not met will the Commission's consideration be governed by § 50.12. The Commission's consideration of requests for exemptions from requirements of the regulations of other parts in this chapter, which are applicable by virtue of this part, shall be governed by the exemption requirements of those parts.

§ 52.8 Combining licenses.

The Commission may combine in a single license the activities of an applicant which would otherwise be licensed separately.

§ 52.9 Jurisdictional limits.

No license, standard design approval, or standard design certification under this part shall be deemed to have been

issued for activities which are not under or within the jurisdiction of the United States.

§ 52.10 Attacks and destructive acts.

Neither an applicant for a license to manufacture, construct, and operate a utilization facility under this part, nor for an amendment to this license, or an applicant for an early site permit, a standard design certification, or standard design approval under this part, or for an amendment to the standard design certification or approval, is required to provide for design features or other measures for the specific purpose of protection against the effects of—

(a) Attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States, whether a foreign government or other person; or

(b) Use or deployment of weapons incident to U.S. defense activities.

§ 52.11 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under Control Number 3150–0151.

(b) The approved information collection requirements contained in this part appear in §§ 52.7, 52.15, 52.16, 52.17, 52.29, 52.35, 52.39, 52.45, 52.46, 52.47, 52.57, 52.63, 52.75, 52.77, 52.79, 52.80, 52.93, 52.99, 52.110, 52.135, 52.136, 52.137, 52.155, 52.156, 52.157, 52.158, 52.171, 52.177, and appendices A, B, C, and D.

Subpart A—Early Site Permits

§ 52.12 Scope of subpart.

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

§ 52.13 Relationship to other subparts.

This subpart applies when any person who may apply for a construction permit under 10 CFR part 50, or for a combined license under this part seeks an early site permit from the Commission separately from an application for a construction permit or a combined license.

§ 52.15 Filing of applications.

(a) Any person who may apply for a construction permit under 10 CFR part 50, or for a combined license under this part, may file an application for an early site permit with the Director, Office of Nuclear Reactor Regulation. An application for an early site permit may be filed notwithstanding the fact that an application for a construction permit or a combined license has not been filed in connection with the site for which a permit is sought.

(b) The application must comply with the applicable filing requirements of §§ 52.3 and 50.30 of this chapter.

(c) The fees associated with the filing and review of an application for the initial issuance or renewal of an early site permit are set forth in 10 CFR part 170.

§ 52.16 Contents of applications; general information.

The application must contain all of the information required by 10 CFR 50.33(a) through (d) and (j) of this chapter.

§ 52.17 Contents of applications; technical information.

(a) The application must contain:

(1) A site safety analysis report. The site safety analysis report shall 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 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

[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.

[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 accident.

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 [insert 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 sets forth the requirements for quality assurance programs for nuclear power plants. The description of the quality assurance program for a nuclear power plant site shall include a discussion of how the applicable requirements of appendix B of this part 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 shall 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 shall 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) If the applicant requests authorization to perform activities at the site, which are identified in 10 CFR 50.10(e)(1), after issuance of the early site permit and without a separate authorization under 10 CFR 50.10(e)(1), the applicant must identify and describe in the site safety analysis report the activities that are requested, and propose a plan in the environmental report for redress of the site in the event that the activities are performed and the early site permit expires before it is referenced in an application for a construction permit or a combined license. The application must demonstrate that there is reasonable assurance that redress carried out under the plan will achieve an environmentally stable and aesthetically acceptable site suitable for whatever non-nuclear use may conform with local zoning laws.

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

§ 52.18 Standards for review of applications.

Applications filed under this subpart will be reviewed according to the applicable standards set out in 10 CFR part 50 and its appendices and 10 CFR part 100. In addition, the Commission shall prepare an environmental impact statement during review of the application, in accordance with the applicable provisions of 10 CFR part 51. The Commission shall determine, after consultation with FEMA, whether the information required of the applicant by § 52.17(b)(1) shows that there is no significant impediment to the development of emergency plans that cannot be mitigated or eliminated by measures proposed by the applicant, whether any major features of emergency plans submitted by the applicant under § 52.17(b)(2)(i) are acceptable in accordance with the applicable standards of 10 CFR 50.47 and the requirements of appendix E to 10 CFR part 50, and whether any emergency plans submitted by the applicant under § 52.17(b)(2)(ii) provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

§ 52.21 Administrative review of applications: hearings.

An early site permit is subject to all procedural requirements in 10 CFR part

2, including the requirements for docketing in § 2.101(a)(1) through (4) of this chapter, and the requirements for issuance of a notice of hearing in §§ 2.104(a) and (d) of this chapter provided that the designated sections may not be construed to require that the environmental report, or draft or final environmental impact statement include an assessment of the benefits of construction and operation of the reactor or reactors, or an analysis of alternative energy sources. The presiding officer in an early site permit hearing shall not admit contentions proffered by any party concerning an assessment of the benefits of construction and operation of the reactor or reactors, or an analysis of alternative energy sources if those issues were not addressed by the applicant in the early site permit application. All hearings conducted on applications for early site permits filed under this part are governed by the procedures contained in subparts C, G, and L of 10 CFR part 2, as applicable.

§ 52.23 Referral to the Advisory Committee on Reactor Safeguards (ACRS).

The Commission shall refer a copy of the application for an early site permit to the ACRS. The ACRS shall report on those portions of the application which concern safety.

§ 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 shall 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.

(c) The early site permit shall specify the activities under § 52.17(c) that the permit holder is authorized to perform.

§ 52.25 Extent of activities permitted.

If the activities authorized by § 52.24(c) are performed and the site is not referenced in an application for a construction permit or a combined license issued under subpart C of this part while the permit remains valid, then the early site permit remains in effect solely for the purpose of site redress, and the holder of the permit shall redress the site in accordance with the terms of the site redress plan required by § 52.17(c). If, before redress is complete, a use not envisaged in the redress plan is found for the site or parts thereof, the holder of the permit shall carry out the redress plan to the greatest extent possible consistent with the alternate use.

§ 52.27 Duration of permit.

(a) Except as provided in paragraph (b) of this section, an early site permit issued under this subpart may be valid for not less than 10, nor more than 20 years from the date of issuance.

(b)(1) An early site permit continues to be valid beyond the date of expiration in any proceeding on a construction permit application or a combined license application that references the early site permit and is docketed before the date of expiration of the early site permit, or, if a timely application for renewal of the permit has been filed, before the Commission has determined whether to renew the permit.

(2) An early site permit also continues to be valid beyond the date of expiration in any proceeding on an operating license application which is based on a construction permit that references the early site permit, and in any hearing held under § 52.103 before operation begins under a combined license which references the early site permit.

(c) An applicant for a construction permit or combined license may, at its own risk, reference in its application a site for which an early site permit application has been docketed but not granted.

§ 52.28 Transfer of early site permit.

An application to transfer an early site permit will be processed under 10 CFR 50.80.

§ 52.29 Application for renewal.

(a) Not less than 12, nor more than 36 months before the expiration date stated in the early site permit, or any later renewal period, the permit holder may apply for a renewal of the permit. An application for renewal must contain all information necessary to bring up to date the information and data contained in the previous application.

(b) Any person whose interests may be affected by renewal of the permit may request a hearing on the application for renewal. The request for a hearing must comply with 10 CFR 2.309. If a hearing is granted, notice of the hearing will be published in accordance with 10 CFR 2.309.

(c) An early site permit, either original or renewed, for which a timely application for renewal has been filed, remains in effect until the Commission has determined whether to renew the permit. If the permit is not renewed, it continues to be valid in certain proceedings in accordance with the provisions of § 52.27(b).

(d) The Commission shall refer a copy of the application for renewal to the ACRS. The ACRS shall report on those portions of the application which concern safety and shall apply the criteria set forth in § 52.31.

§ 52.31 Criteria for renewal.

(a) The Commission shall grant the renewal if it determines that:

(1) The site complies with the Act, the Commission's regulations, and orders applicable and in effect at the time the site permit was originally issued; and

(2) Any new requirements the Commission may wish to impose are:

(i) Necessary for adequate protection to public health and safety or common defense and security;

(ii) Necessary for compliance with the Commission's regulations, and orders applicable and in effect at the time the site permit was originally issued; or

(iii) A substantial increase in overall protection of the public health and safety or the common defense and security to be derived from the new requirements, and the direct and

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

(b) A denial of renewal for failure to comply with the provisions of § 52.31(a) does not bar the permit holder or another applicant from filing a new application for the site which proposes changes to the site or the way that it is used to correct the deficiencies cited in the denial of the renewal.

§ 52.33 Duration of renewal.

Each renewal of an early site permit may be for not less than 10, nor more than 20 years.

§ 52.35 Use of site for other purposes.

A site for which an early site permit has been issued under this subpart may be used for purposes other than those described in the permit, including the location of other types of energy facilities. The permit holder shall inform the Director of Nuclear Reactor Regulation (Director) of any significant uses for the site which have not been approved in the early site permit. The information about the activities must be given to the Director at least 30 days in advance of any actual construction or site modification for the activities. The information provided could be the basis for imposing new requirements on the permit, in accordance with the provisions of § 52.39. If the permit holder informs the Director that the holder no longer intends to use the site for a nuclear power plant, the Director may terminate the permit.

§ 52.39 Finality of early site permit determinations.

(a) *Commission finality.* (1) Notwithstanding any provision in 10 CFR 50.109, while an early site permit is in effect under §§ 52.27 or 52.33, the Commission may not change or impose new site characteristics, design parameters, or terms and conditions, including emergency planning requirements, on the early site permit unless the Commission:

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

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

(iii) Determines that a modification is necessary based on an update under paragraph (b) of this section; or

(iv) Issues a variance requested under paragraph (d) of this section.

(2) In making the findings required for issuance of a construction permit, operating license, or combined license, or the findings required by § 52.103, if the application for the construction permit, operating license, or combined license references an early site permit, the Commission shall treat as resolved those matters resolved in the proceeding on the application for issuance or renewal of the early site permit, except as provided for in paragraphs (b), (c) and (d) of this section. If the early site permit approved an emergency plan (or major features thereof) that are in use by a licensee of a nuclear power plant, the Commission shall treat as resolved changes to the early site permit emergency plan (or major features thereof) that are identical to changes made to the licensee's emergency plans in compliance with § 50.54(q) of this chapter occurring after issuance of the early site permit.

(b) *Updating of early site permit-emergency preparedness.* An applicant for a construction permit, operating license, or combined license who has filed an application referencing an early site permit issued under this subpart shall update the emergency preparedness information that was provided under § 52.17(b), and discuss whether the updated information materially changes the bases for compliance with applicable NRC requirements.

(c) *Hearings and petitions.* (1) In any proceeding for the issuance of a construction permit, operating license, or combined license referencing an early site permit, contentions on the following matters may be litigated in the same manner as other issues material to the proceeding:

(i) The nuclear power reactor proposed to be built does not fit within one or more of the site characteristics or design parameters included in the early site permit;

(ii) One or more of the terms and conditions of the early site permit have not been met;

(iii) A variance requested under paragraph (d) of this section is unwarranted or should be modified;

(iv) New or additional information is provided in the application which materially affects the Commission's earlier determination on emergency preparedness, or is needed to correct inaccuracies in the emergency preparedness information approved in the early site permit; or

(v) Any significant environmental issue not considered which is material to the site or the design 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 permits.

(2) Any person may file a petition requesting that the site characteristics, design parameters, or terms and conditions of the early site permit should be modified, or that the permit should be suspended or revoked. The petition will be considered in accordance with § 2.206 of this chapter. Before construction commences, the Commission shall consider the petition and determine whether any immediate action is required. If the petition is granted, an appropriate order will be issued. Construction under the construction permit or combined license will not be affected by the granting of the petition unless the order is made immediately effective. Any change required by the Commission in response to the petition must meet the requirements of paragraph (a)(1) of this section.

(d) *Variances.* An applicant for a construction permit, operating license, or combined license referencing an early site permit may include in its application a request for a variance from one or more site characteristics, design parameters, or terms and conditions of the early site permit. In determining whether to grant the variance, the Commission shall apply the same technically relevant criteria applicable to the application for the original or renewed early site permit. A variance will not be issued once the construction permit, operating license, or combined license is issued.

(e) *Information requests.* Except for information requests seeking to verify compliance with the current licensing basis of the early site permit, information requests to the holder of an early site permit must be evaluated before issuance to ensure that the burden to be imposed on respondents is justified in view of the potential safety significance of the issue to be addressed in the requested information. Each evaluation performed by the NRC staff must be in accordance with 10 CFR 50.54(f), and must be approved by the Executive Director for Operations or his or her designee before issuance of the request.

Subpart B—Standard Design Certifications

§ 52.41 Scope of subpart.

(a) This subpart sets forth the requirements and procedures applicable to Commission issuance of rules granting standard design certification for nuclear power facilities separate from the filing of an application for a

construction permit or combined license for such a facility.

(b)(1) Any person may seek a standard design certification for an essentially complete nuclear power plant design which is an evolutionary change from light water reactor designs of plants which have been licensed and in commercial operation before April 18, 1989.

(2) Any person may also seek a standard design certification for a nuclear power plant design which differs significantly from the light water reactor designs described in paragraph (b)(1) of this section or uses simplified, inherent, passive, or other innovative means to accomplish its safety functions.

§ 52.43 Relationship to other subparts.

(a) This subpart applies to a person that requests a standard design certification from the NRC separately from an application for a combined license filed under subpart C of this part for a nuclear power facility. An applicant for a combined license may reference a standard design certification.

(b) Subpart E of this part governs the NRC staff review and approval of a final standard design. Subpart E may be used independently of the provisions in this subpart.

(c) Subpart F of this part governs the issuance of licenses to manufacture nuclear power reactors to be installed and operated at sites not identified in the manufacturing license application. Subpart F may be used independently of the provisions in this subpart.

§ 52.45 Filing of applications.

(a) An application for design certification may be filed notwithstanding the fact that an application for a construction permit or combined license for such a facility has not been filed.

(b) The application must comply with the applicable filing requirements of § 52.3 and §§ 2.811 through 2.819 of this chapter.

(c) The fees associated with the review of an application for the initial issuance or renewal of a standard design certification are set forth in 10 CFR part 170.

§ 52.46 Contents of applications; general information.

The application must contain all of the information required by 10 CFR 50.33(a) through (c) and (j).

§ 52.47 Contents of applications; technical information.

The application must contain a level of design information sufficient to enable the Commission to judge the applicant's proposed means of assuring that construction conforms to the design and to reach a final conclusion on all safety questions associated with the design before the certification is granted. The information submitted for a design certification must include performance requirements and design information sufficiently detailed to permit the preparation of acceptance and inspection requirements by the NRC, and procurement specifications and construction and installation specifications by an applicant. The Commission will require, before design certification, that information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if the information is necessary for the Commission to make its safety determination.

(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 and of the facility as a whole, and must include the following information:

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

(2) A description and analysis of the structures, systems, and components (SSCs) of the facility, with emphasis upon performance requirements, the bases, with technical justification therefor, upon which these requirements have been established, and the evaluations required to show that safety functions will be accomplished. It is expected that the standard plant will reflect through its design, construction, and operation an extremely low probability for accidents that could result in the release of significant quantities of radioactive fission products. The description shall be sufficient to permit understanding of the system designs and their relationship to the safety evaluations. Such 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 shall be discussed insofar as they are pertinent. The following power reactor design characteristics 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; and

(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 [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 and any fission product cleanup systems intended to mitigate the consequences of the accidents, together with applicable postulated site parameters, including site meteorology, to evaluate the offsite radiological consequences. 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

[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.

[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. 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.

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;

(3) The design of the facility including:

(i) The principal design criteria for the facility. Appendix A to 10 CFR part 50, general design criteria (GDC), 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, general arrangement, and approximate dimensions, sufficient to provide reasonable assurance that the design will conform to the design bases with an adequate margin for safety;

(4) 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 emergency core cooling system (ECCS) cooling performance and the need for high-point vents following postulated loss-of-coolant accidents shall be performed in accordance with the requirements of §§ 50.46 and 50.46a of this chapter;

(5) A description and analysis of the fire protection design features for the standard plant necessary to comply with 10 CFR part 50, appendix A, GDC 3;

(6) 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 10 CFR 50.60 and 50.61;

(7) An analysis and description of the equipment and systems for combustible gas control as required by 10 CFR 50.44;

(8) A coping analysis, and any design features necessary to address station blackout, as required by 10 CFR 50.63;

(9) A description of the kinds and quantities of radioactive materials expected to be produced and used in the construction and operation and the design features for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in 10 CFR part 20;

(10) 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 described in 10 CFR 50.34a(e);

(11) The information on electric equipment important to safety that is required by 10 CFR 50.49(d);

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

(13) Information demonstrating how the applicant will comply with requirements for criticality accidents in § 50.68(b)(2) through (b)(4);

(14) through (15) [Reserved]

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

(17) The information necessary to demonstrate compliance with any technically relevant portions of the Three Mile Island requirements set forth in 10 CFR 50.34(f), except paragraphs (f)(1)(xii), (f)(2)(ix), and (f)(3)(v);

(18) The information necessary to demonstrate 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 the docket date of the application and that are technically relevant to the standard plant design;

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

(20) 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;

(21) A description of the quality assurance program to be applied to the design of the structures, systems, and components of the facility. Appendix B to 10 CFR part 50, ''Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,'' 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;

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

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

(24) A description of the design features that will provide physical protection of the standard plant design in accordance with the requirements of 10 CFR part 73;

(25) A representative conceptual design for those portions of the standard plant for which the application does not seek certification, to aid the NRC in its review of the final safety analysis and probabilistic risk assessment, and to permit assessment of the adequacy of the interface requirements in paragraph (b)(3) of this section;

(26) An evaluation of the standard plant design against the Standard Review Plan (SRP) revision in effect 6 months before the docket date of the application. The evaluation required by this section shall 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 shall 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 meets the Commission's regulations. The SRP is not a substitute for the regulations, and compliance is not a requirement; and

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

(b) The application must also contain:

(1) A design-specific probabilistic risk assessment (PRA);

(2) The proposed inspections, tests, analyses, and acceptance criteria (ITAAC) that are necessary and sufficient to provide reasonable assurance that, if the inspections, tests, and analyses are performed and the acceptance criteria met, a plant that incorporates the design certification is

built and will operate in accordance with the design certification, the provisions of the Act, and the Commission's regulations;

(3) The interface requirements to be met by those portions of the plant for which the application does not seek certification. These requirements must be sufficiently detailed to allow completion of the final safety analysis and design-specific PRA required by this section;

(4) Justification that compliance with the interface requirements of paragraph (b)(3) of this section is verifiable through inspection, testing (either in the plant or elsewhere), or analysis. The method to be used for verification of interface requirements must be included as part of the proposed ITAAC required by paragraph (b)(2) of this section; and

(5) An evaluation of severe accident mitigation design alternatives to the plant design under 10 CFR 51.30, and a description of how cost-beneficial design alternatives are included in the standard plant design.

(c) This paragraph applies, according to its provisions, to particular applications:

(1) An application for certification of a nuclear power reactor design that is an evolutionary change from light-water reactor designs of plants that have been licensed and in commercial operation before April 18, 1989, must provide an essentially complete nuclear power plant design except for site-specific elements such as the service water intake structure and the ultimate heat sink;

(2) An application for certification of a nuclear power reactor design that differs significantly from the light-water reactor designs described in paragraph (c)(1) of this section or uses simplified, inherent, passive, or other innovative means to accomplish its safety functions must provide an essentially complete nuclear power reactor design except for site-specific elements such as the service water intake structure and the ultimate heat sink and must meet the requirements of 10 CFR 50.43(e); and

(3) An application for certification of a modular nuclear power reactor design must describe the various options for the configuration of the plant and site, including variations in, or sharing of, common systems, interface requirements, and system interactions. The final safety analysis and the PRA must also account for differences among the various options, including any restrictions that will be necessary during the construction and startup of a given module to ensure the safe operation of any module already operating.

§ 52.48 Standards for review of applications.

Applications filed under this subpart will be reviewed for compliance with the standards set out in 10 CFR parts 20, 50 and its appendices, 51, 73, and 100.

§ 52.51 Administrative review of applications.

(a) A standard design certification is a rule that will be issued in accordance with the provisions of subpart H of 10 CFR part 2, as supplemented by the provisions of this section. The Commission shall initiate the rulemaking after an application has been filed under § 52.45 and shall specify the procedures to be used for the rulemaking. The notice of proposed rulemaking published in the **Federal Register** must provide an opportunity for the submission of comments on the proposed design certification rule. If, at the time a proposed design certification rule is published in the **Federal Register** under this paragraph (a), the Commission decides that a legislative hearing should be held, the information required by 10 CFR 2.1502(c) must be included in the **Federal Register** document for the proposed design certification.

(b) Following the submission of comments on the proposed design certification rule, the Commission may, at its discretion, hold a legislative hearing under the procedures in subpart O of part 2 of this chapter. The Commission shall publish a document in the **Federal Register** of its decision to hold a legislative hearing. The document shall contain the information specified in paragraph (c) of this section, and specify whether the Commission or a presiding officer will conduct the legislative hearing.

(c) Notwithstanding anything in 10 CFR 2.390 to the contrary, proprietary information will be protected in the same manner and to the same extent as proprietary information submitted in connection with applications for licenses, provided that the design certification shall be published in chapter I of this title.

§ 52.53 Referral to the Advisory Committee on Reactor Safeguards (ACRS).

The Commission shall refer a copy of the application to the ACRS. The ACRS shall report on those portions of the application which concern safety.

§ 52.54 Issuance of standard design certification.

(a) After conducting a rulemaking proceeding under § 52.51 on an application for a standard design certification and receiving the report to be submitted by the Advisory Committee on Reactor Safeguards under § 52.53, the Commission may issue a standard design certification in the form of a rule for the design which is the subject of the application, if the Commission determines that:

(1) The application meets the applicable standards and requirements of the Atomic Energy 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 standard design conforms with the provisions of the Act, and the Commission's regulations;

(4) The applicant is technically qualified;

(5) The proposed inspections, tests, analyses, and acceptance criteria are necessary and sufficient, within the scope of the standard design, 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 be operated in accordance with the design certification, the provisions of the Act, and the Commission's regulations;

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

(7) The findings required by subpart A of part 51 of this chapter have been made; and

(8) The applicant has implemented the quality assurance program described or referenced in the safety analysis report.

(b) The design certification rule shall specify the site parameters, design characteristics, and any additional requirements and restrictions of the design certification rule.

(c) After the Commission has adopted a final standard design certification rule, the applicant will not permit any individual to have access to or any facility to possess restricted data or classified National Security Information until the individual and/or facility has been approved for access under the provisions of 10 CFR parts 25 and/or 95.

§ 52.55 Duration of certification.

(a) Except as provided in paragraph (b) of this section, a standard design certification issued under this subpart is valid for 15 years from the date of issuance.

(b) A standard design certification continues to be valid beyond the date of expiration in any proceeding on an application for a combined license or an operating license that references the standard design certification and is

docketed either before the date of expiration of the certification, or, if a timely application for renewal of the certification has been filed, before the Commission has determined whether to renew the certification. A design certification also continues to be valid beyond the date of expiration in any hearing held under § 52.103 before operation begins under a combined license that references the design certification.

(c) An applicant for a construction permit or a combined license may, at its own risk, reference in its application a design for which a design certification application has been docketed but not granted.

§ 52.57 Application for renewal.

(a) Not less than 12 nor more than 36 months before the expiration of the initial 15-year period, or any later renewal period, any person may apply for renewal of the certification. An application for renewal must contain all information necessary to bring up to date the information and data contained in the previous application. The Commission will require, before renewal of certification, that information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if this information is necessary for the Commission to make its safety determination. Notice and comment procedures must be used for a rulemaking proceeding on the application for renewal. The Commission, in its discretion, may require the use of additional procedures in individual renewal proceedings.

(b) A design certification, either original or renewed, for which a timely application for renewal has been filed remains in effect until the Commission has determined whether to renew the certification. If the certification is not renewed, it continues to be valid in certain proceedings, in accordance with the provisions of § 52.55.

(c) The Commission shall refer a copy of the application for renewal to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS shall report on those portions of the application which concern safety and shall apply the criteria set forth in § 52.59.

§ 52.59 Criteria for renewal.

(a) The Commission shall issue a rule granting the renewal if the design, either as originally certified or as modified during the rulemaking on the renewal, complies with the Atomic Energy Act and the Commission's regulations applicable and in effect at the time the certification was issued.

(b) The Commission may impose other requirements if it determines that:

(1) They are necessary for adequate protection to public health and safety or common defense and security;

(2) They are necessary for compliance with the Commission's regulations and orders applicable and in effect at the time the design certification was issued; or

(3) There is a substantial increase in overall protection of the public health and safety or the common defense and security to be derived from the new requirements, and the direct and indirect costs of implementing those requirements are justified in view of this increased protection.

(c) In addition, the applicant for renewal may request an amendment to the design certification. The Commission shall grant the amendment request if it determines that the amendment will comply with the Atomic Energy Act and the Commission's regulations in effect at the time of renewal. If the amendment request entails such an extensive change to the design certification that an essentially new standard design is being proposed, an application for a design certification must be filed in accordance with this subpart.

(d) Denial of renewal does not bar the applicant, or another applicant, from filing a new application for certification of the design, which proposes design changes that correct the deficiencies cited in the denial of the renewal.

§ 52.61 Duration of renewal.

Each renewal of certification for a standard design will be for not less than 10, nor more than 15 years.

§ 52.63 Finality of standard design certifications.

(a)(1) Notwithstanding any provision in 10 CFR 50.109, while a standard design certification rule is in effect under §§ 52.55 or 52.61, the Commission may not modify, rescind, or impose new requirements on the certification information, whether on its own motion, or in response to a petition from any person, unless the Commission determines in a rulemaking that the change:

(i) Is necessary either to bring the certification information or the referencing plants into compliance with the Commission's regulations applicable and in effect at the time the certification was issued;

(ii) Is necessary to provide adequate protection of the public health and safety or the common defense and security; or

(iii) Reduces unnecessary regulatory burden and maintains protection to public health and safety and the common defense and security.

(2) The rulemaking procedures must provide for notice and opportunity for public comment.

(3) Any modification the NRC imposes on a design certification rule under paragraph (a)(1) of this section will be applied to all plants referencing the certified design, except those to which the modification has been rendered technically irrelevant by action taken under paragraphs (a)(4) or (b)(1) of this section.

(4) The Commission may not impose new requirements by plant-specific order on any part of the design of a specific plant referencing the design certification rule if that part was approved in the design certification while a design certification rule is in effect under § 52.55 or § 52.61, unless:

(i) A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time the certification was issued, or to assure adequate protection of the public health and safety or the common defense and security; and

(ii) Special circumstances as defined in 10 CFR 52.7 are present. In addition to the factors listed in § 52.7, the Commission shall consider whether the special circumstances which § 52.7 requires to be present outweigh any decrease in safety that may result from the reduction in standardization caused by the plant-specific order.

(5) Except as provided in 10 CFR 2.335, in making the findings required for issuance of a combined license or operating license, or for any hearing under § 52.103, the Commission shall treat as resolved those matters resolved in connection with the issuance or renewal of a design certification rule.

(b)(1) An applicant or licensee who references a standard design certification rule may request an exemption from one or more elements of the design certification information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of § 52.7. In addition to the factors listed in § 52.7, the Commission shall consider whether the special circumstances that § 52.7 requires to be present outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption. The granting of an exemption on request of an applicant must be subject to litigation in the same manner as other issues in the operating license or combined license hearing.

(2) Subject to § 50.59 of this chapter, a licensee who references a standard design certification rule may make changes to the design of the nuclear power facility, without prior Commission approval, unless the proposed change involves a change to the design as described in the rule certifying the design. The licensee shall maintain records of all changes to the facility and these records must be maintained and available for audit until the date of termination of the license.

(c) The Commission will require, before granting a construction permit, combined license, or operating license which references a standard design certification rule, that information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if the information is necessary for the Commission to make its safety determinations, including the determination that the application is consistent with the certification information. This information may be acquired by appropriate arrangements with the design certification applicant.

Subpart C—Combined Licenses

§ 52.71 Scope of subpart.

This subpart sets out the requirements and procedures applicable to Commission issuance of combined licenses for nuclear power facilities.

§ 52.73 Relationship to other subparts.

(a) An application for a combined license under this subpart may, but need not, reference a standard design certification, standard design approval, or manufacturing license issued under subparts B, E, or F of this part, respectively, or an early site permit issued under subpart A of this part. In the absence of a demonstration that an entity other than the one originally sponsoring and obtaining a design certification is qualified to supply a design, the Commission will entertain an application for a combined license that references a standard design certification issued under subpart B of this part only if the entity that sponsored and obtained the certification supplies the design for the applicant's use.

(b) The Commission will require, before granting a combined license that references a standard design certification, that information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if the information is necessary for the Commission to make its safety determinations, including the determination that the application is consistent with the certification information.

§ 52.75 Filing of applications.

(a) Any person except one excluded by 10 CFR 50.38 may file an application for a combined license for a nuclear power facility with the Director of Nuclear Reactor Regulation.

(b) The application must comply with the applicable filing requirements of §§ 52.3 and 50.30 of this chapter.

(c) The fees associated with the filing and review of the application are set forth in 10 CFR part 170.

§ 52.77 Contents of applications; general information.

The application must contain all of the information required by 10 CFR 50.33. The application must also state the earliest and latest dates for completion of construction.

§ 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 shall 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 [5] 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 radiation dose in excess of 25 rem [6] 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 therefor, 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

[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.

[6] 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.

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 shall be sufficient to permit understanding of the system designs and their relationship to safety 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 shall 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 [7] 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 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 shall 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;

[7] 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.

(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) If the applicant wishes to be able to perform the activities at the site allowed by 10 CFR 50.10(e) before issuance of the combined license, the applicant must identify and describe the activities that are requested and propose a plan for redress of the site in the event that the activities are performed and either construction is abandoned or the combined license is revoked. The application must demonstrate that there is reasonable assurance that redress carried out under the plan will achieve an environmentally stable and aesthetically acceptable site suitable for whatever non-nuclear use may conform with local zoning laws;

(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.[8] (Implementing 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 shall 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 shall 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

[8] 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.

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 shall 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.

§ 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) A complete environmental report as required by 10 CFR 51.50(c).

§ 52.81 Standards for review of applications.

Applications filed under this subpart will be reviewed according to the standards set out in 10 CFR parts 20, 50, 51, 54, 55, 73, 100, and 140.

§ 52.83 Finality of referenced NRC approvals.

If the application for a combined license under this subpart references an early site permit, design certification rule, standard design approval, or manufacturing license, the scope and nature of matters resolved for the application and any combined licensed issued are governed by the relevant provisions addressing finality, including §§ 52.39, 52.63, 52.98, 52.145, and 52.171.

§ 52.85 Administrative review of applications; hearings.

A proceeding on a combined license is subject to all applicable procedural requirements contained in 10 CFR part 2, including the requirements for docketing (§ 2.101 of this chapter) and issuance of a notice of hearing (§ 2.104 of this chapter). If an applicant requests a Commission finding on certain ITAAC with the issuance of the combined license, then those ITAAC will be identified in the notice of hearing. All hearings on combined licenses are governed by the procedures contained in 10 CFR part 2.

§ 52.87 Referral to the Advisory Committee on Reactor Safeguards (ACRS).

The Commission shall refer a copy of the application to the ACRS. The ACRS shall report on those portions of the application that concern safety and shall apply the standards referenced in § 52.81, in accordance with the finality provisions in § 52.83.

§ 52.89 [Reserved]

§ 52.91 Authorization to conduct site activities.

(a) If the application does not reference an early site permit which authorizes the applicant to perform site preparation activities, the applicant may not perform the site preparation activities allowed by 10 CFR 50.10(e)(1) without obtaining the separate authorization required by 10 CFR 50.10(e)(1). Authorization may be granted only after the presiding officer in the proceeding on the application has made the findings and determination required by 10 CFR 50.10(e)(2) and has determined that there is reasonable assurance that redress carried out under the site redress plan will achieve an environmentally stable and aesthetically acceptable site suitable for whatever non-nuclear use may conform with local zoning laws.

(b) Authorization to conduct the activities described in 10 CFR 50.10(e)(3)(i) may be granted only after the presiding officer in the combined license proceeding makes the additional finding required by 10 CFR 50.10(e)(3)(ii).

(c) If, after an applicant for a combined license has performed the activities permitted by paragraph (a) of this section, the application for the license is withdrawn or denied, and the early site permit referenced by the application expires, then the applicant shall redress the site in accord with the terms of the site redress plan. If a use not envisaged in the redress plan is found for the site or parts before redress is complete, the applicant shall carry out the redress plan to the greatest extent possible consistent with the alternate use.

§ 52.93 Exemptions and variances.

(a) Applicants for a combined license under this subpart, or any amendment to a combined license, may include in the application a request for an exemption from one or more of the Commission's regulations.

(1) If the request is for an exemption from any part of a referenced design certification rule, the Commission may grant the request if it determines that the exemption complies with any exemption provisions of the referenced design certification rule, or with § 52.63 if there are no applicable exemption provisions in the referenced design certification rule.

(2) For all other requests for exemptions, the Commission may grant a request if it determines that the exemption complies with § 52.7.

(b) An applicant for a combined license who has filed an application referencing an early site permit issued under this subpart may include in the application a request for a variance from one or more site characteristics, design parameters, or terms and conditions of the permit. In determining whether to grant the variance, the Commission shall apply the same technically relevant criteria as were applicable to the application for the original or renewed site permit.

(c) Issuance of the variance is subject to litigation during the combined license proceeding in the same manner as other issues material to that proceeding.

§ 52.97 Issuance of combined licenses.

(a)(1) After conducting a hearing in accordance with § 52.85 and receiving the report submitted by the ACRS, the Commission may issue a combined license if the Commission finds that:

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

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

(iii) 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) The applicant is technically and financially qualified to engage in the activities authorized; and

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

(vi) The findings required by subpart A of part 51 of this chapter have been made.

(2) The Commission may also find, at the time it issues the combined license, that certain acceptance criteria in one or more of the inspections, tests, analyses, and acceptance criteria (ITAAC) in a referenced early site permit or standard design certification have been met. This finding will finally resolve that those acceptance criteria have been met, those acceptance criteria will be deemed to be excluded from the combined license, and findings under § 52.103(g) with respect to those acceptance criteria are unnecessary.

(b) The Commission shall identify within the combined license the inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and the acceptance criteria that, if met, 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.

(c) A combined license shall contain the terms and conditions, including technical specifications, as the Commission deems necessary and appropriate.

§ 52.98 Finality of combined licenses; information requests.

(a) After issuance of a combined license, the Commission may not modify, add, or delete any term or condition of the combined license, the design of the facility, the inspections, tests, analyses, and acceptance criteria contained in the license which are not derived from a referenced standard design certification or manufacturing license, except in accordance with the provisions of § 52.103 or § 50.109 of this chapter, as applicable.

(b) If the combined license does not reference a design certification or a reactor manufactured under a subpart F of this part manufacturing license, then a licensee may make changes in the facility as described in the final safety analysis report (as updated), make changes in the procedures as described in the final safety analysis report (as updated), and conduct tests or experiments not described in the final safety analysis report (as updated) under the applicable change processes in 10 CFR part 50 (e.g., § 50.54, § 50.59, or § 50.90).

(c) If the combined license references a certified design, then—

(1) Changes to or departures from information within the scope of the referenced design certification rule are

subject to the applicable change processes in that rule; and

(2) Changes that are not within the scope of the referenced design certification rule are subject to the applicable change processes in 10 CFR part 50, unless they also involve changes to or noncompliance with information within the scope of the referenced design certification rule. In these cases, the applicable provisions of this section and the design certification rule apply.

(d) If the combined license references a reactor manufactured under a subpart F of this part manufacturing license, then—

(1) Changes to or variances from information within the scope of the manufactured reactor's design are subject to the change processes in § 52.171; and

(2) Changes that are not within the scope of the manufactured reactor's design are subject to the applicable change processes in 10 CFR part 50.

(e) The Commission may issue and make immediately effective any amendment to a combined license upon a determination by the Commission that the amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. The amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. The amendment will be processed in accordance with the procedures specified in 10 CFR 50.91.

(f) Any modification to, addition to, or deletion from the terms and conditions of a combined license, including any modification to, addition to, or deletion from the inspections, tests, analyses, or related acceptance criteria contained in the license is a proposed amendment to the license. There must be an opportunity for a hearing on the amendment.

(g) Except for information sought to verify licensee compliance with the current licensing basis for that facility, information requests to the holder of a combined license must be evaluated before issuance to ensure that the burden to be imposed on the licensee is justified in view of the potential safety significance of the issue to be addressed in the requested information. Each evaluation performed by the NRC staff must be in accordance with 10 CFR 50.54(f) and must be approved by the Executive Director for Operations or his or her designee before issuance of the request.

§ 52.99 Inspection during construction.

(a) Holders of combined licenses shall comply with the provisions of 10 CFR 50.70 and 50.71.

(b) With respect to activities subject to an ITAAC, an applicant for a combined license may proceed at its own risk with design and procurement activities, and a licensee may proceed at its own risk with design, procurement, construction, and pre-operational activities, even though the NRC may not have found that any particular ITAAC has been met.

(c) The licensee shall notify the NRC that the inspections, tests, or analyses in the ITAAC have been successfully completed and that the corresponding acceptance criteria have been met. For those inspections, tests, or analyses that are completed within 180 days prior to the scheduled date for initial loading of fuel, the licensee shall notify the NRC within 10 days of the successful completion of ITAAC.

(d)(1) In the event that an activity is subject to an ITAAC derived from a referenced early site permit or standard design certification and the licensee has not demonstrated that the ITAAC has been met, the licensee may take corrective actions to successfully complete that ITAAC, request a variance from the early site permit ITAAC, or request an exemption from the standard design certification ITAAC, as applicable. A request for a variance or an exemption must also be accompanied by a request for a license amendment under § 52.98(f).

(2) In the event that an activity is subject to an ITAAC not derived from a referenced early site permit or standard design certification and the licensee has not demonstrated that the ITAAC has been met, the licensee may take corrective actions to successfully complete that ITAAC or request a license amendment under § 52.98(f).

(e) The NRC shall ensure that the required inspections, tests, and analyses in the ITAAC are performed. At appropriate intervals, the NRC shall publish notices in the **Federal Register** of the NRC staff's determination of the successful completion of inspections, tests, and analyses.

§ 52.103 Operation under a combined license.

(a) Not less than 180 days before the date scheduled for initial loading of fuel into a plant by a licensee that has been issued a combined license under subpart C of this part, the Commission shall publish notice of intended operation in the **Federal Register.** The notice must provide that any person whose interest may be affected by operation of the plant may, within 60 days, request that the Commission hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria in the combined license, except that a hearing shall not be granted for those ITAAC which the Commission found were met under § 52.97(a)(2).

(b) A request for hearing under paragraph (a) of this section must show, prima facie, that—

(1) One or more of the acceptance criteria of the ITAAC in the combined license have not been, or will not be met; and

(2) The specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety.

(c) After receiving a request for a hearing, the Commission expeditiously shall either deny or grant the request. If the request is granted, the Commission shall determine, after considering petitioners' prima facie showing and any answers thereto, whether during a period of interim operation, there will be reasonable assurance of adequate protection of the public health and safety. If the Commission determines that there is reasonable assurance, it shall allow operation during an interim period under the combined license.

(d) The Commission shall determine appropriate hearing procedures in accordance with 10 CFR part 2 for any hearing under paragraph (a) of this section.

(e) The Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within 180 days of the publication of the notice provided by paragraph (a) of this section or by the anticipated date for initial loading of fuel into the reactor, whichever is later.

(f) A petition to modify the terms and conditions of the combined license will be processed as a request for action in accordance with 10 CFR 2.206. The petitioner shall file the petition with the Secretary of the Commission. Before the licensed activity allegedly affected by the petition (fuel loading, low power testing, etc.) commences, the Commission shall determine whether any immediate action is required. If the petition is granted, then an appropriate order will be issued. Fuel loading and operation under the combined license will not be affected by the granting of the petition unless the order is made immediately effective.

(g) The licensee shall not load fuel into the reactor and shall not operate the facility until the Commission makes a finding that the acceptance criteria in

the combined license are met, except for those acceptance criteria that the Commission found were met under § 52.97(a)(2). If the combined license is for a modular design, each reactor module may require a separate finding as construction proceeds.

(h) After the Commission has made the finding in paragraph (g) of this section, the ITAAC do not, by virtue of their inclusion in the combined license, constitute regulatory requirements either for licensees or for renewal of the license; except for the specific ITAAC for which the Commission has granted a hearing under paragraph (a) of this section, all ITAAC expire upon final Commission action in the proceeding. However, subsequent changes to the facility or procedures described in the final safety analysis report (as updated) must comply with the requirements in §§ 52.98(e) or (f), as applicable.

§ 52.104 Duration of combined license.

A combined license is issued for a specified period not to exceed 40 years from the date on which the Commission makes a finding that acceptance criteria are met under § 52.103(g) or allowing operation during an interim period under the combined license under § 52.103(c).

§ 52.105 Transfer of combined license.

A combined license may be transferred in accordance with § 50.80 of this chapter.

§ 52.107 Application for renewal.

The filing of an application for a renewed license must be in accordance with 10 CFR part 54.

§ 52.109 Continuation of combined license.

Each combined license for a facility that has permanently ceased operations, continues in effect beyond the expiration date to authorize ownership and possession of the production or utilization facility, until the Commission notifies the licensee in writing that the license is terminated. During this period of continued effectiveness the licensee shall—

(a) Take actions necessary to decommission and decontaminate the facility and continue to maintain the facility, including, where applicable, the storage, control and maintenance of the spent fuel, in a safe condition; and

(b) Conduct activities in accordance with all other restrictions applicable to the facility in accordance with the NRC's regulations and the provisions of the combined license for the facility.

§ 52.110 Termination of license.

(a)(1) When a licensee has determined to permanently cease operations the licensee shall, within 30 days, submit a written certification to the NRC, consistent with the requirements of § 52.3(b)(8);

(2) Once fuel has been permanently removed from the reactor vessel, the licensee shall submit a written certification to the NRC that meets the requirements of § 52.3(b)(9); and

(3) For licensees whose licenses have been permanently modified to allow possession but not operation of the facility, before [insert the effective date of this rule], the certification required in paragraph (a)(1) of this section shall be deemed to have been submitted.

(b) Upon docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel, or when a final legally effective order to permanently cease operations has come into effect, the 10 CFR part 52 license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel.

(c) Decommissioning will be completed within 60 years of permanent cessation of operations. Completion of decommissioning beyond 60 years will be approved by the Commission only when necessary to protect public health and safety. Factors that will be considered by the Commission in evaluating an alternative that provides for completion of decommissioning beyond 60 years of permanent cessation of operations include unavailability of waste disposal capacity and other site-specific factors affecting the licensee's capability to carry out decommissioning, including presence of other nuclear facilities at the site.

(d)(1) Before or within 2 years following permanent cessation of operations, the licensee shall submit a post-shutdown decommissioning activities report (PSDAR) to the NRC, and a copy to the affected State(s). The report must include a description of the planned decommissioning activities along with a schedule for their accomplishment, an estimate of expected costs, and a discussion that provides the reasons for concluding that the environmental impacts associated with site-specific decommissioning activities will be bounded by appropriate previously issued environmental impact statements.

(2) The NRC shall notice receipt of the PSDAR and make the PSDAR available for public comment. The NRC shall also schedule a public meeting in the vicinity of the licensee's facility upon receipt of the PSDAR. The NRC shall publish a document in the **Federal Register** and in a forum, such as local newspapers, that is readily accessible to individuals in the vicinity of the site, announcing the date, time and location of the meeting, along with a brief description of the purpose of the meeting.

(e) Licensees shall not perform any major decommissioning activities, as defined in § 50.2 of this chapter, until 90 days after the NRC has received the licensee's PSDAR submittal and until certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessel, as required under § 52.110(a)(1), have been submitted.

(f) Licensees shall not perform any decommissioning activities, as defined in § 52.1, that—

(1) Foreclose release of the site for possible unrestricted use;

(2) Result in significant environmental impacts not previously reviewed; or

(3) Result in there no longer being reasonable assurance that adequate funds will be available for decommissioning.

(g) In taking actions permitted under § 50.59 of this chapter following submittal of the PSDAR, the licensee shall notify the NRC in writing and send a copy to the affected State(s), before performing any decommissioning activity inconsistent with, or making any significant schedule change from, those actions and schedules described in the PSDAR, including changes that significantly increase the decommissioning cost.

(h)(1) Decommissioning trust funds may be used by licensees if—

(i) The withdrawals are for expenses for legitimate decommissioning activities consistent with the definition of decommissioning in § 52.1;

(ii) The expenditure would not reduce the value of the decommissioning trust below an amount necessary to place and maintain the reactor in a safe storage condition if unforeseen conditions or expenses arise and;

(iii) The withdrawals would not inhibit the ability of the licensee to complete funding of any shortfalls in the decommissioning trust needed to ensure the availability of funds to ultimately release the site and terminate the license.

(2) Initially, 3 percent of the generic amount specified in § 50.75 of this chapter may be used for decommissioning planning. For licensees that have submitted the certifications required under § 52.110(a) and commencing 90 days after the NRC has received the PSDAR, an additional

20 percent may be used. A site-specific decommissioning cost estimate must be submitted to the NRC before the licensee may use any funding in excess of these amounts.

(3) Within 2 years following permanent cessation of operations, if not already submitted, the licensee shall submit a site-specific decommissioning cost estimate.

(4) For decommissioning activities that delay completion of decommissioning by including a period of storage or surveillance, the licensee shall provide a means of adjusting cost estimates and associated funding levels over the storage or surveillance period.

(i) All power reactor licensees must submit an application for termination of license. The application for termination of license must be accompanied or preceded by a license termination plan to be submitted for NRC approval.

(1) The license termination plan must be a supplement to the FSAR or equivalent and must be submitted at least 2 years before termination of the license date.

(2) The license termination plan must include—

(i) A site characterization;

(ii) Identification of remaining dismantlement activities;

(iii) Plans for site remediation;

(iv) Detailed plans for the final radiation survey;

(v) A description of the end use of the site, if restricted;

(vi) An updated site-specific estimate of remaining decommissioning costs;

(vii) A supplement to the environmental report, under § 51.53 of this chapter, describing any new information or significant environmental change associated with the licensee's proposed termination activities; and

(viii) Identification of parts, if any, of the facility or site that were released for use before approval of the license termination plan.

(3) The NRC shall notice receipt of the license termination plan and make the license termination plan available for public comment. The NRC shall also schedule a public meeting in the vicinity of the licensee's facility upon receipt of the license termination plan. The NRC shall publish a document in the **Federal Register** and in a forum, such as local newspapers, which is readily accessible to individuals in the vicinity of the site, announcing the date, time and location of the meeting, along with a brief description of the purpose of the meeting.

(j) If the license termination plan demonstrates that the remainder of decommissioning activities will be performed in accordance with the regulations in this chapter, will not be inimical to the common defense and security or to the health and safety of the public, and will not have a significant effect on the quality of the environment and after notice to interested persons, the Commission shall approve the plan, by license amendment, subject to terms and conditions as it deems appropriate and necessary and authorize implementation of the license termination plan.

(k) The Commission shall terminate the license if it determines that—

(1) The remaining dismantlement has been performed in accordance with the approved license termination plan; and

(2) The final radiation survey and associated documentation, including an assessment of dose contributions associated with parts released for use before approval of the license termination plan, demonstrate that the facility and site have met the criteria for decommissioning in subpart E to 10 CFR part 20.

(l) For a facility that has permanently ceased operation before the expiration of its license, the collection period for any shortfall of funds will be determined, upon application by the licensee, on a case-by-case basis taking into account the specific financial situation of each licensee.

Subpart D—[Reserved]

Subpart E—Standard Design Approvals

§ 52.131 Scope of subpart.

This subpart sets out procedures for the filing, NRC staff review, and referral to the Advisory Committee on Reactor Safeguards of standard designs for a nuclear power reactor of the type described in § 50.22 of this chapter or major portions thereof.

§ 52.133 Relationship to other subparts.

(a) This subpart applies to a person that requests a standard design approval from the NRC staff separately from an application for a construction permit filed under 10 CFR part 50 or a combined license filed under subpart C of this part. An applicant for a construction permit or combined license may reference a standard design approval.

(b) Subpart B of this part governs the certification by rulemaking of the design of a nuclear power plant. Subpart B may be used independently of the provisions in this subpart.

(c) Subpart F of this part governs the issuance of licenses to manufacture nuclear power reactors to be installed and operated at sites not identified in the manufacturing license application. Subpart F of this part may be used independently of the provisions in this subpart.

§ 52.135 Filing of applications.

(a) Any person may submit a proposed standard design for a nuclear power reactor of the type described in 10 CFR 50.22 to the NRC staff for its review. The submittal may consist of either the final design for the entire facility or the final design of major portions thereof.

(b) The submittal for review of the proposed standard design must be made in the same manner and in the same number of copies as provided in 10 CFR 50.30 and 52.3 for license applications.

(c) The fees associated with the filing and review of the application are set forth in 10 CFR part 170.

§ 52.136 Contents of applications; general information.

The application must contain all of the information required by 10 CFR 50.33(a) through (d) and (j).

§ 52.137 Contents of applications; technical information.

If the applicant seeks review of a major portion of a standard design, the application need only contain the information required by this section to the extent the requirements are applicable to the major portion of the standard design for which NRC staff approval is sought.

(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 and of the facility as a whole, and must include the following information:

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

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

relationship to the safety evaluations. Items such 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 shall be discussed insofar as they are pertinent. The following power reactor design characteristics 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; and

(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 [9] 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 postulated site parameters, including site meteorology, to evaluate the offsite radiological consequences. 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 [10] total effective dose equivalent (TEDE); and

(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;

(3) The design of the facility including:

(i) The principal design criteria for the facility. Appendix A to 10 CFR part 50, general design criteria (GDC), 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; and

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

(4) An analysis and evaluation of the design and performance of SSC 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 SSCs 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 shall be performed in accordance with the requirements of 10 CFR 50.46 and 50.46a;

(5) A description and analysis of the fire protection design features for the standard plant necessary to comply with 10 CFR part 50, appendix A, GDC 3;

(6) 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 10 CFR 50.60 and 50.61;

(7) An analysis and description of the equipment and systems for combustible gas control as required by 10 CFR 50.44;

(8) A coping analysis, and any design features necessary to address station blackout, as required by 10 CFR 50.63;

(9) A description of the kinds and quantities of radioactive materials expected to be produced and used in the construction and operation and the design features for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in 10 CFR part 20;

(10) 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 described in 10 CFR 50.34a(e);

(11) The information on electric equipment important to safety that is required by 10 CFR 50.49(d);

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

(13) Information demonstrating how the applicant will comply with requirements for criticality accidents in § 50.68(b)(2) through (b)(4);

(14)–(15) [Reserved]

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

(17) The information necessary to demonstrate compliance with any technically relevant portions of the Three Mile Island requirements set forth in 10 CFR 50.34(f), except paragraphs (f)(1)(xii), (f)(2)(ix), and (f)(3)(v) of 10 CFR 50.34(f);

(18) The information necessary to demonstrate 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 the docket date of the application and that are technically relevant to the standard plant design;

(19) The information necessary to demonstrate 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, has been incorporated into the plant design;

[9] 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.

[10] 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.

(20) 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;

(21) A description of the quality assurance program to be applied to the design of the SSCs of the facility. Appendix B to 10 CFR part 50, ''Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,'' 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;

(22) The information pertaining to design features that affect plans for coping with emergencies in the operation of the reactor facility or a major portion thereof;

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

(24) A description of the design features that will provide physical protection of the standard plant design in accordance with the requirements of 10 CFR part 73;

(25) [Reserved]

(26) An evaluation of the standard design against the Standard Review Plan (SRP) revision in effect 6 months before the docket date of the application. The evaluation required by this section shall 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 shall discuss how the alternative proposed provides an acceptable method of complying with 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 meets the Commission's regulations. The SRP is not a substitute for the regulations, and compliance is not a requirement; and

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

(b) The application must also contain:

(1) A design-specific probabilistic risk assessment (PRA);

(2) [Reserved]

(3) A description, analysis, and evaluation of the interfaces between the standard design and the balance of the nuclear power plant.

(c) An application for approval of a standard design, which differs significantly from the light-water reactor designs of plants that have been licensed and in commercial operation before April 18, 1989, or uses simplified, inherent, passive, or other innovative means to accomplish its safety functions, must meet the requirements of 10 CFR 50.43(e).

§ 52.139 Standards for review of applications.

Applications filed under this subpart will be reviewed for compliance with the standards set out in 10 CFR parts 20, 50 and its appendices, and 10 CFR parts 73 and 100.

§ 52.141 Referral to the Advisory Committee on Reactor Safeguards (ACRS).

The Commission shall refer a copy of the application to the ACRS. The ACRS shall report on those portions of the application which concern safety.

§ 52.143 Staff approval of design.

Upon completion of its review of a submittal under this subpart and receipt of a report by the Advisory Committee on Reactor Safeguards under § 52.141 of this subpart, the NRC staff shall publish a determination in the **Federal Register** as to whether or not the design is acceptable, subject to appropriate terms and conditions, and make an analysis of the design in the form of a report available at the NRC Web site, *http://www.nrc.gov.*

§ 52.145 Finality of standard design approvals; information requests.

(a) An approved design must be used by and relied upon by the NRC staff and the ACRS in their review of any individual facility license application that incorporates by reference a standard design approved in accordance with this paragraph unless there exists significant new information that substantially affects the earlier determination or other good cause.

(b) The determination and report by the NRC staff do not constitute a commitment to issue a permit or license, or in any way affect the authority of the Commission, Atomic Safety and Licensing Board Panel, or presiding officers in any proceeding under part 2 of this chapter.

(c) Except for information requests seeking to verify compliance with the current licensing basis of the standard design approval, information requests to the holder of a standard design approval must be evaluated before issuance to ensure that the burden to be imposed on respondents is justified in view of the potential safety significance of the issue to be addressed in the requested information. Each evaluation performed by the NRC staff must be in accordance with 10 CFR 50.54(f) and must be approved by the Executive Director for Operations or his or her designee before issuance of the request.

§ 52.147 Duration of design approval.

A standard design approval issued under this subpart is valid for 15 years from the date of issuance and may not be renewed. A design approval continues to be valid beyond the date of expiration in any proceeding on an application for a construction permit, combined license, or an operating license which references the standard design approval and is docketed before the date of expiration of the design approval.

Subpart F—Manufacturing Licenses

§ 52.151 Scope of subpart.

This subpart sets out the requirements and procedures applicable to Commission issuance of a license authorizing manufacture of nuclear power reactors to be installed at sites not identified in the manufacturing license application.

§ 52.153 Relationship to other subparts.

(a) A nuclear power reactor manufactured under a manufacturing license issued under this subpart may only be transported to and installed at a site for which either a construction permit under part 50 of this chapter or a combined license under subpart C of this part has been issued.

(b) Subpart B of this part governs the certification by rulemaking of the design of standard nuclear power facilities. Subpart E of this part governs the NRC staff review and approval of standard designs for a nuclear power facility. A manufacturing license applicant may reference a standard design certification, or a preliminary or final standard design approval in its application. These subparts may also be used independently of the provisions in this subpart.

§ 52.155 Filing of applications.

(a) Any person, except one excluded by 10 CFR 50.38, may file an application for a manufacturing license under this subpart with the Director of Nuclear Reactor Regulation.

(b) The application must comply with the applicable filing requirements of §§ 52.3 and 50.30 of this chapter.

(c) The fees associated with the filing and review of the application are set forth in 10 CFR part 170.

§ 52.156 Contents of applications; general information.

The application must contain all of the information required by 10 CFR 50.33(a) through (d), and (j).

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

The application must contain a final safety analysis report containing the information set forth below, with a level of design information sufficient to enable the Commission to judge the applicant's proposed means of assuring that the manufacturing conforms to the design and to reach a final conclusion on all safety questions associated with the design, permit the preparation of construction and installation specifications by an applicant who seeks to use the manufactured reactor, and permit the preparation of acceptance and inspection requirements by the NRC:

(a) The principal design criteria for the reactor to be manufactured. Appendix A of 10 CFR part 50, ''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;

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

(c) A description and analysis of the structures, systems, and components of the reactor to be manufactured, with emphasis upon the materials of manufacture, performance requirements, the bases, with technical justification therefor, upon which the performance requirements have been established, and the evaluations required to show that safety functions will be accomplished. The description shall be sufficient to permit understanding of the system designs and their relationship to safety evaluations. Items such 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 shall be discussed insofar as they are pertinent. The following power reactor design characteristics will be taken into consideration by the Commission:

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

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

(3) 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;

(d) The safety features that are to be engineered into the reactor 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 reactor design features intended to mitigate the radiological consequences of accidents. In performing this assessment, an applicant shall assume a fission product release [11] 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 postulated site parameters, including site meteorology, to evaluate the offsite radiological consequences. The evaluation must determine that:

(1) 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 [12] total effective dose equivalent (TEDE);

(2) 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

(3) The kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in part 20 of this chapter.

(e) Information necessary to establish that the design of the reactor to be manufactured complies with the technical requirements in part 50 of this chapter, including:

(1) 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 shall be performed in accordance with the requirements of §§ 50.46 and 50.46a of this chapter;

(2) A description and analysis of the fire protection design features for the reactor necessary to comply with GDC 3 and § 50.48 of this chapter;

(3) 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 of this chapter;

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

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

(6) The information on electric equipment important to safety that is required by 10 CFR 50.49(d);

(7) Information demonstrating how the applicant will comply with requirements for reduction of risk from

[11] 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.

[12] 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.

anticipated transients without scram (ATWS) events in § 50.62;

(8) Information demonstrating how the applicant will comply with requirements for criticality accidents in § 50.68(b)(2) through(b)(4);

(9) through (10) [Reserved]

(11) 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(e) of this chapter;

(12) The information necessary to demonstrate compliance with any technically relevant portions of the Three Mile Island requirements set forth in § 50.34(f) of this chapter, except paragraphs (f)(1)(xii), (f)(2)(ix), and (f)(3)(v);

(13) 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;

(14) The earthquake engineering criteria in appendix S to 10 CFR part 50;

(15) Information sufficient to demonstrate compliance with the applicable requirements regarding testing, analysis, and prototypes as set forth in § 50.43(e) of this chapter;

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

(17) A description of the quality assurance program to be applied to the design and manufacture of the structures, systems, and components of the reactor. Appendix B to 10 CFR part 50, ''Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,'' sets forth the requirements for quality assurance programs for nuclear power plants. The description of the quality assurance program must include a discussion of how the applicable requirements of appendix B to 10 CFR part 50 will be satisfied; and

(18) Proposed technical specifications applicable to the reactor being manufactured, prepared in accordance with the requirements of §§ 50.36 and 50.36a of this chapter;

(f) The site parameters postulated for the design, and an analysis and evaluation of the reactor design in terms of those site parameters;

(g) The interface requirements between the manufactured reactor and the remaining portions of the nuclear power plant. These requirements must be sufficiently detailed to allow for completion of the final safety analysis and probabilistic risk assessment required by § 52.158(a);

(h) Justification that compliance with the interface requirements of paragraph (a)(18) of this section is verifiable through inspection, testing (either in the plant or elsewhere), or analysis;

(i) A representative conceptual design for a nuclear power facility using the manufactured reactor, to aid the NRC in its review of the final safety analysis required by this section and the probabilistic risk assessment required by § 52.158(a), and to permit assessment of the adequacy of the interface requirements in paragraph (g) of this section;

(j) 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;

(k) [Reserved]

(l) If the reactor is to be used in modular plant design, the various options for the configuration of the plant and site, including variations in, or sharing of, common systems, interface requirements, and system interactions must be described. The final safety analysis and the probabilistic risk assessment must account for differences among the various options, including any restrictions which will be necessary during the construction and startup of a given module to ensure the safe operation of any module already operating;

(m) A description of the management plan for design and manufacturing activities, including:

(1) The organizational and management structure singularly responsible for direction of design and manufacture of the reactor;

(2) Technical resources directed by the applicant, and the qualifications requirements;

(3) Details of the interaction of design and manufacture within the applicant's organization and the manner by which the applicant will ensure close integration of the architect engineer and the nuclear steam supply vendor, as applicable;

(4) Proposed procedures governing the preparation of the manufactured reactor for shipping to the site where it is to be operated, the conduct of shipping, and verifying the condition of the manufactured reactor upon receipt at the site; and

(5) The degree of top level management oversight and technical control to be exercised by the applicant during design and manufacture, including the preparation and implementation of procedures necessary to guide the effort;

(n) Necessary parameters to be used in developing plans for preoperational testing and initial operation;

(o) Proposed technical resolutions of those Unresolved Safety Issues and medium- and high-priority generic safety issues which are identified in the version of NUREG–0933 current on the date up to 6 months before application and which are technically relevant to the design;

(p) A description of how operating experience insights from generic letters and bulletins issued up to six months before the docket date of the application, or comparable international operating experience, has been incorporated into the design of the reactor to be manufactured;

(q) An evaluation of the site against applicable sections of the Standard Review Plan revision in effect 6 months before the docket date of the application. The evaluation required by this section shall 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 a difference exists, the evaluation shall 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; and

(r) The NRC staff shall advise the applicant if any information beyond that required by this section must be submitted.

§ 52.158 Contents of application; additional technical information.

The application must contain:

(a) *Probabilistic risk assessment (PRA).* A design-specific PRA for the reactor. If the application references a certified design, the PRA for the certified design must be updated to reflect any additional portions of the reactor to be manufactured which are not within the scope of the certified design.

(b)(1) *Inspections, tests, analyses, and acceptance criteria (ITAAC).* The proposed inspections, tests and analyses that the licensee who will be operating the reactor 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:

(i) The reactor has been manufactured in conformance with the manufacturing license; the provisions of the Atomic Energy Act, and the NRC's regulations; and

(ii) The reactor will operate in conformity with design characteristics in the manufacturing license, any license authorizing operation of the reactor as part of a nuclear power plant, the provisions of the Act, and the NRC's regulations.

(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 covered by the design certification.

(3) If the application references a standard design certification, the application may include a notification that a required inspection, test, or analysis in the design certification ITAAC has been successfully completed and that the corresponding acceptance criterion has been met. The **Federal Register** notification required by § 52.163 must indicate that the application includes this notification.

(c)(1) An environmental report as required by 10 CFR 51.54. The report must address the costs and benefits of severe accident mitigation design alternatives (SAMDAs), and the bases for not incorporating SAMDAs into the design of the reactor to be manufactured. The environmental report need not address the environmental impacts associated with manufacturing the reactor under the manufacturing license. The related environmental assessment prepared by the NRC will be similarly directed.

(2) If the application references a standard design certification, the environmental report need not contain a discussion of severe accident mitigation design alternatives for the reactor.

§ 52.159 Standards for review of application.

Applications filed under this subpart will be reviewed according to the applicable standards set out in 10 CFR parts 20, 50 and its appendices, 51, 73, and 100 and its appendices.

§ 52.161 [Reserved]

§ 52.163 Administrative review of applications; hearings.

A proceeding on a manufacturing license is subject to all applicable procedural requirements contained in 10 CFR part 2, including the requirements for docketing in § 2.101(a)(1) through (4) of this chapter, and the requirements for issuance of a notice of hearing in § 2.104 of this chapter, provided that the designated sections may not be construed to require that the environmental report or draft or final environmental impact statement include an assessment of the benefits of constructing and/or operating the manufactured reactor or an evaluation of alternative energy sources. All hearings on manufacturing licenses are governed by the hearing procedures contained in 10 CFR part 2, subparts C, G and L.

§ 52.165 Referral to the Advisory Committee on Reactor Safeguards (ACRS).

The Commission shall refer a copy of the application to the ACRS. The ACRS shall report on those portions of the application which concern safety.

§ 52.167 Issuance of manufacturing license.

(a) After conducting a hearing in accordance with § 52.163 and receiving the report submitted by the ACRS, the Commission may issue a manufacturing license if the Commission finds that:

(1) Applicable standards and requirements of the Act and the Commission's regulations have been met;

(2) 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 provision of the Act, and the Commission's regulations;

(3) The proposed reactor(s) can be incorporated into a nuclear power plant and operated 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;

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

(5) 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 manufactured reactor has been manufactured and will be operated in conformity with the license, the provisions of the Act, and the Commission's regulations;

(6) The issuance of a license to the applicant will not be inimical to the common defense and security or to the health and safety of the public; and

(7) The findings required by subpart A of part 51 of this chapter have been made.

(b) Each manufacturing license issued under this subpart shall specify:

(1) Terms and conditions as the Commission deems necessary and appropriate;

(2) Technical specifications for operation of the manufactured reactor, as the Commission deems necessary and appropriate;

(3) The number of nuclear power reactors authorized to be manufactured, and the latest date for completion of the manufacturing of all the reactors. The number of reactors to be specified in the manufacturing license may be no more than the number of reactors whose start of manufacture can practically begin within a 10-year period commencing on the date of issuance of the manufacturing license;

(4) Site parameters and design characteristics for the manufactured reactor; and

(5) The interface requirements to be met by the site-specific elements of the facility, such as the service water intake structure and the ultimate heat sink, not within the scope of the manufactured reactor.

(c) A holder of a manufacturing license may not transport or allow to be removed from the place of manufacture the manufactured reactor except to the site of a licensee with either a construction permit under part 50 of this chapter or a combined license under subpart C of this part. The construction permit or combined license must authorize the construction of a nuclear power facility using the manufactured reactor(s).

§ 52.169 [Reserved]

§ 52.171 Finality of manufacturing licenses; information requests.

(a)(1) Notwithstanding any provision in 10 CFR 50.109, during the term of a manufacturing license the Commission may not modify, rescind, or impose new requirements on the design of the nuclear power reactor being manufactured, or the requirements for the manufacture of the nuclear power reactor, unless the Commission determines that a modification is necessary to bring the design of the reactor or its manufacture into compliance with the Commission's requirements applicable and in effect at the time the manufacturing license was issued, or to provide reasonable assurance of adequate protection to public health and safety or common defense and security.

(2) Any modification to the design of a manufactured nuclear power reactor which is imposed by the Commission under paragraph (a)(1) of this section

will be applied to all reactors manufactured under the license, including those that have already been transported and sited, except those reactors to which the modification has been rendered technically irrelevant by action taken under paragraph (b)(1) of this section.

(3) In making the findings required for issuance of a construction permit, operating license, combined license, and for any hearing under § 52.103, for which a nuclear power reactor manufactured under this subpart is referenced or used, the Commission shall treat as resolved those matters resolved in the proceeding on the application for issuance or renewal of the manufacturing license, including the adequacy of design of the manufactured reactor, the costs and benefits of SAMDAs, and the bases for not incorporating SAMDAs into the design of the reactor to be manufactured.

(b)(1) The holder of a manufacturing license may not make changes to the design of the nuclear power reactor authorized to be manufactured without prior Commission approval. The request for a change to the design must be in the form of an application for a license amendment, and must meet the requirements of 10 CFR 50.90 through 50.92.

(2) An applicant or licensee who references or uses a nuclear power reactor manufactured under a manufacturing license under this subpart may request a variance from the design characteristics, site parameters, terms and conditions, or approved design of the manufactured reactor. The Commission may grant a request only if it determines that the variance will comply with the requirements of 10 CFR 50.12(a), and that the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption. The granting of a variance on request of an applicant must be subject to litigation in the same manner as other issues in the construction permit, operating license, or combined license hearing.

(c) Except for information requests seeking to verify compliance with the current licensing basis of either the manufacturing license or the manufactured reactor, information requests to the holder of a manufacturing license or an applicant or licensee using a manufactured reactor must be evaluated before issuance to ensure that the burden to be imposed on respondents is justified in view of the potential safety significance of the issue to be addressed in the requested information. Each evaluation performed by the NRC staff must be in accordance with 10 CFR 50.54(f) and must be approved by the Executive Director for Operations or his or her designee before issuance of the request.

§ 52.173 Duration of manufacturing license.

A manufacturing license issued under this subpart may be valid for not less than 5, nor more than 15 years from the date of issuance. A holder of a manufacturing license may not initiate the manufacture of a reactor less than 3 years before the expiration of the license even though a timely application for renewal has been filed with the NRC. Upon expiration of the manufacturing license, the manufacture of any uncompleted reactors must cease unless a timely application for renewal has been filed with the NRC.

§ 52.175 Transfer of manufacturing license.

A manufacturing license may be transferred in accordance with § 50.80 of this chapter.

§ 52.177 Application for renewal.

(a) Not less than 12 months, nor more than 5 years before the expiration of the manufacturing license, or any later renewal period, the holder of the manufacturing license may apply for a renewal of the license. An application for renewal must contain all information necessary to bring up to date the information and data contained in the previous application.

(b) The filing of an application for a renewed license must be in accordance with subpart A of 10 CFR part 2 and 10 CFR 52.3 and 50.30.

(c) A manufacturing license, either original or renewed, for which a timely application for renewal has been filed, remains in effect until the Commission has made a final determination on the renewal application, *provided, however,* that in accordance with § 52.173, the holder of a manufacturing license may not begin manufacture of a reactor less than 3 years before the expiration of the license.

(d) Any person whose interest may be affected by renewal of the permit may request a hearing on the application for renewal. The request for a hearing must comply with 10 CFR 2.309. If a hearing is granted, notice of the hearing will be published in accordance with 10 CFR 2.104.

(e) The Commission shall refer a copy of the application for renewal to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS shall report on those portions of the application which concern safety and shall apply the criteria set forth in § 52.159.

§ 52.179 Criteria for renewal.

The Commission may grant the renewal if the Commission determines:

(a) The manufacturing license complies with the Atomic Energy Act and the Commission's regulations and orders applicable and in effect at the time the manufacturing license was originally issued; and

(b) Any new requirements the Commission may wish to impose are:

(1) Necessary for adequate protection to public health and safety or common defense and security;

(2) Necessary for compliance with the Commission's regulations and orders applicable and in effect at the time the site permit was originally issued; or

(3) A substantial increase in overall protection of the public health and safety or the common defense and security to be derived from the new requirements, and the direct and indirect costs of implementation of those requirements are justified in view of this increased protection.

§ 52.181 Duration of renewal.

A renewed manufacturing license may be valid for not less than 5, nor more than 15 years from the date of renewal, and shall be subject to the requirements of §§ 52.171 and 52.175.

Subpart G—[Reserved]

Subpart H—Enforcement

§ 52.301 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued under those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under Section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any regulation, or order issued under the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under Section 186 of the Atomic Energy Act of 1954, as amended.

§ 52.303 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under Sections 161b, 161i, or 161o of the Act. For purposes of Section 223, all the regulations in this part 52 are issued under one or more of Sections 161b, 161i, or 160o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in this part 52 that are not issued under Sections 161b, 161i, or 161o for the purposes of Section 223 are as follows: §§ 52.0, 52.1, 52.2, 52.3, 52.7, 52.8, 52.9, 52.10, 52.11, 52.12, 52.13, 52.15, 52.16, 52.17, 52.18, 52.21, 52.23, 52.24, 52.27, 52.28, 52.29, 52.31, 52.33, 52.39, 52.41, 52.43, 52.45, 52.46, 52.47, 52.48, 52.51, 52.53, 52.54, 52.55, 52.57, 52.59, 52.63, 52.71, 52.73, 52.75, 52.77, 52.79, 52.80, 52.81, 52.83, 52.85, 52.87, 52.93, 52.97, 52.98, 52.99, 52.103, 52.104, 52.105, 52.107, 52.109, 52.131, 52.133, 52.135, 52.136, 52.137, 52.139, 52.141, 52.143, 52.145, 52.147, 52.151, 52.153, 52.155, 52.156, 52.157, 52.159, 52.163, 52.165, 52.167, 52.171, 52.173, 52.175, 52.177, 52.179, 52.181, 52.301, and 52.303.

Appendix A to Part 52—Design Certification Rule for the U.S. Advanced Boiling Water Reactor

I. Introduction

Appendix A constitutes the standard design certification for the U.S. Advanced Boiling Water Reactor (ABWR) design, in accordance with 10 CFR part 52, subpart B. The applicant for certification of the U.S. ABWR design was GE Nuclear Energy.

II. Definitions

A. Generic design control document (generic DCD) means the document containing the Tier 1 and Tier 2 information and generic technical specifications that is incorporated by reference into this appendix.

B. Generic technical specifications means the information, required by 10 CFR 50.36 and 50.36a, for the portion of the plant that is within the scope of this appendix.

C. Plant-specific DCD means the document, maintained by an applicant or licensee who references this appendix, consisting of the information in the generic DCD, as modified and supplemented by the plant-specific departures and exemptions made under Section VIII of this appendix.

D. Tier 1 means the portion of the design-related information contained in the generic DCD that is approved and certified by this appendix (hereinafter Tier 1 information). The design descriptions, interface requirements, and site parameters are derived from Tier 2 information. Tier 1 information includes:

1. Definitions and general provisions;
2. Design descriptions;
3. Inspections, tests, analyses, and acceptance criteria (ITAAC);
4. Significant site parameters; and
5. Significant interface requirements.

E. Tier 2 means the portion of the design-related information contained in the generic DCD that is approved but not certified by this appendix (hereinafter Tier 2 information). Compliance with Tier 2 is required, but generic changes to and plant-specific departures from Tier 2 are governed by Section VIII of this appendix. Compliance with Tier 2 provides a sufficient, but not the only acceptable, method for complying with Tier 1. Compliance methods differing from Tier 2 must satisfy the change process in Section VIII of this appendix. Regardless of these differences, an applicant or licensee must meet the requirement in Section III.B of this appendix to reference Tier 2 when referencing Tier 1. Tier 2 information includes:

1. Information required by 10 CFR 52.47, with the exception of generic technical specifications and conceptual design information;
2. Information required for a final safety analysis report under 10 CFR 50.34;
3. Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met; and
4. Combined license (COL) action items (COL license information), which identify certain matters that must be addressed in the site-specific portion of the final safety analysis report (FSAR) by an applicant who references this appendix. These items constitute information requirements but are not the only acceptable set of information in the FSAR. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items are not requirements for the licensee unless such items are restated in the FSAR.

F. Tier 2* means the portion of the Tier 2 information, designated as such in the generic DCD, which is subject to the change process in Section VIII.B.6 of this appendix. This designation expires for some Tier 2* information under Section VIII.B.6.

G. Departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses means:

(1) Changing any of the elements of the method described in the plant-specific DCD unless the results of the analysis are conservative or essentially the same; or

(2) Changing from a method described in the plant-specific DCD to another method unless that method has been approved by NRC for the intended application.

H. All other terms in this appendix have the meaning set out in 10 CFR 50.2 or 52.1, or Section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

III. Scope and Contents

A. Tier 1, Tier 2, and the generic technical specifications in the U.S. ABWR Design Control Document, GE Nuclear Energy, Revision 4 dated March 1997, are approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the generic DCD may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy is available for examination and copying at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Copies are also available for examination at the NRC Library located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20582 and the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

B. An applicant or licensee referencing this appendix, in accordance with Section IV of this appendix, shall incorporate by reference and comply with the requirements of this appendix, including Tier 1, Tier 2, and the generic technical specifications except as otherwise provided in this appendix. Conceptual design information, as set forth in the generic DCD, and the ''Technical Support Document for the ABWR'' are not part of this appendix. Tier 2 references to the probabilistic risk assessment (PRA) in the ABWR standard safety analysis report do not incorporate the PRA into Tier 2.

C. If there is a conflict between Tier 1 and Tier 2 of the DCD, then Tier 1 controls.

D. If there is a conflict between the generic DCD and either the application for design certification of the U.S. ABWR design or NUREG–1503, ''Final Safety Evaluation Report related to the Certification of the Advanced Boiling Water Reactor Design,'' (FSER) and Supplement No. 1, then the generic DCD controls.

E. Design activities for structures, systems, and components that are wholly outside the scope of this appendix may be performed using site characteristics, provided the design activities do not affect the DCD or conflict with the interface requirements.

IV. Additional Requirements and Restrictions

A. An applicant for a license that wishes to reference this appendix shall, in addition to complying with the requirements of 10 CFR 52.77, 52.78, and 52.79, comply with the following requirements:

1. Incorporate by reference, as part of its application, this appendix.
2. Include, as part of its application:

a. A plant-specific DCD containing the same type of information and using the same organization and numbering as the generic DCD for the U.S. ABWR design, as modified and supplemented by the applicant's exemptions and departures;

b. The reports on departures from and updates to the plant-specific DCD required by paragraph X.B of this appendix;

c. Plant-specific technical specifications, consisting of the generic and site-specific technical specifications, that are required by 10 CFR 50.36 and 50.36a;

d. Information demonstrating compliance with the site parameters and interface requirements;

e. Information that addresses the COL action items; and

f. Information required by 10 CFR 52.47(a) that is not within the scope of this appendix.

3. Physically include, in the plant-specific DCD, the proprietary information and safeguards information referenced in the U.S. ABWR DCD.

B. The Commission reserves the right to determine in what manner this appendix may be referenced by an applicant for a construction permit or operating license under 10 CFR Part 50.

V. Applicable Regulations

A. Except as indicated in paragraph B of this section, the regulations that apply to the U.S. ABWR design are in 10 CFR parts 20, 50, 73, and 100, codified as of May 2, 1997, that are applicable and technically relevant, as described in the FSER (NUREG–1503) and Supplement No. 1.

B. The U.S. ABWR design is exempt from portions of the following regulations:

1. Paragraph (f)(2)(iv) of 10 CFR 50.34—Separate Plant Safety Parameter Display Console;

2. Paragraph (f)(2)(viii) of 10 CFR 50.34—Post-Accident Sampling for Boron, Chloride, and Dissolved Gases; and

3. Paragraph (f)(3)(iv) of 10 CFR 50.34—Dedicated Containment Penetration.

VI. Issue Resolution

A. The Commission has determined that the structures, systems, components, and design features of the U.S. ABWR design comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in Section V of this appendix; and therefore, provide adequate protection to the health and safety of the public. A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for the U.S. ABWR design.

B. The Commission considers the following matters resolved within the meaning of 10 CFR 52.63(a)(5) in subsequent proceedings for issuance of a combined license, amendment of a combined license, or renewal of a combined license, proceedings held under 10 CFR 52.103, and enforcement proceedings involving plants referencing this appendix:

1. All nuclear safety issues, except for the generic technical specifications and other operational requirements, associated with the information in the FSER and Supplement No. 1, Tier 1, Tier 2 (including referenced information which the context indicates is intended as requirements), and the rulemaking record for certification of the U.S. ABWR design;

2. All nuclear safety and safeguards issues associated with the information in proprietary and safeguards documents, referenced and in context, are intended as requirements in the generic DCD for the U.S. ABWR design;

3. All generic changes to the DCD under and in compliance with the change processes in Sections VIII.A.1 and VIII.B.1 of this appendix;

4. All exemptions from the DCD under and in compliance with the change processes in Sections VIII.A.4 and VIII.B.4 of this appendix, but only for that plant;

5. All departures from the DCD that are approved by license amendment, but only for that plant;

6. Except as provided in paragraph VIII.B.5.f of this appendix, all departures from Tier 2 pursuant to and in compliance with the change processes in paragraph VIII.B.5 of this appendix that do not require prior NRC approval, but only for that plant;

7. All environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's final environmental assessment for the U.S. ABWR design and Revision 1 of the technical support document for the U.S. ABWR, dated December 1994, for plants referencing this appendix whose site parameters are within those specified in the technical support document.

C. The Commission does not consider operational requirements for an applicant or licensee who references this appendix to be matters resolved within the meaning of 10 CFR 52.63(a)(5). The Commission reserves the right to require operational requirements for an applicant or licensee who references this appendix by rule, regulation, order, or license condition.

D. Except in accordance with the change processes in Section VIII of this appendix, the Commission may not require an applicant or licensee who references this appendix to:

1. Modify structures, systems, components, or design features as described in the generic DCD;

2. Provide additional or alternative structures, systems, components, or design features not discussed in the generic DCD; or

3. Provide additional or alternative design criteria, testing, analyses, acceptance criteria, or justification for structures, systems, components, or design features discussed in the generic DCD.

E.1. Persons who wish to review proprietary and safeguards information or other secondary references in the DCD for the U.S. ABWR design, in order to request or participate in the hearing required by 10 CFR 52.85 or the hearing provided under 10 CFR 52.103, or to request or participate in any other hearing relating to this appendix in which interested persons have adjudicatory hearing rights, shall first request access to such information from GE Nuclear Energy. The request must state with particularity:

a. The nature of the proprietary or other information sought;

b. The reason why the information currently available to the public at the NRC Web site, *http://www.nrc.gov,* and/or at the NRC Public Document Room, is insufficient;

c. The relevance of the requested information to the hearing issue(s) which the person proposes to raise; and

d. A showing that the requesting person has the capability to understand and utilize the requested information.

2. If a person claims that the information is necessary to prepare a request for hearing, the request must be filed no later than 15 days after publication in the **Federal Register** of the notice required either by 10 CFR 52.85 or 10 CFR 52.103. If GE Nuclear Energy declines to provide the information sought, GE Nuclear Energy shall send a written response within 10 days of receiving the request to the requesting person setting forth with particularity the reasons for its refusal. The person may then request the Commission (or presiding officer, if a proceeding has been established) to order disclosure. The person shall include copies of the original request (and any subsequent clarifying information provided by the requesting party to the applicant) and the applicant's response. The Commission and presiding officer shall base their decisions solely on the person's original request (including any clarifying information provided by the requesting person to GE Nuclear Energy), and GE Nuclear Energy's response. The Commission and presiding officer may order GE Nuclear Energy to provide access to some or all of the requested information, subject to an appropriate non-disclosure agreement.

VII. Duration of This Appendix

This appendix may be referenced for a period of 15 years from June 11, 1997, except as provided for in 10 CFR 52.55(b) and 52.57(b). This appendix remains valid for an applicant or licensee who references this appendix until the application is withdrawn or the license expires, including any period of extended operation under a renewed license.

VIII. Processes for Changes and Departures

A. Tier 1 Information

1. Generic changes to Tier 1 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 1 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs A.3 or A.4 of this section.

3. Departures from Tier 1 information that are required by the Commission through plant-specific orders are governed by the requirements in 10 CFR 52.63(a)(4).

4. Exemptions from Tier 1 information are governed by the requirements in 10 CFR 52.63(b)(1) and 52.97(b). The Commission will deny a request for an exemption from Tier 1, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design.

B. Tier 2 Information

1. Generic changes to Tier 2 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 2 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs B.3, B.4, B.5, or B.6 of this section.

3. The Commission may not require new requirements on Tier 2 information by plant-specific order while this appendix is in effect under §§ 52.55 or 52.61, unless:

a. A modification is necessary to secure compliance with the Commission's

regulations applicable and in effect at the time this appendix was approved, as set forth in Section V of this appendix, or to assure adequate protection of the public health and safety or the common defense and security; and

b. Special circumstances as defined in 10 CFR 50.7 are present.

4. An applicant or licensee who references this appendix may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The Commission will deny a request for an exemption from Tier 2, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design. The grant of an exemption to an applicant must be subject to litigation in the same manner as other issues material to the license hearing. The grant of an exemption to a licensee must be subject to an opportunity for a hearing in the same manner as license amendments.

5.a. An applicant or licensee who references this appendix may depart from Tier 2 information, without prior NRC approval, unless the proposed departure involves a change to or departure from Tier 1 information, Tier 2* information, or the technical specifications, or requires a license amendment under paragraphs B.5.b or B.5.c of this section. When evaluating the proposed departure, an applicant or licensee shall consider all matters described in the plant-specific DCD.

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if it would:

(1) Result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the plant-specific DCD;

(2) Result in more than a minimal increase in the likelihood of occurrence of a malfunction of a structure, system, or component (SSC) important to safety previously evaluated in the plant-specific DCD;

(3) Result in more than a minimal increase in the consequences of an accident previously evaluated in the plant-specific DCD;

(4) Result in more than a minimal increase in the consequences of a malfunction of a SSC important to safety previously evaluated in the plant-specific DCD;

(5) Create a possibility for an accident of a different type than any evaluated previously in the plant-specific DCD;

(6) Create a possibility for a malfunction of an SSC important to safety with a different result than any evaluated previously in the plant-specific DCD;

(7) Result in a design basis limit for a fission product barrier as described in the plant-specific DCD being exceeded or altered; or

(8) Result in a departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses.

c. A proposed departure from Tier 2 affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if:

(1) There is a substantial increase in the probability of a severe accident such that a particular severe accident previously reviewed and determined to be not credible could become credible; or

(2) There is a substantial increase in the consequences to the public of a particular severe accident previously reviewed.

d. If a departure requires a license amendment pursuant to paragraphs B.5.b or B.5.c of this section, it is governed by 10 CFR 50.90.

e. A departure from Tier 2 information that is made under paragraph B.5 of this section does not require an exemption from this appendix.

f. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an applicant or licensee who references this appendix has not complied with paragraph VIII.B.5 of this appendix when departing from Tier 2 information, may petition the NRC to admit into the proceeding such a contention. In addition to compliance with the general requirements of 10 CFR 2.309, the petition must demonstrate that the departure does not comply with paragraph VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an asserted noncompliance with an ITAAC acceptance criterion in the case of a 10 CFR 52.103 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of material fact regarding compliance with paragraph VIII.B.5 of this appendix.

6.a. An applicant who references this appendix may not depart from Tier 2* information, which is designated with italicized text or brackets and an asterisk in the generic DCD, without NRC approval. The departure will not be considered a resolved issue, within the meaning of Section VI of this appendix and 10 CFR 52.63(a)(5).

b. A licensee who references this appendix may not depart from the following Tier 2* matters without prior NRC approval. A request for a departure will be treated as a request for a license amendment under 10 CFR 50.90.

(1) Fuel burnup limit (4.2).

(2) Fuel design evaluation (4.2.3).

(3) Fuel licensing acceptance criteria (appendix 4B).

c. A licensee who references this appendix may not, before the plant first achieves full power following the finding required by 10 CFR 52.103(g), depart from the following Tier 2* matters except in accordance with paragraph B.6.b of this section. After the plant first achieves full power, the following Tier 2* matters revert to Tier 2 status and are thereafter subject to the departure provisions in paragraph B.5 of this section.

(1) ASME Boiler & Pressure Vessel Code, Section III.

(2) ACI 349 and ANSI/AISC–690.

(3) Motor-operated valves.

(4) Equipment seismic qualification methods.

(5) Piping design acceptance criteria.

(6) Fuel system and assembly design (4.2), except burnup limit.

(7) Nuclear design (4.3).

(8) Equilibrium cycle and control rod patterns (App. 4A).

(9) Control rod licensing acceptance criteria (App. 4C).

(10) Instrument setpoint methodology.

(11) EMS performance specifications and architecture.

(12) SSLC hardware and software qualification.

(13) Self-test system design testing features and commitments.

(14) Human factors engineering design and implementation process.

d. Departures from Tier 2* information that are made under paragraph B.6 of this section do not require an exemption from this appendix.

C. Operational Requirements

1. Generic changes to generic technical specifications and other operational requirements that were completely reviewed and approved in the design certification rulemaking and do not require a change to a design feature in the generic DCD are governed by the requirements in 10 CFR 50.109. Generic changes that do require a change to a design feature in the generic DCD are governed by the requirements in paragraphs A or B of this section.

2. Generic changes to generic technical specifications and other operational requirements are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs C.3 or C.4 of this section.

3. The Commission may require plant-specific departures on generic technical specifications and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances as defined in 10 CFR 2.335 are present. The Commission may modify or supplement generic technical specifications and other operational requirements that were not completely reviewed and approved or require additional technical specifications and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

4. An applicant who references this appendix may request an exemption from the generic technical specifications or other operational requirements. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The grant of an exemption must be subject to litigation in the same manner as other issues material to the license hearing.

5. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an operational requirement approved in the DCD or a technical specification derived from the generic technical specifications must be changed may petition to admit into the proceeding such a contention. Such petition must comply with the general requirements of 10 CFR 2.309 and must demonstrate why special circumstances as defined in 10 CFR 2.335 are present, or for compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response thereto. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific technical specifications or other operational requirements are subject to a hearing as part of the license proceeding.

6. After issuance of a license, the generic technical specifications have no further effect on the plant-specific technical specifications and changes to the plant-specific technical specifications will be treated as license amendments under 10 CFR 50.90.

IX. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

A.1 An applicant or licensee who references this appendix shall perform and demonstrate conformance with the ITAAC before fuel load. With respect to activities subject to an ITAAC, an applicant for a license may proceed at its own risk with design and procurement activities, and a licensee may proceed at its own risk with design, procurement, construction, and preoperational activities, even though the NRC may not have found that any particular ITAAC has been met.

2. The licensee who references this appendix shall notify the NRC that the required inspections, tests, and analyses in the ITAAC have been successfully completed and that the corresponding acceptance criteria have been met.

3. In the event that an activity is subject to an ITAAC, and the applicant or licensee who references this appendix has not demonstrated that the ITAAC has been met, the applicant or licensee may either take corrective actions to successfully complete that ITAAC, request an exemption from the ITAAC in accordance with Section VIII of this appendix and 10 CFR 52.97(b), or petition for rulemaking to amend this appendix by changing the requirements of the ITAAC, under 10 CFR 2.802 and 52.97(b). Such rulemaking changes to the ITAAC must meet the requirements of paragraph VIII.A.1 of this appendix.

B.1 The NRC shall ensure that the required inspections, tests, and analyses in the ITAAC are performed. The NRC shall verify that the inspections, tests, and analyses referenced by the licensee have been successfully completed and, based solely thereon, find the prescribed acceptance criteria have been met. At appropriate intervals during construction, the NRC shall publish notices of the successful completion of ITAAC in the **Federal Register**.

2. In accordance with 10 CFR 52.103(g), the Commission shall find that the acceptance criteria in the ITAAC for the license are met before fuel load.

3. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not, by virtue of their inclusion within the DCD, constitute regulatory requirements either for licensees or for renewal of the license; except for specific ITAAC, which are the subject of a § 52.103(a) hearing, their expiration will occur upon final Commission action in such proceeding. However, subsequent modifications must comply with the Tier 1 and Tier 2 design descriptions in the plant-specific DCD unless the licensee has complied with the applicable requirements of 10 CFR 52.98 and Section VIII of this appendix.

X. Records and Reporting

A. Records

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes to Tier 1 and Tier 2. The applicant shall maintain the proprietary and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

2. An applicant or licensee who references this appendix shall maintain the plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made under Section VIII of this appendix throughout the period of application and for the term of the license (including any period of renewal).

3. An applicant or licensee who references this appendix shall prepare and maintain written evaluations which provide the bases for the determinations required by Section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any period of renewal).

B. Reporting

1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any plant-specific departures from the DCD, including a summary of the evaluation of each. This report must be filed in accordance with the filing requirements applicable to reports in 10 CFR 52.3.

2. An applicant or licensee who references this appendix shall submit updates to its DCD, which reflect the generic changes and the plant-specific departures from the generic DCD made under Section VIII of this appendix. These updates must be filed under the filing requirements applicable to final safety analysis report updates in 10 CFR 52.3 and 50.71(e).

3. The reports and updates required by paragraphs X.B.1 and X.B.2 must be submitted as follows:

a. On the date that an application for a license referencing this appendix is submitted, the application must include the report and any updates to the generic DCD.

b. During the interval from the date of application for a license to the date the Commission makes the finding required by 10 CFR 52.103(g), the report must be submitted semi-annually. Updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

c. After the Commission makes the finding required by 10 CFR 52.103(g), reports and updates to the plant-specific DCD must be submitted, along with updates to the site-specific portion of the final safety analysis report for the facility, at the intervals required by 10 CFR 50.59(d)(2) and 10 CFR 50.71(e)(4), respectively, or at shorter intervals as specified in the license.

Appendix B to Part 52—Design Certification Rule for the System 80+ Design

I. Introduction

Appendix B constitutes design certification for the System 80+ [1] standard plant design, in accordance with 10 CFR part 52, subpart B. The applicant for certification of the System 80+ design was Combustion Engineering, Inc. (ABB–CE), which is now Westinghouse Electric Company LLC.

II. Definitions

A. Generic design control document (generic DCD) means the document containing the Tier 1 and Tier 2 information and generic technical specifications that is incorporated by reference into this appendix.

B. Generic technical specifications means the information, required by 10 CFR 50.36 and 50.36a, for the portion of the plant that is within the scope of this appendix.

C. Plant-specific DCD means the document, maintained by an applicant or licensee who references this appendix, consisting of the information in the generic DCD, as modified and supplemented by the plant-specific departures and exemptions made under Section VIII of this appendix.

D. Tier 1 means the portion of the design-related information contained in the generic DCD that is approved and certified by this appendix (hereinafter Tier 1 information). The design descriptions, interface requirements, and site parameters are derived from Tier 2 information. Tier 1 information includes:

1. Definitions and general provisions;
2. Design descriptions;
3. Inspections, tests, analyses, and acceptance criteria (ITAAC);
4. Significant site parameters; and
5. Significant interface requirements.

E. Tier 2 means the portion of the design-related information contained in the generic DCD that is approved but not certified by this appendix (hereinafter Tier 2 information). Compliance with Tier 2 is required, but generic changes to and plant-specific departures from Tier 2 are governed by Section VIII of this appendix. Compliance with Tier 2 provides a sufficient, but not the only acceptable, method for complying with Tier 1. Compliance methods differing from Tier 2 must satisfy the change process in

[1] "System 80+" is a trademark of Westinghouse Electric Company LLC.

Section VIII of this appendix. Regardless of these differences, an applicant or licensee must meet the requirement in Section III.B of this appendix to reference Tier 2 when referencing Tier 1. Tier 2 information includes:

1. Information required by 10 CFR 52.47, with the exception of generic technical specifications and conceptual design information;

2. Information required for a final safety analysis report under 10 CFR 50.34;

3. Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met; and

4. Combined license (COL) action items (COL license information), which identify certain matters that must be addressed in the site-specific portion of the final safety analysis report (FSAR) by an applicant who references this appendix. These items constitute information requirements but are not the only acceptable set of information in the FSAR. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items are not requirements for the licensee unless such items are restated in the FSAR.

F. Tier 2* means the portion of the Tier 2 information, designated as such in the generic DCD, which is subject to the change process in Section VIII.B.6 of this appendix. This designation expires for some Tier 2* information under Section VIII.B.6 of this appendix.

G. Departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses means:

(1) Changing any of the elements of the method described in the plant-specific DCD unless the results of the analysis are conservative or essentially the same; or

(2) Changing from a method described in the plant-specific DCD to another method unless that method has been approved by NRC for the intended application.

H. All other terms in this appendix have the meaning set out in 10 CFR 50.2 or 52.1, or Section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

III. Scope and Contents

A. Tier 1, Tier 2, and the generic technical specifications in the System 80+ Design Control Document, ABB–CE, with revisions dated January 1997, are approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the generic DCD may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy is available for examination and copying at the NRC Public Document Room located at One White Flint North 11555 Rockville Pike (first floor) Rockville, Maryland 20852. Copies are also available for examination at the NRC Library located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20582 and the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

B. An applicant or licensee referencing this appendix, in accordance with Section IV of this appendix, shall incorporate by reference and comply with the requirements of this appendix, including Tier 1, Tier 2, and the generic technical specifications except as otherwise provided in this appendix. Conceptual design information, as set forth in the generic DCD, and the Technical Support Document for the System 80+ design are not part of this appendix.

C. If there is a conflict between Tier 1 and Tier 2 of the DCD, then Tier 1 controls.

D. If there is a conflict between the generic DCD and either the application for design certification of the System 80+ design or NUREG–1462, ''Final Safety Evaluation Report Related to the Certification of the System 80+ Design,'' (FSER) and Supplement No. 1, then the generic DCD controls.

E. Design activities for structures, systems, and components that are wholly outside the scope of this appendix may be performed using site characteristics, provided the design activities do not affect the DCD or conflict with the interface requirements.

IV. Additional Requirements and Restrictions

A. An applicant for a license that wishes to reference this appendix shall, in addition to complying with the requirements of 10 CFR 52.77, 52.78, and 52.79, comply with the following requirements:

1. Incorporate by reference, as part of its application, this appendix;

2. Include, as part of its application:

a. A plant-specific DCD containing the same type of information and using the same organization and numbering as the generic DCD for the System 80+ design, as modified and supplemented by the applicant's exemptions and departures;

b. The reports on departures from and updates to the plant-specific DCD required by paragraph X.B of this appendix;

c. Plant-specific technical specifications, consisting of the generic and site-specific technical specifications, that are required by 10 CFR 50.36 and 50.36a;

d. Information demonstrating compliance with the site parameters and interface requirements;

e. Information that addresses the COL action items; and

f. Information required by 10 CFR 52.47(a) that is not within the scope of this appendix.

3. Physically include, in the plant-specific DCD, the proprietary information referenced in the System 80+ DCD.

B. The Commission reserves the right to determine in what manner this appendix may be referenced by an applicant for a construction permit or operating license under 10 CFR part 50.

V. Applicable Regulations

A. Except as indicated in paragraph B of this section, the regulations that apply to the System 80+ design are in 10 CFR parts 20, 50, 73, and 100, codified as of May 9, 1997, that are applicable and technically relevant, as described in the FSER (NUREG–1462) and Supplement No. 1.

B. The System 80+ design is exempt from portions of the following regulations:

1. Paragraph (f)(2)(iv) of 10 CFR 50.34—Separate Plant Safety Parameter Display Console;

2. Paragraphs (f)(2) (vii), (viii), (xxvi), and (xxviii) of 10 CFR 50.34—Accident Source Terms;

3. Paragraph (f)(2)(viii) of 10 CFR 50.34—Post-Accident Sampling for Hydrogen, Boron, Chloride, and Dissolved Gases;

4. Paragraph (f)(3)(iv) of 10 CFR 50.34—Dedicated Containment Penetration; and

5. Paragraphs III.A.1(a) and III.C.3(b) of Appendix J to 10 CFR 50—Containment Leakage Testing.

VI. Issue Resolution

A. The Commission has determined that the structures, systems, components, and design features of the System 80+ design comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in Section V of this appendix; and therefore, provide adequate protection to the health and safety of the public. A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for the System 80+ design.

B. The Commission considers the following matters resolved within the meaning of 10 CFR 52.63(a)(5) in subsequent proceedings for issuance of a combined license, amendment of a combined license, or renewal of a combined license, proceedings held under 10 CFR 52.103, and enforcement proceedings involving plants referencing this appendix:

1. All nuclear safety issues, except for the generic technical specifications and other operational requirements, associated with the information in the FSER and Supplement No. 1, Tier 1, Tier 2 (including referenced information which the context indicates is intended as requirements), and the rulemaking record for certification of the System 80+ design;

2. All nuclear safety and safeguards issues associated with the information in proprietary and safeguards documents, referenced and in context, are intended as requirements in the generic DCD for the System 80+ design;

3. All generic changes to the DCD under and in compliance with the change processes in Sections VIII.A.1 and VIII.B.1 of this appendix;

4. All exemptions from the DCD under and in compliance with the change processes in Sections VIII.A.4 and VIII.B.4 of this appendix, but only for that plant;

5. All departures from the DCD that are approved by license amendment, but only for that plant;

6. Except as provided in paragraph VIII.B.5.f of this appendix, all departures from Tier 2 under and in compliance with the change processes in paragraph VIII.B.5 of this appendix that do not require prior NRC approval, but only for that plant;

7. All environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's final environmental assessment for the

System 80+ design and the technical support document for the System 80+ design, dated January 1995, for plants referencing this appendix whose site parameters are within those specified in the technical support document.

C. The Commission does not consider operational requirements for an applicant or licensee who references this appendix to be matters resolved within the meaning of 10 CFR 52.63(a)(5). The Commission reserves the right to require operational requirements for an applicant or licensee who references this appendix by rule, regulation, order, or license condition.

D. Except in accordance with the change processes in Section VIII of this appendix, the Commission may not require an applicant or licensee who references this appendix to:

1. Modify structures, systems, components, or design features as described in the generic DCD;

2. Provide additional or alternative structures, systems, components, or design features not discussed in the generic DCD; or

3. Provide additional or alternative design criteria, testing, analyses, acceptance criteria, or justification for structures, systems, components, or design features discussed in the generic DCD.

E.1. Persons who wish to review proprietary information or other secondary references in the DCD for the System 80+ design, in order to request or participate in the hearing required by 10 CFR 52.85 or the hearing provided under 10 CFR 52.103, or to request or participate in any other hearing relating to this appendix in which interested persons have adjudicatory hearing rights, shall first request access to such information from Westinghouse. The request must state with particularity:

a. The nature of the proprietary or other information sought;

b. The reason why the information currently available to the public at the NRC Web site, *http://www.nrc.gov,* and/or at the NRC Public Document Room, is insufficient;

c. The relevance of the requested information to the hearing issue(s) which the person proposes to raise; and

d. A showing that the requesting person has the capability to understand and utilize the requested information.

2. If a person claims that the information is necessary to prepare a request for hearing, the request must be filed no later than 15 days after publication in the **Federal Register** of the notice required either by 10 CFR 52.85 or 10 CFR 52.103. If Westinghouse declines to provide the information sought, Westinghouse shall send a written response within ten (10) days of receiving the request to the requesting person setting forth with particularity the reasons for its refusal. The person may then request the Commission (or presiding officer, if a proceeding has been established) to order disclosure. The person shall include copies of the original request (and any subsequent clarifying information provided by the requesting party to the applicant) and the applicant's response. The Commission and presiding officer shall base their decisions solely on the person's original request (including any clarifying information provided by the requesting person to Westinghouse), and Westinghouse's response. The Commission and presiding officer may order Westinghouse to provide access to some or all of the requested information, subject to an appropriate non-disclosure agreement.

VII. Duration of This Appendix

This appendix may be referenced for a period of 15 years from June 20, 1997, except as provided for in 10 CFR 52.55(b) and 52.57(b). This appendix remains valid for an applicant or licensee who references this appendix until the application is withdrawn or the license expires, including any period of extended operation under a renewed license.

VIII. Processes for Changes and Departures

A. Tier 1 Information

1. Generic changes to Tier 1 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 1 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs A.3 or A.4 of this section.

3. Departures from Tier 1 information that are required by the Commission through plant-specific orders are governed by the requirements in 10 CFR 52.63(a)(4).

4. Exemptions from Tier 1 information are governed by the requirements in 10 CFR 52.63(b)(1) and 52.97(b). The Commission will deny a request for an exemption from Tier 1, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design.

B. Tier 2 Information

1. Generic changes to Tier 2 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 2 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs B.3, B.4, B.5, or B.6 of this section.

3. The Commission may not require new requirements on Tier 2 information by plant-specific order while this appendix is in effect under §§ 52.55 or 52.61, unless:

a. A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time this appendix was approved, as set forth in Section V of this appendix, or to assure adequate protection of the public health and safety or the common defense and security; and

b. Special circumstances as defined in 10 CFR 52.7 are present.

4. An applicant or licensee who references this appendix may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The Commission will deny a request for an exemption from Tier 2, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design. The grant of an exemption to an applicant must be subject to litigation in the same manner as other issues material to the license hearing. The grant of an exemption to a licensee must be subject to an opportunity for a hearing in the same manner as license amendments.

5.a. An applicant or licensee who references this appendix may depart from Tier 2 information, without prior NRC approval, unless the proposed departure involves a change to or departure from Tier 1 information, Tier 2* information, or the technical specifications, or requires a license amendment under paragraphs B.5.b or B.5.c of this section. When evaluating the proposed departure, an applicant or licensee shall consider all matters described in the plant-specific DCD.

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if it would—

(1) Result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the plant-specific DCD;

(2) Result in more than a minimal increase in the likelihood of occurrence of a malfunction of a structure, system, or component (SSC) important to safety previously evaluated in the plant-specific DCD;

(3) Result in more than a minimal increase in the consequences of an accident previously evaluated in the plant-specific DCD;

(4) Result in more than a minimal increase in the consequences of a malfunction of a SSC important to safety previously evaluated in the plant-specific DCD;

(5) Create a possibility for an accident of a different type than any evaluated previously in the plant-specific DCD;

(6) Create a possibility for a malfunction of an SSC important to safety with a different result than any evaluated previously in the plant-specific DCD;

(7) Result in a design basis limit for a fission product barrier as described in the plant-specific DCD being exceeded or altered; or

(8) Result in a departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses.

c. A proposed departure from Tier 2 affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if—

(1) There is a substantial increase in the probability of a severe accident such that a particular severe accident previously reviewed and determined to be not credible could become credible; or

(2) There is a substantial increase in the consequences to the public of a particular severe accident previously reviewed.

d. If a departure requires a license amendment under paragraph B.5.b or B.5.c of this section, it is governed by 10 CFR 50.90.

e. A departure from Tier 2 information that is made under paragraph B.5 of this section does not require an exemption from this appendix.

f. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an applicant or licensee who references this appendix has not complied with paragraph VIII.B.5 of this appendix when departing from Tier 2 information, may petition the NRC to admit into the proceeding such a contention. In addition to compliance with the general requirements of 10 CFR 2.309, the petition must demonstrate that the departure does not comply with paragraph VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an asserted noncompliance with an ITAAC acceptance criterion in the case of a 10 CFR 52.103 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of material fact regarding compliance with paragraph VIII.B.5 of this appendix.

6.a. An applicant who references this appendix may not depart from Tier 2* information, which is designated with italicized text or brackets and an asterisk in the generic DCD, without NRC approval. The departure will not be considered a resolved issue, within the meaning of Section VI of this appendix and 10 CFR 52.63(a)(5).

b. A licensee who references this appendix may not depart from the following Tier 2* matters without prior NRC approval. A request for a departure will be treated as a request for a license amendment under 10 CFR 50.90.

(1) Maximum fuel rod average burnup.

(2) Control room human factors engineering.

c. A licensee who references this appendix may not, before the plant first achieves full power following the finding required by 10 CFR 52.103(g), depart from the following Tier 2* matters except in accordance with paragraph B.6.b of this section. After the plant first achieves full power, the following Tier 2* matters revert to Tier 2 status and are thereafter subject to the departure provisions in paragraph B.5 of this section.

(1) ASME Boiler & Pressure Vessel Code, Section III.

(2) ACI 349 and ANSI/AISC–690.

(3) Motor-operated valves.

(4) Equipment seismic qualification methods.

(5) Piping design acceptance criteria.

(6) Fuel and control rod design, except burnup limit.

(7) Instrumentation and controls setpoint methodology.

(8) Instrumentation and controls hardware and software changes.

(9) Instrumentation and controls environmental qualification.

(10) Seismic design criteria for non-seismic category I structures.

d. Departures from Tier 2* information that are made under paragraph B.6 of this section do not require an exemption from this appendix.

C. Operational Requirements

1. Generic changes to generic technical specifications and other operational requirements that were completely reviewed and approved in the design certification rulemaking and do not require a change to a design feature in the generic DCD are governed by the requirements in 10 CFR 50.109. Generic changes that do require a change to a design feature in the generic DCD are governed by the requirements in paragraphs A or B of this section.

2. Generic changes to generic technical specifications and other operational requirements are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs C.3 or C.4 of this section.

3. The Commission may require plant-specific departures on generic technical specifications and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances as defined in 10 CFR 2.335 are present. The Commission may modify or supplement generic technical specifications and other operational requirements that were not completely reviewed and approved or require additional technical specifications and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

4. An applicant who references this appendix may request an exemption from the generic technical specifications or other operational requirements. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The grant of an exemption must be subject to litigation in the same manner as other issues material to the license hearing.

5. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an operational requirement approved in the DCD or a technical specification derived from the generic technical specifications must be changed may petition to admit into the proceeding such a contention. Such a petition must comply with the general requirements of 10 CFR 2.309 and must demonstrate why special circumstances as defined in 10 CFR 2.335 are present, or for compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response thereto. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific technical specifications or other operational requirements are subject to a hearing as part of the license proceeding.

6. After issuance of a license, the generic technical specifications have no further effect on the plant-specific technical specifications and changes to the plant-specific technical specifications will be treated as license amendments under 10 CFR 50.90.

IX. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

A.1 An applicant or licensee who references this appendix shall perform and demonstrate conformance with the ITAAC before fuel load. With respect to activities subject to an ITAAC, an applicant for a license may proceed at its own risk with design and procurement activities, and a licensee may proceed at its own risk with design, procurement, construction, and preoperational activities, even though the NRC may not have found that any particular ITAAC has been met.

2. The licensee who references this appendix shall notify the NRC that the required inspections, tests, and analyses in the ITAAC have been successfully completed and that the corresponding acceptance criteria have been met.

3. In the event that an activity is subject to an ITAAC, and the applicant or licensee who references this appendix has not demonstrated that the ITAAC has been met, the applicant or licensee may either take corrective actions to successfully complete that ITAAC, request an exemption from the ITAAC in accordance with Section VIII of this appendix and 10 CFR 52.97(b), or petition for rulemaking to amend this appendix by changing the requirements of the ITAAC, under 10 CFR 2.802 and 52.97(b). Such rulemaking changes to the ITAAC must meet the requirements of Section VIII.A.1 of this appendix.

B.1 The NRC shall ensure that the required inspections, tests, and analyses in the ITAAC are performed. The NRC shall verify that the inspections, tests, and analyses referenced by the licensee have been successfully completed and, based solely thereon, find the prescribed acceptance criteria have been met. At appropriate intervals during construction, the NRC shall publish notices of the successful completion of ITAAC in the **Federal Register**.

2. In accordance with 10 CFR 52.103(g), the Commission shall find that the acceptance criteria in the ITAAC for the license are met before fuel load.

3. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not, by virtue of their inclusion within the DCD, constitute regulatory requirements either for licensees or for renewal of the license; except for specific ITAAC, which are the subject of a § 52.103(a) hearing, their expiration will occur upon final Commission action in such proceeding. However, subsequent modifications must comply with the Tier 1 and Tier 2 design descriptions in the plant-specific DCD unless the licensee has complied with the applicable requirements of 10 CFR 52.98 and Section VIII of this appendix.

X. Records and Reporting

A. Records

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes to Tier 1 and Tier 2. The applicant shall maintain the proprietary and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

2. An applicant or licensee who references this appendix shall maintain the plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made under Section VIII of this appendix throughout the period of application and for the term of the license (including any period of renewal).

3. An applicant or licensee who references this appendix shall prepare and maintain written evaluations which provide the bases for the determinations required by Section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any period of renewal).

B. Reporting

1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any plant-specific departures from the DCD, including a summary of the evaluation of each. This report must be filed in accordance with the filing requirements applicable to reports in 10 CFR 52.3.

2. An applicant or licensee who references this appendix shall submit updates to its DCD, which reflect the generic changes to and plant-specific departures from the generic DCD made under Section VIII of this appendix. These updates must be filed under the filing requirements applicable to final safety analysis report updates in 10 CFR 52.3 and 50.71(e).

3. The reports and updates required by paragraphs X.B.1 and X.B.2 must be submitted as follows:

a. On the date that an application for a license referencing this appendix is submitted, the application must include the report and any updates to the generic DCD.

b. During the interval from the date of application for a license to the date the Commission makes the finding required by 10 CFR 52.103(g), the report must be submitted semi-annually. Updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

c. After the Commission makes the finding required by 10 CFR 52.103(g), the reports and updates to the plant-specific DCD must be submitted, along with updates to the site-specific portion of the final safety analysis report for the facility, at the intervals required by 10 CFR 50.59(d)(2) and 50.71(e)(4), respectively, or at shorter intervals as specified in the license.

Appendix C to Part 52—Design Certification Rule for the AP600 Design

I. Introduction

Appendix C constitutes the standard design certification for the AP600 [1] design, in accordance with 10 CFR part 52, subpart B. The applicant for certification of the AP600 design is Westinghouse Electric Company LLC.

II. Definitions

A. Generic design control document (generic DCD) means the document containing the Tier 1 and Tier 2 information and generic technical specifications that is incorporated by reference into this appendix.

B. Generic technical specifications means the information, required by 10 CFR 50.36 and 50.36a, for the portion of the plant that is within the scope of this appendix.

C. Plant-specific DCD means the document, maintained by an applicant or licensee who references this appendix, consisting of the information in the generic DCD, as modified and supplemented by the plant-specific departures and exemptions made under Section VIII of this appendix.

D. Tier 1 means the portion of the design-related information contained in the generic DCD that is approved and certified by this appendix (hereinafter Tier 1 information). The design descriptions, interface requirements, and site parameters are derived from Tier 2 information. Tier 1 information includes:

1. Definitions and general provisions;
2. Design descriptions;
3. Inspections, tests, analyses, and acceptance criteria (ITAAC);
4. Significant site parameters; and
5. Significant interface requirements.

E. Tier 2 means the portion of the design-related information contained in the generic DCD that is approved but not certified by this appendix (hereinafter Tier 2 information). Compliance with Tier 2 is required, but generic changes to and plant-specific departures from Tier 2 are governed by Section VIII of this appendix. Compliance with Tier 2 provides a sufficient, but not the only acceptable, method for complying with Tier 1. Compliance methods differing from Tier 2 must satisfy the change process in Section VIII of this appendix. Regardless of these differences, an applicant or licensee must meet the requirement in Section III.B of this appendix to reference Tier 2 when referencing Tier 1. Tier 2 information includes:

1. Information required by 10 CFR 52.47, with the exception of generic technical specifications and conceptual design information;
2. Information required for a final safety analysis report under 10 CFR 50.34;
3. Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met; and
4. Combined license (COL) action items (combined license information), which identify certain matters that must be addressed in the site-specific portion of the final safety analysis report (FSAR) by an applicant who references this appendix. These items constitute information requirements but are not the only acceptable set of information in the FSAR. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items are not requirements for the licensee unless such items are restated in the FSAR.
5. The investment protection short-term availability controls in Section 16.3 of the DCD.

F. Tier 2* means the portion of the Tier 2 information, designated as such in the generic DCD, which is subject to the change process in Section VIII.B.6 of this appendix. This designation expires for some Tier 2* information under Section VIII.B.6.

G. Departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses means:

(1) Changing any of the elements of the method described in the plant-specific DCD unless the results of the analysis are conservative or essentially the same; or

(2) Changing from a method described in the plant-specific DCD to another method unless that method has been approved by NRC for the intended application.

H. All other terms in this appendix have the meaning set out in 10 CFR 50.2 or 52.1, or Section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

III. Scope and Contents

A. Tier 1, Tier 2 (including the investment protection short-term availability controls in Section 16.3), and the generic technical specifications in the AP600 DCD (12/99 revision) are approved for incorporation by reference by the Director of the Office of the Federal Register on January 24, 2000, in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the generic DCD may be obtained from Ronald P. Vijuk, Manager, Passive Plant Engineering, Westinghouse Electric Company, P.O. Box 355, Pittsburgh, Pennsylvania 15230–0355. A copy of the generic DCD is available for examination and copying at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Copies are also available for examination at the NRC Library located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20582; and the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

B. An applicant or licensee referencing this appendix, in accordance with Section IV of this appendix, shall incorporate by reference and comply with the requirements of this appendix, including Tier 1, Tier 2 (including the investment protection short-term availability controls in Section 16.3), and the generic technical specifications except as otherwise provided in this appendix. Conceptual design information in the generic DCD and the evaluation of severe accident mitigation design alternatives in Appendix

[1] AP600 is a trademark of Westinghouse Electric Company LLC.

1B of the generic DCD are not part of this appendix.

C. If there is a conflict between Tier 1 and Tier 2 of the DCD, then Tier 1 controls.

D. If there is a conflict between the generic DCD and either the application for design certification of the AP600 design or NUREG–1512, ''Final Safety Evaluation Report Related to Certification of the AP600 Standard Design,'' (FSER), then the generic DCD controls.

E. Design activities for structures, systems, and components that are wholly outside the scope of this appendix may be performed using site characteristics, provided the design activities do not affect the DCD or conflict with the interface requirements.

IV. Additional Requirements and Restrictions

A. An applicant for a license that wishes to reference this appendix shall, in addition to complying with the requirements of 10 CFR 52.77, 52.78, and 52.79, comply with the following requirements:

1. Incorporate by reference, as part of its application, this appendix;

2. Include, as part of its application:

a. A plant-specific DCD containing the same type of information and utilizing the same organization and numbering as the generic DCD for the AP600 design, as modified and supplemented by the applicant's exemptions and departures;

b. The reports on departures from and updates to the plant-specific DCD required by paragraph X.B of this appendix;

c. Plant-specific technical specifications, consisting of the generic and site-specific technical specifications, that are required by 10 CFR 50.36 and 50.36a;

d. Information demonstrating compliance with the site parameters and interface requirements;

e. Information that addresses the COL action items; and

f. Information required by 10 CFR 52.47(a) that is not within the scope of this appendix.

3. Physically include, in the plant-specific DCD, the proprietary information and safeguards information referenced in the AP600 DCD.

B. The Commission reserves the right to determine in what manner this appendix may be referenced by an applicant for a construction permit or operating license under 10 CFR part 50.

V. Applicable Regulations

A. Except as indicated in paragraph B of this section, the regulations that apply to the AP600 design are in 10 CFR parts 20, 50, 73, and 100, codified as of December 16, 1999, that are applicable and technically relevant, as described in the FSER (NUREG–1512) and the supplementary information for this section.

B. The AP600 design is exempt from portions of the following regulations:

1. Paragraph (a)(1) of 10 CFR 50.34—whole body dose criterion;

2. Paragraph (f)(2)(iv) of 10 CFR 50.34—Plant Safety Parameter Display Console;

3. Paragraphs (f)(2)(vii), (viii), (xxvi), and (xxviii) of 10 CFR 50.34—Accident Source Term in TID 14844;

4. Paragraph (a)(2) of 10 CFR 50.55a—ASME Boiler and Pressure Vessel Code;

5. Paragraph (c)(1) of 10 CFR 50.62—Auxiliary (or emergency) feedwater system;

6. Appendix A to 10 CFR Part 50, GDC 17—Offsite Power Sources; and

7. Appendix A to 10 CFR Part 50, GDC 19—whole body dose criterion.

VI. Issue Resolution

A. The Commission has determined that the structures, systems, components, and design features of the AP600 design comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in Section V of this appendix; and therefore, provide adequate protection to the health and safety of the public. A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for the AP600 design.

B. The Commission considers the following matters resolved within the meaning of 10 CFR 52.63(a)(5) in subsequent proceedings for issuance of a combined license, amendment of a combined license, or renewal of a combined license, proceedings held under 10 CFR 52.103, and enforcement proceedings involving plants referencing this appendix:

1. All nuclear safety issues, except for the generic technical specifications and other operational requirements, associated with the information in the FSER and Supplement No. 1, Tier 1, Tier 2 (including referenced information which the context indicates is intended as requirements and the investment protection short-term availability controls in Section 16.3), and the rulemaking record for certification of the AP600 design;

2. All nuclear safety and safeguards issues associated with the information in proprietary and safeguards documents, referenced and in context, are intended as requirements in the generic DCD for the AP600 design;

3. All generic changes to the DCD under and in compliance with the change processes in Sections VIII.A.1 and VIII.B.1 of this appendix;

4. All exemptions from the DCD under and in compliance with the change processes in Sections VIII.A.4 and VIII.B.4 of this appendix, but only for that plant;

5. All departures from the DCD that are approved by license amendment, but only for that plant;

6. Except as provided in paragraph VIII.B.5.f of this appendix, all departures from Tier 2 under and in compliance with the change processes in paragraph VIII.B.5 of this appendix that do not require prior NRC approval, but only for that plant;

7. All environmental issues concerning severe accident mitigation design alternatives (SAMDAs) associated with the information in the NRC's environmental assessment for the AP600 design and appendix 1B of the generic DCD, for plants referencing this appendix whose site parameters are within those specified in the SAMDA evaluation.

C. The Commission does not consider operational requirements for an applicant or licensee who references this appendix to be matters resolved within the meaning of 10 CFR 52.63(a)(5). The Commission reserves the right to require operational requirements for an applicant or licensee who references this appendix by rule, regulation, order, or license condition.

D. Except in accordance with the change processes in Section VIII of this appendix, the Commission may not require an applicant or licensee who references this appendix to:

1. Modify structures, systems, components, or design features as described in the generic DCD;

2. Provide additional or alternative structures, systems, components, or design features not discussed in the generic DCD; or

3. Provide additional or alternative design criteria, testing, analyses, acceptance criteria, or justification for structures, systems, components, or design features discussed in the generic DCD.

E.1. Persons who wish to review proprietary and safeguards information or other secondary references in the AP600 DCD, in order to request or participate in the hearing required by 10 CFR 52.85 or the hearing provided under 10 CFR 52.103, or to request or participate in any other hearing relating to this appendix in which interested persons have adjudicatory hearing rights, shall first request access to such information from Westinghouse. The request must state with particularity:

a. The nature of the proprietary or other information sought;

b. The reason why the information currently available to the public at the NRC Web site, *http://www.nrc.gov,* and/or at the NRC Public Document Room, is insufficient;

c. The relevance of the requested information to the hearing issue(s) which the person proposes to raise; and

d. A showing that the requesting person has the capability to understand and utilize the requested information.

2. If a person claims that the information is necessary to prepare a request for hearing, the request must be filed no later than 15 days after publication in the **Federal Register** of the notice required either by 10 CFR 52.85 or 10 CFR 52.103. If Westinghouse declines to provide the information sought, Westinghouse shall send a written response within 10 days of receiving the request to the requesting person setting forth with particularity the reasons for its refusal. The person may then request the Commission (or presiding officer, if a proceeding has been established) to order disclosure. The person shall include copies of the original request (and any subsequent clarifying information provided by the requesting party to the applicant) and the applicant's response. The Commission and presiding officer shall base their decisions solely on the person's original request (including any clarifying information provided by the requesting person to Westinghouse), and Westinghouse's response. The Commission and presiding officer may order Westinghouse to provide access to some or all of the requested information, subject to an appropriate non-disclosure agreement.

VII. Duration of This Appendix

This appendix may be referenced for a period of 15 years from January 24, 2000, except as provided for in 10 CFR 52.55(b) and 52.57(b). This appendix remains valid for an applicant or licensee who references this appendix until the application is withdrawn or the license expires, including any period of extended operation under a renewed license.

VIII. Processes for Changes and Departures

A. Tier 1 Information

1. Generic changes to Tier 1 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 1 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs A.3 or A.4 of this section.

3. Departures from Tier 1 information that are required by the Commission through plant-specific orders are governed by the requirements in 10 CFR 52.63(a)(4).

4. Exemptions from Tier 1 information are governed by the requirements in 10 CFR 52.63(b)(1) and § 52.97(b). The Commission will deny a request for an exemption from Tier 1, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design.

B. Tier 2 Information

1. Generic changes to Tier 2 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 2 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs B.3, B.4, B.5, or B.6 of this section.

3. The Commission may not require new requirements on Tier 2 information by plant-specific order while this appendix is in effect under §§ 52.55 or 52.61, unless:

a. A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time this appendix was approved, as set forth in Section V of this appendix, or to assure adequate protection of the public health and safety or the common defense and security; and

b. Special circumstances as defined in 10 CFR 52.7 are present.

4. An applicant or licensee who references this appendix may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The Commission will deny a request for an exemption from Tier 2, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design. The grant of an exemption to an applicant must be subject to litigation in the same manner as other issues material to the license hearing. The grant of an exemption to a licensee must be subject to an opportunity for a hearing in the same manner as license amendments.

5.a. An applicant or licensee who references this appendix may depart from Tier 2 information, without prior NRC approval, unless the proposed departure involves a change to or departure from Tier 1 information, Tier 2* information, or the technical specifications, or requires a license amendment under paragraphs B.5.b or B.5.c of this section. When evaluating the proposed departure, an applicant or licensee shall consider all matters described in the plant-specific DCD.

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if it would:

(1) Result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the plant-specific DCD;

(2) Result in more than a minimal increase in the likelihood of occurrence of a malfunction of a structure, system, or component (SSC) important to safety previously evaluated in the plant-specific DCD;

(3) Result in more than a minimal increase in the consequences of an accident previously evaluated in the plant-specific DCD;

(4) Result in more than a minimal increase in the consequences of a malfunction of a SSC important to safety previously evaluated in the plant-specific DCD;

(5) Create a possibility for an accident of a different type than any evaluated previously in the plant-specific DCD;

(6) Create a possibility for a malfunction of an SSC important to safety with a different result than any evaluated previously in the plant-specific DCD;

(7) Result in a design basis limit for a fission product barrier as described in the plant-specific DCD being exceeded or altered; or

(8) Result in a departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses.

c. A proposed departure from Tier 2 affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if:

(1) There is a substantial increase in the probability of a severe accident such that a particular severe accident previously reviewed and determined to be not credible could become credible; or

(2) There is a substantial increase in the consequences to the public of a particular severe accident previously reviewed.

d. If a departure requires a license amendment under paragraphs B.5.b or B.5.c of this section, it is governed by 10 CFR 50.90.

e. A departure from Tier 2 information that is made under paragraph B.5 of this section does not require an exemption from this appendix.

f. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an applicant or licensee who references this appendix has not complied with paragraph VIII.B.5 of this appendix when departing from Tier 2 information, may petition the NRC to admit into the proceeding such a contention. In addition to compliance with the general requirements of 10 CFR 2.309, the petition must demonstrate that the departure does not comply with paragraph VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an asserted noncompliance with an ITAAC acceptance criterion in the case of a 10 CFR 52.103 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of material fact regarding compliance with paragraph VIII.B.5 of this appendix.

6.a. An applicant who references this appendix may not depart from Tier 2* information, which is designated with italicized text or brackets and an asterisk in the generic DCD, without NRC approval. The departure will not be considered a resolved issue, within the meaning of Section VI of this appendix and 10 CFR 52.63(a)(5).

b. A licensee who references this appendix may not depart from the following Tier 2* matters without prior NRC approval. A request for a departure will be treated as a request for a license amendment under 10 CFR 50.90.

(1) Maximum fuel rod average burn-up.

(2) Fuel principal design requirements.

(3) Fuel criteria evaluation process.

(4) Fire areas.

(5) Human factors engineering.

c. A licensee who references this appendix may not, before the plant first achieves full power following the finding required by 10 CFR 52.103(g), depart from the following Tier 2* matters except in accordance with paragraph B.6.b of this section. After the plant first achieves full power, the following Tier 2* matters revert to Tier 2 status and are thereafter subject to the departure provisions in paragraph B.5 of this section.

(1) Nuclear Island structural dimensions.

(2) ASME Boiler and Pressure Vessel Code, Section III, and Code Case –284.

(3) Design Summary of Critical Sections.

(4) ACI 318, ACI 349, and ANSI/AISC—690.

(5) Definition of critical locations and thicknesses.

(6) Seismic qualification methods and standards.

(7) Nuclear design of fuel and reactivity control system, except burn-up limit.

(8) Motor-operated and power-operated valves.

(9) Instrumentation and control system design processes, methods, and standards.

(10) PRHR natural circulation test (first plant only).

(11) ADS and CMT verification tests (first three plants only).

d. Departures from Tier 2* information that are made under paragraph B.6 of this section

do not require an exemption from this appendix.

C. Operational Requirements

1. Generic changes to generic technical specifications and other operational requirements that were completely reviewed and approved in the design certification rulemaking and do not require a change to a design feature in the generic DCD are governed by the requirements in 10 CFR 50.109. Generic changes that do require a change to a design feature in the generic DCD are governed by the requirements in paragraphs A or B of this section.

2. Generic changes to generic technical specifications and other operational requirements are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs C.3 or C.4 of this section.

3. The Commission may require plant-specific departures on generic technical specifications and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances as defined in 10 CFR 2.335 are present. The Commission may modify or supplement generic technical specifications and other operational requirements that were not completely reviewed and approved or require additional technical specifications and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

4. An applicant who references this appendix may request an exemption from the generic technical specifications or other operational requirements. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The grant of an exemption must be subject to litigation in the same manner as other issues material to the license hearing.

5. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an operational requirement approved in the DCD or a technical specification derived from the generic technical specifications must be changed may petition to admit into the proceeding such a contention. Such petition must comply with the general requirements of 10 CFR 2.309 and must demonstrate why special circumstances as defined in 10 CFR 2.335 are present, or for compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response thereto. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific technical specifications or other operational requirements are subject to a hearing as part of the license proceeding.

6. After issuance of a license, the generic technical specifications have no further effect on the plant-specific technical specifications and changes to the plant-specific technical specifications will be treated as license amendments under 10 CFR 50.90.

IX. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

A.1 An applicant or licensee who references this appendix shall perform and demonstrate conformance with the ITAAC before fuel load. With respect to activities subject to an ITAAC, an applicant for a license may proceed at its own risk with design and procurement activities, and a licensee may proceed at its own risk with design, procurement, construction, and preoperational activities, even though the NRC may not have found that any particular ITAAC has been met.

2. The licensee who references this appendix shall notify the NRC that the required inspections, tests, and analyses in the ITAAC have been successfully completed and that the corresponding acceptance criteria have been met.

3. In the event that an activity is subject to an ITAAC, and the applicant or licensee who references this appendix has not demonstrated that the ITAAC has been met, the applicant or licensee may either take corrective actions to successfully complete that ITAAC, request an exemption from the ITAAC in accordance with Section VIII of this appendix and 10 CFR 52.97(b), or petition for rulemaking to amend this appendix by changing the requirements of the ITAAC, under 10 CFR 2.802 and 52.97(b). Such rulemaking changes to the ITAAC must meet the requirements of paragraph VIII.A.1 of this appendix.

B.1 The NRC shall ensure that the required inspections, tests, and analyses in the ITAAC are performed. The NRC shall verify that the inspections, tests, and analyses referenced by the licensee have been successfully completed and, based solely thereon, find the prescribed acceptance criteria have been met. At appropriate intervals during construction, the NRC shall publish notices of the successful completion of ITAAC in the **Federal Register**.

2. In accordance with 10 CFR 52.103(g), the Commission shall find that the acceptance criteria in the ITAAC for the license are met before fuel load.

3. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not, by virtue of their inclusion within the DCD, constitute regulatory requirements either for licensees or for renewal of the license; except for specific ITAAC, which are the subject of a § 52.103(a) hearing, their expiration will occur upon final Commission action in such proceeding. However, subsequent modifications must comply with the Tier 1 and Tier 2 design descriptions in the plant-specific DCD unless the licensee has complied with the applicable requirements of 10 CFR 52.98 and Section VIII of this appendix.

X. Records and Reporting

A. Records

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes to Tier 1 and Tier 2. The applicant shall maintain the proprietary and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

2. An applicant or licensee who references this appendix shall maintain the plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made under Section VIII of this appendix throughout the period of application and for the term of the license (including any period of renewal).

3. An applicant or licensee who references this appendix shall prepare and maintain written evaluations which provide the bases for the determinations required by Section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any period of renewal).

B. Reporting

1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any plant-specific departures from the DCD, including a summary of the evaluation of each. This report must be filed in accordance with the filing requirements applicable to reports in 10 CFR 52.3.

2. An applicant or licensee who references this appendix shall submit updates to its DCD, which reflect the generic changes to and plant-specific departures from the generic DCD made under Section VIII of this appendix. These updates must be filed under the filing requirements applicable to final safety analysis report updates in 10 CFR 52.3 and 50.71(e).

3. The reports and updates required by paragraphs X.B.1 and X.B.2 must be submitted as follows:

a. On the date that an application for a license referencing this appendix is submitted, the application must include the report and any updates to the generic DCD.

b. During the interval from the date of application for a license to the date the Commission makes the finding required by 10 CFR 52.103(g), the report must be submitted semi-annually. Updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

c. After the Commission makes the finding required by 10 CFR 52.103(g), the reports and updates to the plant-specific DCD must be submitted, along with updates to the site-specific portion of the final safety analysis report for the facility, at the intervals required by 10 CFR 50.59(d)(2) and 50.71(e), respectively, or at shorter intervals as specified in the license.

Appendix D to Part 52—Design Certification Rule for the AP1000 Design

I. Introduction

Appendix D constitutes the standard design certification for the AP1000 [1] design, in accordance with 10 CFR part 52, subpart

[1] AP1000 is a trademark of Westinghouse Electric Company LLC.

B. The applicant for certification of the AP1000 design is Westinghouse Electric Company LLC.

II. Definitions

A. *Generic design control document* (generic DCD) means the document containing the Tier 1 and Tier 2 information and generic technical specifications that is incorporated by reference into this appendix.

B. *Generic technical specifications* means the information required by 10 CFR 50.36 and 50.36a for the portion of the plant that is within the scope of this appendix.

C. *Plant-specific DCD* means the document maintained by an applicant or licensee who references this appendix consisting of the information in the generic DCD as modified and supplemented by the plant-specific departures and exemptions made under Section VIII of this appendix.

D. *Tier 1* means the portion of the design-related information contained in the generic DCD that is approved and certified by this appendix (Tier 1 information). The design descriptions, interface requirements, and site parameters are derived from Tier 2 information. Tier 1 information includes:

1. Definitions and general provisions;
2. Design descriptions;
3. Inspections, tests, analyses, and acceptance criteria (ITAAC);
4. Significant site parameters; and
5. Significant interface requirements.

E. *Tier 2* means the portion of the design-related information contained in the generic DCD that is approved but not certified by this appendix (Tier 2 information). Compliance with Tier 2 is required, but generic changes to and plant-specific departures from Tier 2 are governed by Section VIII of this appendix. Compliance with Tier 2 provides a sufficient, but not the only acceptable, method for complying with Tier 1. Compliance methods differing from Tier 2 must satisfy the change process in Section VIII of this appendix. Regardless of these differences, an applicant or licensee must meet the requirement in Section III.B of this appendix to reference Tier 2 when referencing Tier 1. Tier 2 information includes:

1. Information required by 10 CFR 52.47, with the exception of generic TS, the design-specific PRA, the evaluation of SAMDAs, and conceptual design information;
2. Information required for a final safety analysis report under 10 CFR 50.34;
3. Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met; and
4. COL action items (COL information), which identify certain matters that must be addressed in the site-specific portion of the FSAR by an applicant who references this appendix. These items constitute information requirements but are not the only acceptable set of information in the FSAR. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items are not requirements for the licensee unless such items are restated in the FSAR.
5. The investment protection short-term availability controls in Section 16.3 of the DCD.

F. *Tier 2** means the portion of the Tier 2 information, designated as such in the generic DCD, which is subject to the change process in Section VIII.B.6 of this appendix. This designation expires for some Tier 2* information under paragraph VIII.B.6.

G. *Departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses* means:

1. Changing any of the elements of the method described in the plant-specific DCD unless the results of the analysis are conservative or essentially the same; or
2. Changing from a method described in the plant-specific DCD to another method unless that method has been approved by the NRC for the intended application.

H. All other terms in this appendix have the meaning set out in 10 CFR 50.2, or 52.1, or Section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

III. Scope and Contents

A. Tier 1, Tier 2 (including the investment protection short-term availability controls in Section 16.3), and the generic TS in the AP1000 DCD (Revision 15, dated December 8, 2005) are approved for incorporation by reference by the Director of the Office of the Federal Register on February 27, 2006, under 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the generic DCD may be obtained from Ronald P. Vijuk, Manager, Passive Plant Engineering, Westinghouse Electric Company, P.O. Box 355, Pittsburgh, Pennsylvania 15230–0355. A copy of the generic DCD is also available for examination and copying at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Copies are available for examination at the NRC Library, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, telephone (301) 415–5610, e-mail *LIBRARY@NRC.GOV* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

B. An applicant or licensee referencing this appendix, in accordance with Section IV of this appendix, shall incorporate by reference and comply with the requirements of this appendix, including Tier 1, Tier 2 (including the investment protection short-term availability controls in Section 16.3 of the DCD), and the generic TS except as otherwise provided in this appendix. Conceptual design information in the generic DCD and the evaluation of SAMDAs in appendix 1B of the generic DCD are not part of this appendix.

C. If there is a conflict between Tier 1 and Tier 2 of the DCD, then Tier 1 controls.

D. If there is a conflict between the generic DCD and either the application for design certification of the AP1000 design or NUREG–1793, ''Final Safety Evaluation Report Related to Certification of the AP1000 Standard Design,'' (FSER) and Supplement No. 1, then the generic DCD controls.

E. Design activities for structures, systems, and components that are wholly outside the scope of this appendix may be performed using site characteristics, provided the design activities do not affect the DCD or conflict with the interface requirements.

IV. Additional Requirements and Restrictions

A. An applicant for a license that wishes to reference this appendix shall, in addition to complying with the requirements of 10 CFR 52.77, 52.78, and 52.79, comply with the following requirements:

1. Incorporate by reference, as part of its application, this appendix.
2. Include, as part of its application:

a. A plant-specific DCD containing the same type of information and using the same organization and numbering as the generic DCD for the AP1000 design, as modified and supplemented by the applicant's exemptions and departures;

b. The reports on departures from and updates to the plant-specific DCD required by paragraph X.B of this appendix;

c. Plant-specific TS, consisting of the generic and site-specific TS that are required by 10 CFR 50.36 and 50.36a;

d. Information demonstrating compliance with the site parameters and interface requirements;

e. Information that addresses the COL action items; and

f. Information required by 10 CFR 52.47(a) that is not within the scope of this appendix.

3. Physically include, in the plant-specific DCD, the proprietary information and safeguards information referenced in the AP1000 DCD.

B. The Commission reserves the right to determine in what manner this appendix may be referenced by an applicant for a construction permit or operating license under 10 CFR part 50.

V. Applicable Regulations

A. Except as indicated in paragraph B of this section, the regulations that apply to the AP1000 design are in 10 CFR parts 20, 50, 73, and 100, codified as of January 23, 2006, that are applicable and technically relevant, as described in the FSER (NUREG–1793) and Supplement No. 1.

B. The AP1000 design is exempt from portions of the following regulations:

1. Paragraph (f)(2)(iv) of 10 CFR 50.34—Plant Safety Parameter Display Console;
2. Paragraph (c)(1) of 10 CFR 50.62—Auxiliary (or emergency) feedwater system; and
3. Appendix A to 10 CFR part 50, GDC 17—Second offsite power supply circuit.

VI. Issue Resolution

A. The Commission has determined that the structures, systems, components, and design features of the AP1000 design comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in Section V of this appendix; and therefore, provide adequate protection to the health and safety of the public. A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing,

analyses, acceptance criteria, or justifications are not necessary for the AP1000 design.

B. The Commission considers the following matters resolved within the meaning of 10 CFR 52.63(a)(5) in subsequent proceedings for issuance of a COL, amendment of a COL, or renewal of a COL, proceedings held under 10 CFR 52.103, and enforcement proceedings involving plants referencing this appendix:

1. All nuclear safety issues, except for the generic TS and other operational requirements, associated with the information in the FSER and Supplement No. 1, Tier 1, Tier 2 (including referenced information, which the context indicates is intended as requirements, and the investment protection short-term availability controls in Section 16.3 of the DCD), and the rulemaking record for certification of the AP1000 design;

2. All nuclear safety and safeguards issues associated with the information in proprietary and safeguards documents, referenced and in context, are intended as requirements in the generic DCD for the AP1000 design;

3. All generic changes to the DCD under and in compliance with the change processes in Sections VIII.A.1 and VIII.B.1 of this appendix;

4. All exemptions from the DCD under and in compliance with the change processes in Sections VIII.A.4 and VIII.B.4 of this appendix, but only for that plant;

5. All departures from the DCD that are approved by license amendment, but only for that plant;

6. Except as provided in paragraph VIII.B.5.f of this appendix, all departures from Tier 2 under and in compliance with the change processes in paragraph VIII.B.5 of this appendix that do not require prior NRC approval, but only for that plant;

7. All environmental issues concerning SAMDAs associated with the information in the NRC's EA for the AP1000 design and Appendix 1B of the generic DCD, for plants referencing this appendix whose site parameters are within those specified in the SAMDA evaluation.

C. The Commission does not consider operational requirements for an applicant or licensee who references this appendix to be matters resolved within the meaning of 10 CFR 52.63(a)(5). The Commission reserves the right to require operational requirements for an applicant or licensee who references this appendix by rule, regulation, order, or license condition.

D. Except under the change processes in Section VIII of this appendix, the Commission may not require an applicant or licensee who references this appendix to:

1. Modify structures, systems, components, or design features as described in the generic DCD;

2. Provide additional or alternative structures, systems, components, or design features not discussed in the generic DCD; or

3. Provide additional or alternative design criteria, testing, analyses, acceptance criteria, or justification for structures, systems, components, or design features discussed in the generic DCD.

E.1. Persons who wish to review proprietary and safeguards information or other secondary references in the AP1000 DCD, in order to request or participate in the hearing required by 10 CFR 52.85 or the hearing provided under 10 CFR 52.103, or to request or participate in any other hearing relating to this appendix in which interested persons have adjudicatory hearing rights, shall first request access to such information from Westinghouse. The request must state with particularity:

a. The nature of the proprietary or other information sought;

b. The reason why the information currently available to the public in the NRC's public document room is insufficient;

c. The relevance of the requested information to the hearing issue(s) which the person proposes to raise; and

d. A showing that the requesting person has the capability to understand and utilize the requested information.

2. If a person claims that the information is necessary to prepare a request for hearing, the request must be filed no later than 15 days after publication in the **Federal Register** of the notice required either by 10 CFR 52.85 or 10 CFR 52.103. If Westinghouse declines to provide the information sought, Westinghouse shall send a written response within 10 days of receiving the request to the requesting person setting forth with particularity the reasons for its refusal. The person may then request the Commission (or presiding officer, if a proceeding has been established) to order disclosure. The person shall include copies of the original request (and any subsequent clarifying information provided by the requesting party to the applicant) and the applicant's response. The Commission and presiding officer shall base their decisions solely on the person's original request (including any clarifying information provided by the requesting person to Westinghouse), and Westinghouse's response. The Commission and presiding officer may order Westinghouse to provide access to some or all of the requested information, subject to an appropriate non-disclosure agreement.

VII. Duration of This Appendix

This appendix may be referenced for a period of 15 years from February 27, 2006, except as provided for in 10 CFR 52.55(b) and 52.57(b). This appendix remains valid for an applicant or licensee who references this appendix until the application is withdrawn or the license expires, including any period of extended operation under a renewed license.

VIII. Processes for Changes and Departures

A. Tier 1 Information

1. Generic changes to Tier 1 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 1 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs A.3 or A.4 of this section.

3. Departures from Tier 1 information that are required by the Commission through plant-specific orders are governed by the requirements in 10 CFR 52.63(a)(4).

4. Exemptions from Tier 1 information are governed by the requirements in 10 CFR 52.63(b)(1) and 52.97(b). The Commission will deny a request for an exemption from Tier 1, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design.

B. Tier 2 Information

1. Generic changes to Tier 2 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 2 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs B.3, B.4, B.5, or B.6 of this section.

3. The Commission may not require new requirements on Tier 2 information by plant-specific order while this appendix is in effect under 10 CFR 52.55 or 52.61, unless:

a. A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time this appendix was approved, as set forth in Section V of this appendix, or to ensure adequate protection of the public health and safety or the common defense and security; and

b. Special circumstances as defined in 10 CFR 50.12(a) are present.

4. An applicant or licensee who references this appendix may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The Commission will deny a request for an exemption from Tier 2, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design. The grant of an exemption to an applicant must be subject to litigation in the same manner as other issues material to the license hearing. The grant of an exemption to a licensee must be subject to an opportunity for a hearing in the same manner as license amendments.

5.a. An applicant or licensee who references this appendix may depart from Tier 2 information, without prior NRC approval, unless the proposed departure involves a change to or departure from Tier 1 information, Tier 2* information, or the TS, or requires a license amendment under paragraphs B.5.b or B.5.c of this section. When evaluating the proposed departure, an applicant or licensee shall consider all matters described in the plant-specific DCD.

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if it would:

(1) Result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the plant-specific DCD;

(2) Result in more than a minimal increase in the likelihood of occurrence of a malfunction of a structure, system, or component (SSC) important to safety and previously evaluated in the plant-specific DCD;

(3) Result in more than a minimal increase in the consequences of an accident previously evaluated in the plant-specific DCD;

(4) Result in more than a minimal increase in the consequences of a malfunction of an SSC important to safety previously evaluated in the plant-specific DCD;

(5) Create a possibility for an accident of a different type than any evaluated previously in the plant-specific DCD;

(6) Create a possibility for a malfunction of an SSC important to safety with a different result than any evaluated previously in the plant-specific DCD;

(7) Result in a design basis limit for a fission product barrier as described in the plant-specific DCD being exceeded or altered; or

(8) Result in a departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses.

c. A proposed departure from Tier 2 affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if:

(1) There is a substantial increase in the probability of a severe accident such that a particular severe accident previously reviewed and determined to be not credible could become credible; or

(2) There is a substantial increase in the consequences to the public of a particular severe accident previously reviewed.

d. If a departure requires a license amendment under paragraph B.5.b or B.5.c of this section, it is governed by 10 CFR 50.90.

e. A departure from Tier 2 information that is made under paragraph B.5 of this section does not require an exemption from this appendix.

f. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an applicant or licensee who references this appendix has not complied with paragraph VIII.B.5 of this appendix when departing from Tier 2 information, may petition to admit into the proceeding such a contention. In addition to compliance with the general requirements of 10 CFR 2.309, the petition must demonstrate that the departure does not comply with paragraph VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an asserted noncompliance with an ITAAC acceptance criterion in the case of a 10 CFR 52.103 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of material fact regarding compliance with paragraph VIII.B.5 of this appendix.

6.a. An applicant who references this appendix may not depart from Tier 2* information, which is designated with italicized text or brackets and an asterisk in the generic DCD, without NRC approval. The departure will not be considered a resolved issue, within the meaning of Section VI of this appendix and 10 CFR 52.63(a)(5).

b. A licensee who references this appendix may not depart from the following Tier 2* matters without prior NRC approval. A request for a departure will be treated as a request for a license amendment under 10 CFR 50.90.

(1) Maximum fuel rod average burn-up.

(2) Fuel principal design requirements.

(3) Fuel criteria evaluation process.

(4) Fire areas.

(5) Human factors engineering.

(6) Small-break loss-of-coolant accident (LOCA) analysis methodology.

c. A licensee who references this appendix may not, before the plant first achieves full power following the finding required by 10 CFR 52.103(g), depart from the following Tier 2* matters except under paragraph B.6.b of this section. After the plant first achieves full power, the following Tier 2* matters revert to Tier 2 status and are subject to the departure provisions in paragraph B.5 of this section.

(1) Nuclear Island structural dimensions.

(2) American Society of Mechanical Engineers Boiler & Pressure Vessel Code (ASME Code), Section III, and Code Case–284.

(3) Design Summary of Critical Sections.

(4) American Concrete Institute (ACI) 318, ACI 349, American National Standards Institute/American Institute of Steel Construction (ANSI/AISC)–690, and American Iron and Steel Institute (AISI), ''Specification for the Design of Cold Formed Steel Structural Members, Part 1 and 2,'' 1996 Edition and 2000 Supplement.

(5) Definition of critical locations and thicknesses.

(6) Seismic qualification methods and standards.

(7) Nuclear design of fuel and reactivity control system, except burn-up limit.

(8) Motor-operated and power-operated valves.

(9) Instrumentation and control system design processes, methods, and standards.

(10) Passive residual heat removal (PRHR) natural circulation test (first plant only).

(11) Automatic depressurization system (ADS) and core make-up tank (CMT) verification tests (first three plants only).

(12) Polar crane parked orientation.

(13) Piping design acceptance criteria.

(14) Containment vessel design parameters.

d. Departures from Tier 2* information that are made under paragraph B.6 of this section do not require an exemption from this appendix.

C. Operational Requirements

1. Generic changes to generic TS and other operational requirements that were completely reviewed and approved in the design certification rulemaking and do not require a change to a design feature in the generic DCD are governed by the requirements in 10 CFR 50.109. Generic changes that require a change to a design feature in the generic DCD are governed by the requirements in paragraphs A or B of this section.

2. Generic changes to generic TS and other operational requirements are applicable to all applicants who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs C.3 or C.4 of this section.

3. The Commission may require plant-specific departures on generic TS and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances as defined in 10 CFR 2.335 are present. The Commission may modify or supplement generic TS and other operational requirements that were not completely reviewed and approved or require additional TS and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

4. An applicant who references this appendix may request an exemption from the generic TS or other operational requirements. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The grant of an exemption must be subject to litigation in the same manner as other issues material to the license hearing.

5. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license, or for operation under 10 CFR 52.103(a), who believes that an operational requirement approved in the DCD or a TS derived from the generic TS must be changed may petition to admit such a contention into the proceeding. The petition must comply with the general requirements of 10 CFR 2.309 and must demonstrate why special circumstances as defined in 10 CFR 2.335 are present, or demonstrate compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response to the petition. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific TS or other operational requirements are subject to a hearing as part of the license proceeding.

6. After issuance of a license, the generic TS have no further effect on the plant-specific TS. Changes to the plant-specific TS will be treated as license amendments under 10 CFR 50.90.

IX. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

A.1 An applicant or licensee who references this appendix shall perform and demonstrate conformance with the ITAAC before fuel load. With respect to activities subject to an ITAAC, an applicant for a license may proceed at its own risk with design and procurement activities. A licensee may also proceed at its own risk with design, procurement, construction, and preoperational activities, even though the NRC may not have found that any particular ITAAC has been met.

2. The licensee who references this appendix shall notify the NRC that the required inspections, tests, and analyses in the ITAAC have been successfully completed and that the corresponding acceptance criteria have been met.

3. If an activity is subject to an ITAAC and the applicant or licensee who references this appendix has not demonstrated that the ITAAC has been met, the applicant or licensee may either take corrective actions to successfully complete that ITAAC, request an exemption from the ITAAC under Section VIII of this appendix and 10 CFR 52.97(b), or petition for rulemaking to amend this appendix by changing the requirements of the ITAAC, under 10 CFR 2.802 and 52.97(b). Such rulemaking changes to the ITAAC must meet the requirements of paragraph VIII.A.1 of this appendix.

B.1 The NRC shall ensure that the required inspections, tests, and analyses in the ITAAC are performed. The NRC shall verify that the inspections, tests, and analyses referenced by the licensee have been successfully completed and, based solely thereon, find that the prescribed acceptance criteria have been met. At appropriate intervals during construction, the NRC shall publish notices of the successful completion of ITAAC in the **Federal Register.**

2. In accordance with 10 CFR 52.103(g), the Commission shall find that the acceptance criteria in the ITAAC for the license are met before fuel load.

3. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not, by virtue of their inclusion within the DCD, constitute regulatory requirements either for licensees or for renewal of the license; except for specific ITAAC, which are the subject of a § 52.103(a) hearing, their expiration will occur upon final Commission action in such a proceeding. However, subsequent modifications must comply with the Tier 1 and Tier 2 design descriptions in the plant-specific DCD unless the licensee has complied with the applicable requirements of 10 CFR 52.98 and Section VIII of this appendix.

X. Records and Reporting

A. Records

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes to Tier 1, Tier 2, and the generic TS and other operational requirements. The applicant shall maintain the proprietary and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

2. An applicant or licensee who references this appendix shall maintain the plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made under Section VIII of this appendix throughout the period of application and for the term of the license (including any period of renewal).

3. An applicant or licensee who references this appendix shall prepare and maintain written evaluations which provide the bases for the determinations required by Section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any period of renewal).

B. Reporting

1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any plant-specific departures from the DCD, including a summary of the evaluation of each. This report must be filed in accordance with the filing requirements applicable to reports in 10 CFR 52.3.

2. An applicant or licensee who references this appendix shall submit updates to its DCD, which reflect the generic changes to and plant-specific departures from the generic DCD made under Section VIII of this appendix. These updates must be filed under the filing requirements applicable to final safety analysis report updates in 10 CFR 52.3 and 50.71(e).

3. The reports and updates required by paragraphs X.B.1 and X.B.2 must be submitted as follows:

a. On the date that an application for a license referencing this appendix is submitted, the application must include the report and any updates to the generic DCD.

b. During the interval from the date of application for a license to the date the Commission makes its findings required by 10 CFR 52.103(g), the report must be submitted semi-annually. Updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

c. After the Commission makes the finding required by 10 CFR 52.103(g), the reports and updates to the plant-specific DCD must be submitted, along with updates to the site-specific portion of the final safety analysis report for the facility, at the intervals required by 10 CFR 50.59(d)(2) and 50.71(e)(4), respectively, or at shorter intervals as specified in the license.

PART 54—REQUIREMENTS FOR RENEWAL OF OPERATING LICENSES FOR NUCLEAR POWER PLANTS

132. The authority citation for Part 54 continues to read as follows:

Authority: Secs. 102, 103, 104, 161, 181, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs 201, 202, 206, 88 Stat. 1242, 1244, as amended (42 U.S.C. 5841, 5842).

Section 54.17 also issued under E.O.12829, 3 CFR, 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR, 1995 Comp., p. 391.

133. Section 54.1 is revised to read as follows:

§ 54.1 Purpose.

This part governs the issuance of renewed operating licenses and renewed combined licenses for nuclear power plants licensed pursuant to Sections 103 or 104b of the Atomic Energy Act of 1954, as amended, and Title II of the Energy Reorganization Act of 1974 (88 Stat. 1242).

134. In § 54.3, paragraph (a), the definition for *Current licensing basis* is revised, and the definition for *Renewed combined license* is added to read as follows:

§ 54.3 Definitions.

(a) * * *

Current licensing basis (CLB) is the set of NRC requirements applicable to a specific plant and a licensee's written commitments for ensuring compliance with and operation within applicable NRC requirements and the plant-specific design basis (including all modifications and additions to such commitments over the life of the license) that are docketed and in effect. The CLB includes the NRC regulations contained in 10 CFR parts 2, 19, 20, 21, 26, 30, 40, 50, 51, 52, 54, 55, 70, 72, 73, 100 and appendices thereto; orders; license conditions; exemptions; and technical specifications. It also includes the plant-specific design-basis information defined in 10 CFR 50.2 as documented in the most recent final safety analysis report (FSAR) as required by 10 CFR 50.71 and the licensee's commitments remaining in effect that were made in docketed licensing correspondence such as licensee responses to NRC bulletins, generic letters, and enforcement actions, as well as licensee commitments documented in NRC safety evaluations or licensee event reports.

* * * * *

Renewed combined license means a combined license originally issued under part 52 of this chapter for which an application for renewal is filed in accordance with 10 CFR 52.107 and issued under this part.

* * * * *

135. In § 54.17, paragraph (c) is revised to read as follows:

§ 54.17 Filing of application.

* * * * *

(c) An application for a renewed license may not be submitted to the Commission earlier than 20 years before the expiration of the operating license or combined license currently in effect.

* * * * *

136. Section 54.27 is revised to read as follows:

§ 54.27 Hearings.

A notice of an opportunity for a hearing will be published in the **Federal Register** in accordance with 10 CFR 2.105. In the absence of a request for a hearing filed within 30 days by a person whose interest may be affected, the Commission may issue a renewed

operating license or renewed combined license without a hearing upon 30-day notice and publication in the **Federal Register** of its intent to do so.

137. In § 54.31, paragraphs (a), (b), and (c) are revised to read as follows:

§ 54.31 Issuance of a renewed license.

(a) A renewed license will be of the class for which the operating license or combined license currently in effect was issued.

(b) A renewed license will be issued for a fixed period of time, which is the sum of the additional amount of time beyond the expiration of the operating license or combined license (not to exceed 20 years) that is requested in a renewal application plus the remaining number of years on the operating license or combined license currently in effect. The term of any renewed license may not exceed 40 years.

(c) A renewed license will become effective immediately upon its issuance, thereby superseding the operating license or combined license previously in effect. If a renewed license is subsequently set aside upon further administrative or judicial appeal, the operating license or combined license previously in effect will be reinstated unless its term has expired and the renewal application was not filed in a timely manner.

* * * * *

138. Section 54.35 is revised to read as follows:

§ 54.35 Requirements during term of renewed license.

During the term of a renewed license, licensees shall be subject to and shall continue to comply with all Commission regulations contained in 10 CFR parts 2, 19, 20, 21, 26, 30, 40, 50, 51, 52, 54, 55, 70, 72, 73, and 100, and the appendices to these parts that are applicable to holders of operating licenses or combined licenses, respectively.

139. In § 54.37, paragraph (a) is revised to read as follows:

§ 54.37 Additional records and recordkeeping requirements.

(a) The licensee shall retain in an auditable and retrievable form for the term of the renewed operating license or renewed combined license all information and documentation required by, or otherwise necessary to document compliance with, the provisions of this part.

* * * * *

PART 55—OPERATORS' LICENSES

140. The authority citation for Part 55 continues to read as follows:

Authority: Secs. 107, 161, 182, 68 Stat. 939, 948, 953 , as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); 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). Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97–425, 96 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

141. In § 55.1, paragraph (a) is revised to read as follows:

§ 55.1 Purpose.

* * * * *

(a) Establish procedures and criteria for the issuance of licenses to operators and senior operators of utilization facilities licensed under the Atomic Energy Act of 1954, as amended, or Section 202 of the Energy Reorganization Act of 1974, as amended, and part 50, part 52, or part 54 of this chapter,

* * * * *

142. In § 55.2, paragraph (a) is revised to read as follows:

§ 55.2 Scope.

* * * * *

(a) Any individual who manipulates the controls of any utilization facility licensed under parts 50, 52, or 54 of this chapter,

* * * * *

143. In § 55.5, paragraph (b)(1) and the introductory text of paragraph (b)(2) are revised to read as follows:

§ 55.5 Communications.

* * * * *

(b)(1) Except for test and research reactor facilities, the Director of Nuclear Reactor Regulation has delegated to the Regional Administrators of Regions I, II, III, and IV authority and responsibility under the regulations in this part for the issuance and renewal of licenses for operators and senior operators of nuclear power reactors licensed under 10 CFR part 50 or part 52 and located in these regions.

(2) Any application for a license or license renewal filed under the regulations in this part involving a nuclear power reactor licensed under 10 CFR part 50 or part 52 and any related inquiry, communication, information, or report must be submitted to the Regional Administrator by an appropriate method listed in paragraph (a) of this section. The Regional Administrator or the Administrator's designee will transmit to the Director of Nuclear Reactor Regulation any matter that is not within the scope of the Regional Administrator's delegated authority.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE AND REACTOR RELATED GREATER THAN CLASS C WASTE

144. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 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). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

145. Section 72.210 is revised to read as follows:

§ 72.210 General license issued.

A general license is hereby issued for the storage of spent fuel in an independent spent fuel storage installation at power reactor sites to persons authorized to possess or operate nuclear power reactors under 10 CFR part 50 or 10 CFR part 52.

146. In § 72.218, paragraph (b) is revised to read as follows:

§ 72.218 Termination of licenses.

* * * * *

(b) An application for termination of a reactor operating license issued under 10 CFR part 50 and submitted under § 50.82 of this chapter, or a combined license issued under 10 CFR part 52 and submitted under § 52.110 of this chapter, must contain a description of how the spent fuel stored under this

general license will be removed from the reactor site.

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

147. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C, 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

148. In § 73.1, paragraph (b)(1)(i) is revised to read as follows:

§ 73.1 Purpose and scope.

* * * * *

(b) * * *

(1) * * *

(i) The physical protection of production and utilization facilities licensed under parts 50 or 52 of this chapter,

* * * * *

149. In § 73.2, the introductory text of paragraph (a) is revised to read as follows:

§ 73.2 Definitions.

* * * * *

(a) Terms defined in parts 50, 52, and 70 of this chapter have the same meaning when used in this part.

* * * * *

150. In § 73.50, the introductory text is revised to read as follows:

§ 73.50 Requirements for physical protection of licensed activities.

Each licensee who is not subject to § 73.51, but who possesses, uses, or stores formula quantities of strategic special nuclear material that are not readily separable from other radioactive material and which have total external radiation dose rates in excess of 100 rems per hour at a distance of 3 feet from any accessible surfaces without intervening shielding other than at nuclear reactor facility licensed under parts 50 or 52 of this chapter, shall comply with the following:

* * * * *

151. In § 73.56, paragraph (a)(3) is revised to read as follows:

§ 73.56 Personnel access authorization requirements for nuclear power plants.

(a) * * *

(3) Each applicant for a license to operate a nuclear power reactor under §§ 50.21(b) or 50.22 of this chapter, including an applicant for a combined license under part 52 of this chapter, whose application is submitted after April 25, 1991, shall include the required access authorization program as part of its Physical Security Plan. The applicant, upon receipt of an operating license or upon notice of the Commission's finding under § 52.103(g) of this chapter, shall implement the required access authorization program as part of its site Physical Security Plan.

* * * * *

152. In § 73.57, paragraphs (a)(1), (a)(2), and (a)(3) are revised to read as follows:

§ 73.57 Requirements for criminal history checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information by power reactor licensees.

(a) * * *

(1) Each licensee who is authorized to operate a nuclear power reactor under part 50 of this chapter, or each holder of a combined license under part 52 of this chapter upon receipt of notice of the Commission's finding under § 52.103(g), shall comply with the requirements of this section.

(2) Each applicant for a license to operate a nuclear power reactor under part 50 of this chapter and each applicant for a combined license under part 52 of this chapter shall submit fingerprints for those individuals who have or will have access to Safeguards Information.

(3) Before receiving its operating license under part 50 of this chapter or before the Commission makes its finding under § 52.103(g) of this chapter, each applicant for a license to operate a nuclear power reactor (including an applicant for a combined license) may submit fingerprints for those individuals who will require unescorted access to the nuclear power facility.

* * * * *

153. In Appendix C to part 73, the Introduction is revised to read as follows:

Appendix C to Part 73—Licensee Safeguards Contingency Plans

Introduction

A licensee safeguards contingency plan is a documented plan to give guidance to licensee personnel in order to accomplish specific defined objectives in the event of threats, thefts, or radiological sabotage relating to special nuclear material or nuclear facilities licensed under the Atomic Energy Act of 1954, as amended. An acceptable safeguards contingency plan must contain:

(1) A predetermined set of decisions and actions to satisfy stated objectives;

(2) An identification of the data, criteria, procedures, and mechanisms necessary to efficiently implement the decisions; and

(3) A stipulation of the individual, group, or organizational entity responsible for each decision and action.

The goals of licensee safeguards contingency plans for responding to threats, thefts, and radiological sabotage are:

(1) To organize the response effort at the licensee level;

(2) To provide predetermined, structured responses by licensees to safeguards contingencies;

(3) To ensure the integration of the licensee response with the responses by other entities; and

(4) To achieve a measurable performance in response capability.

Licensee safeguards contingency planning should result in organizing the licensee's resources in such a way that the participants will be identified, their several responsibilities specified, and the responses coordinated. The responses should be timely.

It is important to note that a licensee's safeguards contingency plan is intended to be complementary to any emergency plans developed under appendix E to part 50 of this chapter, § 52.17 or § 52.79, or to § 70.22(i) of this chapter.

* * * * *

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

154. The authority citation for part 75 continues to read as follows:

Authority: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 75.4 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

155. In § 75.6, paragraph (b) is revised to read as follows:

§ 75.6 Maintenance of records and delivery of information, reports, and other communications.

* * * * *

(b) If an installation is a nuclear power plant or a non-power reactor for which a construction permit, operating license or a combined license has been issued, whether or not a license to receive and possess nuclear material at the installation has been issued, the cognizant Director is the Director, Office of Nuclear Reactor Regulation. For all other installations, the cognizant Director is the Director, Office of Nuclear Material Safety and Safeguards.

* * * * *

PART 95—FACILITY SECURITY CLEARANCE AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

156. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 145, 161, 193, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); E.O. 10865, as amended, 3 CFR 1959–1963 Comp., p. 398 (50 U.S.C. 401, note); E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333, as amended by E.O. 13292, 3 CFR, 2004 Comp., p. 196; E.O. 12968, 3 CFR, 1995 Comp., p. 391.

157. In § 95.5, the definition of license is revised to read as follows:

§ 95.5 Definitions.

* * * * *

License means a license issued under 10 CFR parts 50, 52, 54, 60, 63, 70, or 72.

* * * * *

158. In § 95.13, paragraph (b) is revised to read as follows:

§ 95.13 Maintenance of records.

* * * * *

(b) Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, or specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee, certificate holder, or other person shall maintain adequate safeguards against tampering with and loss of records.

159. In § 95.19, the introductory text of paragraph (b) is revised to read as follows:

§ 95.19 Changes to security practices and procedures.

* * * * *

(b) A licensee, certificate holder, or other person may effect a minor, non-substantive change to an approved Standard Practice Procedures Plan for the safeguarding of classified information without receiving prior CSA approval. These minor changes that do not affect the security of the facility may be submitted to the addressees noted in paragraph (a) of this section within 30 days of the change. Page changes rather than a complete rewrite of the plan may be submitted. Some examples of minor, non-substantive changes to the Standard Practice Procedures Plan include—

* * * * *

160. Section 95.20 is revised to read as follows:

§ 95.20 Grant, denial or termination of facility clearance.

The Division of Nuclear Security shall provide notification in writing (or orally with written confirmation) to the licensee, certificate holder, or other person of the Commission's grant, acceptance of another agency's facility clearance, denial, or termination of facility clearance. This information must also be furnished to representatives of the NRC, NRC contractors, licensees, certificate holders, or other person, or other Federal agencies having a need to transmit classified information to the licensees or other person.

161. In § 95.23, paragraph (b) is revised to read as follows:

§ 95.23 Termination of facility clearance.

* * * * *

(b) When facility clearance is terminated, the licensee, certificate holder, or other person will be notified in writing of the determination and the procedures outlined in § 95.53 apply.

162. Section 95.31 is revised to read as follows:

§ 95.31 Protective personnel.

Whenever protective personnel are used to protect classified information they shall:

(a) Possess an ''L'' access authorization (or CSA equivalent) if the licensee, certificate holder, or other person possesses information classified Confidential National Security Information, Confidential Restricted Data or Secret National Security Information.

(b) Possess a ''Q'' access authorization (or CSA equivalent) if the licensee, certificate holder, or other person possesses Secret Restricted Data related to nuclear weapons design, manufacturing and vulnerability information; and certain particularly sensitive Naval Nuclear Propulsion Program information (*e.g.*, fuel manufacturing technology) and the protective personnel require access as part of their regular duties.

163. In § 95.33, paragraph (c) is revised to read as follows:

§ 95.33 Security education.

* * * * *

(c) *Temporary Help Suppliers.* A temporary help supplier, or other contractor who employs cleared individuals solely for dispatch elsewhere, is responsible for ensuring that required briefings are provided to their cleared personnel. The temporary help supplier or the using licensee's, certificate holder's, or other person's facility may conduct these briefings.

* * * * *

164. Section 95.34 is revised to read as follows:

§ 95.34 Control of visitors.

(a) *Uncleared visitors.* Licensees, certificate holders, or other persons subject to this part shall take measures to preclude access to classified information by uncleared visitors.

(b) *Foreign visitors.* Licensees, certificate holders, or other persons subject to this part shall take measures as may be necessary to preclude access to classified information by foreign visitors. The licensee, certificate holder, or other person shall retain records of visits for 5 years beyond the date of the visit.

165. In § 95.35, the introductory text of paragraph (a), and paragraph (a)(3) are revised to read as follows:

§ 95.35 Access to matters classified as National Security Information and Restricted Data.

(a) Except as the Commission may authorize, no licensee, certificate holder or other person subject to the regulations in this part may receive or may permit any other licensee, certificate holder, or other person to have access to matter revealing Secret or Confidential National Security Information or Restricted Data unless the individual has:

* * * * *

(3) NRC-approved storage facilities if classified documents or material are to be transmitted to the licensee, certificate holder, or other person.

* * * * *

166. In § 95.36, paragraphs (c), (d) and (e) are revised to read as follows:

§ 95.36 Access by representatives of the International Atomic Energy Agency or by participants in other international agreements.

* * * * *

(c) In accordance with the specific disclosure authorization provided by the Division of Nuclear Security, licensees, certificate holders, or other persons subject to this part are authorized to release (i.e., transfer possession of) copies of documents that

contain classified National Security Information directly to IAEA inspectors and other representatives officially designated to request and receive classified National Security Information documents. These documents must be marked specifically for release to IAEA or other international organizations in accordance with instructions contained in the NRC's disclosure authorization letter. Licensees, certificate holders, and other persons subject to this part may also forward these documents through the NRC to the international organization's headquarters in accordance with the NRC disclosure authorization. Licensees, certificate holders, and other persons may not reproduce documents containing classified National Security Information except as provided in § 95.43.

(d) Records regarding these visits and inspections must be maintained for 5 years beyond the date of the visit or inspection. These records must specifically identify each document released to an authorized representative and indicate the date of the release. These records must also identify (in such detail as the Division of Nuclear Security, by letter, may require) the categories of documents that the authorized representative has had access and the date of this access. A licensee, certificate holder, or other person subject to this part shall also retain Division of Nuclear Security disclosure authorizations for 5 years beyond the date of any visit or inspection when access to classified information was permitted.

(e) Licensees, certificate holders, or other persons subject to this part shall take such measures as may be necessary to preclude access to classified matter by participants of other international agreements unless specifically provided for under the terms of a specific agreement.

167. In § 95.37, paragraphs (a), (b) and (h) are revised to read as follows:

§ 95.37 Classification and preparation of documents.

(a) *Classification.* Classified information generated or possessed by a licensee, certificate holder, or other person must be appropriately marked. Classified material which is not conducive to markings (e.g., equipment) may be exempt from this requirement. These exemptions are subject to the approval of the CSA on a case-by-case basis. If a person or facility generates or possesses information that is believed to be classified based on guidance provided by the NRC or by derivation from classified documents, but which no authorized classifier has determined to be classified, the information must be protected and marked with the appropriate classification markings pending review and signature of an NRC authorized classifier. This information shall be protected as classified information pending final determination.

(b) *Classification consistent with content.* Each document containing classified information shall be classified Secret or Confidential according to its content. NRC licensees, certificate holders, or other persons subject to the requirements of 10 CFR part 95 may not make original classification decisions.

* * * * *

(h) *Classification challenges.* Licensees, certificate holders, or other persons in authorized possession of classified National Security Information who in good faith believe that the information's classification status (*i.e.*, that the document), is classified at either too high a level for its content (overclassification) or too low for its content (underclassification) are expected to challenge its classification status. Licensees, certificate holders, or other persons who wish to challenge a classification status shall—

(1) Refer the document or information to the originator or to an authorized NRC classifier for review. The authorized classifier shall review the document and render a written classification decision to the holder of the information.

(2) In the event of a question regarding classification review, the holder of the information or the authorized classifier shall consult the NRC Division of Facilities and Security, Information Security Branch, for assistance.

(3) Licensees, certificate holders, or other persons who challenge classification decisions have the right to appeal the classification decision to the Interagency Security Classification Appeals Panel.

(4) Licensees, certificate holders, or other persons seeking to challenge the classification of information will not be the subject of retribution.

* * * * *

168. In § 95.39, paragraph (a) is revised to read as follows:

§ 95.39 External transmission of documents and material.

(a) *Restrictions.* Documents and material containing classified information received or originated in connection with an NRC license, certificate, or standard design approval or standard design certification under part 52 of this chapter must be transmitted only to CSA approved security facilities.

* * * * *

169. In § 95.43, paragraph (a) is revised to read as follows:

§ 95.43 Authority to reproduce.

(a) Each licensee, certificate holder, or other person possessing classified information shall establish a reproduction control system to ensure that reproduction of classified material is held to the minimum consistent with operational requirements. Classified reproduction must be accomplished by authorized employees knowledgeable of the procedures for classified reproduction. The use of technology that prevents, discourages, or detects the unauthorized reproduction of classified documents is encouraged.

* * * * *

170. In § 95.45, paragraph (d) is revised to read as follows:

§ 95.45 Changes in classification.

* * * * *

(d) Any licensee, certificate holder, or other person making a change in classification or receiving notice of such a change shall forward notice of the change in classification to holders of all copies as shown on their records.

171. Section 95.49 is revised to read as follows:

§ 95.49 Security of automatic data processing (ADP) systems.

Classified data or information may not be processed or produced on an ADP system unless the system and procedures to protect the classified data or information have been approved by the CSA. Approval of the ADP system and procedures is based on a satisfactory ADP security proposal submitted as part of the licensee's, certificate holder's, or other person's request for facility clearance outlined in § 95.15 or submitted as an amendment to its existing Standard Practice Procedures Plan for the protection of classified information.

172. Section 95.51 is revised to read as follows:

§ 95.51 Retrieval of classified matter following suspension or revocation of access authorization.

In any case where the access authorization of an individual is suspended or revoked in accordance with the procedures set forth in part 25 of this chapter, or other relevant CSA procedures, the licensee, certificate holder, or other person shall, upon due notice from the Commission of such suspension or revocation, retrieve all classified information possessed by the

individual and take the action necessary to preclude that individual having further access to the information.

173. Section 95.53 is revised to read as follows:

§ 95.53 Termination of facility clearance.

(a) If the need to use, process, store, reproduce, transmit, transport, or handle classified matter no longer exists, the facility clearance will be terminated. The licensee, certificate holder, or other person for the facility may deliver all documents and matter containing classified information to the Commission, or to a person authorized to receive them, or must destroy all classified documents and matter. In either case, the licensee, certificate holder, or other person for the facility shall submit a certification of nonpossession of classified information to the NRC Division of Nuclear Security within 30 days of the termination of the facility clearance.

(b) In any instance where a facility clearance has been terminated based on a determination of the CSA that further possession of classified matter by the facility would not be in the interest of the national security, the licensee, certificate holder, or other person for the facility shall, upon notice from the CSA, dispose of classified documents in a manner specified by the CSA.

174. In § 95.57, the introductory paragraph is revised to read as follows:

§ 95.57 Reports.

Each licensee, certificate holder, or other person having a facility clearance shall report to the CSA and the Regional Administrator of the appropriate NRC Regional Office listed in 10 CFR part 73, appendix A:

* * * * *

175. Section 95.59 is revised to read as follows:

§ 95.59 Inspections.

The Commission shall make inspections and reviews of the premises, activities, records and procedures of any licensee, certificate holder, or other person subject to the regulations in this part as the Commission and CSA deem necessary to effect the purposes of the Act, E.O. 12958 and/or NRC rules.

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

176. The authority citation for Part 140 continues to read as follows:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 841, 5842); Sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

177. In § 140.2, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 140.2 Scope.

(a) * * *

(1) To each person who is an applicant for or holder of a license issued under 10 CFR parts 50, 52 or 54 to operate a nuclear reactor, and

(2) With respect to an extraordinary nuclear occurrence, to each person who is an applicant for or holder of a license to operate a production facility or a utilization facility (including an operating license issued under part 50 of this chapter and a combined license under part 52 of this chapter), and to other persons indemnified with respect to the involved facilities.

* * * * *

178. Section 140.10 is revised to read as follows:

§ 140.10 Scope.

This subpart applies to each person who is an applicant for or holder of a license issued under 10 CFR parts 50 or 54 to operate a nuclear reactor, or is the applicant for or holder of a combined license issued under parts 52 or 54 of this chapter, except licenses held by persons found by the Commission to be Federal agencies or nonprofit educational institutions licensed to conduct educational activities. This subpart also applies to persons licensed to possess and use plutonium in a plutonium processing and fuel fabrication plant.

179. In § 140.11, paragraph (b) is revised to read as follows:

§ 140.11 Amounts of financial protection for certain reactors.

* * * * *

(b) In any case where a person is authorized under parts 50, 52 or 54 of this chapter to operate two or more nuclear reactors at the same location, the total primary financial protection required of the licensee for all such reactors is the highest amount which would otherwise be required for any one of those reactors; provided, that such primary financial protection covers all reactors at the location.

180. In § 140.12, paragraph (c) is revised to read as follows:

§ 140.12 Amount of financial protection required for other reactors.

* * * * *

(c) In any case where a person is authorized under parts 50, 52 or 54 of this chapter to operate two or more nuclear reactors at the same location, the total financial protection required of the licensee for all such reactors is the highest amount which would otherwise be required for any one of those reactors; provided, that such financial protection covers all reactors at the location.

* * * * *

181. Section 140.13 is revised to read as follows:

§ 140.13 Amount of financial protection required of certain holders of construction permits and combined licenses under 10 CFR part 52.

Each holder of a part 50 construction permit, or a holder of a combined license under part 52 of this chapter before the date that the Commission had made the finding under 10 CFR 52.103(g), who also holds a license under part 70 of this chapter authorizing ownership, possession and storage only of special nuclear material at the site of the nuclear reactor for use as fuel in operation of the nuclear reactor after issuance of either an operating license under 10 CFR part 50 or combined license under 10 CFR part 52, shall, during the period before issuance of a license authorizing operation under parts 50, or the period before the Commission makes the finding under § 52.103(g) of this chapter, as applicable, have and maintain financial protection in the amount of $1,000,000. Proof of financial protection shall be filed with the Commission in the manner specified in § 140.15 of this chapter before issuance of the license under part 70 of this chapter.

182. In § 140.20, paragraph (a)(1)(ii) is revised, and paragraph (a)(1)(iii) is added to read as follows:

§ 140.20 Indemnity agreements and liens.

(a) * * *

(1) * * *

(ii) The date that the Commission makes the finding under § 52.103(g) of this chapter; or

(iii) The effective date of the license (issued under part 70 of this chapter) authorizing the licensee to possess and store special nuclear material at the site of the nuclear reactor for use as fuel in operation of the nuclear reactor after issuance of an operating license for the reactor, whichever is earlier. No such agreement, however, shall be effective prior to September 26, 1957; or

* * * * *

183. In § 140.81, paragraph (a) is revised to read as follows:

§ 140.81 Scope and purpose.

(a) *Scope.* This subpart applies to applicants for and holders of licenses authorizing operation of production facilities and utilization facilities, including combined licenses under part 52 of this chapter, and to other persons

indemnified with respect to such facilities.

* * * * *

184. In § 140.93 Appendix C, Article VIII, paragraph 4 is revised to read as follows:

§ 140.93 Appendix C—Form of indemnity agreement with licensees furnishing proof of financial protection in the form of licensee's resources.

* * * * *

Article VIII

* * * * *

4. If the Commission determines that the licensee is financially able to reimburse the Commission for a deferred premium payment made in its behalf, and the licensee, after notice of such determination by the Commission fails to make such reimbursement within 120 days, the Commission will take appropriate steps to suspend the license for 30 days. The Commission may take any further action as necessary if reimbursement is not made within the 30-day suspension period including, but not limited to, termination of the operating license or combined license.

* * * * *

185. Section 140.96 is revised to read as follows:

§ 140.96 Appendix F—Indemnity locations.

(a) *Geographical boundaries of indemnity locations.* (1) In every indemnity agreement between the Commission and a licensee which affords indemnity protection for the preoperational storage of fuel at the site of a nuclear power reactor under construction, the geographical boundaries of the indemnity location will include the entire construction area of the nuclear power reactor, as determined by the Commission. Such area will not necessarily be coextensive with the indemnity location which will be established at the time an operating license or combined license under 10 CFR part 52 is issued for such additional nuclear power reactors.

(2) In every indemnity agreement between the Commission and a licensee which affords indemnity protection for an existing nuclear power reactor, the geographical boundaries of the indemnity location shall include the entire construction area of any additional nuclear power reactor as determined by the Commission, built as part of the same power station by the same licensee. Such area will not necessarily be coextensive with the indemnity location which will be established at the time an operating license or combined license is issued for such additional nuclear power reactors.

(3) This section is effective May 1, 1973, as to construction permits issued before March 2, 1973, and, as to construction permits and combined licenses issued on or after March 2, 1973, the provisions of this section will apply no later than such time as a construction permit or combined license is issued authorizing construction of any additional nuclear power reactor.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

186. The authority citation for Part 170 continues to read as follows:

Authority: Sec. 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

187. In § 170.2, paragraph (j) is removed and reserved, and paragraphs (g) and (k) are revised to read as follows:

§ 170.2 Scope.

* * * * *

(g) An applicant for or holder of a production or utilization facility construction permit or operating license issued under 10 CFR part 50, or an early site permit, standard design certification, standard design approval, manufacturing license, or combined license issued under 10 CFR part 52;

* * * * *

(j) [Reserved]

(k) Applying for or already has applied for review, under appendix Q to 10 CFR part 50 of a facility site before the submission of an application for a construction permit;

* * * * *

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIAL LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY NRC

188. The authority citation for Part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330 as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

189. In § 171.15, paragraph (a) is revised to read as follows:

§ 171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses.

(a) Each person holding an operating license for a power, test, or research reactor; each person holding a combined license under part 52 of this chapter after the Commission has made the finding under § 52.103(g); each person holding a part 50 or part 52 power reactor license that is in decommissioning or possession only status, except those that have no spent fuel on-site; and each person holding a part 72 license who does not hold a part 50 or part 52 license shall pay the annual fee for each license held at any time during the Federal fiscal year in which the fee is due. This paragraph does not apply to test and research reactors exempted under § 171.11(a).

* * * * *

Dated at Rockville, Maryland, this 22nd day of February, 2006.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 06–1856 Filed 3–10–06; 8:45 am]

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Monday,
March 13, 2006

Part III

Millennium Challenge Corporation

Notice of Entering Into a Compact With the Government of the Republic of Benin; Notice

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 06–05]

Notice of Entering Into a Compact With the Government of the Republic of Benin

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with Section 610(b)(2) of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D), the Millennium Challenge Corporation (MCC) is publishing a summary and the complete text of the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Government of the Republic of Benin. Representatives of the United States Government and the Government of the Republic of Benin executed the Compact documents on February 22, 2006.

Dated: March 6, 2006.

Jon A. Dyck,

Vice President & General Counsel, Millennium Challenge Corporation.

Summary of Millennium Challenge Compact With the Government of the Republic of Benin

I. Introduction

Situated in West Africa, between Nigeria and Togo in the Gulf of Guinea, Benin is a very poor country with a population of nearly seven million, a third of which live in poverty. Progress in development is attributed to reforms initiated in the early 1990s as Benin transitioned from a Marxist-Leninist state towards a pluralistic democracy and market economy.

Despite growth rates averaging 5 percent per year in the past decade, rapid population growth has offset much of these gains and poverty remains widespread. Per capita income in Benin remains below the sub-Sahara African average and rural poverty has increased in recent years. Benin's economy is narrowly dependent on cotton production, subsistence agriculture and regional trade through the Port of Cotonou. Key impediments to sustainable economic growth and poverty reduction are a poor investment climate and a lack of dynamic private sector activity. These are hindered by land insecurity, lack of access to capital, an inefficient judicial system, and an increasingly uncompetitive Port of Cotonou.

The five year, approximately $307 million Millennium Challenge Compact with the Government of Benin (GOB) aims to increase investment and private sector activity in Benin. The program to be funded under the Compact (Program) seeks to remove key constraints to growth and supports improvements in physical and institutional infrastructures. The projects included in the Program reinforce each other and MCC estimates they will together contribute to an economic rate of return (ERR) of 24 percent.

II. Program Overview and Budget

Benin's MCA Program is a series of strategic investments designed to improve core physical and institutional infrastructure and increase investment and private sector activity. The Program comprises four Projects: ''Access to Land,'' ''Access to Financial Services,'' ''Access to Justice,'' and ''Access to Markets.''

1. Access to Land (''Land Project'') (approximately $36 million): Investment climate studies list land access among the top constraints to business development in Benin. This Project aims to create secure land tenure for the poor and non-poor alike and to create effective, transparent governance of land and property issues. MCC anticipates this Project will reduce the time and cost to obtain a title, reduce the number of land disputes, and increase the perception of land security.

2. Access to Financial Services (''Financial Services Project'') (approximately $20 million): Due to the high cost or unavailability of credit and other financial services, small businesses in Benin are unable to expand production and employment. This Project aims to improve the ability of micro, small and medium-sized enterprises (MSMEs) to respond to opportunities by expanding access to financial services. The Project is designed to expand the financial services provided to MSMEs, improve supervision of microfinance institutions (MFIs), increase MFI operational self-sufficiency, decrease MFI portfolio at risk, and increase the number of loans guaranteed with land titles.

3. Access to Justice (''Justice Project'') (approximately $34 million): A major obstacle to investment and economic growth in Benin is the inefficiency of the judicial system. Only 8 percent of commercial cases filed are resolved within a year. Benin was recently rated by the World Bank as among the most difficult places in the world to enforce a contract. This Project aims to strengthen the institutional environment for business and investment in Benin by improving the ability of the judicial system to resolve claims. The Project is expected to increase the number of cases resolved per year by the Courts of First Instance, increase the number of cases handled by the Arbitration Center, and increase the number of registered enterprises.

4. Access to Markets (''Markets Project'') (approximately $169 million): The importance of the Port of Cotonou to Benin's economy has been increasing, while its competitiveness has been steadily decreasing. This Project is designed to promote access to markets by improving Port operations and infrastructure. Specifically, it aims to improve Port performance and security, expand capacity, and reduce costs. MCC anticipates the Project will reduce delays at the Port and increase the volume of imports and exports.

The following table outlines the estimated MCC contribution to the Program by year and category for term of the Compact.

Description	Timeline					
	Compact YI ($US mil)	Compact YI ($US mil)	Compact Y2 ($US mil)	Compact Y3 ($US mil)	Compact Y4 ($US mil)	Compact Y5 ($US mil)
Access to Land	4.56	10.43	8.55	7.37	5.11	36.02
Access to Financial Services	3.15	5.42	5.41	4.71	0.96	19.65
Access to Justice	3.83	7.85	9.06	6.97	6.56	34.27
Access to Markets	9.45	30.13	66.29	62.36	1.22	169.45
Program Administration & Audits	8.21	7.61	7.75	7.73	7.83	39.13
Monitoring & Evaluation	3.19	1.69	1.24	1.24	1.42	8.78
Estimated Total	32.39	63.13	98.30	90.38	23.10	307.30

III. Impact

The Program is expected to impact up to five million beneficiaries and lift an estimated 250,000 Beninese out of poverty by the year 2015. Specifically, the Land Project is expected to assist an estimated 115,000 rural and urban households with more secure and useful tenure; contribute to a 50 percent reduction in court cases related to land disputes; and result in a 10 percent increase in investment in rural land and a 20 percent increase in investment in urban property. The Financial Services Project is expected to expand financial services to MSMEs by nearly $60 million (a multiple of three times the Project's funding), thereby increasing MSME value added and incomes of the poor that own, are employed by, or do business with those enterprises. The Justice Project is anticipated to benefit approximately 2.38 million Beninese by bringing courts closer to rural populations and making them more responsive and effective. Finally, a more efficient Port will contribute to importer and exporter value-added by reducing transportation costs and increasing the level of Port operations. It is likely that the anticipated reduction in shipping costs will be passed on to wholesalers and traders, and ultimately be reflected in lower consumer prices. Additional added value in jobs from fish processing and Port operations are expected from improvements in several infrastructure components.

IV. Program Management

GOB will create a legal entity (MCA-Benin) to manage and oversee the implementation of the Program. This entity will be comprised of an eleven-member Board of Directors and a management team. The Board of Directors will make certain strategic decisions and recommendations, provide oversight of the Program implementation and ensure the success of the Program. MCA-Benin's management will be responsible for the implementation of the Program, including contracting, program management, certain financial management functions, and coordination of monitoring and evaluation. In addition, an eight-member Advisory Council will be established to provide recommendations and feedback to the MCA-Benin Board of Directors.

Independent fiscal and procurement agents, selected through international competitive search processes, will be engaged to provide fiscal management and procurement services respectively.

Other Highlights

A. Consultative Process: This Program has undergone one of the most robust consultative processes to date in an MCA-eligible country. Benin's proposal is the product of a genuine, meaningful and participatory consultative process. Guided by the Poverty Reduction Strategy Paper (PRSP), GOB's consultative process included a wide cross-section of private sector and civil society groups in the formulation of Benin's MCA priorities. Benin held several consultative meetings with representatives from various stakeholder groups as well as radio and television events to broadly present the outlines of the proposal and garner feedback from intended beneficiaries. The consultative process was guided by the Benin National Committee (BNC), whose members were elected or delegated by their respective constituencies. Representation on the BNC includes six representatives of GOB, three representatives of civil society, three representatives of the Chamber of Commerce, three representatives of national labor unions, two representatives of the Agricultural Chamber, and one representative of artisan associations.

B. Government Commitment and Effectiveness: The Program has received considerable attention during the Compact development process. GOB allocated $680,000 for the preparation of the proposal and has committed as part of the Compact to contribute an additional 5 billion CFA ($9.2 million) to the Program during the Compact Term. One fourth of this contribution has already been included in the national budget for 2006 and will be available immediately following Compact signing. GOB has also expressed its commitment to the Program by its willingness to condition key activities upon requirements for institutional change and policy reform.

C. Sustainability: Sustainability will be ensured through training, capacity building, policy reforms and institutional changes. The Land and Justice Projects contain core training, information and education campaigns that will build public knowledge on land and justice issues, respectively. A key objective of the Financial Services Project is to enhance the sustainability of existing commercial actors that service MSMEs. Beneficiaries of the Challenge Facility can be expected to continue to implement improvements in financial technologies and institutional capacities after Program support ends. The Markets Project includes greater private management of operations, more efficient land usage, and streamlining of customs processing.

D. Environment and Social Impacts: The Land and Financial Services Projects are expected to have few or no adverse environmental and social impacts. They have been placed in screening category ''C'' under the MCC Environmental Guidelines. The Land Project is anticipated to have positive social effects as well as to foster land stewardship. The Financial Services Project will incorporate training, technical assistance, and services, where appropriate, on strategies to avoid environmental and social risks and enhance the sustained impact of access to financial services. Both of these projects have specific commitments to take into account gender concerns.

The Justice Project has the potential for modest, adverse environmental and social impacts because of construction of a legal information center and courthouses. The Justice Project has been placed in screening category ''B'' under the MCC Environmental Guidelines. A framework environmental and social assessment will be required to screen sites once they are proposed and provide guidance for site-specific Environmental Management Plans (EMPs) and Resettlement Action Plans (RAPs) consistent with international best practices. To enhance the social impacts of this project, outreach will be designed to incorporate gender considerations as well as access by vulnerable segments of society.

The Markets Project has been placed in screening category ''A'' under the MCC Environmental Guidelines and will require a comprehensive Environmental and Social Impact Assessment (ESIA), conducted in phases. As a critical first step, technical, environmental, engineering and economic studies are required to evaluate alternatives and select the preferred design to reduce sedimentation of the harbor access and not adversely impact coastal erosion east of the Port; studies must also analyze disposal of potentially contaminated dredged material, for the selected alternative and new wharf construction. Based on these studies, an ESIA and EMP will be required to address impacts of increased Port activity and new infrastructure and compliance with international marine conventions. An ESIA (combined or separate, according to schedule needs) will be required for landside improvements, including an environmental audit of the existing operations, an Environmental Management Plan/System, and an

overall EMP. Verification is required to determine if economic or physical displacement will occur and a RAP is needed.

E. Donor Coordination: MCC's investment would position the United States Government as the largest bilateral donor to the country. Other major donors to Benin are the Netherlands, Denmark, France, Belgium and Germany.

GOB and MCC have convened various discussions and meetings with donor partners to ensure complementarity. The German development agency, *Deutsche Gesellschaft fur Technische Zusammenarbeit* (GTZ), financed a pilot phase of the Rural Land Plans upon which sections of GOB's proposal are based. A recent International Finance Corporation Foreign Investment Advisory Service (FIAS) investigation of the investment climate in Benin will recommend a reform agenda very similar to what is proposed for MCC funding. A number of multilateral and bilateral donors, including the World Bank, France, Denmark, and the Netherlands, have been involved in activities and studies aimed at improving the performance of the Port of Cotonou.

Millennium Challenge Compact Between the United States of America Acting Through the Millennium Challenge Corporation and the Government of the Republic of Benin

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Millennium Challenge Compact

This Millennium Challenge Compact (the ''Compact'') is made between the United States of America, acting through the Millennium Challenge Corporation, a United States Government corporation (''MCC''), and the Government of the Republic of Benin (the ''Government'') (referred to herein individually as a ''Party'' and collectively, the ''Parties''). A compendium of capitalized terms defined herein is included, for convenience only, in Exhibit A attached hereto.

Recitals

Whereas, MCC, acting through its Board of Directors, has selected the Republic of Benin as eligible to present to MCC a proposal for the use of Millennium Challenge Account (''MCA'') assistance to help facilitate the advance of economic growth and poverty reduction in Benin;

Whereas, the Government has carried out a consultative process with the country's private sector and civil society to outline the country's priorities for the use of MCA assistance and developed a proposal, which final proposal was submitted to MCC on September 5, 2005 (the ''Proposal'');

Whereas, the Proposal focused on, among other things, improving core physical and institutional infrastructure to increase investment and private sector activity;

Whereas, MCC has evaluated the Proposal and related documents to determine whether the Proposal is consistent with core MCA principles and includes proposed activities and projects that will advance the progress of Benin towards achieving economic growth and poverty reduction; and

Whereas, based on MCC's evaluation of the Proposal and related documents and subsequent discussions and negotiations between the Parties, the Government and MCC determined to enter into this Compact to implement a program using MCC Funding to advance Benin's progress towards economic growth and poverty reduction (the ''Program'');

Now, Therefore, in consideration of the foregoing and the mutual covenants and agreements set forth herein, the Parties hereby agree as follows:

Article I. Purpose and Term

Section 1.1 Objectives. The overall objective of this Compact is to increase investment and private sector activity in Benin (''Program Objective''), which is key to advancing the goal of economic growth and poverty reduction in Benin (the ''Compact Goal''). The Parties have identified the following project-level objectives (each, a ''Project Objective'' and together, the ''Project Objectives'') of this Compact to advance the Program Objective and Compact Goal, each of which is described in more detail in the Annexes attached hereto:

(a) Strengthen property rights and investment (the ''Land Objective'');

(b) Expand access to financial services (the ''Financial Services Objective'');

(c) Improve ability of the justice system to enforce contracts and reconcile claims (the ''Justice Objective''); and

(d) Improve access to markets through improvements to the Port of Cotonou (''Markets Objective'').

The Government expects to achieve, and shall use its best efforts to ensure the achievement of, the Compact Goal, Program Objective and Project Objectives during the Compact Term. The Program Objective and the individual Project Objectives collectively referred to herein as ''Objectives'' and each individually as an ''Objective.''

Section 1.2 Projects. The Annexes attached hereto describe the specific projects and the policy reforms and other activities related thereto (each, a ''Project'') that the Government will carry out, or cause to be carried out, in

furtherance of this Compact to achieve the Objectives and the Compact Goal.

Section 1.3 Entry into Force; Compact Term. This Compact shall enter into force on the date of the last letter in an exchange of letters between the Principal Representatives of each Party confirming that each Party has completed its domestic requirements for entry into force of this Compact (including as set forth in Section 3.10) and that all conditions set forth in Section 4.1 have been satisfied by the Government and MCC (the ''Entry into Force''). This Compact shall remain in force for five (5) years from the Entry into Force, unless earlier terminated in accordance with Section 5.4 (the ''Compact Term'').

Article II. Funding and Resources

Section 2.1 MCC Funding.

(a) MCC's Contribution. MCC hereby grants to the Government, subject to the terms and conditions of this Compact, an amount not to exceed Three Hundred Seven Million Two Hundred and Ninety Eight Thousand and Forty United States Dollars (USD $307,298,040) (''MCC Funding'') during the Compact Term to enable the Government to implement the Program and achieve the Objectives.

(i) Subject to Sections 2.1(a)(ii), 2.2(b) and 5.4(b), the allocation of the MCC Funding within the Program and among and within the Projects shall be as generally described in *Annex II* or as otherwise agreed upon by the Parties from time to time.

(ii) If at any time MCC determines that a condition precedent to an MCC Disbursement has not been satisfied, MCC may, upon written notice to the Government, reduce the total amount of MCC Funding by an amount equal to the amount estimated in the applicable Detailed Financial Plan for the Program, Project or Project Activity or sub-activity for which such condition precedent has not been met. Upon the expiration or termination of this Compact, (A) any amounts of MCC Funding not disbursed by MCC to the Government shall be automatically released from any obligation in connection with this Compact and (B) any amounts of MCC Funding disbursed by MCC to the Government as provided in Section 2.1(b)(i), but not re-disbursed as provided in Section 2.1(b)(ii) or otherwise incurred as permitted pursuant to Section 5.4(e) prior to the expiration or termination of this Compact, shall be returned to MCC in accordance with Section 2.5(a)(ii).

(iii) Notwithstanding any other provision of this Compact and pursuant to the authority of Section 609(g) of the Millennium Challenge Act of 2003, as amended (the ''Act''), upon the conclusion of this Compact (and without regard to the satisfaction of all of the conditions for Entry into Force required under Section 1.3), MCC shall make available One Million Five Hundred Thirty Six Thousand Four Hundred and Ninety United States Dollars (USD $1,536,490) (''Compact Implementation Funding'') to facilitate certain aspects of Compact implementation as described in Schedule 2.1(a)(iii) attached hereto; provided, such Compact Implementation Funding shall be subject to (A) the limitations on the use or treatment of MCC Funding set forth in Section 2.3, as if such provision were in full force and effect, and (B) any other requirements for, and limitations on the use of, such Compact Implementation Funding as may be required by MCC in writing; provided, further, that any Compact Implementation Funding granted in accordance with this Section 2.1(a)(iii) shall be included in, and not additional to, the total amount of MCC Funding; and provided further, any obligation to provide such Compact Implementation Funding shall expire upon the expiration or termination of this Compact or five (5) years from the conclusion of this Compact, whichever occurs sooner. Notwithstanding anything to the contrary in this Compact, this Section 2.1(a)(iii) shall provisionally apply prior to Entry into Force.

(b) Disbursements.

(i) Disbursements of MCC Funding. MCC shall from time to time make disbursements of MCC Funding (each such disbursement, an ''MCC Disbursement'') to a Permitted Account or through such other mechanism agreed by the Parties under and in accordance with the procedures and requirements set forth in Annex I, the Disbursement Agreement or as otherwise provided in any other relevant Supplemental Agreement.

(ii) Re-Disbursements of MCC Funding. The release of MCC Funding from a Permitted Account (each such release, a ''Re-Disbursement''), shall be made in accordance with the procedures and requirements set forth in Annex I, the Disbursement Agreement or as otherwise provided in any other relevant Supplemental Agreement.

(c) Interest. Unless the Parties agree otherwise in writing, any interest or other earnings on MCC Funding that accrue (collectively, ''Accrued Interest'') shall be held in a Permitted Account and accrue in accordance with the requirements for the accrual and treatment of Accrued Interest as specified in Annex I or any relevant Supplemental Agreement. On a quarterly basis and upon the termination or expiration of this Compact, the Government shall return, or ensure the return of, all Accrued Interest to any United States Government account designated by MCC.

(d) Conversion; Exchange Rate. The Government shall ensure that all MCC Funding that is held in the Permitted Account(s) shall be denominated in the currency of the United States of America (''United States Dollars'') prior to Re-Disbursement; provided, that a certain portion of MCC Funding may be transferred to a Local Account and may be held in such Local Account in the currency of the Republic of Benin prior to Re-Disbursement in accordance with the requirements of Annex I and any relevant Supplemental Agreement. To the extent that any amount of MCC Funding held in United States Dollars must be converted into the currency of the Republic of Benin for any purpose, including for any Re-Disbursement or any transfer of MCC Funding into a Local Account, the Government shall ensure that such amount is converted consistent with Annex I, including the rate and manner set forth in Annex I, and the requirements of the Disbursement Agreement or any other Supplemental Agreement between the Parties.

(e) Guidance. From time to time, MCC may provide guidance to the Government through Implementation Letters on the frequency, form and content of requests for MCC Disbursements and Re-Disbursements or any other matter relating to MCC Funding. The Government shall apply such guidance in implementing this Compact.

Section 2.2 Government Resources.

(a) The Government shall provide or cause to be provided such Government funds and other resources, including any Government contributions set out forth on Annex II attached hereto, and shall take or cause to be taken such actions, including obtaining all necessary approvals and consents, as are specified in this Compact or in any Supplemental Agreement to which the Government is a party or as are otherwise necessary and appropriate to effectively carry out the Government Responsibilities or other responsibilities or obligations of the Government under or in furtherance of this Compact during the Compact Term and through the completion of any post-Compact Term activities, audits or other responsibilities. The Government shall submit to the Parliament on an annual basis the amount of the upcoming year's

Government contribution for inclusion in the applicable finance law of Benin and such amount shall be committed in the national budget for that year for purposes of the Program, such contribution to be allocated within and in furtherance of the Program as agreed by the Parties. The Government shall disburse funds on a quarterly basis from this committed amount into an account, held at a bank acceptable to MCC, designated solely for this purpose.

(b) If at any time during the Compact Term, the Government materially reallocates or reduces the allocation in its national budget or any other Beninese governmental authority at a departmental, municipal, regional or other jurisdictional level materially reallocates or reduces the allocation of its respective budget of the normal and expected resources that the Government or such other governmental authority, as applicable, would have otherwise received or budgeted, from external or domestic sources, for the activities contemplated herein, the Government shall notify MCC in writing within fifteen (15) days of such reallocation or reduction, such notification to contain information regarding the amount of the reallocation or reduction, the affected activities, and an explanation for the reallocation or reduction. In the event that MCC independently determines, upon review of the executed national annual budget that such a material reallocation or reduction of resources has occurred, MCC shall notify the Government and, following such notification, the Government shall provide a written explanation for such reallocation or reduction and MCC may (i) reduce, in its sole discretion, the total amount of MCC Funding or any MCC Disbursement by an amount equal to the amount estimated in the applicable Detailed Financial Plan for the activity for which funds were reduced or reallocated or (ii) otherwise suspend or terminate MCC Funding in accordance with Section 5.4(b).

(c) The Government shall use its best efforts to ensure that all MCC Funding is fully reflected and accounted for in the annual budget of the Republic of Benin on a multi-year basis.

Section 2.3 Limitations on the Use or Treatment of MCC Funding.

(a) Abortions and Involuntary Sterilizations. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support any activity that is subject to prohibitions on use of funds contained in (i) paragraphs (1) through (3) of section 104(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b(f)(1)–(3), a United States statute, which prohibitions shall apply to the same extent and in the same manner as such prohibitions apply to funds made available to carry out Part I of such Act; or (ii) any provision of law comparable to the eleventh and fourteenth provisos under the heading ''Child Survival and Health Programs Fund'' of division E of Public Law 108–7 (117 Stat. 162), a United States statute.

(b) United States Job Loss or Displacement of Production. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support any activity that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production, including:

(i) Providing financial incentives to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(ii) Supporting investment promotion missions or other travel to the United States with the intention of inducing United States firms to relocate a substantial number of United States jobs or a substantial amount of production outside the United States;

(iii) Conducting feasibility studies, research services, studies, travel to or from the United States, or providing insurance or technical and management assistance, with the intention of inducing United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(iv) Advertising in the United States to encourage United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(v) Training workers for firms that intend to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(vi) Supporting a United States office of an organization that offers incentives for United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States; or

(vii) Providing general budget support for an organization that engages in any activity prohibited above.

(c) Military Assistance and Training. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support the purchase or use of goods or services for military purposes, including military training, or to provide any assistance to the military, police, militia, national guard or other quasi-military organization or unit.

(d) Prohibition of Assistance Relating to Environmental, Health or Safety Hazards. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support any activity that is likely to cause a significant environmental, health, or safety hazard. Unless MCC and the Government agree otherwise in writing, the Government shall ensure that activities undertaken, funded or otherwise supported in whole or in part (directly or indirectly) by MCC Funding comply with environmental guidelines delivered by MCC to the Government or posted by MCC on its Web site or otherwise publicly made available, as such guidelines may be amended from time to time (the ''Environmental Guidelines''), including any definition of ''likely to cause a significant environmental, health, or safety hazard'' as may be set forth in such Environmental Guidelines.

(e) Taxation.

(i) Taxes. The Government shall ensure that the Program, any Program Assets, MCC Funding and Accrued Interest shall be free from any taxes imposed under the laws currently or hereafter in effect in the Republic of Benin during the Compact Term. This exemption shall apply to any use of any Program Asset, MCC Funding and Accrued Interest, including any Exempt Uses, and to any work performed under or activities undertaken in furtherance of this Compact by any person or entity (including contractors and grantees) funded by MCC Funding, and shall apply to all taxes, tariffs, duties, and other levies (each a ''Tax'' and collectively, ''Taxes''), including:

(1) To the extent attributable to MCC Funding, income taxes and other taxes on profit or businesses imposed on organizations or entities, other than nationals of the Republic of Benin, receiving MCC Funding, including taxes on the acquisition, ownership, rental, disposition or other use of real or personal property, taxes on investment or deposit requirements and currency controls in the Republic of Benin, or any other tax, duty, charge or fee of whatever nature, except fees for specific services rendered; for purposes of this Section 2.3(e), the term ''national'' refers to organizations established under the laws currently or hereafter in effect in the Republic of Benin, other than MCA-Benin or any other entity established solely for purposes of managing or overseeing the implementation of the Program or any wholly-owned subsidiaries, divisions, or Affiliates of entities not registered or established under the laws currently or hereafter in effect in the Republic of Benin;

(2) Customs duties, tariffs, import and export taxes, or other levies on the importation, use and re-exportation of goods, services, or the personal belongings and effects, including personally-owned automobiles, for Program use or the personal use of individuals who are neither citizens nor permanent residents of the Republic of Benin and who are present in the Republic of Benin for purposes of carrying out the Program or their family members, including all charges based on the value of such imported goods;

(3) Taxes on the income or personal property of all individuals who are neither citizens nor permanent residents of the Republic of Benin, including income and social security taxes of all types and all taxes on the personal property owned by such individuals, to the extent such income or property are attributable to MCC Funding; and

(4) Taxes or duties levied on the last transaction for the purchase of goods or services funded by MCC Funding, including sales taxes, tourism taxes, value-added taxes (VAT), or other similar charges. The term ''last transaction'' refers to the last transaction by which the goods or services were purchased for use in the activities funded by MCC Funding.

(ii) This Section 2.3(e) shall apply, but is not limited to (A) any transaction, service, activity, contract, grant or other implementing agreement funded in whole or in part by MCC Funding; (B) any supplies, equipment, materials, property or other goods (referred to herein collectively as ''goods'') or funds introduced into, acquired in, used or disposed of in, or imported into or exported from, the Republic of Benin by MCC, or by any person or entity (including contractors and grantees) as part of, or in conjunction with, MCC Funding or the Program; (C) any contractor, grantee, or other organization carrying out activities funded in whole or in part by MCC Funding; and (D) any employee of such organizations (the uses set forth in clauses (A) through (D) are collectively referred to herein as ''Exempt Uses'').

(iii) If a Tax has been levied and paid contrary to the requirements of this Section 2.3(e), whether inadvertently, due to the impracticality of implementation of this provision with respect to certain types or amounts of taxes, or otherwise, the Government shall refund promptly to MCC to an account designated by MCC the amount of such Tax in the currency of the Republic of Benin, within thirty (30) days (or such other period as may be agreed in writing by the Parties) after the Government is notified in writing of such levy and tax payment, in accordance with procedures agreed by the Parties, whether by MCC or otherwise; provided, however, the Government shall apply national funds to satisfy its obligations under this paragraph and no MCC Funding, Accrued Interest, or any assets, goods, or property (real, tangible, or intangible) purchased or financed in whole or in part (directly or indirectly) by MCC Funding (''Program Assets'') may be applied by the Government in satisfaction of its obligations under this paragraph.

(iv) The Parties shall memorialize in a mutually acceptable Supplemental Agreement or Implementation Letter or other suitable document the mechanisms for implementing this Section 2.3(e), including (A) a formula for determining refunds for Taxes paid, the amount of which is not susceptible to precise determination, (B) a mechanism for ensuring the tax-free importation, use, and re-exportation of goods, services, or the personal belongings of individuals (including all Providers) described in paragraph (i)(2) of this Section 2.3(e), (C) a requirement for the provision by the Government of a tax-exemption certificate which expressly includes, inter alia, the thirty (30) day refund requirement of Section 2.3(e)(iii), and (D) any other appropriate Government action to facilitate the administration of this Section 2.3(e).

(f) Alteration. The Government shall ensure that no MCC Funding, Accrued Interest nor Program Assets shall be subject to any impoundment, rescission, sequestration or any provision of law now or hereafter in effect in the Republic of Benin that would have the effect of requiring or allowing any impoundment, rescission or sequestration of any MCC Funding, Accrued Interest or Program Asset.

(g) Liens or Encumbrances. The Government shall ensure that no MCC Funding, Accrued Interest, or Program Assets shall be subject to any lien, attachment, enforcement of judgment, pledge, or encumbrance of any kind (each a ''Lien''), except with the prior approval of MCC in accordance with Section 3(c) of Annex I, and in the event of the imposition of any Lien not so approved, the Government shall promptly seek the release of such Lien and if required by final non-appealable order, shall pay any amounts owed to obtain such release; provided, however, the Government shall apply national funds to satisfy its obligations under this Section 2.3(g) and no MCC Funding, Accrued Interest, or Program Assets may be applied by the Government in satisfaction of its obligations under this Section 2.3(g).

(h) Other Limitations. The Government shall ensure that the use or treatment of MCC Funding, Accrued Interest, and Program Assets shall be subject to and in conformity with such other limitations (i) as required by the applicable law of the United States of America now or hereafter in effect during the Compact Term, (ii) as advisable under or required by applicable United States Government policies now or hereafter in effect during the Compact Term, or (iii) to which the Parties may otherwise agree in writing.

(i) Utilization of Goods, Services and Works. The Government shall ensure that any Program Assets, services, facilities or works funded in whole or in part (directly or indirectly) by MCC Funding, unless otherwise agreed by the Parties in writing, shall be used solely in furtherance of this Compact.

(j) Notification of Applicable Laws and Policies. MCC shall notify the Government of any applicable United States law or policy affecting the use or treatment of MCC Funding, whether or not specifically identified in this Section 2.3, and shall provide to the Government a copy of the text of any such applicable law and a written explanation of any such applicable policy.

Section 2.4 Incorporation; Notice; Clarification.

(a) The Government shall include, or ensure the inclusion of, all of the requirements set forth in Section 2.3 in all Supplemental Agreements to which MCC is not a party and shall use its best efforts to ensure that no such Supplemental Agreement is implemented in violation of the prohibitions set forth in Section 2.3.

(b) The Government shall ensure notification of all of the requirements set forth in Section 2.3 to any Provider and all relevant officers, directors, employees, agents, representatives, Affiliates, contractors, sub-contractors, grantees and sub-grantees of any Provider. The term ''Provider'' shall mean (i) MCA-Benin and any Government Affiliate or Permitted Designee involved in any activities in furtherance of this Compact or (ii) any third party who receives at least USD $50,000 in the aggregate of MCC Funding (other than employees of MCA-Benin) during the Compact Term or such other amount as the Parties may agree in writing, whether directly from MCC, indirectly through Re-Disbursements, or otherwise.

(c) In the event the Government or any Provider requires clarification from

MCC as to whether an activity contemplated to be undertaken in furtherance of this Compact violates or may violate any provision of Section 2.3, the Government shall notify, or ensure that such Provider notifies, MCC in writing and provide in such notification a detailed description of the activity in question. In such event, the Government shall not proceed, and shall use its best efforts to ensure that no relevant Provider proceeds, with such activity, and the Government shall ensure that no Re-Disbursements shall be made for such activity, until MCC advises the Government or such Provider in writing that the activity is permissible.

Section 2.5 Refunds; Violation.

(a) Notwithstanding the availability to MCC, or exercise by MCC of, any other remedies, including under international law, this Compact, or any Supplemental Agreement:

(i) If any amount of MCC Funding or Accrued Interest, or any Program Asset, is used for any purpose prohibited under this Article II or otherwise in violation of any of the terms and conditions of this Compact, any guidance in any Implementation Letter, or any Supplemental Agreement between the Parties, MCC may, upon written notice, require the Government to repay promptly to MCC to an account designated by MCC or to others as MCC may direct the amount of such misused MCC Funding or Accrued Interest, or the cash equivalent of the value of any misused Program Asset, in United States Dollars, plus any interest that accrued or would have accrued thereon, within thirty (30) days after the Government is notified, whether by MCC or other duly authorized representative of the United States Government, of such prohibited use; provided, however, the Government shall apply national funds to satisfy its obligations under this Section 2.5(a)(i) and no MCC Funding, Accrued Interest, nor Program Assets may be applied by the Government in satisfaction of its obligations under this Section 2.5(a)(i); and

(ii) If all or any portion of this Compact is terminated or suspended and upon the expiration of this Compact, the Government shall, subject to the requirements of Sections 5.4(e) and 5.4(f), refund, or ensure the refund, to MCC to such account(s) designated by MCC the amount of any MCC Funding, plus any Accrued Interest, promptly, but in no event later than thirty (30) days after the Government receives MCC's request for such refund; provided, that if this Compact is terminated or suspended in part, MCC may request a refund for only the amount of MCC Funding, plus any Accrued Interest, then allocated to the terminated or suspended portion; provided, further, that any refund of MCC Funding or Accrued Interest shall be to such account(s) as designated by MCC.

(b) Notwithstanding any other provision in this Compact or any other agreement to the contrary, MCC's right under this Section 2.5 for a refund shall continue during the Compact Term and for a period of (i) five (5) years thereafter or (ii) one (1) year after MCC receives actual knowledge of such violation, whichever is later.

(c) If MCC determines that any activity or failure to act violates, or may violate, any Section in this Article II, MCC may refuse any further MCC Disbursements for or conditioned upon such activity, and may take any action to prevent any Re-Disbursement related to such activity.

Section 2.6 Bilateral Agreement. All MCC Funding shall be considered United States assistance under the Economic, Technical and Related Assistance Agreement by and between the Government of the United States of America and the Government of the Republic of Benin, dated May 27, 1961, as amended from time to time (the ''Bilateral Agreement''). If there are conflicts or inconsistencies between any parts of this Compact and the Bilateral Agreement, as either may be amended from time to time, the provisions of this Compact shall prevail over those of the Bilateral Agreement.

Article III. Implementation

Section 3.1 Implementation Framework. This Compact shall be implemented by the Parties in accordance with this Article III and as further specified in the Annexes and in relevant Supplemental Agreements.

Section 3.2 Government Responsibilities.

(a) The Government shall have principal responsibility for oversight and management of the implementation of the Program (i) in accordance with the terms and conditions specified in this Compact and relevant Supplemental Agreements, (ii) in accordance with all applicable laws then in effect in Benin, and (iii) in a timely and cost-effective manner and in conformity with sound technical, financial and management practices (collectively, the ''Government Responsibilities''). Unless otherwise expressly provided, any reference to the Government Responsibilities or any other responsibilities or obligations of the Government herein shall be deemed to apply to any Government Affiliate and any of their respective directors, officers, employees, contractors, sub-contractors, grantees, sub-grantees, agents or representatives.

(b) The Government shall ensure that no person or entity shall participate in the selection, award, administration, or oversight of a contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding, in which (i) the entity, the person, members of the person's immediate family or household or his or her business partners, or organizations controlled by or substantially involving such person or entity, has or have a direct or indirect financial or other interest or (ii) the person or entity is negotiating or has any arrangement concerning prospective employment, unless such person or entity has first disclosed in writing to the Government the conflict of interest and, following such disclosure, the Parties agree in writing to proceed notwithstanding such conflict. The Government shall ensure that no person or entity involved in the selection, award, administration, oversight or implementation of any contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding shall solicit or accept from or offer to a third party or seek or be promised directly or indirectly for itself or for another person or entity any gift, gratuity, favor or benefit, other than items of *de minimis* value and otherwise consistent with such guidance as MCC may provide from time to time.

(c) The Government shall not designate any person or entity, including any Government Affiliate, to implement, in whole or in part, this Compact or any Supplemental Agreement between the Parties (including any Government Responsibilities or any other responsibilities or obligations of the Government under this Compact or any Supplemental Agreement between the Parties) or to exercise any rights of the Government under this Compact or any Supplemental Agreement between the Parties, except as expressly provided herein or with the prior written consent of MCC; provided, however, the Government may designate MCA-Benin or, with the prior written consent of MCC, such other mutually acceptable persons or entities, (each, a ''Permitted Designee'') to implement some or all of the Government Responsibilities or any other responsibilities or obligations of the Government or to exercise any rights of the Government under this Compact or any Supplemental Agreement between the Parties each in accordance with the terms and conditions set forth

in this Compact or such Supplemental Agreement (referred to herein collectively as ''Designated Rights and Responsibilities''). Notwithstanding any provision herein or any other agreement to the contrary, no such designation shall relieve the Government of such Designated Rights and Responsibilities, for which the Government shall retain ultimate responsibility. In the event that the Government designates any person or entity, including any Government Affiliate, to implement any portion of the Government Responsibilities or other responsibilities or obligations of the Government, or to exercise any rights of the Government under this Compact or any Supplemental Agreement between the Parties, in accordance with this Section 3.2(c), then the Government shall (i) cause such person or entity to perform such Designated Rights and Responsibilities in the same manner and to the full extent to which the Government is obligated to perform such Designated Rights and Responsibilities, (ii) ensure that such person or entity does not assign, delegate or contract (or otherwise transfer) any of such Designated Rights and Responsibilities to any person or entity and (iii) cause such person or entity to certify to MCC in writing that it will so perform such Designated Rights and Responsibilities and will not assign, delegate, or contract (or otherwise transfer) any of such Designated Rights and Responsibilities to any person or entity without the prior written consent of MCC.

(d) The Government shall, upon a request from MCC, execute, or ensure the execution of, an assignment to MCC of any cause of action which may accrue to the benefit of the Government, a Government Affiliate or any Permitted Designee, including MCA-Benin, in connection with or arising out of any activities funded in whole or in part (directly or indirectly) by MCC Funding.

(e) The Government shall ensure that (i) no decision of MCA-Benin is modified, supplemented, unduly influenced or rescinded by any governmental authority, except by a non-appealable judicial decision, and (ii) the authority of MCA-Benin shall not be expanded, restricted, or otherwise modified, except in accordance with this Compact, the Governance Agreement, the Governing Documents or any other Supplemental Agreement between the Parties.

(f) The Government shall ensure that all persons and individuals that enter into agreements to provide goods, services or works under the Program or in furtherance of this Compact shall do so in accordance with the Procurement Guidelines and shall obtain all necessary immigration, business and other permits, licenses, consents and approvals to enable them and their personnel to fully perform under such agreements.

Section 3.3 Government Deliveries. The Government shall proceed, and cause others to proceed, in a timely manner to deliver to MCC all reports, notices, certificates, documents or other deliveries required to be delivered by the Government under this Compact or any Supplemental Agreement between the Parties, in form and substance as set forth in this Compact or in any such Supplemental Agreement.

Section 3.4 Government Assurances. The Government hereby provides the following assurances to MCC that as of the date this Compact is signed:

(a) The information contained in the Proposal and any agreement, report, statement, communication, document or otherwise delivered or otherwise communicated to MCC by or on behalf of the Government on or after the date of the submission of the Proposal (i) are true, correct and complete in all material respects and (ii) do not omit any fact known to the Government that if disclosed would (A) alter in any material respect the information delivered, (B) likely have a material adverse effect on the Government's ability to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its responsibilities or obligations under or in furtherance of this Compact, or (C) have likely adversely affected MCC's determination to enter into this Compact or any Supplemental Agreement between the Parties.

(b) Unless otherwise disclosed in writing to MCC, the MCC Funding made available hereunder is in addition to the normal and expected resources that the Government usually receives or budgets for the activities contemplated herein from external or domestic sources.

(c) This Compact does not conflict and will not conflict with any international agreement or obligation to which the Government is a party or by which it is bound.

(d) No payments have been (i) received by any official of the Government or any other government body in connection with the procurement of goods, services or works to be undertaken or funded in whole or in part (directly or indirectly) by MCC Funding, except fees, taxes, or similar payments legally established in the Republic of Benin (subject to Section 2.3(e)) and consistent with the applicable requirement of Beninese law or (ii) made to any third party, in connection with or in furtherance of this Compact, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. 78a *et seq.*).

Section 3.5 Implementation Letters; Supplemental Agreements.

(a) MCC may, from time to time, issue one or more letters to furnish additional information or guidance to assist the Government in the implementation of this Compact (each, an ''Implementation Letter''). The Government shall apply such guidance in implementing this Compact.

(b) The details of any funding, implementing and other arrangements in furtherance of this Compact may be memorialized in one or more agreements between (A) the Government (or any Government Affiliate or Permitted Designee) and MCC, (B) MCC and/or the Government (or any Government Affiliate or Permitted Designee) and any third party, including any of the Providers or Permitted Designee or (C) any third parties where neither MCC nor the Government is a party, before, on or after the Entry into Force (each, a ''Supplemental Agreement''). The Government shall deliver, or cause to be delivered, to MCC within five (5) days of its execution a copy of any Supplemental Agreement to which MCC is not a party.

Section 3.6 Procurement; Awards of Assistance.

(a) The Government shall ensure that the procurement of all goods, services and works by the Government or any Provider in furtherance of this Compact shall be consistent with the procurement guidelines (the ''Procurement Guidelines'') reflected in a Supplemental Agreement between the Government (and/or a mutually acceptable Government Affiliate or MCA-Benin) and MCC (the ''Procurement Agreement''), which Procurement Guidelines shall include the following requirements:

(i) Internationally accepted procurement rules with open, fair and competitive procedures are used in a transparent manner to solicit, award and administer contracts, grants, and other agreements and to procure goods, services and works;

(ii) Solicitations for goods, services, and works shall be based upon a clear and accurate description of the goods, services or works to be acquired;

(iii) Contracts shall be awarded only to qualified and capable contractors that have the capability and willingness to perform the contracts in accordance with the terms and conditions of the

applicable contracts and on a cost effective and timely basis; and

(iv) No more than a commercially reasonable price, as determined, for example, by a comparison of price quotations and market prices, shall be paid to procure goods, services, and works.

(b) The Government shall maintain, and shall use its best efforts to ensure that all Providers maintain, records regarding the receipt and use of goods, services and works acquired in furtherance of this Compact, the nature and extent of solicitations of prospective suppliers of goods, services and works acquired in furtherance of this Compact, and the basis of award of contracts, grants and other agreements in furtherance of this Compact.

(c) The Government shall use its best efforts to ensure that information, including solicitations, regarding procurement, grant and other agreement actions funded (or to be funded) in whole or in part (directly or indirectly) by MCC Funding shall be made publicly available in the manner outlined in the Procurement Guidelines or in any other manner agreed upon by the Parties in writing.

(d) The Government shall ensure that no goods, services or works may be funded in whole or in part (directly or indirectly) by MCC Funding which are procured pursuant to orders or contracts firmly placed or entered into prior to the Entry into Force, except as the Parties may otherwise agree in writing.

(e) The Government shall ensure that MCA-Benin and any other Permitted Designee follows, and uses its best efforts to ensure that all Providers follow, the Procurement Guidelines in procuring (including soliciting) goods, services and works and in awarding and administering contracts, grants and other agreements in furtherance of this Compact, and shall furnish MCC evidence of the adoption of the Procurement Guidelines by MCA-Benin no later than the time specified in the Disbursement Agreement.

(f) The Government shall include, or ensure the inclusion of, the requirements of this Section 3.6 into all Supplemental Agreements between the Government, any Government Affiliate or Permitted Designee or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents, on the one hand, and a Provider, on the other hand.

Section 3.7 Policy Performance; Policy Reforms. In addition to the specific policy and legal reform commitments identified in Annex I and the Schedules thereto, the Government shall seek to maintain and to improve its level of performance under the policy criteria identified in Section 607 of the Act, and the MCA selection criteria and methodology published by MCC pursuant to Section 607 of the Act from time to time (''MCA Eligibility Criteria'').

Section 3.8 Records and Information; Access; Audits; Reviews.

(a) Reports and Information. The Government shall furnish to MCC, and shall use its best efforts to ensure that all Providers and any other third party receiving MCC Funding, as appropriate, furnish to the Government (and the Government shall provide to MCC), any records and other information required to be maintained under this Section 3.8 and such other information, documents and reports as may be necessary or appropriate for the Government to effectively carry out its obligations under this Compact, including under Section 3.12.

(b) Government Books and Records. The Government shall maintain, and shall use its best efforts to ensure that all Providers maintain, accounting books, records, documents and other evidence relating to this Compact adequate to show, to the satisfaction of MCC, without limitation, the use of all MCC Funding, including all costs incurred by the Government and the Providers in furtherance of this Compact, the receipt, acceptance and use of goods, services and works acquired in furtherance of this Compact by the Government and the Providers, agreed-upon cost sharing requirements, the nature and extent of solicitations of prospective suppliers of goods, services and works acquired by the Government and the Providers in furtherance of this Compact, the basis of award of Government and other contracts and orders in furtherance of this Compact, the overall progress of the implementation of the Program, and any documents required by this Compact or any Supplemental Agreement between the Parties or reasonably requested by MCC upon reasonable notice (''Compact Records''). The Government shall maintain, and shall use its best efforts to ensure that all Covered Providers maintain, Compact Records in accordance with generally accepted accounting principles prevailing in the United States, or at the Government's option and with the prior written approval by MCC, other accounting principles, such as those (1) prescribed by the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) or (2) then prevailing in Benin. Compact Records shall be maintained for at least five (5) years after the end of the Compact Term or for such longer period, if any, required to resolve any litigation, claims or audit findings or any statutory requirements.

(c) Access. Upon the request of MCC, the Government, at all reasonable times, shall permit, or cause to be permitted, authorized representatives of MCC, the Inspector General, the United States Government Accountability Office, any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of this Compact, and any agents or representatives engaged by MCC or a Permitted Designee to conduct any assessment, review or evaluation of the Program, at all reasonable times the opportunity to audit, review, evaluate or inspect activities funded in whole or in part (directly or indirectly) by MCC Funding or undertaken in connection with the Program, the utilization of goods and services purchased or funded in whole or in part (directly or indirectly) by MCC Funding, and Compact Records, including of the Government or any Provider, relating to activities funded or undertaken in furtherance of, or otherwise relating to, this Compact, and shall use its best efforts to ensure access by MCC, the Inspector General, the United States Government Accountability Office or relevant auditor, reviewer or evaluator or their respective representatives or agents to all relevant directors, officers, employees, Affiliates, contractors, representatives and agents of the Government or any Provider.

(d) Audits.

(i) Government Audits. The Government shall, on at least an annual basis and as the Parties may otherwise agree in writing, conduct, or cause to be conducted, financial audits of all MCC Disbursements and Re-Disbursements during the year since the Entry into Force or since the prior anniversary of the Entry into Force in accordance with the following terms, except as the Parties may otherwise agree in writing. As requested by MCC in writing, the Government shall use, or cause to be used, or select or cause to be selected, an auditor named on the approved list of auditors in accordance with the ''Guidelines for Financial Audits Contracted by Foreign Recipients'' (the ''Audit Guidelines'') issued by the Inspector General of the United States Agency for International Development (the ''Inspector General''), and as approved by MCC, to conduct such annual audits. Such audits shall be performed in accordance with such Audit Guidelines and be subject to quality assurance oversight by the

Inspector General in accordance with such Audit Guidelines. An audit shall be completed and delivered to MCC no later than 90 days after the first period to be audited and no later than 90 days after each anniversary of the Entry into Force thereafter, or such other period as the Parties may otherwise agree in writing.

(ii) Audits of U.S. Entities. The Government shall ensure that Supplemental Agreements between the Government or any Provider, on the one hand, and a United States non-profit organization, on the other hand, state that the United States organization is subject to the applicable audit requirements contained in OMB Circular A–133, notwithstanding any other provision of this Compact to the contrary. The Government shall ensure that Supplemental Agreements between the Government or any Provider, on the one hand, and a United States for-profit Covered Provider, on the other hand, state that the United States organization is subject to audit by the cognizant United States Government agency, unless the Government and MCC agree otherwise in writing.

(iii) Audit Plan. The Government shall submit, or cause to be submitted, to MCC no later than 20 days prior to the date of its adoption a plan, in accordance with the Audit Guidelines, for the audit of the expenditures of any Covered Providers, which audit plan, in the form and substance as approved by MCC, the Government shall adopt, or cause to be adopted, no later than sixty (60) days prior to the end of the first period to be audited (such plan, the ''Audit Plan'').

(iv) Covered Provider. A ''Covered Provider'' is (A) a non-United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) USD $300,000 or more of MCC Funding in any MCA-Benin fiscal year or any other non-United States person or entity that receives, directly or indirectly, USD $300,000 or more of MCC Funding from any Provider in such fiscal year or (B) any United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) USD $500,000 or more of MCC Funding in any MCA-Benin fiscal year or any other United States person or entity that receives, directly or indirectly, USD $500,000 or more of MCC Funding from any Provider in such fiscal year.

(v) Corrective Actions. The Government shall use its best efforts to ensure that Covered Providers take, where necessary, appropriate and timely corrective actions in response to audits, consider whether a Covered Provider's audit necessitates adjustment of its own records, and require each such Covered Provider to permit independent auditors to have access to its records and financial statements as necessary.

(vi) Audit Reports. The Government shall furnish, or use its best efforts to cause to be furnished, to MCC an audit report in a form satisfactory to MCC for each audit required by this Section 3.8, other than audits arranged for by MCC, no later than 90 days after the end of the period under audit, or such other time as may be agreed by the Parties from time to time.

(vii) Other Providers. For Providers who receive MCC Funding under this Compact pursuant to direct contracts or agreements with MCC, MCC shall include appropriate audit requirements in such contracts or agreements and shall, on behalf of the Government, unless otherwise agreed by the Parties, conduct the follow-up activities with regard to the audit reports furnished pursuant to such requirements.

(viii) Audit by MCC. MCC retains the right to perform, or cause to be performed, the audits required under this Section 3.8 by utilizing MCC Funding or other resources available to MCC for this purpose, and to audit, conduct a financial review, or otherwise ensure accountability of any Provider or any other third party receiving MCC Funding, regardless of the requirements of this Section 3.8.

(e) Application to Providers. The Government shall include, or ensure the inclusion of, at a minimum, the requirements of:

(i) Paragraphs (a), (b), (c), (d)(ii), (d)(iii), (d)(v), (d)(vi), and (d)(viii) of this Section 3.8 into all Supplemental Agreements between the Government, any Government Affiliate, any Permitted Designee or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents (each, a ''Government Party''), on the one hand, and a Covered Provider that is not a non-profit organization domiciled in the United States, on the other hand;

(ii) Paragraphs (a), (b), (c), (d)(ii), and (d)(viii) of this Section 3.8 into all Supplemental Agreements between a Government Party and a Provider that does not meet the definition of a Covered Provider; and

(iii) Paragraphs (a), (b), (c), (d)(ii), (d)(v) and (d)(viii) of this Section 3.8 into all Supplemental Agreements between a Government Party and a Covered Provider that is a non-profit organization domiciled in the United States.

(f) Reviews or Evaluations. The Government shall conduct, or cause to be conducted, such performance reviews, data quality reviews, environmental and social audits, or program evaluations during the Compact Term or otherwise and in accordance with the M&E Plan or as otherwise agreed in writing by the Parties.

(g) Cost of Audits, Reviews or Evaluations. MCC Funding may be used to fund the costs of any Audits, reviews or evaluations required under this Compact, including as reflected on Exhibit A to Annex II, and in no event shall the Government be responsible for the costs of any such Audits, reviews or evaluations from financial sources other than MCC Funding.

Section 3.9 Insurance; Performance Guarantees. The Government shall, to MCC's satisfaction, insure or cause to be insured all Program Assets and shall obtain or cause to be obtained such other appropriate insurance and other protections to cover against risks or liabilities associated with the operations of the Program, including by requiring Providers to obtain adequate insurance and post adequate performance bonds or other guarantees. MCA-Benin or the Implementing Entity, as applicable, shall be named as the payee on any such insurance and the beneficiary of any such guarantee, including performance bonds. MCC, and to the extent it is not named as the insured party, MCA-Benin shall be named as additional insureds on any such insurance or other guarantee, to the extent permissible under applicable laws. The Government shall ensure that any proceeds from claims paid under such insurance or any other form of guarantee shall be used to replace or repair any loss of Program Assets or to pursue the procurement of the covered goods, services, works, or otherwise; provided, however, at MCC's election, such proceeds shall be deposited in a Permitted Account as designated by MCA-Benin and acceptable to MCC or as otherwise directed by MCC. To the extent MCA-Benin is held liable under any indemnification or other similar provision of any agreement between MCA-Benin, on the one hand, and any other Provider or other third party, on the other hand, the Government shall pay in full on behalf of MCA-Benin any such obligation; provided, further, the Government shall apply national funds to satisfy its obligations under this Section 3.9 and no MCC Funding, Accrued Interest, or Program Asset may be applied by the Government in satisfaction of its obligations under this Section 3.9.

Section 3.10 Domestic Requirements. The Government shall proceed in a timely manner to seek ratification of this Compact, as necessary or required by the laws of the Republic of Benin, or similar domestic requirement, in order that (i) this Compact shall be given the status of an international agreement, (ii) this Compact shall take precedence and prevail over the domestic laws of Benin now or hereafter in effect and (iii) each of the provisions of this Compact is valid, binding and in full force and effect under Beninese law. The Government shall initiate such process promptly after the conclusion of this Compact. Notwithstanding anything to the contrary in this Compact, this Section 3.10 shall provisionally apply prior to Entry into Force.

Section 3.11 No Conflict. The Government shall undertake not to enter into any agreement in conflict with this Compact or any Supplemental Agreement during the Compact Term.

Section 3.12 Reports. The Government shall provide, or cause to be provided, to MCC at least on each anniversary of the Entry into Force (or such other anniversary agreed by the Parties in writing) and otherwise within thirty (30) days of any written request by MCC, or as otherwise agreed in writing by the Parties, the following information:

(a) The name of each entity to which MCC Funding has been provided;

(b) The amount of MCC Funding provided to such entity;

(c) A description of the Program and each Project funded in furtherance of this Compact, including:

(i) A statement of whether the Program or any Project was solicited or unsolicited; and

(ii) A detailed description of the objectives and measures for results of the Program or Project;

(d) The progress made by Benin toward achieving the Compact Goal and Objectives;

(e) A description of the extent to which MCC Funding has been effective in helping Benin to achieve the Compact Goal and Objectives;

(f) A description of the coordination of MCC Funding with other United States foreign assistance and other related trade policies;

(g) A description of the coordination of MCC Funding with assistance provided by other donor countries;

(h) Any report, document or filing that the Government, any Government Affiliate or any Permitted Designee submits to any government body in connection with this Compact;

(i) Any report or document required to be delivered to MCC under the Environmental Guidelines, any Audit Plan, or any component of the Implementation Plan; and

(j) Any other report, document or information requested by MCC or required by this Compact or any Supplemental Agreement between the Parties.

Article IV. Conditions Precedent; Deliveries

Section 4.1 Conditions Prior to the Entry into Force and Deliveries. As conditions precedent to the Entry into Force, the Parties shall satisfy the conditions set forth in this Section 4.1.

(a) The Government (or a mutually acceptable Government Affiliate) and MCC shall execute a Disbursement Agreement, which agreement shall be in full force and effect as of the Entry into Force.

(b) (i) The Government shall deliver one or more of the Supplemental Agreements or other document identified on Exhibit B attached hereto, which agreements or other documents shall be fully executed by the parties thereto and in full force and effect, or (ii) the Government (or a mutually acceptable Government Affiliate) and MCC execute one or more term sheets that set forth the material and principal terms and conditions that will be included in any such Supplemental Agreement or document that has not been entered into or effective as of the Entry into Force (the ''Supplemental Agreement Term Sheets'').

(c) The Government (or a mutually acceptable Government Affiliate) and MCC shall execute a Procurement Agreement, which agreement shall be in full force and effect as of the Entry into Force.

(d) The Government shall deliver a written statement as to the incumbency and specimen signature of the Principal Representative and each Additional Representative of the Government executing any document under this Compact, such written statement to be signed by a duly authorized official of the Government other than the Principal Representative or any such Additional Representative.

(e) The Government shall deliver a certificate signed and dated by the Principal Representative of the Government, or such other duly authorized representative of the Government acceptable to MCC, that:

(i) Certifies the Government has completed all of its domestic requirements for (1) this Compact to be given the status of an international agreement, (2) this Compact to take precedence and prevail over the domestic laws of Benin now or hereafter in effect and (3) each of the provisions of this Compact to be valid, binding and in full force and effect under Beninese law; and

(ii) Attaches thereto, and certifies that such attachments are, true, correct and complete copies of all decrees, legislation, regulations or other governmental documents relating to its domestic requirements for this Compact to enter into force and the satisfaction of Section 3.10, which MCC may post on its Web site or otherwise make publicly available.

(f) MCC shall deliver a written statement as to the incumbency and specimen signature of the Principal Representative and each Additional Representative of MCC executing any document under this Compact such written statement to be signed by a duly authorized official of MCC other than the Principal Representative or any such Additional Representative.

(g) The Government has not engaged subsequent to the conclusion of this Compact in any action or omission inconsistent with the MCA Eligibility Criteria, as determined by MCC in its sole discretion.

Section 4.2 Conditions Precedent to MCC Disbursements or Re-Disbursements. Prior to, and as condition precedent to, any MCC Disbursement or Re-Disbursement, the Government shall satisfy, or ensure the satisfaction of, all applicable conditions precedent in the Disbursement Agreement.

Article V. Final Clauses

Section 5.1 Communications. Unless otherwise expressly stated in this Compact or otherwise agreed in writing by the Parties, any notice, certificate, request, report, document or other communication required, permitted, or submitted by either Party to the other under this Compact shall be (a) in writing, (b) in English and (c) deemed duly given: (i) Upon personal delivery to the Party to be notified; (ii) when sent by confirmed facsimile or electronic mail, if sent during normal business hours of the recipient Party, if not, then on the next business day; or (iii) three (3) business days after deposit with an internationally recognized overnight courier, specifying next day delivery, with written verification of receipt to the Party to be notified at the address indicated below, or at such other address as such Party may designate:

To MCC: Millennium Challenge Corporation, Attention: Vice President of Operations (with a copy to the Vice President and General Counsel), 875

Fifteenth Street, NW., Washington, DC 20005, United States of America, Facsimile: (202) 521–3700, Phone: (202) 521–3600, e-mail: *VPOperations@mcc.gov* (Vice President of Operations); *VPGeneralCounsel@mcc.gov* (Vice President and General Counsel).

To the Government: Ministry of Finance and Economy, Attention: Minister of Finance and Economy, Route de l'Aéroport, P.O. Box 302, Cotonou, Republic of Benin, Facsimile: 229 21 30 18 51, Phone: 229 21 30 69 38.

With a copy to: Office of the Head of State, Attention: Chief of Staff, Presidence de la République, Avenue de la Marina, Cotonou, Republic of Benin, Facsimile: 229 21 30 00 90, Phone: 229 21 30 06 36, MCA-Benin (to be formed), Attention: National Coordinator, Immeuble Espace Dina, 6th Floor, Boulevard Saint Michel, Cotonou, Republic of Benin, Facsimile: 229 21 32 83 22, Phone: 229 21 32 83 19, e-mail: *mcabenin@yahoo.com.*

Notwithstanding the foregoing, any audit report delivered pursuant to Section 3.8, if delivered by facsimile or electronic mail, shall be followed by an original in overnight express mail. This Section 5.1 shall not apply to the exchange of letters contemplated in Section 1.3 or any amendments under Section 5.3.

Section 5.2 Representatives. Unless otherwise agreed in writing by the Parties, for all purposes relevant to this Compact, the Government shall be represented by the individual holding the position of, or acting as, Minister of Finance and Economy of the Republic of Benin, and MCC shall be represented by the individual holding the position of, or acting as, Vice President for Operations (each, a ''Principal Representative''), each of whom, by written notice to the other Party, may designate one or more additional representatives (each, an ''Additional Representative'') for all purposes other than signing amendments to this Compact. The names of the Principal Representative and any Additional Representative of each of the Parties shall be provided, with specimen signatures, to the other Party, and the Parties may accept as duly authorized any instrument signed by such representatives relating to the implementation of this Compact, until receipt of written notice of revocation of their authority. A Party may change its Principal Representative to a new representative of equivalent or higher rank upon written notice to the other Party, which notice shall include the specimen signature of the new Principal Representative.

Section 5.3 Amendments. The Parties may amend this Compact only by a written agreement signed by the Principal Representatives of the Parties and subject to the respective domestic approval requirements to which this Compact was subject.

Section 5.4 Termination; Suspension.

(a) Subject to Section 2.5, either Party may terminate this Compact in its entirety by giving the other Party thirty (30) days' written notice.

(b) Notwithstanding any other provision of this Compact, including Section 2.1, or any Supplemental Agreement between the Parties, subject to Section 2.5, MCC may suspend or terminate this Compact or MCC Funding, in whole or in part, and any obligation or sub-obligation related thereto, upon giving the Government written notice, if MCC determines, in its sole discretion, that:

(i) Any use or proposed use of MCC Funding or Program Assets or continued implementation of the Compact would be in violation of applicable law or United States Government policy, whether now or hereafter in effect;

(ii) The Government, any Provider, or any other third party receiving MCC Funding or using Program Assets is engaged in activities that are contrary to the national security interests of the United States;

(iii) The Government or any Permitted Designee has committed an act or omission or an event has occurred that would render the Republic of Benin ineligible to receive United States economic assistance under Part I of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), by reason of the application of any provision of the Foreign Assistance Act of 1961 or any other provision of law;

(iv) The Government or any Permitted Designee has engaged in a pattern of actions or omissions inconsistent with the MCA Eligibility Criteria, or there has occurred a significant decline in the performance of the Republic of Benin on one or more of the eligibility indicators contained therein;

(v) The Government or any Provider has materially breached one or more of its assurances or any covenants, obligations or responsibilities under this Compact or any Supplemental Agreement;

(vi) An audit, review, report or any other document delivered in furtherance of the Compact or any Supplemental Agreement or any other evidence reveals that actual expenditures for the Program or any Project or Project Activity were greater than the projected expenditure for such activities identified in the applicable Detailed Financial Plan or are projected to be greater than projected expenditures for such activities;

(vii) If the Government (A) materially reallocates or reduces the allocation in its national budget or any other Government budget of the normal and expected resources that the Government would have otherwise received or budgeted, from external or domestic sources, for the activities contemplated herein, (B) fails to contribute or provide the amount, level, type and quality of resources required to effectively carry out the Government Responsibilities or any other responsibilities or obligations of the Government under or in furtherance of this Compact, or (C) fails to pay any of its obligations as required under this Compact or any Supplemental Agreement, including such obligations which shall be paid solely out of national funds;

(viii) If the Government, any Provider, or any other third party receiving MCC Funding or using Program Assets, or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantee, sub-grantee, representatives or agents, is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking;

(ix) Any MCC Funding or Program Assets are applied, directly or indirectly, to the provision of resources and support to, individuals and organizations associated with terrorism, sex trafficking or prostitution;

(x) An event or condition of any character has occurred that: (A) Materially and adversely affects, or is likely to materially and adversely affect, the ability of the Government or any other party to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its responsibilities or obligations under or in furtherance of this Compact or any Supplemental Agreement or to perform its obligations under or in furtherance of this Compact or any Supplemental Agreement or to exercise its rights thereunder; (B) makes it improbable that the Objectives will be achieved during the Compact Term; (C) materially and adversely affects the Program Assets or any Permitted Account or (D) constitutes misconduct injurious to MCC, or constitutes a fraud or a felony, by the Government, any Government Affiliate, Permitted Designee or Provider, or any officer, director, employee, agent, representative, Affiliate, contractor,

grantee, subcontractor or sub-grantee of any of the foregoing;

(xi) The Government or any Permitted Designee or Provider has taken any action or omission or engaged in any activity in violation of, or inconsistent with, the requirements of this Compact or any Supplemental Agreement to which the Government or any Permitted Designee or Provider is a party;

(xii) There has occurred a failure to meet a condition precedent or series of conditions precedent or any other requirements or conditions in connection with MCC Disbursement as set out in and in accordance with any Supplemental Agreement between the Parties; or

(xiii) Any MCC Funding, Accrued Interest or Program Asset becomes subject to a Lien without the prior approval of MCC, and the Government fails to obtain the release of such Lien (at its own expense and not with MCC Funding, Accrued Interest, or Program Assets) within thirty (30) days after the imposition of such Lien.

(c) MCC may reinstate any suspended or terminated MCC Funding under this Compact or any Supplemental Agreement if MCC determines, in its sole discretion, that the Government or other relevant party has demonstrated a commitment to correcting each condition for which MCC Funding was suspended or terminated.

(d) The authority to suspend or terminate this Compact or any MCC Funding under this Section 5.4 includes the authority to suspend or terminate any obligations or sub-obligations relating to MCC Funding under any Supplemental Agreement without any liability to MCC whatsoever.

(e) All MCC Disbursements and Re-Disbursements shall cease upon expiration, suspension, or termination of this Compact; provided, however, (i) reasonable expenditures for goods, services and works that are properly incurred under or in furtherance of this Compact before expiration, suspension or termination of this Compact and (ii) reasonable expenditures for goods and services (including certain administrative expenses) properly incurred within one hundred and twenty (120) days after the expiration, suspension or termination of the Compact in connection with the winding up of the Program may be paid from MCC Funding, provided that in the case of clauses (i) and (ii) the request for such payment is (A) properly submitted within ninety (90) days after the expiration, suspension or termination of the Compact and (B) subject to the prior written consent of MCC.

(f) Other than payments permitted pursuant to Section 5.4(e), in the event of the suspension or termination of this Compact or any Supplemental Agreement, in whole or in part, the Party, at MCC's sole discretion, shall suspend, for the period of the suspension, or terminate, or ensure the suspension or termination of, as applicable, any obligation or sub-obligation of the Parties to provide financial or other resources under this Compact or any Supplemental Agreement, or to the suspended or terminated portion of this Compact or such Supplemental Agreement, as applicable. In the event of such suspension or termination, the Government shall use its best efforts to suspend or terminate, or ensure the suspension or termination of, as applicable, all such noncancelable commitments related to the suspended or terminated MCC Funding. Any portion of this Compact or any such Supplemental Agreement that is not suspended or terminated shall remain in full force and effect.

(g) Upon the full or partial suspension or termination of this Compact or any MCC Funding, MCC may, at its expense, direct that title to Program Assets be transferred to MCC if such Program Assets are in a deliverable state; provided, for any Program Asset(s) partially purchased or funded (directly or indirectly) by MCC Funding, the Government shall reimburse to a United States Government account designated by MCC the cash equivalent of the portion of the value of such Program Asset(s), such value as determined by MCC.

(h) Prior to the expiration of this Compact or upon termination of this Compact, the Parties shall consult in good faith with a view to reaching an agreement in writing on (i) the post-Compact Term treatment of MCA-Benin, (ii) the process for ensuring the refunds of MCC Disbursements that have not yet been released from a Permitted Account through a valid Re-Disbursement or otherwise committed in accordance with Section 5.4(e), or (iii) any other matter related to the winding up of the Program and this Compact.

Section 5.5 Privileges and Immunities. MCC is an agency of the Government of the United States of America and its personnel assigned to the Republic of Benin will be notified pursuant to the Vienna Convention on Diplomatic Relations as members of the mission of the Embassy of the United States of America. The Government shall ensure that any personnel of MCC so notified, including individuals detailed to or contracted by MCC, and the members of the families of such personnel, while such personnel are performing duties in the Republic of Benin, shall enjoy the privileges and immunities that are enjoyed by a member of the United States Foreign Service, or the family of a member of the United States Foreign Service so notified, as appropriate, of comparable rank and salary of such personnel, if such personnel or the members of the families of such personnel are not a national of, or permanently resident in, the Republic of Benin.

Section 5.6 Attachments. Any annex, schedule, exhibit, table, appendix or other attachment expressly attached hereto (collectively, the ''Attachments'') is incorporated herein by reference and shall constitute an integral part of this Compact.

Section 5.7 Inconsistencies.

(a) Conflicts or inconsistencies between any parts of this Compact shall be resolved by applying the following descending order of precedence:

(i) Articles I through V and

(ii) Any Attachments.

(b) In the event of any conflict or inconsistency between this Compact and any Supplemental Agreement between the Parties, the terms of this Compact shall prevail. In the event of any conflict or inconsistency between any Supplemental Agreement between the Parties and any other Supplemental Agreement, the terms of the Supplemental Agreement between the Parties shall prevail. In the event of any conflict or inconsistency between Supplemental Agreements between any parties, the terms of a more recently executed Supplemental Agreement between such parties shall take precedence over a previously executed Supplemental Agreement between such parties. In the event of any inconsistency between a Supplemental Agreement between the Parties and any component of the Implementation Plan, the terms of the relevant Supplemental Agreement shall prevail.

Section 5.8 Indemnification. The Government shall indemnify and hold MCC and any MCC officer, director, employee, Affiliate, contractor, agent or representative (each of MCC and any such persons, an ''MCC Indemnified Party'') harmless from and against, and shall compensate, reimburse and pay such MCC Indemnified Party for, any liability or other damages which (i) are directly or indirectly suffered or incurred by such MCC Indemnified Party, or to which any MCC Indemnified Party may otherwise become subject, regardless of whether or not such damages relate to any third-party claim, and (ii) arise from or as a result of the

negligence or willful misconduct of the Government, any Government Affiliate, MCA-Benin or any Permitted Designee, directly or indirectly connected with, any activities (including acts or omissions) undertaken in furtherance of this Compact; provided, however, the Government shall apply national funds to satisfy its obligations under this Section 5.8 and no MCC Funding, Accrued Interest, or Program Asset may be applied by the Government in satisfaction of its obligations under this Section 5.8.

Section 5.9 Headings. The Section and Subsection headings used in this Compact are included for convenience only and are not to be considered in construing or interpreting this Compact.

Section 5.10 Interpretation; Definitions.

(a) Any reference to the term ''including'' in this Compact shall be deemed to mean ''including without limitation'' except as expressly provided otherwise.

(b) Any reference to activities undertaken ''in furtherance of this Compact'' or similar language shall include activities undertaken by the Government, any Government Affiliate, any Permitted Designee, any Provider or any other third party receiving MCC Funding involved in carrying out the purposes of this Compact or any Supplemental Agreement, including their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents, whether pursuant to the terms of this Compact, any Supplemental Agreement or otherwise.

(c) References to ''day'' or ''days'' shall be calendar days unless provided otherwise.

(d) The term ''United States Government'' shall, for the purposes of this Compact, mean any branch, agency, bureau, government corporation, government chartered entity or other body of the Federal government of the United States.

(e) The term ''Affiliate'' of a party is a person or entity that controls, is controlled by, or is under the same control as the party in question, whether by ownership or by voting, financial or other power or means of influence.

(f) The term ''Government Affiliate'' is an Affiliate, ministry, bureau, department, agency, government corporation or any other entity chartered or established by the Government.

(g) References to any Affiliate or Government Affiliate herein shall include any of their respective directors, officers, employees, affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives, and agents.

(h) Any references to ''Supplemental Agreement between the Parties'' shall mean any agreement between MCC on the one hand, and the Government or any Government Affiliate or Permitted Designee on the other hand.

(i) A compendium of capitalized terms defined herein is included, for convenience only, in Exhibit A attached hereto.

Section 5.11 Signatures. A signature to this Compact or an amendment to this Compact pursuant to Section 5.3 shall be delivered only as an original signature. With respect to all other signatures, a signature delivered by facsimile or electronic mail in accordance with Section 5.1 shall be deemed an original signature, and the Parties hereby waive any objection to such signature or to the validity of the underlying document, certificate, notice, instrument or agreement on the basis of the signature's legal effect, validity or enforceability solely because it is in facsimile or electronic form; without limiting the foregoing, a signature on an audit report or a signature evidencing any modification identified in Sections 2(b) and (4)(a)(iv) of Annex I, Section 4 of Annex II or Section 5(c) Annex III shall be followed by an original in overnight express mail. Such signature shall be accepted by the receiving Party as an original signature and shall be binding on the Party delivering such signature.

Section 5.12 Designation. MCC may designate any Affiliate, agent, or representative to implement, in whole or in part, its obligations, and exercise any of its rights, under this Compact or any Supplemental Agreement between the Parties. MCC shall inform the Government of any such designation.

Section 5.13 Survival. Any Government Responsibilities, covenants, or obligations or other responsibilities to be performed by the Government after the Compact Term shall survive the termination or expiration of this Compact and expire in accordance with their respective terms. Notwithstanding the termination or expiration of this Compact, the following provisions shall remain in force: Sections 2.2, 2.3, 2.5, 3.2, 3.3, 3.4, 3.5, 3.8, 3.9 (for one year), 3.12, 5.1, 5.2, 5.4(d), 5.4(e) (for one hundred and twenty days), 5.4(f), 5.4(g), 5.4(h), 5.5, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11, 5.12, this Section 5.13, 5.14, and 5.15.

Section 5.14 Consultation. Either Party may, at any time, request consultations relating to the interpretation or implementation of this Compact or any Supplemental Agreement between the Parties. Such consultations shall begin at the earliest possible date. The request for consultations shall designate a representative for the requesting Party with the authority to enter consultations and the other Party shall endeavor to designate a representative of equal or comparable rank. If such representatives are unable to resolve the matter within 20 days from the commencement of the consultations then each Party shall forward the consultation to the Principal Representative or such other representative of comparable or higher rank. The consultations shall last no longer than 45 days from date of commencement. If the matter is not resolved within such time period, either Party may terminate this Compact pursuant to Section 5.4(a). The Parties shall enter any such consultations guided by the principle of achieving the Compact Goal in a timely and cost-effective manner and by the principles of international law. Any dispute arising under or related to this Compact shall be determined exclusively through the consultation mechanism set forth in this Section 5.14.

Section 5.15 MCC Status. MCC is a United States government corporation acting on behalf of the United States Government in the implementation of this Compact. As such, MCC has no liability under this Compact, is immune from any action or proceeding arising under or relating to this Compact and the Government hereby waives and releases all claims related to any such liability. In matters arising under or relating to this Compact, MCC is not subject to the jurisdiction of the courts or other body of Benin or any other jurisdiction and all disputes arising under or relating to this Compact shall be determined in accordance with Section 5.14.

Section 5.16 Language. This Compact is prepared in English and in the event of any ambiguity or conflict between this official English version and any other version translated into any language for the convenience of the Parties, this official English version shall prevail.

Section 5.17 Publicity; Information and Marking. The Government shall give appropriate publicity to this Compact as a program to which the United States, through MCC, has contributed, including by posting this Compact, and any amendments thereto, on the Web site operated by MCA-Benin (''MCA-Benin Website''), identifying Program activity sites, and marking Program Assets; provided, any announcement, press release or

statement regarding MCC or the fact that MCC is funding the Program or any other publicity materials referencing MCC, including the publicity described in this Section 5.17, shall be subject to prior approval by MCC and shall be consistent with any instructions provided by MCC from time to time in relevant Implementation Letters. Upon the termination or expiration of this Compact, MCC may request the removal of, and the Government shall, upon such request, remove, or cause the removal of, any such markings and any references to MCC in any publicity materials or on the MCA-Benin Website. MCC may post this Compact, and any amendments thereto, on the Web site of MCC. MCC shall have the right to use any information or data provided in any report or document provided to MCC for the purpose of satisfying MCC reporting requirements or in any other manner.

In Witness Whereof, the undersigned, duly authorized by their respective governments, have signed this Compact this 22nd day of February, 2006 and this Compact shall enter into force in accordance with Section 1.3.

Done at Washington, DC in English.

For the United States of America, acting through the Millennium Challenge Corporation, Name: John J. Danilovich, Title: Chief Executive Officer.

For the Government of the Republic of Benin, Name: Cosme Sehlin, Title: Minister of Finance and Economy.

Exhibit A—Definitions

The following compendium of capitalized terms that are used herein is provided for the convenience of the reader. To the extent that there is a conflict or inconsistency between the definitions in this Exhibit A and the definitions elsewhere in the text of this Compact, the definition elsewhere in this Compact shall prevail over the definition in this Exhibit A.

2006 Baseline Data Survey shall have the meaning set forth in Section 2(a)(i) of Annex III.

Accrued Interest is any interest or other earnings on MCC Funding that accrues as specified in Section 2.1(c).

Act means the Millennium Challenge Act of 2003, as amended.

Additional Representative is a representative as may be designated by a Principal Representative, by written notice, for all purposes other than signing amendments to this Compact.

ADR means alternative dispute resolution.

AFD means the Agence Française de Développement.

Advisory Council shall have the meaning set forth in Section 3(e)(i) of Annex I.

Affiliate means the affiliate of a party, which is a person or entity that controls, is controlled by, or is under the same control as the party in question, whether by ownership or by voting, financial or other power or means of influence. References to Affiliate herein shall include any of their respective directors, officers, employees, affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives, and agents.

Arbitration Center Activity is the Project Activity related to expansion of the arbitration center under the Justice Project described in Section 2(a) of Schedule 3 to Annex I.

Attachments are any annex, schedule, exhibit, table, appendix or other attachment expressly attached to this Compact.

Audit Guidelines means the ''Guidelines for Financial Audits Contracted by Foreign Recipients'' issued by the Inspector General of the United States Agency for International Development.

Audit Plan means a plan, in accordance with the Audit Guidelines, for the audit of the expenditures of any Covered Providers, which audit plan, in the form and substance as approved by MCC, the Government shall adopt, or cause to be adopted, no later than sixty (60) days prior to the end of the first period to be audited.

Auditor means the auditor(s) as defined in, and engaged pursuant to, Section 3(h) of Annex I and as required by Section 3.8(d) of the Compact.

Auditor/Reviewer Agreement is an agreement between MCA-Benin and each Auditor or Reviewer, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Auditor or Reviewer with respect to the audit, review or evaluation, including access rights, required form and content of the applicable audit, review or evaluation and other terms and conditions such as payment of the Auditor or Reviewer.

Bank(s) means each individually and collectively, any bank holding an account referenced in Section 4(d) of Annex I.

Bank Agreement means an agreement between MCA-Benin and a Bank, satisfactory to MCC, that sets forth the signatory authority, access rights, anti-money laundering and anti-terrorist financing provisions, and other terms related to the Permitted Account.

BDS means business development services.

Beneficiaries means the intended beneficiaries identified in accordance with Annex I.

Bilateral Agreement means the Economic, Technical and Related Assistance Agreement by and between the Government of the United States of America and the Government of the Republic of Benin, dated May 27, 1961, as amended from time to time.

BNC means Benin National Committee.

Board means the independent board of directors of MCA-Benin to oversee MCA-Benin's responsibilities and obligations under this Compact.

BOC means the fish/seafood inspection handling facility at the Port.

Business Registration Activity is the Project Activity related to the business registration center under the Justice Project described in Section 2(b) of Schedule 3 to Annex I.

CAMeC means the Centre d'Arbitrage, Mediation et Conciliation.

Capacity Building Activity is the Project Activity related to financial institution and borrower capacity building under the Financial Services Project described in Section 2(a) of Schedule 2 of Annex I.

Cellule means the Cellule de Microfinance.

Chair means the Chair of the Board of Directors.

Challenge Facility means a financial innovation and expansion challenge facility or FINECF described in Section 2(a) of Schedule 2 to Annex I.

Chamber means the Chamber of Commerce.

Civil Member(s) means the representatives for the positions identified in Sections 3(d)(ii)(2)(A)(vii)-(xi) of Annex I designated to serve as voting members on the Board for a one-year period.

Compact means the Millennium Challenge Compact made between the United States of America, acting through the Millennium Challenge Corporation, and the Government of the Republic of Benin.

Compact Goal means advancing economic growth and poverty reduction in Benin.

Compact Goal Indicator(s) means the Indicators that will measure the results for the overall Program on the intended Beneficiaries, as set out in the table at Section 2(a)(i) of Annex III.

Compact Implementation Funding shall have the meaning set forth in Section 2.1(a)(iii).

Compact Records shall have the meaning set forth in Section 3.8(b).

Compact Reports are any documents or reports delivered to MCC in satisfaction of the Government's

reporting requirements under this Compact or any Supplemental Agreement between the Parties.

Compact Term means the term for which this Compact shall remain in force, which shall be the five (5) year period from the Entry into Force, unless earlier terminated in accordance with Section 5.4.

Component shall have the meaning set forth in Section 2(a)(ii)(7) in Schedule 2 of Annex I.

Courts Activity is the Project Activity related to improved services of courts under the Justice Project described in Section 2(c) of Schedule 1 to Annex I.

Covered Provider shall have the meaning set forth in Section 3.8(d)(iv).

Designated Rights and Responsibilities shall have the meaning set forth in Section 3.2(c).

Detailed Financial Plan means the financial plans that specify respectively the annual and quarterly detailed budget and projected cash requirements for the Program (including monitoring and evaluation and administrative costs) and each Project, projected both on a commitment and cash requirement basis.

Disbursement Agreement is a Supplemental Agreement that MCC, the Government (or a mutually acceptable Government Affiliate and MCA-Benin shall enter into that (i) further specifies the terms and conditions of any MCC Disbursements and Re-Disbursements, (ii) is in a form and substance mutually satisfactory to the Parties, and (iii) is signed by the Principal Representative of each Party (or in the case of the Government, the principal representative of the applicable Government Affiliate) and of MCA-Benin.

EMICoV means Benin's national household living standards measurement survey (L'Enquête Modulaire Integrée sur les Conditions de Vie).

EMPs means Environmental Management Plans.

Entry into Force shall have the meaning set forth in Section 1.3.

Environmental Guidelines means the environmental guidelines delivered by MCC to the Government or posted by MCC on its website or otherwise publicly made available, as such guidelines may be amended from time to time.

ESI Officer means the Environmental and Social Assessment Director, an Officer of MCA-Benin.

ESIAs means environmental and social impact assessments.

EU means the European Union.

Evaluation Component means the component of the M&E Plan that specifies a methodology, process and timeline for the evaluation of planned, ongoing, or completed Project Activities to determine their impact and likely sustainability.

Exempt Uses shall have the meaning set forth in Section 2.3(e)(ii).

Facility Manager means the qualified independent management entity or entities that shall manage and implement the Challenge Facility.

Final Evaluation shall have the meaning set forth in Section 3(a) of Annex III.

Financial Advisory Committee is a stakeholders group that will provide feedback and input to the Financial Services Project Division.

Financial Enabling Environment Activity is the Project Activity related to financial enabling environment under the Financial Services Project described in Section 2(b) of Schedule 2 to Annex I.

Financial Plan means collectively, the Multi-Year Financial Plan, each Detailed Financial Plan, and each amendment, supplement or other change thereto.

Financial Plan Annex means Annex II of this Compact, which summarizes the Multi-Year Financial Plan for the Program.

Financial Services Objective is a Project Objective of this Compact and means to expand access to financial services.

Financial Services Project is the Access to Financial Services Project, and the Project described in Schedule 2 to Annex I, that the Parties intend to implement in furtherance of the Financial Services Objective.

FINECF means a financial innovation and expansion challenge facility or the Challenge Facility described in Section 2(a) of Schedule 2 of Annex I.

Fiscal Accountability Plan shall have the meaning set forth in Section 4(c) of Annex I.

Fiscal Agent shall have the mean set forth in Section 3(g) of Annex I.

Fiscal Agent Agreement is an agreement between MCA-Benin and each Fiscal Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Fiscal Agent and other appropriate terms and conditions, such as payment of the Fiscal Agent. ''goods'' refers to any supplies, equipment, materials, property or other goods.

Governing Document means any decree, legislation, regulation, contractual arrangement (including a governance agreement by and among the Government (or a mutually acceptable Government Affiliate), MCA-Benin and MCC), or other charter document establishing or governing MCA-Benin.

Government means the Government of the Republic of Benin.

Government Affiliate is an Affiliate, ministry, bureau, department, agency, government, corporation or any other entity chartered or established by the Government. References to Government Affiliate shall include any of their respective directors, officers, employees, affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives, and agents.

Government Members are the government members identified in Section 3(d)(ii)(2)(A)(i)–(vi) of Annex I serving as voting members on the Board, and any replacements thereof in accordance with Section 3(d)(ii)(2)(A) of Annex I.

Government Party means the Government, any Government Affiliate, any Permitted Designee or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents.

Government Responsibilities shall have the meaning set forth in Section 3.2(a).

GTZ means Deutsche Gessellschaft Für Technische Zusammenarbeit, GmbH.

IEC means information, education and communication campaign.

IEC Activity is the Project Activity related to information, education, and communication Project Activity under the Land Project described in Section 2(d) of Schedule 1 of Annex I.

IFC means the International Finance Corporation.

Implementation Letter is a letter that may be issued by MCC from time to time to furnish additional information or guidance to assist the Government in the implementation of this Compact.

Implementation Plan is a detailed plan for the implementation of the Program and each Project, which will be memorialized in one or more documents and shall consist of: (i) A Multi-Year Financial Plan; (ii) Detailed Financial Plans; (iii) Fiscal Accountability Plan; (iv) Procurement Plan; (v) Program and Project Work Plans; and (vi) M&E Plan.

Implementing Entity means a Government Affiliate, nongovernmental organization or other public- or private-sector entity or persons to which MCA-Benin may provide MCC funding, directly or indirectly, through an Outside Project Manager, to implement and carry out the Projects or any other activities to be carried out in furtherance of this Compact.

Implementing Entity Agreement is an agreement between MCA-Benin (or the

appropriate Outside Project Manager) and an Implementing Entity, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of such Implementing Entity and other appropriate terms and conditions, such as payment of the Implementing Entity.

Indicators shall mean the quantitative, objective and reliable data that the M&E Plan will use to measure the results of the Program.

Initial Technical Studies means the initial technical studies (engineering pre-feasibilty, environmental and economic) related to the Markets Project described in Section 2(a) of Schedule 4 of Annex I.

Inspector General means the Inspector General of the United States Agency for International Development.

ISPS means the International Ship and Port Security Code.

Justice Advisory Committee is a stakeholders group that will provide feedback and input to the Justice Project Division.

Justice Objective is a Project Objective of this Compact and means to improve the ability of the judicial system to enforce contracts and resolve claims.

Justice Project is the Access to Justice Project, and the Project described in Schedule 3 of Annex I, that the Parties intend to implement in furtherance of the Justice Objective.

Land Objective is a Project Objective of this Compact and means to strengthen property rights and investment.

Land Project is the Access to Land Project, and the Project described in Schedule 1 to Annex I, that the Parties intend to implement in furtherance of the Land Project Objective.

Land Project Steering Group is a stakeholders group that will provide feedback and input to the Land Project Division.

Lien means any lien, attachment, enforcement of judgment, pledge, or encumbrance of any kind.

Local Account is an interest-bearing local currency of Benin bank account at a commercial bank, subject to MCC approval, to which the Fiscal Agent may authorize transfer from any U.S. Dollar Permitted Account for the purpose of making Re-Disbursements payable in local currency.

M&E Annex means Annex III of this Compact, which generally describes the components of the M&E Plan for the Program.

M&E Plan means the plan to measure and evaluate progress toward achievement of the Compact Goal and Objectives of this Compact.

Management means the management team or national program coordination team of MCA-Benin to have overall management responsibility for the implementation of this Compact.

Markets Objective is a Project Objective of this Compact and means to improve the Port of Cotonou.

Markets Project is the Access to Markets Project, and the Project described in Schedule 4 of Annex I, that the Parties intend to implement in furtherance of the Markets Objective.

Material Agreement shall have the meaning set forth in Section3(c)(i)(5) of Annex I.

Material Re-Disbursement means any Re-Disbursement that requires MCC approval under applicable law, the Procurement Agreement, any Governing Document, or any Supplemental Agreement.

Material Terms of Reference means any terms of reference for the procurement of goods, services or works that requires MCC approval under applicable law, the Procurement Agreement, any Governing Document, or any Supplemental Agreement.

MCA means the Millennium Challenge Account.

MCA-Benin shall have the meaning set forth in Section 3(b) of Annex I and as is further described in Section 3(d) of Annex I.

MCA-Benin Website means the website operated by MCA-Benin.

MCA Eligibility Criteria means the MCA selection criteria and methodology published by MCC pursuant to Section 607 of the Act from time to time.

MCA National Coordinator means the National Coordinator of the Millennium Challenge Account under the Benin National Committee, as described in Section 1(b) of Annex I.

MCC means the Millennium Challenge Corporation.

MCC Disbursement means the disbursement of MCC Funding by MCC from time to time to a Permitted Account or through such other mechanism agreed by the Parties as defined in and in accordance with Section 2.1(b)(i).

MCC Disbursement Request means the applicable request that the Government and MCA-Benin will jointly submit for an MCC Disbursement as may be specified in the Disbursement Agreement.

MCC Funding shall have the meaning set forth in Section 2.1(a).

MCC Indemnified Party means MCC and any MCC officer, director, employee, Affiliate, contractor, agent or representative.

MCC Representative is a representative designated by MCC to serve as an Observer on the Board.

MFIs means micro-finance institutions.

Monitoring Component means the component of the M&E Plan that specifies how the implementation of the Program and progress toward the Compact Goal and Objectives will be monitored.

MSMEs means micro and small- and medium-scale enterprises.

Multi-Year Financial Plan means the multi-year financial plan for the Program and for each Project, which is summarized in Annex II to this Compact.

Multi-Year Financial Plan Summary means a multi-year Financial plan summary attached to this Compact as Exhibit A of Annex II.

''national'' means, for purposes of Section 2.3(e), organizations established under the laws currently or hereafter in effect in the Republic of Benin, other than MCA-Benin or any other entity established solely for purposes of managing or overseeing the implementation of the Program or any wholly-owned subsidiaries, divisions, or Affiliates of entities not registered or established under the laws currently or hereafter in effect in the Republic of Benin.

National Coordinator means the National Coordinator of MCA-Benin as defined in Section 3(c)(i) of Annex I.

NGOs means non-governmental organizations.

Objective(s) are the Program Objective together with the following project-level objectives of this Compact that have been identified by the Parties, each of which is (i) key to advancing the Compact Goal and (ii) described in more detail in the Annexes attached hereto: (a) the Land Objective, (b) the Financial Services Objective (c) the Justice Objective and (d) the Markets Objective.

Objective Indicator means the Indicator for each Objective that will measure the ultimate result for each of the individual Projects. A table of Objective Indicator definitions is set forth at Section 2(a)(ii) of Annex III.

Observer(s) means the non-voting members of the Board as identified in Section 3(d)(ii)(2)(B) of Annex I.

Officers shall have the meaning set forth in 3(d)(iii)(3) of Annex I.

OHADA means Organization for the Harmonization of Business Law in Africa.

Outcome Indicator means the Indicator in the M&E Plan that will measure the intermediate results achieved under each of the Project Activities in order to provide early measures of progress towards the accomplishment of the Project Objective. A table of Outcome Indicator definitions is set forth at Section 2(a)(ii) of Annex III.

Output Indicator means the Indicator in the M&E Plan to measure the direct outputs of the Project Activities.

Outside Project Manager means the qualified persons or entities engaged by Management, on behalf of MCA-Benin, to serve as outside project managers in accordance with Section 3(d)(iii)(5) of Annex I.

PAC means the Port Autonome de Cotonou.

Panel shall have the meaning set forth in Section 2(a)(ii)(3) of Schedule 2 to Annex I.

Parties means the United States of America, acting through MCC, and the Government.

Party means (i) the United States of America, acting through MCC or (ii) the Government.

Permitted Account(s) shall have the meaning set forth in Section 4(d) of Annex I.

Permitted Designee shall have the meaning set forth in Section 3.2(c).

PFR means Plan Foncier Rural.

Pledge means any pledge of any MCC Funding or any Program Assets, or any guarantee directly or indirectly of any indebtedness.

Policy Activity is the Project Activity related to policy and legal reform under the Land Project described in Section 2(a) of Schedule 1 of Annex I.

Port means the Port of Cotonou.

Port Advisory Committee is a stakeholders group representing the Markets Project beneficiaries that will provide feedback and input to the Markets Project Division.

Port Institutional Activity means the port institutional and systems improvements Project Activity of the Markets Project as described in Section 2(b) of Schedule 4 to Annex I.

Port Security and Landside Improvements Activity means the port security and landside improvements Project Activity of the Markets Project as described in Section 2(c) of Schedule 4 to Annex I.

Principal Representative means (i) for the Government, the individual holding the position of, or acting as the Minister of State in Charge of Planning and Development of the Republic of Benin, and (ii) for MCC, the individual holding the position of, or acting as, the Vice President for Operations.

Procedural Code shall have the meaning set forth in Section 2(c)(v)(1) of Schedule 3 to Annex I.

Procurement Agent shall have the meaning set forth in Section 3(i) of Annex I.

Procurement Agent Agreement is an agreement between MCA-Benin and each Procurement Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Procurement Agent with respect to the conduct, monitoring, and review of procurements and other appropriate terms and conditions, such as payment of the Procurement Agent.

Procurement Agreement is a Supplemental Agreement between the Government (and/or a mutually accepted Government Affiliate or MCA-Benin) and MCC, which includes the Procurement Guidelines, and governs the procurement of all goods, services and works by the Government or any Provider in furtherance of this Compact.

Procurement Guidelines shall have the meaning set forth in Section 3.6(a).

Procurement Plan means a procurement plan adopted by MCA-Benin as set forth in Section 3(i) of Annex I.

Program means a program, to be implemented under this Compact, using MCC Funding to advance Benin's progress towards economic growth and poverty reduction.

Program Annex means Annex I to this Compact, which generally describes the Program that MCC Funding will support in Benin during the Compact Term and the results to be achieved from the investment of MCC Funding.

Program Assets means (i) MCC Funding, (ii) Accrued Interest, or (iii) any assets, goods, or property (real, tangible, or intangible) purchased or financed in whole or in part by MCC Funding.

Program Objective means the overall objective of the Program to which the Project Objectives contribute and means to increase investment and private sector activity in Benin, which is key to advancing the Compact Goal.

Project(s) are the specific projects and the policy reforms, and other activities related thereto that the Government will carry out, or cause to be carried out in furtherance of this Compact to achieve the Objectives and the Compact Goal, specifically the Land Project, the Financial Services Project, the Justice Project and the Markets Project.

Project Activity means the activities that will be undertaken in furtherance of each Project.

Project Director shall have the meaning set forth in Section 3(d)(iii)(3) of Annex I.

Project Division means the divisions that manage the implementation of each Project.

Project Objective(s) means the project-level objectives that will advance the Program Objective and Compact Goal, each of which is described in more detail in the Annexes of this Compact.

Proposal is the proposal for use of MCA assistance submitted to MCC, as revised, by the Government on September 5, 2005.

Provider shall have the meaning set forth in Section 2.4(b).

PRSP means the Poverty Reduction Strategy Paper.

RAPs means Resettlement Action Plans.

Re-Disbursement is the release of MCC Funding from a Permitted Account.

Registration Activity is the Project Activity related to achieving formal property rights under the Land Project described in Section 2(b) of Schedule 1 of Annex I.

Reviewer shall have the meaning set forth in Section 3(h) of Annex I.

Services and Information Activity is the Project Activity related to improving land registration services and land information management under the Land Project described in Section 2(c) of Schedule 1 of Annex I.

Special Account means a single, completely separate U.S. Dollar interest-bearing account at a commercial bank, acceptable to MCC, to receive MCC Disbursements.

Studies Activity means the feasibility studies and assessments Project Activity of the Markets Project described in Section 2(a) of Schedule 4 to Annex I.

Supplemental Agreement shall have the meaning set forth in Section 3.5(b).

Supplemental Agreement between the Parties means any agreement between MCC on the one hand, and the Government or any Government Affiliate or Permitted Designee on the other hand.

Supplemental Agreement Term Sheets means one or more term sheets that the Government (or mutually acceptable Government Affiliate) and MCC shall execute that set forth the material and principal terms and conditions of each of the Supplemental Agreements identified in Exhibit B attached hereto.

Support Strategy Activity is the Project Activity related to strategy and programmatic coordination under the Land Project described in Section 2(e) of Schedule 1 of Annex I.

Target means each Indicator will have one or more targets that quantifies the result and the expected time by which that result will be achieved.

Tax(es) shall have the meaning set forth in Section 2.3(e)(i).

TEU means twenty-foot equivalent unit, in Euro.

TPI shall have the meaning set forth in Section 2(c)(v) of Schedule 3 to Annex I.

United States Dollars (USD) means the currency of the United States of America.

United States Government shall mean any branch, agency, bureau, government corporation, government chartered entity or other body of the Federal government of the United States.

WAEMU means the West African Economic and Monetary Union.

Waterside Improvements Activity means the waterside improvements Project Activity described in Section 2(d) of Schedule 4 to Annex I.

Work Plans means work plans for the overall administration of the Program and for each Project.

Exhibit B—List of Certain Supplemental Agreements

1. Governing Document Principles.
2. Fiscal Agent Agreement.
3. Procurement Agent Agreement.
4. Form of Implementing Entity Agreement.
5. Form of Bank Agreement.

Schedule 2.1(a)(iii)—Description of Compact Implementation Funding

Compact Implementation Funding

The Compact Implementation Funding provided pursuant to Section 2.1(a)(iii) shall support the following activities and expenditures in an amount not to exceed the amounts specified below:

(a) Conduct some or all Initial Technical Studies as described in Section 2(a)(i) of Schedule 4 of Annex I, in an amount not to exceed USD $800,000.[a]*

(b) Conduct the activities related to the 2006 Baseline Data Survey as described in Section 2(a)(i) of Annex III, including: communication and transportation of survey staff, supervision and quality assurance, and data management, in an amount not to exceed USD $600,000.*

(c) Conduct fiscal and procurement administration activities, in an amount not to exceed USD $500,000.*

(d) Payments for reasonable and normal staff salaries and administrative expenses of MCA-Benin (or mutually acceptable Government Affiliate) such as rent, computers, and other information technology equipment, in an amount not to exceed USD $500,000.*

Annex I—Program Description

This Annex I to the Compact (the ''Program Annex'') generally describes the Program that MCC Funding will support in Benin during the Compact Term and the results to be achieved from the investment of MCC Funding. Prior to any MCC Disbursement or Re-Disbursement, including for the Projects described herein, MCC, the Government (or a mutually acceptable Government Affiliate) and MCA-Benin shall enter into a Supplemental Agreement that (i) further specifies the terms and conditions of such MCC Disbursements and Re-Disbursements, (ii) is in a form and substance mutually satisfactory to the Parties, and (iii) is signed by the Principal Representative of each Party (or in the case of the Government, the principal representative of the applicable Government Affiliate) and of MCA-Benin (the ''Disbursement Agreement''). Except as specifically provided herein, the Parties may amend this Program Annex only by written agreement signed by the Principal Representative of each Party. Each capitalized term in this Program Annex shall have the same meaning given such term elsewhere in this Compact. Unless otherwise expressly stated, each Section reference herein is to the relevant Section of the main body of the Compact.

1. Background and Benin Development Strategy; Consultative Process

(a) Background and Benin Development Strategy

Situated in West Africa, between Nigeria and Togo in the Gulf of Guinea, Benin is a small and very poor country with a population of nearly seven million, a third of which live in poverty. Progress in development is largely a result of reforms initiated in the early 1990s as Benin transitioned from a Marxist-Leninist state towards a pluralistic democracy and market economy.

Despite growth rates averaging 5% per year in the past decade, per capita income in Benin remains below the sub-Sahara African average and rural poverty has increased in recent years. Private sector activity and broad-based investment that would lead to sustainable growth and poverty reduction are hindered by land insecurity, lack of access to capital, an inefficient judicial system, and an uncompetitive Port of Cotonou.

The Program is a series of strategic investments designed to increase investment and private sector activity by improving core physical and institutional infrastructure. The objectives of the Compact are fully consistent with, and directly support, the priority areas identified by the Government in the Poverty Reduction Strategy Paper (''PRSP''). Benin's PRSP was developed in 2002 with broad participation from Beninese society. Its development plan is based on four pillars: (i) Strengthening the macroeconomic framework over the medium-term; (ii) developing human capital and environmental management; (iii) strengthening good governance and institutional capacity; and (iv) promoting employment and strengthening the ability of the poor to participate in decision-making and production processes. The Program is focused primarily on supporting the fourth pillar of the PRSP.

(b) Consultative Process

The Proposal was the product of a genuine, meaningful and participatory consultative process. By decree, the Government designated the National Coordinator of the Millennium Challenge Account (''MCA National Coordinator''), empowered the Benin National Committee (''BNC'') to oversee the Proposal development and charged a Technical Team with shaping the Proposal. The MCA National Coordinator sought the participation of various stakeholders through workshops, meetings, and radio and television events. Initially a vision for the Program was presented to representatives from the government (both central and municipal), the private sector, civil society, labor unions, artisans, and the agricultural sector. Among these groups, members were elected or delegated by their respective constituencies to form the BNC. This MCA working group consists of six government Ministers, three Chamber of Commerce representatives, three civil society representatives (elected), three labor union representatives, two representatives of the Agricultural Chamber (elected), and one representative of the artisan community. Included in the working group are two women, the Vice President of the Chamber of Commerce and another who was elected by NGOs promoting women's rights.

Working sessions were held based on the PRSP to discuss the major constraints to growth. Several iterations of the Proposal's projects were vetted by a broad audience through nationally broadcast radio programs to garner feedback from the targeted beneficiaries. In September the MCA National Coordinator convened a stakeholder meeting in which mayors from all 77 communes, and representatives of microfinance institutions, the donor community and the central government gathered to discuss the land tenure, and financial services components of the Proposal. Continuing consultation

[a]* Notwithstanding the amount specified for this activity or payment, the total amount of funds disbursed in accordance with Section 2.1(a)(iii) shall not exceed the amount set forth in Section 2.1(a)(iii).

throughout the proposal development process has resulted in widespread endorsement by potential beneficiaries. On-going consultations with stakeholders and beneficiaries are planned during the Compact Term, including at the Project-level.

Following MCC's review of the Proposal and discussions and negotiations of the Parties, the Parties have identified certain mutually acceptable components of the Proposal and other components developed through the discussions of the Parties that together shall constitute the Program. The Program is fully consistent with, and directly supports PRSP, in particular the promoting employment and strengthening the ability of the poor to participate in decision-making and production processes as noted above.

2. Overview

(a) Program Objectives. The Program Goal and Objectives of the Compact are expected to have a substantial impact on increasing economic growth and reducing poverty in Benin. The Program will accelerate economic growth and reduce poverty by removing constraints to investment in key sectors of the Beninese economy. The Program aims to increase investment and private sector activity by improving key institutional and physical infrastructures through four Projects: Access to Land, Access to Financial Services, Access to Justice, and Access to Markets. Respectively, the Projects will address: Insecure land tenure rights; insufficient access to financial services for micro, small and medium-enterprises (MSMEs); an inefficient and under-equipped judicial system; and the degrading competitiveness of the Port. The Projects are complementary and support each other. The Land Project and Financial Services Project will enhance the use of land titles as collateral for loans or refinancing. The Justice Project will support this relationship by increasing the confidence in the judicial system to enforce contracts and collateral interests. The Markets Project will increase the flow of goods through the Port of Cotonou. In turn, improvements to the physical infrastructure will enhance the success of Projects focusing on the institutional environment. The sequencing and geographic selection criteria for activities undertaken in Projects will be influenced by each of the other Projects.

(b) Projects. The Parties have identified, for each Objective, Projects that the Government will implement, or cause to be implemented, using MCC Funding. Each Project is described in the Schedules to this Program Annex. The Schedules to this Program Annex identify the activities that will be undertaken in furtherance of each Project (each, a ''Project Activity'') as well as the various activities within a Project Activity. Notwithstanding anything to the contrary in this Compact, the Parties may agree to modify, amend, terminate or suspend these Projects or to create a new project by written agreement signed by the Principal Representative of each Party without amending this Compact; provided, however, any such modification or amendment of a Project or creation of a new project is (i) consistent with the Objectives; (ii) does not cause the amount of MCC Funding to exceed the aggregate amount specified in Section 2.1(a) of this Compact; (iii) does not cause the Government's responsibilities or contribution of resources to be less than specified in Section 2.2 of this Compact or elsewhere in this Compact; and (iv) does not extend the Compact Term. Certain Project Activities of the Program such as the policy reforms, the extension of financial services and court services, and improvements to the Port, will have an impact at the national level. The Land Project will be undertaken in targeted geographic areas of Benin, which are yet to be determined, but will be selected based on the criteria set forth in the applicable Schedule.

(c) Beneficiaries. The intended beneficiaries of each Project are described in the respective Schedule to this Program Annex and Annex III to the extent identified as of the date hereof. The intended beneficiaries shall be identified more precisely during the initial phases of implementation of the Program. The Government shall provide to MCC information on the population of the areas in which the Projects will be active, disaggregated by gender, income level and age. The Parties shall agree upon the description of the intended beneficiaries and the Parties will make publicly available a more detailed description of the intended beneficiaries of the Program, including publishing such description on the MCA-Benin Website. For each Project, the Government shall ensure that MCA-Benin presents to the Advisory Council (i) a detailed description of the intended beneficiaries and (ii) the methodology used to determine the intended beneficiaries within sixty (60) days after the commencement of the Project implementation and completion of the analysis of the intended beneficiaries therein, disaggregated, to the maximum extent practicable, by income level, gender, and age. The Land Project is expected to assist an estimated 115,000 rural and urban households with more secure and useful tenure, contribute to a 50% reduction in court cases related to land disputes, and result in a 10% increase in investment in rural land and a 20% increase in investment in urban property. The Financial Services Project is expected to increase MSME value added and incomes of the poor that own, are employed by, or do business with those enterprises. The expected result is that by the end of the Compact Term, financial services to MSMEs will have expanded by nearly $60 million, which represents a multiple of three times the Project's funding. A more efficient Port will contribute to importer and exporter value-added through reducing transportation costs. Moreover, because Benin's road transport industry is relatively competitive, it is likely that the anticipated reduction in shipping costs will be passed on to wholesalers and traders, and ultimately be reflected in consumer prices. The Justice Project is expected to benefit land occupants, title holders, businesses and legal professionals in the jurisdictions where the Project will be active.

Overall, the Program is expected to impact an estimated five million beneficiaries and raise one quarter of a million Beninese out of poverty by 2015.

(d) Civil Society. Civil Society shall participate in overseeing the implementation of the program through its representation on the Board of Directors and the Advisory Council (which will include representatives from non-governmental organizations and private sector entities), as provided in Section 3(d) and Section 3(e), respectively, of this Program Annex. Stakeholders will be able to weigh in by a Land Project steering group and discussion groups for studies, the White Paper, and related legislative drafting. The Financial Services Project and the Markets Project will also incorporate the input of Stakeholders in advisory committees comprising non-governmental organizations and private sector entities. Finally, members of civil society may be recipients of training, technical assistance, or other public awareness programs that are integral to the Projects. In addition, the Work Plans or Procurement Plans for each Project shall note the extent to which civil society will have a role in the implementation of or participation in a particular Project or Project Activity.

(e) Monitoring and Evaluation (''M&E''). Annex III of this Compact generally describes the plan to measure

and evaluate progress toward achievement of the Compact Goal and Objectives of this Compact (the ''M&E Plan''). As outlined in the Disbursement Agreement and other Supplemental Agreements, continued disbursement of MCC Funding under this Compact (whether as MCC Disbursements and Re-Disbursements) shall be contingent, among other things, on successful achievement of targets set forth in the M&E Plan.

3. Implementation Framework

The implementation framework and the plan for ensuring adequate governance, oversight, management, monitoring, evaluation and fiscal accountability for the use of MCC Funding is summarized below and in the Schedules attached to this Program Annex, or as may otherwise be agreed in writing by the Parties.

(a) General. The elements of the implementation framework will be further described in relevant Supplemental Agreements and in a detailed plan for the implementation of the Program and each Project, which will be memorialized in one or more documents and shall consist of a Multi-Year Financial Plan, Detailed Financial Plans, a Fiscal Accountability Plan, a Procurement Plan, Program and Project Work Plans, and an M&E Plan (the ''Implementation Plan''). MCA-Benin shall adopt each component of the Implementation Plan in accordance with the requirements and timeframe as may be specified in this Program Annex, the Disbursement Agreement or as may otherwise be agreed by the Parties from time to time. MCA-Benin may amend the Implementation Plan or any component thereof without amending this Compact, provided any material amendment of the Implementation Plan or any component thereof has been approved by MCC and is otherwise consistent with the requirements of this Compact and any relevant Supplemental Agreement between the Parties. By such time as may be specified in the Disbursement Agreement or as may otherwise be agreed by the Parties from time to time, MCA-Benin shall adopt one or more work plans for the overall administration of the Program and for each Project (collectively, the ''Work Plans''). The Work Plan(s) shall set forth the details of each activity to be undertaken or funded by MCC Funding as well as the allocation of roles and responsibilities for specific Project activities, or other programmatic guidelines, performance requirements, targets, or other expectations for a Project.

(b) Government.

(i) The Government shall promptly take all necessary and appropriate actions to carry out the Government Responsibilities and other obligations or responsibilities of the Government under and in furtherance of this Compact, including undertaking or pursuing such legal, legislative or regulatory actions or procedural changes and contractual arrangements as may be necessary or appropriate to achieve the Objectives, to successfully implement the Program, to designate any rights or responsibilities to any Permitted Designee, and to establish a legal entity, in a form mutually agreeable to the Parties, the form, structure and other features of such legal entity to be determined and agreed upon by the Parties on or before the time specified in the Disbursement Agreement (''MCA-Benin''), which shall be a Permitted Designee and shall be responsible for the oversight and management of the implementation of this Compact on behalf of the Government. The Government shall promptly deliver to MCC certified copies of any documents, orders, decrees, laws or regulations evidencing such legal, legislative, regulatory, procedural, contractual or other actions.

(ii) The Government shall ensure that MCA-Benin is duly authorized and organized, sufficiently staffed and empowered to fully carry out the Designated Rights and Responsibilities. Without limiting the generality of the preceding sentence, MCA-Benin shall be organized, and have such roles and responsibilities, as described in Section 3(d) of this Program Annex and as provided in any Governing Documents; provided, however, the Government or another Permitted Designee may, subject to MCC approval, carry out any of the roles and responsibilities designated to be carried out by MCA-Benin and described in Section 3(d) of this Program Annex or elsewhere in this Program Annex, any Governing Document, or any other Supplemental Agreement prior to and during the initial period of the establishment and staffing and operational formation of MCA-Benin, but in no event longer than the earlier of (1) the formation and convening of organizational meetings of the Steering Committee, formation and operational establishment of MCA-Benin (including the selection and engagement of Officers and key employees), and engagement of the Officers and (2) six months from the Entry into Force, unless otherwise agreed by the Parties in writing.

(iii) Various ministries, bureaus and agencies of the Government may serve as Implementing Entities.

(c) MCC.

(i) Notwithstanding Section 3.1 of this Compact or any provision in this Program Annex to the contrary, and except as may be otherwise agreed upon by the Parties from time to time, MCC must approve in writing each of the following transactions, activities, agreements and documents prior to the execution or carrying out of such transaction, activity, agreement or document and prior to MCC Disbursements or Re-Disbursements in connection therewith:

(1) MCC Disbursements;

(2) Each Detailed Financial Plan, and any amendments thereto;

(3) The Multi-Year Financial Plan and any amendments and annual supplements thereto;

(4) Any Audit Plan;

(5) Agreements (i) between the Government and MCA-Benin, (ii) between the Government, a Government Affiliate, MCA-Benin or any other Permitted Designee on the one hand, and any Provider or Affiliate of a Provider, on the other hand, which require such MCC approval under applicable law, the Procurement Agreement, any Governing Document, or any other Supplemental Agreement or (iii) in which the Government, a Government Affiliate, MCA-Benin or any other Permitted Designee appoints, hires, or engages any of the following in furtherance of this Compact:

(A) Auditor;

(B) Reviewer;

(C) Fiscal Agent;

(D) Procurement Agent;

(E) Each Bank;

(F) Outside Project Manager;

(G) Implementing Entity; and

(H) Board of Directors member, Observer, Officer, and other key employee of MCA-Benin (including any compensation for such person).

(Any agreement described in clause (i) through (iii) of this Section 3(c)(i)(5) and any amendments and supplements thereto, each, a ''Material Agreement'');

(6) Any modification, termination or suspension of a Material Agreement, or any action that would have the effect of such a modification, termination or suspension of a Material Agreement;

(7) Any agreement that is (A) not at arm's length or (B) with a party related to the Government or MCA-Benin or any of their respective Affiliates;

(8) Any Re-Disbursement (each, a ''Material Re-Disbursement'') that requires such MCC approval under applicable law, the Procurement

Agreement, any Governing Document, or any Supplemental Agreement;

(9) Any terms of reference (each, a ''Material Terms of Reference'') for the procurement of goods, services or works that requires such MCC approval under applicable law, the Procurement Agreement, any Governing Document, or any Supplemental Agreement;

(10) The Implementation Plan, including each component plan thereto, and any material amendments and supplements to the Implementation Plan or any component thereto;

(11) Any pledge of any MCC Funding or any Program Assets or any guarantee directly or indirectly of any indebtedness (each, a ''Pledge'');

(12) Any decree, legislation, regulation, contractual arrangement (including a governance agreement by and among the Government (or a mutually acceptable Government Affiliate), MCA-Benin and MCC), or other charter document establishing or governing MCA-Benin (''Governing Document'');

(13) Any disposition (in whole or in part), liquidation, dissolution, winding up, reorganization or other change of (A) MCA-Benin, including any revocation or modification of or supplement to any Governing Document related thereto, or (B) any subsidiary or Affiliate of MCA-Benin;

(14) Any change in character or location of any Permitted Account;

(15) Formation or acquisition of any subsidiary (direct or indirect) or other Affiliate of MCA-Benin;

(16) Any (A) change of a Board of Directors member, Observer, Officer or other key employee or contractor of MCA-Benin, or change in the composition of the Board of Directors of MCA-Benin, including approval of the nominee for Chair, (B) filling of any vacant seat of the Chair, Board of Directors member, or an Observer or vacant position of an Officer, key employee or contractor of MCA-Benin, (C) filling of the seats designated as representatives nominated by the Advisory Council, if any, to the Board of Directors, and (D) filling any vacant seat on the Advisory Council;

(17) The management information system to be developed and maintained by the Management of MCA-Benin, and any material modifications to such system;

(18) Any decision to amend, supplement, replace, terminate, or otherwise change any of the foregoing; and

(19) Any other activity, agreement, document or transaction requiring the approval of MCC in this Compact, applicable law, any Governing Document, the Procurement Agreement, the Disbursement Agreement, or any other Supplemental Agreement between the Parties. The Chair of the Board of Directors (the ''Chair'') and/or the National Coordinator of MCA-Benin (the ''National Coordinator'') or other designated Officer, as provided in applicable Governing Document, shall certify any documents or reports delivered to MCC in satisfaction of the Government's reporting requirements under this Compact or any Supplemental Agreement between the Parties (the ''Compact Reports'').

(ii) MCC shall have the authority to exercise its approval rights set forth in this Section 3(c) in its sole discretion and independent of any participation or position taken by the MCC Representative at a meeting of the Board of Directors. MCC retains the right to revoke its approval of any matter, agreement, or action if MCC concludes, in its sole discretion, that its approval was issued on the basis of incomplete, inaccurate or misleading information furnished by the Government, MCA-Benin, or any Government Affiliate or Permitted Designee. Notwithstanding any provision in this Compact or any Supplemental Agreement to the contrary, the exercise by MCC of its approval rights under this Compact or any Supplemental Agreement shall not (1) diminish or otherwise affect the Government Responsibilities or any other obligations or responsibilities of the Government under this Compact or any Supplemental Agreement, (2) transfer any such obligations or responsibilities of the Government, or (3) otherwise subject MCC to any liability.

(d) MCA-Benin.

(i) General. Unless otherwise agreed by the Parties in writing, MCA-Benin shall, as a Permitted Designee, be responsible for the oversight and management of the implementation of this Compact. MCA-Benin shall be governed by applicable law and any Governing Documents, each such Governing Document to be in a form and substance satisfactory to MCC and effective on or before the time specified in the Disbursement Agreement, and based on the following principles:

(1) The Government shall ensure that MCA-Benin shall not assign, delegate or contract any of the Designated Rights and Responsibilities without the prior written consent of the Government and MCC. MCA-Benin shall not establish any Affiliates or subsidiaries (direct or indirect) without the prior written consent of the Government and MCC.

(2) Unless otherwise agreed by the Parties in writing, MCA-Benin shall consist of (a) an independent board of directors (the ''Board'') to oversee MCA-Benin's responsibilities and obligations under this Compact (including any Designated Rights and Responsibilities) and (b) a management team or national program coordination team (''Management'') to have overall management responsibility for the implementation of this Compact.

(ii) Board.

(1) Formation. The Government shall ensure that the Board shall be formed, constituted, governed and operated in accordance with the terms and conditions set forth in the applicable Governing Document and any other relevant Supplemental Agreement.

(2) Composition. Unless otherwise agreed by the Parties in writing, the Board shall consist of at least nine (9) and no more than eleven (11) voting members, one of whom shall be appointed as the Chair as provided in applicable law, any Governing Document and subject to MCC approval, and the non-voting observers identified below.

(A) The Board shall initially be composed of eleven voting members as follows, provided that the Government members identified in subsections (i)—(vi) below (the ''Government Members'') may be replaced by another government official of comparable rank from a ministry or other government body relevant to the Program activities, subject to approval by the Government and MCC (such replacement to be referred to thereafter as a Government Member):

(i) Chief of Staff of the Office of the Presidency of the Republic of Benin;

(ii) Chief of Staff of the Ministry of Economy and Finance;

(iii) Chief of Staff of the Ministry of Planning and Development;

(iv) Chief of Staff of the Ministry of Agriculture;

(v) Chief of Staff of the Ministry of Public Works and Transportation;

(vi) Chief of Staff of the Ministry of the Environment, Housing and Urban Planning;

(vii) Representative from civil society (selected following a national assembly of the non-governmental organizations and civil society and based upon selection criteria to be agreed by the Parties, including the capacity and expertise of the individual to hold such position);

(viii) President of the Chamber of Commerce and Industry;

(ix) The Chairman of the Chamber of Agriculture;

(x) Representative from the Mayors' Council (which shall be the public official holding the relevant office as

such office is selected following a national assembly of the mayors throughout Benin); and

(xi) A member of the Board of the National Assembly as designated by the National Assembly.

(B) The non-voting observers (each, an ''Observer'') shall be:

(i) A representative designated by MCC (the ''MCC Representative'');

(ii) A representative from the Advisory Council; and

(iii) Representatives-elect for Civil Members (defined below), who will be non-voting observers for a one-year period.

(C) Each Government Member position shall be filled by the individual, during the Compact Term, holding the office identified and such individuals shall serve in their capacity as the applicable Government official and not in their personal capacity; in the event that such member is unable to participate in a meeting of the Board such member's principal deputy may participate in the member's stead.

(D) The positions identified in Section 3(d)(ii)(2)(A)(vii)–(xi) of this Program Annex shall be each individually referred to as a ''Civil Member'' and collectively as ''Civil Members.'' Each Civil Member position shall be filled by the individual, during the Compact Term, holding the office or position identified in, or selected pursuant to, Section 3(d)(ii)(2)(A)(viii)—(xi) and such individuals shall serve in their capacity as the incumbent in such office or position and not in their personal capacity; in the event that such member is unable to participate in a meeting of the Board such member's principal deputy may participate in the member's stead, provided, however, any action shall be taken only by a proxy signed by the Civil Member. The Civil Member identified in Section 3(d)(ii)(2)(A)(vii) shall serve in their personal capacity and if such member is unable to participate in a meeting of the Board, such member may only send a substitute as permitted in the applicable Governing Document, provided, any action shall be taken only by a proxy signed by the Civil Member. The term of each Civil Member's appointment to the Board shall be thirty (30) months; other than the Civil Member identified in Section 3(d)(2)(ii)(A)(viii) and (ix) which position shall be filled by the individual holding such position during the Compact Term; provided, further if the Civil Member designated pursuant to Section 3(d)(ii)(2)(A)(xi) resigns or is removed from the Board of the National Assembly, the National Assembly shall designate another member of the Board of the National Assembly to fill this seat on the Board.

(E) The voting members identified in Section 3(d)(ii)(2)(A) by majority vote may alter the size of the Board in accordance with the applicable Governing Document, so long as the total does not exceed eleven members; in the event that such action is taken, any change in the composition of the voting seats shall be subject to the approval of the Government and MCC.

(F) Subject to the Governing Documents, the Parties contemplate that the Chief of Staff of the Office of the Presidency shall initially fill the seat of Chair.

(G) Each Observer shall have rights to attend all meetings of the Board, participate in the discussions of the Board, and receive all information and documents provided to the Board, together with any other rights of access to records, employees or facilities as would be granted to a member of the Board under any Governing Document.

(H) The voting members identified in Section 3(d)(ii)(2)(A) shall exercise their duties solely in accordance with the best interests of MCA-Benin and the Program and its Objectives and may not undertake any action that is contrary to those interests or would result in personal gain or a conflict of interest.

(3) Roles and Responsibilities.

(A) The Board shall oversee the Management, the overall implementation of the Program, and the performance of the Designated Rights and Responsibilities.

(B) Certain actions may be taken and certain agreements, documents or instruments executed and delivered, as the case may be, by MCA-Benin only upon the approval and authorization of the Board provided under applicable law or as set forth in any Governing Document, including each MCC Disbursement Request, selection or termination of certain Providers, any component of the Implementation Plan, certain Re-Disbursements and certain terms of reference.

(C) The Chair shall certify the approval by the Board of all Compact Reports or any other documents or reports from time to time delivered to MCC by MCA-Benin (whether or not such documents or reports are required to be delivered to MCC), and that such documents or reports are true, correct and complete.

(D) Without limiting the generality of the Designated Rights and Responsibilities that the Government may designate to MCA-Benin, and subject to MCC's contractual rights of approval as set forth in Section 3(c) of this Program Annex or elsewhere in this Compact or any relevant Supplemental Agreement, the Board shall have the exclusive authority as between the Board and the Management for all actions defined for the Board in any Governing Document and which are expressly designated therein as responsibilities that cannot be delegated further.

(4) Indemnification of Civil Members; Observers; and Officers. The Government shall ensure, at the Government's sole cost and expense, that appropriate insurance is obtained and appropriate indemnifications and other protections are provided, acceptable to MCC and to the fullest extent permitted under the laws of the Republic of Benin, to ensure that (A) as Civil Members and Observers shall not be held personally liable for the actions or omissions of the Board or MCA-Benin and (B) as Officers shall not be held personally liable for the actions or omissions of the Board, MCA-Benin or actions or omissions of the Officer so long as properly within the scope of Officer's authority. Pursuant to Section 5.5 and Section 5.8 of this Compact, the Government and MCA-Benin shall hold harmless the MCC Representative for any liability or action arising out of the MCC Representative's role as a non-voting observer on the Board. The Government hereby waives and releases all claims related to any such liability and acknowledges that the MCC Representative has no fiduciary duty to MCA-Benin. In matters arising under or relating to the Compact, the MCC Representative is not subject to the jurisdiction of the courts or any other body of Benin. MCA-Benin shall provide a written waiver and acknowledgement that no fiduciary duty to MCA-Benin is owed by the MCC Representative.

(iii) Management. Unless otherwise agreed in writing by the Parties, the Management shall report, through the National Coordinator or other Officer as designated in any Governing Document, directly to the Board and shall have the composition, roles and responsibilities described below and set forth more particularly in any Governing Document.

(1) Appointment of the National Coordinator. The National Coordinator of MCA-Benin shall be selected by the Board and hired after an open and competitive recruitment and selection process, which appointment shall be subject to MCC approval. Such appointment shall be further evidenced by such document as the Parties may agree.

(2) Appointment of Other Officers. Unless otherwise specified in any

Governing Document, the other Officers of MCA-Benin shall be selected and hired by the National Coordinator after an open and competitive recruitment and selection process, which appointment shall be subject to the approval of the Board and MCC.

(3) Composition. The Government shall ensure that the Management shall be composed of qualified experts from the public or private sectors, including such offices and staff as may be necessary to carry out effectively its responsibilities, each with such powers and responsibilities as set forth in any Governing Document, and from time to time in any Supplemental Agreement between the Parties, including without limitation the following: (i) National Coordinator; (ii) Administration and Finance Director; (iii) Monitoring and Evaluation Director; (iv) Land Project Director, Financial Services Project Director, Justice Project Director and Markets Project Director (each a, ''Project Director''); (v) Environmental and Social Assessment Director; (vi) Legal Counsel and (vii) Procurement Director (the persons holding the positions in sub-clauses (i) through (vii) and such other offices as may be created and designated in accordance with any Governing Document and any other Supplemental Agreement between the Parties, shall be collectively referred to as ''Officers''). In addition, MCA-Benin will have an implementation staff in each of the Project divisions as described below and administrative or other assistants and staff in other divisions as appropriate and budgeted in the Detailed Financial Plan and provided for in the applicable Work Plan or other Implementation Plan component, and as otherwise agreed by MCC. The Administration and Finance Division and the Procurement Division shall have separate authorizations, duties and responsibilities and each shall report directly only to the National Coordinator and the Board. The Parties contemplate that for purposes of the initial period of operations, and in no event longer than six months, MCA-Benin may appoint an acting National Coordinator, subject to the approval of MCC; provided, following such period, the Board shall ratify the actions of such acting National Coordinator and the Board shall select a permanent National Coordinator through a competitive selection process and subject to MCC approval in accordance with this Annex I. The divisions that manage the implementation of each Project (''Project Division'') shall have the following general organizational structure, or such other structure as may be agreed by the Parties in writing and specified in the applicable Governing Document:

(A) Land Project Division. In addition to the Project Director, there shall be (i) a Senior Land Administration Advisor for period to be specified in the Work Plan, (ii) a National Land Policy Reform Coordinator, and (iii) up to two Activity Implementation Managers. The Land Project Division will also receive feedback and input from a stakeholders group (the ''Land Project Steering Group''), the composition and formation of which shall be specified in the applicable Governing Document or Implementation Plan.

(B) Financial Services Project Division. In addition to the Project Director, there shall be (i) an Enabling Environment Activity Coordinator and (ii) a Capacity Building Activity Coordinator. The Financial Services Project Division will also receive feedback and input from a stakeholders group (the ''Financial Advisory Committee''), the composition and formation of which shall be specified in the applicable Governing Document or Implementation Plan.

(C) Justice Project Division. In addition to the Project Director, there shall be a Justice Project Coordinator. The Justice Project Division will also receive feedback and input from a stakeholders group (the ''Justice Advisory Committee''), the composition and formation of which shall be specified in the applicable Governing Document or Implementation Plan component.

(D) Markets Project Division. The Markets Project Division will also receive feedback and input from a stakeholders group representing the Markets Project beneficiaries (the ''Port Advisory Committee''), the composition and formation of which shall be specified in the applicable Governing Document or Implementation Plan.

(4) Roles and Responsibilities.

(A) Management shall assist the Board in overseeing the implementation of the Program and shall have principal responsibility (subject to the direction and oversight of the Board and subject to MCC's contractual rights of approval as set forth in Section 3(c) of this Program Annex or elsewhere in this Compact or any relevant Supplemental Agreement) for the overall management of the implementation of the Program.

(B) Without limiting the foregoing general responsibilities or the generality of Designated Rights and Responsibilities that the Government may designate MCA-Benin, Management shall develop the components of the Implementation Plan, oversee the implementation of the Projects, manage and coordinate monitoring and evaluation, maintain internal accounting records, conduct and oversee certain procurements, and such other responsibilities as set out in the applicable Governing Document or delegated to Management by the Board from time to time.

(C) Appropriate Officers as designated in the Governing Documents shall have the authority to contract on behalf of MCA-Benin under any procurement under the Program undertaken in accordance with the Procurement Agreement and Procurement Guidelines.

(D) Management shall have the obligation and right to approve certain actions and documents or agreements, including certain Re-Disbursements, MCC Disbursement Requests, Compact Reports, certain human resources decisions and other certain actions, as provided in the applicable Governing Document.

(5) Additional Resources. Management, on behalf of MCA-Benin, shall have the authority to engage qualified persons or entities to serve as outside project managers (each, an ''Outside Project Manager'') in the event that it is advisable to do so for the proper and efficient day-to-day management of a Project; provided, however, that the appointment or engagement of any Outside Project Manager, after a competitive selection process, shall be subject to approval by the Board and MCC prior to such appointment or engagement. Upon Board approval, Management, on behalf of MCA-Benin, may delegate, assign, or contract to the Outside Project Managers such duties and responsibilities as it deems appropriate with respect to the management of the Implementing Entities and the implementation of the specific Projects or Project Activities, subject to Section 3.2(c) of the Compact; provided, however, that the Management and the relevant Project Manager shall remain accountable for those duties and responsibilities and all reports delivered by the Outside Project Manager. Independent of any request from Management, the Board may determine that it is advisable for MCA-Benin to engage one or more Outside Project Managers and the Board may direct Management to commence and conduct the competitive selection process for such Outside Project Manager. Upon a finding by the Board that Management has not responded to such a Board directive, the Board may direct the Procurement Agent to commence and conduct the competitive selection process for one or more Outside Project Managers.

(e) Advisory Council.

(i) Formation and Composition. The Government shall ensure the establishment of an advisory council with both governmental, private sector and non-governmental representatives (the ''Advisory Council'') consisting of at least eight (8) and no more than eleven (11) members, unless otherwise agreed by the Parties, and comprised of the following members: (A) Chief of Staff of the Ministry of Foreign Affairs and African Integration; (B) Chief of Staff of the Ministry of Industry and Commerce; (C) Chief of Staff of the Ministry of the Interior, Security, and Decentralization; (D) Chief of Staff of the Ministry of Justice; (E) a representative from the Private Sector (selected following a national assembly of the private sector); (F) a representative from the labor unions (selected following a national assembly of the labor unions); (G) a representative from the regional organizations (selected following a national assembly of the regional organizations); and (H) a representative from the National Artisan Federation (selected following a national assembly of the National Artisan Federation). Representatives described in (E) through (H) shall be selected and vacancies filled in accordance with the manner and criteria set forth in the applicable Governing Document, subject to MCC approval. Following the selection of the representatives described in (E) through (H), the results of the selection shall be posted on the MCA-Benin Website and published in the local newspaper. The Government shall take all action necessary and appropriate actions to ensure the Advisory is established consistent with this Section 3(e) and as otherwise specified in the Governing Document or otherwise agreed in writing by the Parties. The composition of the Advisory Council may be adjusted by agreement of the Parties from time to time to ensure, among other things, a cross-section representative of the intended beneficiaries. The number of members of the Advisory Council may be increased, but in no event more than eleven (11), upon the majority vote of the then existing members and the vacancies created by such increase shall be filled by the majority vote of the then existing members, subject to the approval of the Government and MCC.

(1) Each member position identified in Sections 3(e)(i) of this Program Annex shall be filled by the individual, during the Compact Term, holding the office identified and such individuals shall serve in their capacity as the applicable Government official and not in their personal capacity. In the event that such member is unable to participate in a meeting of the Advisory Council such member's principal deputy may participate in the member's stead.

(2) In the event of a vacancy in positions identified in Sections 3(e)(i) (E) through (H) such vacancy to be filled by nomination of the organization or group for whom such seat is designated and in the same manner as described in Section 3(e)(i) for the initial designation and as otherwise set forth in the applicable Governing Document.

(ii) Role. The Advisory Council shall be a mechanism to provide representatives of the private sector, civil society and local and regional governments the opportunity to provide advice and input to MCA-Benin regarding the implementation of the Compact. During quarterly meetings of the Advisory Council, Management shall present an update on the implementation of this Compact and progress towards achievement of the Objectives. The Advisory Council will have an opportunity to regularly provide to the Board, via the Chair, its views or recommendations on the performance and progress on the Projects and Project Activities, components of the Implementation Plan, procurement, financial management or such other issues as may be presented from time to time to the Advisory Council or as otherwise raised by the Advisory Council. Management shall provide copies of the M&E Plan and related reports to the Advisory Council simultaneously with the transmittal to the Advisory Council of such documents and reports. The Board may, in response to the Advisory Council, require Management to provide such other information and documents as the Board deems advisable and subject to appropriate treatment of the information by the Advisory Council and its members.

(iii) Meetings. The Advisory Council shall hold quarterly meetings of the full Advisory Council as well as such other periodic meetings of the Advisory Council or subcommittees thereof designated along sectoral, regional, or other lines, as may be necessary or appropriate from time to time.

(iv) Board Observer. The Advisory Council shall nominate, by majority decision, one individual, either from the Advisory Council or otherwise, to serve as an Observer to the Board for a one-year term. The Advisory Council shall rotate its representative each year. Any vacancy of the Observer seat designated for the Advisory Council shall be filled by the Advisory Council in same manner as it would the annual nomination.

(v) Accessibility; Transparency. Advisory Council members will be accessible to the beneficiaries they represent to receive the beneficiaries' comments or suggestions regarding the Program. The minutes of all meetings of the Advisory Council meetings and any subcommittees shall be made public on the MCA-Benin Website in a timely manner.

(f) Implementing Entities. Subject to the terms and conditions of this Compact and any other Supplemental Agreement between the Parties, MCA-Benin may provide MCC Funding, directly or indirectly through an Outside Project Manager, to one or more Government Affiliates or to one or more nongovernmental organizations or other public- or private-sector entities or persons to implement and carry out the Projects or any other activities to be carried out in furtherance of this Compact (each, an ''Implementing Entity''). The Government shall ensure that MCA-Benin (or the appropriate Outside Project Manager) enters into an agreement with each Implementing Entity, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of such Implementing Entity and other appropriate terms and conditions, such as payment of the Implementing Entity (the ''Implementing Entity Agreement''). An Implementing Entity shall report directly to the relevant Project Manager or Outside Project Manager, as designated in the applicable Implementing Entity Agreement or as otherwise agreed by the Parties. The Implementing Entities shall be either (i) pre-determined ministries, bureaus or agencies of the Government based on their sector expertise with respect to certain activities or (ii) government bodies, businesses, micro-finance institutions (''MFIs'') and/or non-governmental organizations, vendors and contractors selected according to a the Procurement Guidelines.

(g) Fiscal Agent. The Government shall ensure that MCA-Benin engages one fiscal agent following an international competitive process (a ''Fiscal Agent'') who shall be responsible for, among other things: (i) Assisting MCA-Benin in preparing the Fiscal Accountability Plan, (ii) ensuring and certifying that Re-Disbursements are properly authorized and documented in accordance with established control procedures set forth in the Disbursement Agreement, the Fiscal Agent Agreement and other relevant Supplemental Agreements; (iii) Re-Disbursing from, cash management and

account reconciliation of a Bank Account established and maintained by the Fiscal Agent for the purpose of instructing Bank to make Re-Disbursements from a Permitted Account (to which Fiscal Agent has sole signature authority), following applicable certification by the Fiscal Agent; (iv) providing applicable certifications for MCC Disbursement Requests; (v) maintaining and retaining proper accounting, records and document disaster recovery system of all MCC Funded financial transactions and certain other accounting functions; (vi) producing reports on MCC Disbursements and Re-Disbursements (including any requests therefore) in accordance with established procedures set forth in the Disbursement Agreement, the Fiscal Agent Agreement, the Fiscal Accountability Plan, or any other relevant Supplemental Agreements, (vii) preparing budget development procedures and the Compact implementation budget, (viii) managing funds control, (ix) inventory control, and (x) internal management of the Fiscal Agent operations. Upon the written request of MCC, the Government shall ensure that MCA-Benin terminates the Fiscal Agent, without any liability to MCC, and the Government shall ensure that MCA-Benin engages a new Fiscal Agent, subject to the approval by the Board and MCC. The Government shall ensure that MCA-Benin enters into an agreement with each Fiscal Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Fiscal Agent and other appropriate terms and conditions, such as payment of the Fiscal Agent (each, a ''Fiscal Agent Agreement''), such Fiscal Agent Agreement shall not be terminated until MCA-Benin has engaged a successor Fiscal Agent or as otherwise agreed by MCC in writing.

(h) Auditors and Reviewers. The Government shall ensure that MCA-Benin carries out the Government's audit responsibilities as provided in Sections 3.8(d), (e) and (f) of this Compact, including engaging one or more auditors (each, an ''Auditor'') required by Section 3.8(d) of this Compact. As requested by MCC in writing from time to time, the Government shall ensure that MCA-Benin also engages (i) an independent reviewer to conduct reviews of performance and compliance under this Compact pursuant to Section 3.8(f) of this Compact, which reviewer shall have the capacity to (A) conduct general reviews of performance or compliance, (B) conduct environmental audits, (C) conduct data quality assessments in accordance with the M&E Plan, as described more fully in Annex III, and/or (ii) an independent evaluator to assess performance as required under the M&E Plan (each, a ''Reviewer''). MCA-Benin shall select the Auditor(s) or Reviewers in accordance with any Governing Document or other relevant Supplemental Agreement. The Government shall ensure that MCA-Benin enters into an agreement with each Auditor or Reviewer, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Auditor or Reviewer with respect to the audit, review or evaluation, including access rights, required form and content of the applicable audit, review or evaluation and other appropriate terms and conditions such as payment of the Auditor or Reviewer (the ''Auditor/Reviewer Agreement''). In the case of a financial audit required by Section 3.8(f) of the Compact, such Auditor/Reviewer Agreement shall be effective no later than 120 days prior to the end of the relevant fiscal year or other period to be audited; provided, however, if MCC requires concurrent audits of financial information or reviews of performance and compliance under this Compact, then such Auditor/Reviewer Agreement shall be effective no later than the date agreed by the Parties in writing.

(i) Procurement Agent. The Government shall ensure that MCA-Benin engages one or more procurement agents through international competitive process (each, a ''Procurement Agent'') to carry out and/or certify specified procurement activities in furtherance of this Compact on behalf of the Government, MCA-Benin, the Project Manager or Implementing Entity. The roles and responsibilities of such Procurement Agent and the criteria for selection of a Procurement Agent shall be as set forth in the applicable Implementation Letter or Supplemental Agreement. The Government shall ensure that MCA-Benin enters into an agreement with the Procurement Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Procurement Agent with respect to the conduct, monitoring and review of procurements and other appropriate terms and conditions, such as payment of the Procurement Agent (the ''Procurement Agent Agreement''). Any Procurement Agent shall adhere to the procurement standards set forth in the Procurement Agreement and Procurement Guidelines and ensure procurements are consistent with the procurement plan adopted by MCA-Benin pursuant to the Procurement Agreement (the ''Procurement Plan'').

4. Finances and Fiscal Accountability

(a) Financial Plans.

(i) Multi-Year Financial Plan. The multi-year financial plan for the Program and for each Project (the ''Multi-Year Financial Plan'') is summarized in Annex II to this Compact.

(ii) Detailed Financial Plan. During the Compact Term, the Government shall ensure that MCA-Benin timely delivers to MCC financial plans that specify respectively the annual and quarterly detailed budget and projected cash requirements for the Program (including monitoring and evaluation and administrative costs) and each Project, projected both on a commitment and cash requirement basis (each a ''Detailed Financial Plan''). Each Detailed Financial Plan shall be delivered by such time as specified in the Disbursement Agreement or as may otherwise be agreed by the Parties. The Multi-Year Financial Plan and each Detailed Financial Plan and each amendment, supplement or other change thereto are collectively, the ''Financial Plan.''

(iii) Expenditures. No financial commitment involving MCC Funding shall be made, no obligation of MCC Funding shall be incurred, and no Re-Disbursement shall be made or MCC Disbursement Request submitted for any activity or expenditure, unless the expense is provided for in the Detailed Financial Plan and unless uncommitted funds exist in the balance of the Detailed Financial Plan for the relevant period or unless the Parties otherwise agree in writing.

(iv) Modifications to Multi-Year Financial Plan or Detailed Financial Plan. Notwithstanding anything to the contrary in this Compact, MCA-Benin may amend or supplement the Multi-Year Financial Plan, or any component thereof or any Detailed Financial Plan without amending this Compact, provided any material amendment or supplement has been approved by MCC and is otherwise consistent with the requirements of this Compact including Section 4 of Annex II and any relevant Supplemental Agreement between the Parties; provided, however, MCA-Benin may modify the Detailed Financial Plan to reallocate MCC Funding without MCC prior approval to the extent that in the aggregate during the Compact Term the:

(1) Reallocation of funds within a Project would not reduce or increase any line item in the Detailed Financial Plan for a Project Activity more than the

lesser of 10% of such relevant line item in the Detailed Financial Plan or USD $2,000,000, taking into account any modifications made pursuant to paragraph (B) such that any modifications made pursuant to (A) and (B) in the aggregate shall not exceed USD $2,000,000;

(2) Re-allocation of funds within a Project Activity would not reduce or increase any line item in the Detailed Financial Plan for a sub-activity more than the lesser of 10% of the relevant line item in the Detailed Financial Plan or USD $2,000,000 taking into account any modifications made pursuant to paragraph (A) such that any modifications made pursuant to (A) and (B) in the aggregate shall not exceed USD $2,000,000;

(3) Re-allocation of funds between Projects would not reduce or increase any line item in the Detailed Financial Plan for a Project Activity more than the lesser of 10% of the relevant line item in the Detailed Financial Plan or USD $500,000;

(4) Re-allocation of funds within Monitoring and Evaluation category of the Detailed Financial Plan would not reduce or increase more than the lesser of 10% of the relevant line item in the Detailed Financial Plan for the M&E activity or USD $500,000; or

(5) Re-allocation of funds within Program Administration category of the Detailed Financial Plan would not reduce or increase more than the lesser of 10% of the relevant line item in the Detailed Financial Plan for the Program Administration expense category or USD $500,000.

With respect to any modification pursuant to subparagraphs (1)–(5) above, such modification (A) shall be consistent with the Objectives and the Implementation Plan; (B) shall not materially adversely impact the applicable Project, Project Activity, sub-activity, M&E activity or Program administration activity; (C) shall not cause the amount of MCC Funding to exceed the aggregate amount specified in Section 2.1(a) of this Compact; and (D) shall not cause the Government's obligations or responsibilities or overall contribution of resources to be less than as specified in Section 2.2(a) of this Compact, this Annex I or elsewhere in this Compact; provided, further, that MCA-Benin shall promptly deliver to MCC any such modified Detailed Financial Plan, together with a modified Multi-Year Financial Plan to reflect the corresponding modifications, and further reflected in the Detailed Financial Plan submitted with the MCC Disbursement Request at the next Disbursement Period.

(b) Disbursement and Re-Disbursement. The Disbursement Agreement (and disbursement schedules thereto), as amended from time to time, shall specify the terms, conditions and procedures on which MCC Disbursements and Re-Disbursements shall be made. The obligation of MCC to make MCC Disbursements or approve Re-Disbursements is subject to the fulfillment, waiver or deferral of any such terms and conditions. The Government and MCA-Benin shall jointly submit the applicable request for an MCC Disbursement (the ''MCC Disbursement Request'') as may be specified in the Disbursement Agreement. MCC will make MCC Disbursements in tranches to a Permitted Account from time to time as provided in the Disbursement Agreement or as may otherwise be agreed by the Parties, subject to Program requirements and performance by the Government, MCA-Benin and other relevant parties in furtherance of this Compact. Re-Disbursements will be made from time to time based on requests by an authorized representative of the appropriate party designated for the size and type of Re-Disbursement in accordance with any Governing Document and Disbursement Agreement; provided, however, unless otherwise agreed by the Parties in writing, no Re-Disbursement shall be made unless and until the written approvals specified herein or in any Governing Document and Disbursement Agreement for such Re-Disbursement have been obtained and delivered to the Fiscal Agent.

(c) Fiscal Accountability Plan. By such time as specified in the Disbursement Agreement or as otherwise agreed by the Parties, MCA-Benin shall adopt as part of the Implementation Plan a fiscal accountability plan that identifies the principles, mechanisms and procedures to ensure appropriate fiscal accountability for the use of MCC Funding provided under this Compact, including the process to ensure that open, fair, and competitive procedures will be used in a transparent manner in the administration of grants or cooperative agreements and the procurement of goods and services for the accomplishment of the Objectives (the ''Fiscal Accountability Plan''). The Fiscal Accountability Plan shall set forth, among other things, requirements with respect to the following matters: (i) Re-Disbursement, cash management and account reconciliation; (ii) funds control and documentation; (iii) accounting standards and systems; (iv) content and timing of reports; (v) preparing budget development procedures and the Compact implementation budget; (vi) policies concerning records, document disaster recovery and public availability of all financial information; (vii) procurement and contracting practices, including timely payment to vendors; (viii) inventory control; (ix) the role of independent auditors; (x) the roles of fiscal agents and procurement agents; (xi) separation of duties and internal controls; and (xii) certifications, powers, authorities and delegations.

(d) Permitted Accounts. The Government shall establish, or cause to be established, such accounts (each, a ''Permitted Account,'' and collectively ''Permitted Accounts'') as may be agreed by the Parties in writing from time to time, including:

(i) A single, completely separate U.S. Dollar interest-bearing account (the ''Special Account'') at a commercial bank, subject to MCC approval, that is procured through a competitive process;

(ii) If necessary, an interest-bearing local currency of Benin account (the ''Local Account'') at a commercial bank, subject to MCC approval, that is procured through a competitive process to which the Fiscal Agent may authorize transfer from any U.S. Dollar Permitted Account for the purpose of making Re-Disbursements payable in local currency; and

(iii) Such other interest-bearing accounts to receive MCC Disbursements in such banks as the Parties mutually agree upon in writing.

No other funds shall be commingled in a Permitted Account other than MCC Funding and Accrued Interest thereon. All MCC Funding held in an interest-bearing Permitted Account shall earn interest at a rate of no less than such amount as the Parties may agree in the respective Bank Agreement or otherwise. MCC shall have the right, among other things, to view any Permitted Account statements and activity directly on-line, where feasible, or at such other frequency as the Parties may otherwise agree. By such time as shall be specified in the Disbursement Agreement or as otherwise agreed by the Parties, the Government shall ensure that MCA-Benin enters into an agreement with each Bank, respectively, satisfactory to MCC, that sets forth the signatory authority, access rights, anti-money laundering and anti-terrorist financing provisions, and other terms related to the Permitted Account, respectively (each, a ''Bank Agreement''). For purposes of this Compact, the banks holding an account referenced in Sections 4(d) of this Program Annex are each a ''Bank'' and

are collectively referred to as the ''Banks.''

(e) Currency Exchange. The Bank shall convert MCC Funding to the currency of Benin at a rate to which the parties to the Bank Agreement mutually agree with the Bank in the Bank Agreement, subject to MCC approval.

5. Transparency; Accountability

Transparency and accountability to MCC and to the beneficiaries are important aspects of the Program and Projects. Without limiting the generality of the foregoing, in an effort to achieve the goals of transparency and accountability, the Government shall ensure that MCA-Benin:

(a) Establishes an e-mail suggestion box as well as a means for other written comments that interested persons may use to communicate ideas, suggestions or feedback to MCA-Benin.

(b) Considers as a factor in its decision-making the recommendations of the Board, particularly in MCA-Benin's deliberations over pending key Management decisions and key Board decisions as shall be specified in the relevant Governing Document.

(c) Develops and maintains the MCA-Benin Web site in a timely, accurate and appropriately comprehensive manner, such MCA-Benin Web site to include postings of information and documents in English and French.

(d) Posts on the MCA-Benin Website and otherwise makes publicly available via appropriate mediums (including radio and print) in the appropriate language the following documents or information from time to time:

(i) All minutes of the meetings of the Advisory Council and the meetings of the Board; provided, however, in certain instances of sensitivity and solely as specified and in accordance with the Governing Documents meeting minutes may be maintained solely in the corporate records of MCA-Benin without public release;

(ii) The M&E Plan, as amended from time to time, along with periodic reports on Program performance;

(iii) Such financial information as may be required by this Compact or as may otherwise be agreed from time to time by the Parties;

(iv) All Compact Reports;

(v) All audit reports by an Auditor and any periodic reports or evaluations by a Reviewer;

(vi) All relevant Environmental Impact Assessments and supporting documents, and such other environmental documentation as MCC may request;

(vii) A copy of the Disbursement Agreement, as amended from time to time;

(viii) A copy of any documents related to the formation, organization and governance of MCA-Benin including any Governing Documents, together with any amendments thereto;

(ix) A copy of the Procurement Agreement (including Procurement Guidelines), as amended from time to time and any procurement policies or procedures and standard documents; and

(x) A copy of information derived from each Procurement Plan, as specified in the Procurement Agreement, and all bid requests and awarded contracts.

Schedule 1 to Annex I—Access to Land Project

This Schedule 1 generally describes and summarizes the key elements of an Access to Land Project (the ''Land Project'') that the Parties intend to implement in furtherance of the Land Project Objective. Additional details regarding the implementation of the Land Project will be included in the Implementation Plan and in relevant Supplemental Agreements.

1. Background

Insecure access to land is a determinant of poverty and a major barrier to income growth in Benin as reflected in the Government's Action Plan and the Poverty Reduction Strategy Document. Investment climate studies list land access among the top constraints to business development in Benin. Therefore, the Government's Access to Land proposal was met with strong civil society support. Inclusion of the Land Project in the Program reflects an understanding of the importance of sound property rights to overall economic growth and to the owners and users of land across Benin.

Currently, the title registration system is expensive, slow, and complex. For a small urban land parcel, titling and registration costs approximately $1,400 and can take up to two years to complete. As a result, only 1% of households hold a formal title to their land and a majority of the rural population relies on oral customary land rights. In urban areas, individuals occupy land under a weak administrative permit while enterprises occupy state land by concession. Land disputes are prevalent and are estimated to comprise more than 70% of all civil court cases in Benin. Women are often disadvantaged under current practices while investors are unable to acquire sites with confidence. Public investment in infrastructure is hindered by the lack of land use planning and adequate property tax administration. The lack of registered land rights also limits access to credit, particularly since Benin adheres to agreements under the Organization for Harmonization of Business Law in Africa (''OHADA'') requiring land titles as a basis for pledging real property as collateral.

The Government is committed to changing this scenario. The Government has demonstrated a commitment to adopting improved laws, regulations, administrative processes and techniques to meet its ambitious land policy vision. It has already undertaken important legal reforms and experimented with new approaches to formalizing property rights. The Government's view of the importance of converting to titles, albeit in a progressive, voluntary approach, will be promoted and ways to make the process easier will be identified through this Project. With MCA support, a new land policy framework will be developed and over 100,000 households will attain registered land rights. The Land Project will serve both rural and urban areas and will lead to: significantly reduced time and costs to obtain titles and record transfers; fewer land disputes; and increased sense of land security. These improvements should, in turn, motivate investment and contribute, along with other Projects, to income growth.

2. Summary of Projects and Activities in Project and Expected Results

The Land Project is designed to establish secure access to land and efficient land administration services. MCC Funding will support the following Project Activities:

- Policy and Legal Reform: To enable sustainable, efficient land registration services, gender equity, land dispute resolution and expanded use of land as collateral, MCC Funding will support legal, regulatory, administrative and informational reforms within a national land policy framework encompassing both rural and urban land.
- Achieving Formal Property Rights to Land: To provide citizens with more secure and useful records of their land rights, MCC Funding will support conversion of 30,000 occupancy permits to land titles in urban areas and formally document land rights to 300 rural villages directly benefiting around 85,000 households with certificates or titles.
- Improve Land Registration Services and Land Information Management: To reduce time and costs to register land and expand access to land information for public and private uses, MCC

Funding will be used to upgrade and decentralize title registration services in twenty four communes and introduce map-based land information systems in twelve of these communes.

• Information, Education and Communication: To create broad awareness of land policy reform, especially among more vulnerable groups, in order to help citizens understand, protect and use their land rights.

• Support Land Program Coordination: To strengthen the capacity to manage the reform process and to encourage active participation of key stakeholder representatives, support policy and program coordination advisors, convene a Project steering group, and establish working groups for particular studies.

The M&E Plan (described in Annex III) will set forth anticipated results and, where appropriate, regular benchmarks that may be used to monitor implementation progress. Performance against these benchmarks and the overall impact of the Land Project will be assessed and reported at the intervals to be specified in the M&E Plan or as otherwise agreed by the Parties from time to time. The Parties expect that additional indicators will be identified during the implementation of the Land Project. The expected results from, and the key benchmarks to measure progress on the Project, Project Activities and sub-activities undertaken or funded under the Land Project are set forth in Annex III.

Estimated amounts of MCC Funding for each Project Activity for the Land Project are identified in Annex II of this Compact. Conditions precedent to each Land Project Activity and sequencing of these Project Activities shall be set forth in the Disbursement Agreement or other relevant Supplemental Agreements or component of the Implementation Plan.

The following summarizes the Land Project Activities:

(a) Project Activity: Policy and Legal Reform (the ''Policy Activity'').

Building from the Government's commitment to land reform, under this Policy Activity, MCC funds will support three-stages to establish a more cohesive, functional land policy. The three stages are analysis, policy formulation and legal reform. This Policy Activity is national in scope and will address both urban and rural issues. MCA-Benin shall take account of the relevant outputs of the Policy Activity, as described below, in the full Implementation Plan (to be adopted following the completion of the relevant assessments in this Policy Activity). It is also anticipated that the Policy Activity will affect the implementation strategy to be used for certain other Land Project activities or sub-activities.

Detailed assessments of a series of topics will be produced by commissioned experts working in consultation with key stakeholder representatives. As a result, decision-makers will be better informed of best options for detailing the legal, administrative and technical solutions needed to achieve secure land rights and efficient land access. Based on the assessment process, a Land Policy White Paper will be prepared to guide public and private actors regarding the reform process. Endorsement from senior Government of Benin officials, including all relevant Ministers will be sought by MCA-Benin. The Policy Activity will also support drafting of a National Land Policy Decree, drafting of any needed legislation and/or amendments, and, finally, the compilation of land laws into a new Land Code to reinforce cohesiveness.

MCC Funding will support the following activities:

(i) Conduct of assessments that will inform policy decisions and Land Project implementation strategies. The assessments will further clarify issues and provide recommendations for refining the reform strategy. Efficiency, affordability, sustainability, gender equity, and the ability to manage the reform process with minimum risk will be considered. The assessments listed below will be conducted by experts and MCA-Benin will convene working groups of stakeholder representatives that will consult on the terms of reference for and the preparation of the assessments described below. MCA-Benin shall ensure that the results of these assessments are incorporated as relevant in the complete and final Work Plans for the activities described in Sections 2(b)–(d) of this Schedule 1. The assessments shall include the following topics, unless otherwise agreed by the Parties:

(1) A review of current practice and proposed reforms related to the administrative structure and functions of national, regional and local agencies involved in implementation of land policy; clarify roles and responsibilities and propose an approach to achieve greater operational efficiency and coherence;

(2) A review of the processes for titling (conversion) and registration to identify specific bottlenecks to an accelerated, quality implementation pace, including a review of technical norms, administrative procedures, evidences accepted and proofs required to participate; taxes, fees and budget parameters; and the technical specifications of the certification processes (particularly of the Plan Foncier Rural ''PFR''); make recommendations for changes to make the process more affordable and/or efficient and its results more sustainable;

(3) An assessment of the number and types of land conflicts encountered in the past under rural and urban pilot activities and how/if these conflicts have been resolved; recommend a strategy for strengthening the capacity to resolve land conflicts under formal and informal means;

(4) An analysis of how to effectively improve women's access to land and the security of their tenure; propose a gender strategy on policy, legal, administrative, and/or project implementation measures and provide guidelines for its implementation;

(5) Following the completion of the assessment described in paragraph (1) above, compare technology options to meet information management needs at national, regional and local levels including mapping data, registration data, land market information and land use planning; compare initial investment costs as well as implied operational and maintenance costs and capacity to sustain the systems; and

(6) An analysis of the operational modalities for the communes in implementing the proposed new rural land law and related financing needs; make recommendations for the content for the regulations to this law.

(ii) Development, formalization and dissemination of a new land policy framework for Benin, that draws on the assessments conducted under the sub-activity described in Section 2(a)(i) above:

(1) Draft and promote a Land Policy White Paper covering rural and urban land and addressing the findings of the assessments conducted under sub-activity described in Section 2(a)(i); seek its immediate endorsement by relevant senior Government of Benin officials for use in implementation of Projects and also a legislative mandate for compliance with its key provisions;

(2) Upon completion of sub-activity described in Section 2(a)(i) above, prepare a new procedural manual for the transformation of urban and rural certificates into land titles;

(3) Review of relevant current law and proposed legislation compared to the requirements of the Land Policy White Paper;

(4) Based on the conclusions reached in paragraph 3 of this Section 2(a)(ii), support the drafting of new or amended laws and regulations as called for such

that the resulting body of land legislation removes disincentives to register land rights and transactions, facilitates compliance with relevant agreements under OHADA; and safeguards vulnerable populations to the extent feasible from risks and undue tax burdens;

(5) Following completion of the sub-activity described in paragraph (4) of this Section 2(a)(ii), support the preparation of a draft unified Land Code for submission to Parliament; and

(6) Conduct public consultation on and dissemination of the new legislation and procedures.

(b) Project Activity: Achieving Formal Property Rights (the ''Registration Activity''). By providing roughly 115,000 citizens with more secure and useful property rights, this Registration Activity will demonstrate the effectiveness of Benin's new policy and approaches. Support will be provided for the conversion of urban housing land use permits into land titles in selected neighborhoods primarily in Cotonou, Parakou and Porto Novo. In roughly 300 selected rural villages, the recording of rural land rights through written land plans and certificates of customary ownership will be undertaken using an existing methodology. Additionally, converting rural land certificates to land titles will also be facilitated for beneficiaries that choose to participate. To facilitate progress in the Government's title conversion approach, the Registration Activity will support mapping and related technology improvements and will help communities to identify and resolve any case-specific issues that could arise during tenure formalization.

Specifically, MCC Funding will support the following:

(i) Expansion of formal registration of land rights in urban areas. Based on lessons learned in a pilot project recently conducted by the Government, improve and continue the process of transforming urban housing land permits to titles in selected neighborhoods in Cotonou, Parakou, Porto Novo and possibly other cities. For each neighborhood selected:

(1) Investigation of the current status of land tenure and records and take measures to organize data and prepare the areas for the conversion process;

(2) Organization and engagement of the community as active and informed participants in the conversion process; and

(3) Measurement and mapping individual parcels, conduct public review of parcel maps to gain agreement among community members on the boundaries indicated on the maps, and issuance of registered land titles (incorporating recommendations of the relevant assessments conducted under sub-activity described in Section 2(a)(i)).

(ii) Expansion of formal land rights in rural areas. Consistent with existing standards and guidelines, expand the creation of rural land plans, land tenure certificates and local land management capacity:

(1) For each rural commune meeting the site selection criteria and chosen by MCA-Benin for participation, (A) conduct of information campaigns, (B) assessment of the socio-economic and land tenure conditions of villages in the area and (C) prepare village profiles including documentation of any location-specific land tenure terms and norms;

(2) Based on the conclusions reached in paragraph (1) above and the application of the more general site selection criteria to the villages within each commune, final selection of villages for implementing the PFR process;

(3) For selected villages, production of land use and tenure maps (the PFR) using a participatory method and submission of the plan for public review and comment; and

(4) Based on the PFR, issuance of rural land use certificates and facilitation of formal, written records of subordinate land rights such as tenancies using improved approaches (e.g., standard lease template).

(iii) Facilitation of voluntary, ''on-demand'' conversion of rural land certificates into land titles. Conversion of rural land certificates to land titles through an efficient, affordable process. Priority will be given to villages that already have a PFR in place.

(iv) Improvements in capacity for mapping and surveying. To facilitate more rapid registration of land rights and to establish databases that support land information services e.g., for planning and fiscal purposes and for land market research, support the following actions, incorporating as relevant recommendations from sub-activity described in Section 2(a)(i):

(1) Creation of up-to-date digital imagery of Benin's land resources;

(2) Creation of regional scale maps for selected areas of the country indicating major topographic features and infrastructure systems, such regional scale maps will be an important tool to the production of an integrated set of parcel maps generated through the process of property rights formalization; and

(3) Following the completion of the design strategy described in Section 2(d)(iii), training for public and private professionals in use of digital imagery and in improved surveying and mapping techniques.

(v) Improvement of local capacity to adapt to changing land tenure and use patterns and to resolve case-specific issues that might arise during the implementation of land tenure reforms by:

(1) Supporting communes in rural areas to develop improved social programs and planning for the specific needs of landless peasants and migrants;

(2) Supporting the provision of paralegal, informational and other advisory services related to land access and tenure security to citizens who otherwise would not have access to such services;

(3) Improvement of the capacity of citizens, local authorities and tribunals to resolve disputes related to land tenure;

(4) Establishment of transitional measures, in urban areas, to protect the rights of land occupants with certificates who delay or opt-out of the conversion process; and

(5) In a few pilot sites, introduction of the use of parcel layout plans in irregularly developed neighborhoods as a step prior to the permit-title conversion process (any site in which such plans would call for resettlement of persons to sites outside the neighborhood prior to the conversion of permits to titles may not be selected for participation).

The activities contemplated under this Registration Activity may begin with preparatory activities such as those described in Sections 2(b)(i)(1) and (2), 2(b)(ii)(1) and (2), and 2(b)(v) above under a provisional work plan; provided, however, full implementation will require a complete and final work plan which adopts, to MCC's satisfaction, the recommendations and findings of the relevant reports produced under the Project Activity described in Section 2(a)(i).

(c) Project Activity: Improve Land Registration Services and Land Information Management (the ''Services and Information Activity'').

To launch the process of moving Benin's land registration system services to the local level, new offices of the national property registry will be established (i.e., deconcentration) , and, select communes will be supported as authority is transferred to them to manage their land (i.e., decentralization). This Activity will help design, equip and adequately staff new local registry offices. Communes should be chosen from among those in which implementation of the Registration Activity will occur, unless

otherwise agreed in writing with MCC. Some communes will also experiment with a cadastre or parcel-based registration system that may include additional land information used for planning and fiscal purposes. Finally, the Services and Information Activity will help make reliable land market information (e.g., recent sales and prices) available for use by households, investors and public offices.

Pending completion of the relevant studies in Policy Activity and incorporation of the recommendations into implementation plans, MCC Funding will support the design and implementation of more accessible, efficient, reliable land registration and information services. The implementation strategy for each sub-activity described below in paragraphs (i), (ii) and (iii) shall promote, to the extent practicable, the harmonization of national, regional, and communal land data and uses including the mapping and certificate lists generated during the PFR process.

Specifically, MCC Funding will support:

(i) Deconcentration of the National Land Registration Services.

(1) The establishment of regional offices in Benin's 12 prefectures and communal service offices in 24 selected communes; and

(2) In the offices established pursuant to paragraph (1) of this Section 2(c)(i), replacement of the manual system of document administration with an automated, digital records management system and training of land registry office staff in the operation of these systems.

(ii) Decentralization of Land Administration.

(1) Assist in development of capacity of approximately 50 communes for land administration, such assistance to include training, acquisition of equipment and transitional operational support; and

(2) Design and implementation of a pilot parcel-based or cadastre-registration system in 12 of the communes where MCC Funding will support decentralization; this sub-activity will support a more comprehensive, systematic approach to the establishment of a cadastre may be demonstrated in three of these twelve communes (one rural, one urban and one peri-urban).

(iii) Design and establishment of an electronic national land market data system.

(iv) Provision of technical assistance, training (consistent with the design strategy completed pursuant to Section 2(d)(iii)) and in relation to the capacity to manage and to quality control the land information systems established in (i) and (ii) of this Section 2(c).

(d) Project Activity: Information, Education and Communication (''IEC'') (the ''IEC Activity'').

MCA-Benin has an opportunity to promote good governance through appropriate transparency and consultation on the Project throughout the Compact Term. Moreover, informed and widespread participation in planning, dispute resolution and decision-making are necessary for an effective system of land registration. The IEC Activity will ensure citizens have a clear understanding of their rights and responsibilities, and are able to participate fully in the new processes of planning, land securitization and dispute resolution.

Specifically, MCC Funding will support IEC campaigns throughout the Compact Term to include but not limited to the following topics (other topics for these campaigns may be implemented, subject to MCC approval):

(i) Creation of broad awareness and understanding of the changing land policy regime and how it affects the rights of citizens; new processes and services; gender considerations, and, land markets and access to credit.

(ii) Conduct of specific public notice and awareness of each activity and sub-activity and of the results relevant to particular groups or communities.

(iii) Design of a training strategy precedent to implementation of any training in the Registration Activity or Services and Information Activity.

(e) Project Activity: Support Strategy and Programmatic Coordination (the ''Support Strategy Activity'').

This Project Activity will ensure coordination across the various Project Activities and sub-Activities of the Land Project, across agencies involved in the land policy reform process, and facilitate ongoing consultation with stakeholder groups. In the near term, this is critical to the Project effectiveness in undertaking a comprehensive and diverse set of reform actions. By the end of the Compact Term, the MCA-Benin Access to Land Project division could be transformed into a national coordination unit to lead the completion of the reform implementation process over a longer time period.

Specifically, in addition to an overall Land Project Director and the ordinary Project-related operating expenses, MCC Funding will support:

(i) Complement MCA-Benin management staff with a group of professionals dedicated to ''change management and coordination,'' namely a National Land Policy Reform Coordinator and a long term policy advisor familiar with international best practice in land administration. Among their roles are, potentially, to (A) lead the process of incorporation of the results of the Policy Activity into practice by both project implementing partners and more generally, in Benin; (B) provide guidance on policy and implementation oversight issues to senior Government officials and MCA-Benin management; (C) facilitate linkages with the Financial Services Project activities as relevant; (D) engage other donors in Project specific coordination; and, (E) respond to beneficiary requests and queries.

(ii) Establishment (including rules regarding selection, composition, roles and frequency of meetings) and convening of a Steering Group for periodic consultations on the implementation of the Land Project e.g., the development of annual work plans, key terms of reference, draft reports and otherwise as appropriate; including key stakeholder representatives, at least one person from each of the MCA-Benin Finance Services Project and the Justice Project divisions, and a gender expert.

(iii) Convening of discussion groups for each of the assessments in Section (2)(a)(i) and for the White Paper and corresponding legal reform work.

(iv) Selection of sites for activities undertaken under this Project. Sites shall be chosen by applying selection criteria developed by MCA-Benin, subject to MCC approval, in a fair and transparent manner. MCA-Benin will publicize, including posting on the MCA-Benin Website, both the criteria for selection and the actual sites chosen, giving a brief justification for each site. These criteria will ensure that sites have the following characteristics, among others: representation of the North, South and Central regions of Benin; sites that exhibit both poverty and near-term economic opportunity e.g., urbanizing areas, high-value crop production sites, and places where market participation is expanding; willingness to comply with Benin's Family Code; site of activity under the Financial Services Project and the Justice Project; and location within the scope of the decentralized registry and land information systems to be established under Services and Information Activity set forth in Section 2(c) of this Schedule 1. These characteristics will be strategic to choosing sites that will more readily experience near-term, economically meaningful results including for the poor and women. The completion of this site selection shall be a condition

precedent to certain activities under this Project.

(v) Strengthening of the National Land Commission for the transformation of urban land permits to titles by providing the resources and guidance to enhance the quality and quantity of work it can perform.

3. Beneficiaries

The Land Project will encourage investment in urban and rural land. A new policy framework will enable a progressive transition between customary and administrative land management to markets and a title registration system. With lower transactions costs and fewer disputes, the climate for investment, productivity and finance will be improved. The Land Project will strengthen women's land rights under the law and, more importantly, work to ensure the new family code is practiced widely. In Cotonou, Porto-Novo and Parakou, the three main cities in Benin, up to 30,000 properties currently under administrative certificates will have titles. In twenty-four selected rural communes, as many as 83,000 families in 300 villages will receive a certificate, which can be subsequently turned into a land title. Other rural land users, without full ownership rights, will also have recorded agreements. Accurate land rights information will benefit potential local and international investors, including Benin's diaspora. For example, reliable and cost-effective inquiries of local records will be possible before entering leases or purchasing land. Finally, there will be better capacity for local planning and tax administration which will benefit local municipalities and civil society.

Roughly 115,000 rural and urban households will have more secure and useful tenure, affordable access to reliable land related information and services; a 50% reduction in court cases related to land disputes is targeted, and a modest 10% to 20% investment response is expected to boost income earning opportunities.

4. Donor Coordination; Private Sector; Role of Civil Society

In rural Benin, both Deutsche Gesellschaft für Technische Zusammenarbeit (''GTZ'') GmbH (German) and Agence Francaise de Développement (''AFD'') (French) have supported successful land use pilot projects under the Program for Natural Resources Conservation and Management. A first phase of these pilot projects has recently ended and both donors have expressed interested in continuing this work. The approach has been standardized and guidelines established which will be used in implementation of this Project.

In urban areas the Government recently completed a pilot titling project that had positive but limited results. The limited results were due to substantial titling fees, a reluctance to being the initial participant (''first adopter''), insufficient public outreach, and administrative problems relating to certificates previously pledged as collateral. These limitations were identified in the Proposal and will be further addressed in the Implementation Plan for the Registration Activity.

The ''Transformation of Assets into Usable Capital in the Least Developed Countries'' project initiated by the International Land Coalition has chosen Benin as a pilot country. Under this International Land Coalition initiative, the UNDP will support a stakeholder analysis that could be used to refine the relevant components of the Project Activity Implementation Plans. The Foreign Investors Advisory Service of the International Finance Corporation (''IFC'') will soon complete a study of land access and investment. Their preliminary recommendations are generally consistent with this Project, with some sub-activities herein having been derived from it.

Private professionals, e.g., surveyors, are currently called on by the government to implement tasks within the formalization process. To the extent feasible, the Land Project will promote out-sourcing and development of private sector services related to land registration and land markets. Among the key stakeholders that will guide the project implementation planning and participate in the studies undertaken pursuant to the Policy Activity, are bankers and businessmen and civil society organizations, e.g., women's groups. These are the end-users of the improved formal property registration system and their perspectives will provide much-needed insight into final definition of land policy and of the most practical approaches to implementation.

5. U.S. Agency for International Development

No USAID projects focus specifically on land access and security in Benin. However, MCA-Benin will continue to dialogue with USAID to identify areas in which it can complement or coordinate with e.g., women's legal aid.

6. Sustainability

One of the prime concerns that will underlie the series of evaluations conducted in the Policy Activity is the need to ensure that investments can be sustained and that near-term results translate into long'term sustainable change. The Government has set ambitious targets for decreasing costs of land titling and registration and will be considering further rationalizing fee structures. The final choice of technical solutions for information management and for supporting the process of formalizing land tenure will be chosen on a best-value for cost in the specific context of Benin. The extensive consultation, information dissemination and training embedded across all the Project Activities will reinforce consensus and make it more likely that people can take advantage of the new land policy framework. The review of the law will identify and address disincentives to keep land records formal over time. All together, these features lend themselves to sustainability.

7. Policy; Legal Reform; and Procedural Changes

The Parties have identified the following policy, legal and regulatory reforms and actions that the Government shall pursue in support, and to reach the full benefits, of the Land Project, the satisfactory implementation of which will be conditions precedent to certain MCC Disbursements as provided in the Disbursement Agreement:

(a) Undertake policy, legal and/or procedural changes as called for in the final approved assessment reports produced under the Policy Activity: to simplify, streamline and make affordable all processes related to formal registration of land rights;

(b) Endorse a Land Policy White Paper produced in conjunction with this Project; issue a National Land Policy Decree endorsing its vision, adopt a law requiring compliance with it and pass a unified Land Code to consolidate the body of law that affects land rights;

(c) Reform laws, regulations and administrative processes as needed to remove constraints to the use of land as collateral;

(d) Undertake measures to improve the enforcement of Benin's Family Code, Rural Code, and other legislation, as identified in the gender strategy undertaken pursuant to the Policy Activity, which give and protect women's rights to land; and

(e) Undertake measures to ensure the property taxes do not discourage registration of land transactions and that safeguard against undue tax burdens.

8. Proposals

Under the Land Project, public solicitations for proposals are

anticipated to procure goods and services, as needed, to implement all Land Project Activities. MCA-Benin will develop, subject to MCC approval, a process for consideration of both such proposals. While competitive procurement will be the norm for this Land Project, MCA-Benin may also consider, using a process developed subject to MCC approval, any unsolicited proposals it might receive. Under Strategy Support Activity of this Land Project, a Land Project Steering Group and several working groups will be comprised to guide implementation planning and implementation of the assessments to be conducted under the Policy Activity. MCA-Benin will determine the number and types of participants in these groups. A public call for expressions of interest to participate will be made and candidates will be selected by a panel comprised of MCA-Benin's Land Project Director, Finance Project Director and one other person to be determined by MCA-Benin with MCC approval. The composition of this panel shall be made publicly available as will be their final selection for any particular group.

This Land Project also involves selection of particular communes, villages or urban neighborhoods to participate in Project Activities described in Sections 2(b) and (c) of this Schedule 1. As described in Sections 2(b) and (c), selection criteria for identifying communes, villages or urban neighborhoods to participate and a method to apply these will be developed by MCA-Benin, subject to MCC approval. The criteria, method and final selections (including justifications) will be made known to the public. In addition, MCA-Benin will incorporate into the method for applying the selection criteria a process for consideration of unsolicited offers of participation by particular communes, villages or urban neighborhoods.

Schedule 2 to Annex I—Access to Financial Services Project

This Schedule 2 generally describes and summarizes the key elements of the Access to Financial Services Project (the ''Financial Services Project'') that the Parties intend to implement in furtherance of the Financial Services Objective. Additional details regarding the implementation of the Financial Services Project will be included in the Implementation Plan and in relevant Supplemental Agreements.

1. Background

Benin has a shallow financial sector that provides limited services to micro and small- and medium-scale enterprises (one or more of such categories of enterprises, ''MSMEs''), particularly those that are involved directly or indirectly in the production of goods in Benin. For example, the banking sector, while possessing significant liquidity, has focused much of its credit services on short-term financings and on larger companies, such as multinationals with branches in Benin. Savings services in Benin have had limited penetration, with only a small fraction of the population owning a bank account. Although the microfinance sector is relatively vibrant in Benin, it faces significant challenges, including the weak institutional capacity of many MFIs and the need for additional monitoring and supervision. Moreover, much of the financial sector has focused on urban areas and on short-term commerce rather than long-term production.

The following factors contribute to the limited scope of financial services to MSMEs:

- High transaction costs, especially in rural areas;
- Lack of reliable information on clients;
- Lack of creditworthiness of many borrowers;
- Limited resources and capacity of some of the financial intermediaries; and
- Perceived risk of clients, in part due to lack of sufficient collateral (such as title) and the inability of lenders to effectively enforce debts or sell collateral upon default, and price and yield risks inherent in agriculture.

These factors constrain the growth of MSMEs in Benin. The high cost or unavailability of credit and other financial services, including savings, limits the capacity of small businesses in Benin to expand production and employment, to respond to business opportunities and to manage risk. Accordingly, alleviating these constraints, and creating a broader and deeper financial sector, should increase incomes of the poor that own, are employed by, or do business with MSMEs.

2. Summary of Projects and Activities in Project and Expected Results

The Financial Services Project is designed to improve the ability of MSMEs, particularly those directly or indirectly involved in production in Benin, to access financial services that will help them improve the sustainability of their businesses.

- The Financial Services Project includes the following two Project Activities:
- Financial Institution and Borrower Capacity Building Activity: This Project Activity aims to (a) improve the capacity of financial institutions to expand existing or establish new services for MSMEs and (b) improve the capacity of MSMEs to access and use expanded financial services productively by improving their creditworthiness; and
- Financial Enabling Environment Activity: This Project Activity will undertake to identify and support legal and policy changes that are needed to facilitate the expansion of the financial sector in Benin.

The M&E Plan (described in Annex III) will set forth anticipated results and, where appropriate, regular benchmarks that may be used to monitor implementation progress. Performance against these benchmarks and the overall impact of Financial Services Project will be assessed and reported at the intervals to be specified in the M&E Plan or as otherwise agreed by the Parties from time to time. The Parties expect that additional indicators will be identified during the implementation of the Financial Services Project. The expected results from, and the key benchmarks to measure progress on, the Project, Project Activities and sub-activities undertaken or funded under the Financial Services Project are set forth in Annex III.

Estimated amounts of MCC Funding for each Project Activity for the Financial Services Project are identified in Annex II of this Compact. Conditions precedent to each Financial Services Project Activity and sequencing of these Project Activities shall be set forth in the Disbursement Agreement or other relevant Supplemental Agreements or applicable component of the Implementation Plan.

The following summarizes the Financial Services Project Activities:

(a) Project Activity: Financial Institution and Borrower Capacity Building (the ''Capacity Building Activity'')

The overall goal of this Project Activity is to broaden and deepen the financial sector in Benin by improving both the supply of and demand for financial services. It is intended to build the capacity of financial institutions, as well as to improve MSMEs' creditworthiness and ability to use financial services productively.

This Project Activity involves two sub-activities:

- Demand and feasibility assessments; and
- A financial innovation and expansion challenge facility (''FINECF'' or the ''Challenge Facility'').

(i) Demand and Feasibility Assessments. This sub-activity is intended to help shape the criteria and guidelines for the Challenge Facility described in Section 2(a)(ii), and to build on existing studies and improve the quality of information available to potential applicants. Satisfactory completion of these studies, and dissemination of the key findings, shall therefore be conditions precedent to the Challenge Facility. The below studies shall be conducted by an expert or experts retained after an international competitive procurement; terms of reference and procurement for these studies shall be subject to MCC approval. The results of the studies may be further divided or combined into one or more reports, so long as they cover the topics mentioned below or such other topics as the Parties may agree in writing. MCC and MCA-Benin shall consider cost structures where public and private costs for the studies are shared, with the private portion to expand over time.

MCC Funding, together with potential parallel or co-financing from other sources, shall support the following:

(1) Conduct of demand study for services to MSMEs. This will study the demand for innovative and expanded financial services (especially credit and savings) that may be provided to MSMEs by MFIs, banks and other financial institutions. To the extent practical, the study will assess demand particularly among MSMEs involved in production in Benin and in areas where Land Project is likely to be active.

(2) Conduct of economic feasibility and cost assessment. An economic feasibility and cost assessment will determine the effectiveness of certain MFI investments in technologies that have the potential to reduce operating costs, increase the scale of operations and expand services to MSMEs in previously underserved regions and sectors. The technologies that may be explored and identified include, without limitation, smart cards, e-payment systems, management information systems, and biometric technology. To the extent practical, these studies will focus on MFIs operating in areas where the Land Project is likely to be active.

(3) Conduct of demand study for business development services. This will study the demand for, and capacity within Benin to supply, business development services (''BDS'') to MSMEs involved in agricultural and non-agricultural sectors. In order to determine capacity to supply such services, the study will investigate specialized BDS providers, MFIs and agricultural and rural organizations. To the extent practical, these studies will focus on BDS in areas where the Land Project is likely to be active.

(4) Conduct of follow-up research and studies or assessments, as needed during the Compact Term, in the areas covered by the studies and assessments, set forth in paragraphs (1)–(3) of this sub-activity or other similar types of studies.

(ii) Financial Innovation and Expansion Challenge Facility. MCC Funding shall support a demand-driven and competitive mechanism that will co-fund with participants technical assistance and capacity building for both financial institutions and MSMEs. This mechanism requires potential beneficiaries to compete for support based on transparent criteria and to contribute a significant portion of the project costs. These elements help ensure that resources are directed to the most motivated institutions and to the most promising projects. MCC Funding shall finance up to 66% of the cost of selected projects with the share funded by MCC Funding decreasing over time (this is a cap, and in some cases the program criteria may set a lower percentage of support by MCC Funding). Operating costs shall not be eligible for support and the remainder of a project's costs must be provided by private enterprises (which may include NGOs). The Challenge Facility shall emphasize and encourage support for local service providers.

A qualified independent management entity or entities shall manage and implement the Challenge Facility (the ''Facility Manager''), acceptable to MCC and MCA-Benin, selected after a competitive tender. Funding for the Challenge Facility shall be conditioned upon: (a) Feasibility and demand studies having been satisfactorily concluded; (b) terms of reference and procurement of Facility Manager being satisfactory to MCC and (c) operating guidelines and criteria for each Component of Challenge Facility having been developed in form and substance satisfactory to MCC. The Challenge Facility itself will not be making debt or equity investments or issuing guarantees to recipients of support; however, its support, it is expected, will enable institutions to better mobilize that capital from others.

MCC Funding will support the following activities, to be undertaken in the manner described:

(1) Identification of viable applicants. The Facility Manager shall filter expressions of interest and identify viable applicants for the three facility components described below in paragraph (7).

(2) Provision of guidance to applicants and development of operating manual. The Facility Manager will provide guidance to applicants throughout the application procedure; including guiding viable applicants through the process of preparing a brief concept note for review, and ultimately providing assistance with development of the full application. Challenge Facility funds shall assist (where appropriate, based on need) in the development of applications that submit a concept note with significant potential. The Facility Manager shall develop a policy as part of the operating manual that will identify criteria for this assistance.

(3) Review of applications and selection of funding awards. Following submission of applications, an independent panel (the ''Panel'') shall review applications and make awards based on selection criteria described below and subject to MCC approval. MCA-Benin shall post on the MCA-Benin Website the names and descriptions of applications that receive awards, including amounts of awards.

(4) Development of award criteria. The Facility Manager shall develop (A) award criteria consistent with paragraph (6) below and (B) an operating procedures manual, each subject to MCC and MCA-Benin approval. In developing the award criteria, efforts shall be made to support activities that extend financial services to places outside Cotonou where the Land Project is (or is likely to be) active. Awards, if practical, will be awarded in kind rather than in cash, where technical assistance or equipment or services are required. Unless otherwise agreed by the Parties, the Facility Manager shall be responsible for selecting the provider through a competitive tender, in accordance with the procurement guidelines that govern the Compact.

(5) Support of donor coordination related to the Project Activity. The Facility Manager, to the extent practical, shall support capacity building activities that leverage other donor support or enable the beneficiary to attract financing from other sources (for example, enabling an MFI to attract long-term financing from a bank or enabling an MSME to obtain a loan). MCA-Benin and the Facility Manager shall seek to coordinate with other donors to ensure that the MCA assistance is as effective as possible.

(6) Development of criteria for support by the Challenge Facility. The selection criteria for funding under the Components shall be determined by the

Facility Manager, subject to approval by MCC and MCA-Benin. The Parties anticipate that the criteria will include (without limitation) the following categories:

(A) Market demand (there must be a demonstrated need for the project);

(B) Impact (the project must be expected to contribute, directly or indirectly, to improved incomes and opportunities for a substantial number of poor people; the applicant's commitment to gender issues will be a positive factor);

(C) Effectiveness (the project's impact must be expected to exceed its costs);

(D) Implementation Capacity (applicants must have the capacity to implement the project successfully);

(E) Demonstration effect (the project must be unlikely to be undertaken without the requested financial support. In particular, projects suggested by for-profit entities, while permitted, shall be scrutinized. In addition, pilot projects shall be preferred over projects that involve larger, untested ideas);

(F) Commitment (applicants must show their commitment through the share of project funding they are willing to contribute);

(G) Sustainability (the project must be expected to lead to the improved financial sustainability of funding recipients, and the impact of the project must be expected to extend beyond the termination of funding);

(H) Timing (the financial support of the project must be completed prior to the termination of the proposed Program);

(I) Limitations on Use of Funding (the proposed project must comply with the limitations on use and treatment of MCC Funding as set forth in Section 2.3 of this Compact); and

(J) Other (the Facility Manager shall develop such other selection criteria for Components, including any criteria unique to particular Component).

MCA-Benin shall post on the MCA-Benin Website the selection criteria developed by the Facility Manager, as approved by MCC and MCA-Benin.

(7) Implementation of Challenge Facility Projects. Unless otherwise agreed by the Parties, there shall be the following three sub-facilities (each a ''Component'' and each described more fully below) and to be funded equally; provided, however, there may be changes in allocations between the Components, subject to MCC approval:

- The Innovation Component;
- The Institutional Strengthening Component; and
- The MSME Business Development Component.

Support under each Component is expected to range from $25,000 to $250,000 per institution. Applications can come from individual institutions or groups of up to ten institutions with one institution taking the lead. Where the total project cost exceeds $500,000, the application shall be subject to heightened review and additional selection criteria. A call for applications shall be made up to twice per year, and the guidelines and criteria will be clearly communicated. Applications must be supported by a sound business plan by one of the eligible parties. In the event MCA-Benin receives any unsolicited written applications or proposals and such proposals have not been otherwise submitted to the Facility Manager through the call for applications, MCA-Benin shall forward such applications to the Facility Manager. The Facility Manager will evaluate such unsolicited applications in the same manner as those received through the call and identify viable applications in accordance with paragraph (1) above.

(A) The Innovation Component shall support financial institutions (non-banks and banks) that expand their product offering to MSMEs in previously underserved regions and sectors or introduce innovative technologies that lead to economies of scale and reduced operating costs and risks. For example, funding may be used to support investments in technology, management information or communications services, or to provide technical assistance and staff training to assist with the design, implementation and marketing of new financial products or services.

(B) The Institutional Strengthening Component shall seek to strengthen the capacity of selected microfinance institutions in Benin by improving internal controls, transparency, management, and ability to access additional stable financial resources from commercial banks and investors at reduced costs. As a result, MFIs shall be able to provide better quality and cheaper products and services to MSMEs. This Component shall fund technical assistance and grants for equipment or supplies to build capacity within MFIs that significantly serve MSMEs. Unless otherwise agreed by the Parties, 10% of grants under this Component shall go to each of the following:

(i) Promotion of transparency and good governance at MFIs, such as external audits and ratings and internal controls.

(ii) Improvement of management/analysis of long-term credit extended by MFIs with national or regional scope.

(iii) Training or other mechanisms to improve the ability of MFI management to access long-term financing and other stable resources.

(iv) Assistance with compliance with regulatory requirements.

(v) Evaluations of, and technical assistance to improve, operating capacity and efficiency of MFIs.

(C) The MSME Business Development Component shall support business development services for agricultural and non-agricultural MSMEs. The objective is to improve access to finance by improving the MSMEs' creditworthiness and ability to use financial services productively. This Component may include the following types of funding:

(i) Funding to financial institutions, such as MFIs: Assistance designed to improve financial literacy and business management (including through improved marketing, internal controls and accounting), as well as to improve the ability of borrowers to complete credit applications and access credit.

(ii) Funding to rural networks and organizations (such as co-ops and associations): Training and technology to agricultural and rural networks and organizations that present plans to build the creditworthiness and productivity of their MSME members.

(iii) Funding to specialized BDS providers: Training and technology to assist local specialized business development service providers in improving their capacity to provide sustainable services.

(8) Monitoring of progress of the Challenge Facility projects. Funding agreements with entities receiving benefits shall include annual performance benchmarks to indicate progress in meeting objectives, with the form of such agreements subject to the approval of MCA-Benin and MCC and will be specified as conditions to certain Re-Disbursements for the selected Challenge Facility project. In the case of the Institutional Strengthening Component, this might include items such as capitalization and other financial reporting requirements. In the case of the Innovation Component, this might include items such as increased amount of services, number of new clients for all services and number of new credit clients. Failure to meet these benchmarks may lead to termination of project support and in some cases a requirement that the entity repay a portion of the assistance received. Repaid funds shall be used as grant funding to finance other activities under the Challenge Facility.

(9) Conduct of information, education, and communications campaign. To

improve the quality and responsiveness of proposals, a portion of the MCC Funding for FINECF shall be used to support market information campaigns. The campaigns shall inform potential applicants about FINECF's objectives and guidelines for targeted technical assistance and grants. Where appropriate, certain trainings, technical assistance, and services will be provided through FINECF to incorporate information on strategies for avoiding environmental and social risks, using environmental and social review criteria and enhancing the sustainability of loans.

(b) Project Activity: Financial Enabling Environment Activity (the ''Financial Enabling Environment Activity'').

The objective of the Financial Enabling Environment Activity is to identify and support legal and policy changes that are needed to facilitate the deepening and expansion of the financial sector in Benin.

The Financial Enabling Environment Activity consists of the following sub-activities:

- Strengthening of Microfinance Supervision: Support for Cellule de Microfinance (''Cellule''), microfinance supervisory authority in the Ministry of Finance, and for audits of microfinance institutions.
- Multi-stakeholder forums: Conduct of electronic and/or physical forums to discuss potential improvements to laws and policies relating to an expanded financial sector and use of land titles as collateral.
- Improvement of regulatory environment: Support for financial sector regulatory changes by funding the analysis of and advocacy for such changes.
- Credit Bureau capacity building: Building the capacity of the MFI credit information bureau so that it can track the payment history of borrowers more accurately.
- Land titles as collateral: Provision of support to assist ability of financial institutions to use land titles as collateral in loans or refinancings.

MCC Funding will support the following activities:

(i) Strengthening of Microfinance Supervision.

(1) Build capacity of the Ministry of Finance and Economy's Cellule de Microfinance, which currently serves as the supervisory authority for microfinance in Benin, by providing support in areas such as technical assistance, training, and acquisition of software and equipment. The goal of this support is to improve the supervision, transparency and governance of MFIs in Benin. MCC Funding will not be used for salaries of Cellule staff. This sub-activity will improve the capacity of the Cellule to increase its monitoring and licensing activities and use resources more effectively;

(2) Improvement of rules and procedures for microfinance. An outside advisor shall be engaged to work with the Cellule to improve rules and procedures in Benin regarding microfinance, and improve the efficiency and effectiveness of the Cellule. It is intended that the advisor shall come for approximately two weeks a quarter, at least for the first year, with limited follow-up visits thereafter; and

(3) Conduct of audits of microfinance institutions, with the goal of further strengthening the supervision of MFIs in Benin. Institutions to be audited will be recommended by the Cellule, with the criteria for selection submitted to MCC for approval. Funding for audits will be conditioned on the development by the Ministry of Finance and Economy of a plan, approved by MCC, for the sustainability of the conduct of audits beyond the Compact Term.

(ii) Multi-stakeholder forums.

(1) Design workshops and electronic forums to promote the discussion and exchange of ideas on policies and strategies for expanding access to financial services. Where relevant, implementers of other Projects in this Program (especially Land Project and Justice Project) will also have representatives involved in the design and implementation of these forums; and

(2) Conduct of workshops and electronic forums designed under paragraph (1) above. Topics for these forums shall be approved by MCC and MCA-Benin and are expected to include, for example (1) actions and initiatives needed to ensure successful use of land titles as collateral for loans (with the participation of the implementers of the Land Project, including the MCA-Benin Land Project division); and (2) legal and regulatory hurdles, at the national and regional level, to development and implementation of expanded financial services and new products. The Government, including the Ministry of Finance, shall participate in these forums and respond to reasonable issues raised therein. The presentations to and results or feedback generated from these forums shall be posted on the MCA-Benin Web site.

(iii) Improvement of regulatory environment. Following completion of initial multi-stakeholder forums convened pursuant to paragraph (ii) above, MCC Funding shall support analysis of, and advocacy for, changes in West African regional and Benin national regulations of the financial sector that are intended to expand access to financial services prudently. On an annual basis, areas of focus for these regulatory changes shall be agreed upon between MCC and MCA-Benin, and are expected to include the priority reforms identified in the multi-stakeholder forums described above. Other stakeholders may, at this stage, present to MCA-Benin unsolicited proposals for interventions or activities that were not identified in the multi-stakeholder forums. In implementing these activities, MCA-Benin shall coordinate with other development organizations and government agencies involved in the financial sector in Benin and in West Africa.

MCC Funding will support the following:

(1) Technical assistance in identifying areas of regulatory reform; and

(2) Drafting of regulations and/or policy papers, and other acceptable advocacy and consensus building mechanisms in areas of regulatory focus approved by MCC and MCA-Benin of the areas of focus.

(iv) Credit bureau capacity building. To build the capacity of the Consortium Alafia (a microfinance trade association) credit information bureau, MCC Funding will support the following:

(1) Conduct of studies to assess demand, feasibility and cost-effectiveness of the recommended improvements; and

(2) Improvements to Consortium Alafia (a microfinance trade association) credit information bureau, following completion of the studies conducted pursuant to paragraph (1) above and subject to agreement between MCC and MCA-Benin that: there is sufficient demand, that the feasibility has been demonstrated, and that the proposed costs are acceptable. This activity will build capacity of the credit information bureau to track information and more precisely identify customers in a credit information database, including not just negative (i.e., missed payment) information, but also positive (i.e., satisfied payment) information of clients. The activity may also link the credit bureau database with databases that include bank customer data.

(v) Land titles as collateral for loans. This sub-activity will provide technical assistance and other capacity building for financial institutions, particularly MFIs, to support their ability to make title-based-loans or refinance portfolios of loans secured by land titles. The financial institutions to receive this

assistance shall be selected based on criteria developed by MCA-Benin, subject to MCC approval. It is expected that these financial institutions shall be located or serve areas covered by the Land Project. MCA-Benin shall post on the MCA-Benin Web site the selection criteria.

The activities MCC Funding will support under this sub-activity are expected to include, without limitation:

(1) Technical assistance to MFIs to improve credit management and assessment for secured loans and to assist them in using portfolios of secured loans as collateral for MFI financing obtained from banks;

(2) Development of standardized forms; and

(3) Installation of mechanisms of collaboration between financial institutions and land authorities to facilitate and accelerate the treatment of the files of application for credit.

3. Beneficiaries

The principal beneficiaries of the Financial Services Project are expected to be people who own, are employed by, or do business with MSMEs in Benin. Particular efforts shall be made to reach MSMEs in traditionally underserved areas of the country, as well as in areas where the Land Project is likely to be active.

The urban and rural poor will benefit directly, due to their (or the MSME with whom they do business or are employed) gaining access to a broader and more effective menu of financial products and services. They will also benefit indirectly, because financial sector deepening has been shown to lead to economic growth and disproportionately benefit the poor. The Financial Services Project, in particular, will benefit poor women. When managed effectively, microfinance has significant economic and social benefits for women, and by strengthening the microfinance sector in Benin, this Project will extend these benefits to a larger percent of the population. Showing commitment to gender issues will be weighted positively in the criteria for allocating funding in FINECF.

4. Donor Coordination; Private Sector; Role of Civil Society

Donor Coordination: The Financial Services Project complements the activities of other donors. The World Bank, United Nations Development Program, African Development Bank, and several bilateral donors have been active in MFI and other financial sector activities. The demand-driven nature of the FINECF and the requirement for applicants to demonstrate the need for funding should enhance rather than duplicate donor efforts. In addition, policy and regulatory initiatives funded under this Project will be designed to complement and support the efforts of other donors that are leading similar initiatives at the regional level.

Private Sector: MSMEs are a particular focus of this project, and an assessment of their financial services needs will help drive the focus of the Challenge Facility and efforts to support policy and legal reforms.

Civil Society: The multi-stakeholder forums are designed to solicit suggestions from a wide range of voices in society to improve the regulatory and policy environment. In addition, a number of the recipients of FINECF funding are likely to be local NGOs.

5. U.S. Agency for International Development

USAID was consulted during the design of the Project, and their input will be solicited throughout the implementation and monitoring of the Financial Services Project. This Project will benefit from the lessons learned from USAID's main microfinance project which is nearing the end of its term. To the extent applicable, this Project will be coordinated with ongoing and future agricultural and other programs focused on increasing the breadth and quality of demand for financial services.

6. Sustainability

The Financial Services Project is not intended to create a new, sustainable institution or financial mechanism. Rather, it is intended to enhance the success of existing commercial actors that service MSMEs and make them more sustainable. Beneficiary institutions of the Challenge Facility, for example, can be expected to continue to implement improvements in financial technologies and institutional capacities after Program support ends, since participating institutions are required to present sustainable, economically viable, plans for assistance and demonstrate their financial commitment to the project. Moreover, by demonstrating best practices, the Project will also encourage other financial institutions or business development service providers to follow the innovations of participating institutions.

Support for portions of the Financial Enabling Environment Activity shall be conditioned on Benin having presented and developed a funding and sustainability plan for the microfinance supervisory authority in the Ministry of Finance that is satisfactory to MCC; such plan may include mechanism for funding via national funds and private funds and adjustments in staffing.

7. Policy; Legal Reform; and Procedural Changes

The Parties have identified the following policy, legal and regulatory reforms and actions that the Government shall pursue in support, and to reach the full benefits, of the Financial Services Project, the satisfactory implementation of which will be conditions precedent to certain MCC Disbursements as provided in the Disbursement Agreement:

(a) The implementers of the Financial Services Project, including the MCA-Benin Financial Services Project division, shall participate in the development of the Land Policy White Paper through representation on the Land Project Steering Committee and in the relevant working group(s). The Government shall commit to adopt the reforms consistent with this Land Policy White Paper that are necessary to ensure effective use of land titles as collateral for loans and to enable financial institutions to effectively enforce their collateral interest in such title;

(b) The Government shall develop a funding and sustainability plan for the Cellule that shows appropriate use of MCC Funding and is satisfactory to MCC, including a commitment to finance significantly increased and adequate staffing for the Cellule as soon as practical through the budget, fees, or another sustainable mechanism. The amount funded by this sustainable funding mechanism must grow over time and eventually replace the MCC Funding. This commitment must be in form and substance acceptable to MCC. In addition, the Government shall commit to working with the outside advisor to the Cellule funded under the Compact and adopting reasonable reforms suggested by advisor;

(c) The Government shall develop and seek MCC approval of a funding and sustainability plan for the implementation of regular audits of microfinance institutions, as well as of a plan for selection of these institutions;

(d) Support for improvements to the credit bureau for microfinance shall be conditioned upon the results of a study (or studies) of feasibility and demand (with procurement approved by MCC). An implementation plan and detailed budget for improvements, based on the results of the feasibility and demand study (or studies), shall be submitted to MCC for approval;

(e) The National Policy for Microfinance shall be adopted in form and substance satisfactory to MCC; and

(f) The Government shall develop and advocate for, and use its best efforts to adopt and implement, those reasonable legal and regulatory reforms, if any, that are identified by the multi-stakeholder forums in the Financial Enabling Environment Activity as necessary to expand, significantly and sustainably, financial services offered to MSMEs. A yearly report, including a summary of the forums and a resulting work plan, shall be submitted to MCC for approval.

8. Proposals

Mechanisms for consideration of solicited and unsolicited Challenge Facility applications shall be as described above in Section 2(a)(ii).

Mechanisms for consideration of solicited and unsolicited proposals for regulatory reforms shall be as described above in Section 2(b)(ii).

In addition, as appropriate, MCA-Benin will develop, subject to MCC approval, a process for consideration of solicited and unsolicited proposals. With respect to solicited proposals, the evaluation process will include, consistent as appropriate with the Procurement Guidelines, the issuance of a published request for proposals with specific identified evaluation criteria and peer reviewers.

Schedule 3 to Annex I—Access to Justice

This Schedule 3 generally describes the key elements of an Access to Justice Project (the ''Justice Project'') that the Parties intend to implement. Additional details regarding the implementation of the Access to Justice Project will be included in the Implementation Plan and in relevant Supplemental Agreements.

1. Background

A major obstacle to Benin's economic growth is the inadequate physical and institutional infrastructure of the judicial system. The judicial system and courthouses serving Benin at independence in 1960 are largely the same system and courthouses that serves Benin now. Archaic laws, few and insufficiently trained judges, insufficient administrative capacity, and poor access to legal information combine with few and old courthouses to deny access to justice to many Beninese. If individuals or businesses dare to proceed into the maze of the courts, expense, delays (it takes an average of 570 days to enforce a contract), and the risk of corruption mean that justice is a highly uncertain result. Business decisions are skewed, and business expansion is stifled by the reality of slow, costly and uncertain justice.

Throughout West Africa alternative dispute resolution (''ADR'') is becoming an increasingly viable means to resolve commercial disputes. As part of Benin's obligations under OHADA, the Centre d'Arbitrage, Mediation et Conciliation (''CAMeC'') has been formed within the Chamber of Commerce and Industry in Cotonou. It has not yet begun to conduct arbitrations or other ADR activities.

The Chamber of Commerce (the ''Chamber'') has initiated and is managing a successful program in business registration that this Justice Project will build upon. Rather than a lengthy corporate registration proceeding through many offices in many agencies, the Chamber has developed a service that has already reduced the average time for the registration of companies from over three months to ten days by centrally managing the process of corporate registrations. The Business Registration Center is based in Cotonou with small satellite offices in Porto-Novo, Abomey, and Parakou.

The Government has already begun an extensive process of legal reform: hiring additional new judges and court personnel, improving court administration, and building new courthouses. In addition, other donors have already made commitments to the improvement of Benin's judicial infrastructure. The Inspection General service provides supervision for the courts. It assures that courts are all performing with uniform quality, provides guidance to new judges, and initiates investigations when improper behavior by court personnel is reported. MCC's contribution will fit with Benin's ongoing legal reform plans and complement the work of other donors. A notable failure of the current judicial system is the lack of access to legal information and the absence of a central location for legal information—whether it is the decisions of courts, the laws of Benin, or legal texts, either in paper or electronic form. Greater knowledge of the laws and courts of Benin for large numbers of people will lead to greater certainty in commercial transactions, reduced demand for courts in minor disputes, and less fear of the judicial system for more serious disputes. Informed public awareness of legal and judicial issues is critical to public confidence in the judicial system. For this reason, the Government proposed the creation of a Legal Information Center.

This Project also aims at assisting litigants in Benin currently suffering from case backlogs and litigants or potential litigants who live great distances from current courts. New courts will be built, to an established modern design, beginning late in year two of the Justice Project. Training of current judges and other court personnel will begin in year one of the Justice Project. A financing facility to support legal aid to assist poorer litigants will also be established. The construction of the courts will be linked to growth and training of new judges; as noted Section 6 below, the Government of Benin will hire new judges and other personnel on an appropriate schedule to staff the new courts and to allow for training prior to their assignment to the courts. Finally, the Justice Project will increase the likelihood of success of both the Land Project and Financial Services Project by increasing speed and likelihood of contract enforcement.

2. Summary of Project Activities

The overall objective of the Justice Project is to improve the investment climate by increasing the confidence in the judicial system to enforce contracts. In response to the conditions noted above, this Project has three main components:

- Support the expansion of the Center of Arbitration, Mediation and Conciliation at the Chamber of Commerce;
- Improvement of the Registration Center (Guichet Unique); and
- Improved services of courts including capacity building and training for judges, court personnel, legal aid, and Inspection General service; creation of a legal information center; development of a public awareness campaign; and the construction of new courthouses.

The following summarizes the contemplated Justice Project Activities. The M&E Plan (described in Annex III) will set forth anticipated results and, where appropriate, regular benchmarks that may be used to monitor implementation progress. Performance against the benchmarks and the overall impact of the Justice Project will be assessed and reported at the intervals to be specified in the M&E Plan or as otherwise agreed by the Parties from time to time. The Parties expect that additional benchmarks will be identified during the implementation of the Justice Project. Estimated amounts of MCC Funding for each Project Activity for the Justice Project are identified in Annex II of this Compact. Conditions precedent to each Project Activity and sequencing of the Project Activities shall be set forth in the Disbursement Agreement, other relevant

Supplemental Agreements, or component of the Implementation Plan.

(a) Project Activity: Expansion of the Arbitration Center (''Arbitration Center Activity'').

Increased access to ADR will reduce the burden on courts, reduce the cost of dispute resolution, and allow for faster resolution of commercial disputes. Companies and individuals engaging in commercial activities are the expected beneficiaries for this Project Activity. Increased economic activity and a growing number of entrants to commercial activity are expected results, supporting the Program Objective. This Project Activity will facilitate a plan to fully launch operations of CAMeC involves capacity building, public outreach, and budgetary support (e.g., staff costs).

MCC Funding will support the following activities:

(i) Training for arbitrators and CAMeC staff in arbitration procedures and ADR and arbitration management.

(ii) Development of institutional management and operational procedures.

(iii) Promotion of public outreach, including production of training and publicity materials and maintaining of Web site with relevant documents and information.

(iv) Support for staff salaries at the CAMeC; provided, however, MCC Funding will gradually phase out over the Compact Term as an incentive for CAMeC to promote a commercially viable pricing structure for provision of and access to services of the Arbitration Center and to ensure sustainability of the activity after the Compact Term.

(v) Acquisition of new equipment and some additional rented space for CAMeC as increased caseload warrants.

(b) Project Activity: Business Registration Center (Guichet Unique) (''Business Registration Activity'').

The Business Registration Project Activity is intended to greatly reduce the steps required to register a company. This Project Activity will track the reduction of registration time year by year, from the current average of twenty days. MCC support will strengthen current operations in Cotonou, Porto-Novo, Abomey and Parakou and support opening new satellite offices in Natitingou and Lokossa. Investment in existing and new offices will further speed, simplify and reduce the cost of corporate registration, and make this service available to more enterprises. It is expected that these improvements will encourage the formation of companies, boost employment in the formal sector and increase incomes.

MCC Funding will support the following activities:

(i) Evaluation of the performance of existing offices to identify necessary improvements and assist with design of new offices and services of the Business Registration Center.

(ii) Introduction of new services such as a system for registration under the Investment Code.

(iii) Training of new staff in regulations, rules and procedures related to formation of companies.

(iv) Development and maintenance of an electronic database of companies in Benin.

(v) Provision of computers and other office equipment for new offices of the Business Registration Center.

(vi) Conduct of public outreach to business community including seminars and publicity or informational materials.

(c) Project Activity: Improved Services of Courts (''Courts Activity'').

The Courts Activity will allow Benin to move forward its ten year plan for improvement of the judiciary by providing basic training, court management, guidance, and physical and institutional infrastructure.

MCC Funding will support the following activities:

(i) Training of judges and court personnel.

(1) Prior to commencing of activities described in paragraphs (2) through (5) below, design of a comprehensive capacity building strategy for judges and court personnel;

(2) Training of both new and current judges in substantive and procedural matters, particularly in commercial issues as the laws of Benin are modernized and harmonized, under the OHADA process, with the rest of francophone West Africa;

(3) Training of court personnel, including clerks and court officials, in modern case management procedures, use of technology, and other substantive and procedural matters as the courts modernize;

(4) Continuing training of current judges and court staff as well as training of new hires, particularly on commercial issues. This activity will build on training programs already underway supported by various European aid agencies; and

(5) Development of comprehensive training materials and judicial bench-books and other documents to support improved functioning of the courts and further development of local training capacity, to support efforts to institutionalize the capacity building process.

(ii) Inspection General Service. To improve the efficiency of the Inspection General Service and its ability to serve the increased number of courts contemplated by Benin's legal reform plan, the work of other donors and this Project:

(1) Training of new and existing personnel of the Inspection General Service to improve their ability to supervise the courts, advise court staff, and identify unethical behavior; and

(2) Development of training materials to build Inspection General Service capacity.

(iii) Legal Information Center. The proposed Legal Information Center to be located in Cotonou will serve not just as law library, but as a center for the disseminating of court decisions, laws, and other legal information. The Legal Information Center will be open to the public, both physically and electronically. The Legal Information Center will: Serve as a central location for case records; convert case records and other legal documents to electronic media; provide public access to laws and other legal documents; serve as a resource and training center for judges, court personnel, and government officials.

MCC Funding will support the following activities:

(1) Following the completion of the Category B environmental and social assessment framework specified in Section 2(c)(v)(3) and an individual EMP or environmental assessment (including an EMP) as determined according to the framework and subject to adoption of the Procedural Code and other Codes specified in Section 2(c)(v)(1), construction and equipment of a new Legal Information Center. Hazardous and toxic materials will not be permitted to be used or result as by-products from construction and operation of the buildings;

(2) Development of an electronic database of legal information and documents; and

(3) Conduct of a public awareness campaign to demystify law and legal proceedings to the broader public. This will involve ''open days'' at the courts and the Legal Information Center, publication of legal information for non-lawyers, information dissemination via the media, and other outreach efforts such as coordination with the outreach activities of the CAMeC and Business Registration Center to introduce consumers and the broader public to the workings of each institution. Media outreach will also be an important aspect to the public awareness campaign, along with publication of informational and legal materials in French and major local languages, and the development of a web-based

information system based at the Legal Information Center.

(iv) Legal Aid.

(1) Support of poorer litigants gaining access to legal services by law professionals (lawyers and others) and to information materials such as on processes and rights by establishing a fund for this purpose. Initial funding will be USD$1,000,000. An additional matching amount of up to USD$1,500,000 will be provided from MCC Funding on a dollar for dollar basis to match funds provided by non-MCC sources, such as other bi-lateral or multilateral donors, foundations or corporations; and

(2) Funding shall be provided to, and services provided by, existing non-governmental organizations (''NGOs'') active in Benin, or by a not-for-profit entity established in the future to provide these services. MCA-Benin shall conduct a competitive selection process to determine the best value providers of legal aid services eligible for funding. The selection process shall include an evaluation by, among others, the Justice Project Manager of proposals by candidate NGO for use of funds. Final selection of NGOs and awards shall be subject to MCC approval. Funding shall support selected NGOs implement the proposed legal aid services.

(v) New Courthouses.

This sub-activity, the capstone to the Justice Project, will support the creation of new courthouses '' one appellate court in Abomey, a region that is currently lacking in appellate court capacity, and eight courts of first instance (Tribunaux de Premier Instance) (''TPI'') distributed throughout the country. Another key requirement for this activity will be that a system for case management is developed as described in Section 2(c)(vi) and that support of legal aid services is undertaken as described in Section 2(c)(iv), likewise in keeping with modern best practices, and implemented prior to construction of the courthouses.

MCC Funding will support the following:

(1) Evaluation of Codes to be adopted. As condition to MCC Disbursements and prior to commencement of construction, a new Code of Civil Commercial, Administrative and Social Procedure of Benin (''Procedural Code'') and such other codes as may be identified by the time specified in the Disbursement Agreement and agreed by the Parties, must be passed by the legislature and adopted by the Government. The Procedural Code, as passed by the legislature must be in keeping with regional best practices, as determined by independent experts;

(2) Select sites for courthouses. MCA-Benin shall select sites based on its identification of viable sites. MCA-Benin shall consider input from civil society and other stakeholders, including any unsolicited proposals for sites from communities or others. The criteria for selection of courthouse locations shall be as follows: (i) Population density in surrounding area; (ii) commercial activity in the surrounding area; (iii) proximity of proposed court site to underserved populations and other courts; (iv) links to other Projects, in particular the Land Project and Financial Services Project and (v) restrictions on selection of sites that are (A) contaminated with toxic or hazardous waste, (B) require major service infrastructure improvements (such as new roads, water supply or treatment, transmission lines or sewage treatment), or (C) in sensitive locations as defined in Appendix C of the Environmental Guidelines;

(3) Preparation of a Category B environmental and social assessment, pursuant to the Environmental Guidelines, for the courthouses and the Legal Information Center will be required to provide pertinent guidance in the form of a framework document. This will allow more rapid and efficient environmental and social assessment of the courthouses and the Legal Information Center. This document will be used to screen sites, according to MCC Environmental Guidelines, focus the content of Environmental Management Plans (''EMPs'') or any Resettlement Action Plans (''RAPs''), and provide standard contract/bid clauses for impact mitigation during construction and operation. The framework document will provide criteria for determining when individual environmental and social assessments or solely EMPs of the buildings are needed and will incorporate procedures to address economic or physical displacement consistent with the World Bank policy on Involuntary Resettlement in effect as of the date hereof;

(4) Subject to completion and satisfactory results of the environmental and social assessment framework conducted under paragraph (1) above and an individual EMP or environmental and social assessment (including an EMP) for each construction, as determined according to the framework, construction of courthouses. Construction of four TPI and one appellate court can commence as early as the end of year two of compact, assuming code modernization, case management, and training goals and other conditions precedent have been achieved. Process of construction of final four courthouses may commence one year after construction starts for first set of TPI, assuming continued satisfaction of conditions precedent and other criteria such as case management and training. Hazardous and toxic materials will not be permitted to be used or result as by-products from construction and operation of the buildings; and

(5) Following the construction undertaken in accordance with paragraph (2) above, equip newly constructed courthouses. This includes computers, furniture, and other necessary items and systems.

(vi) Case Management. To the facilitate increasing the speed and efficiency of the processing cases through judicial system, MCC Funding will support the following:

(1) Conduct of a survey of current case management system and develop recommendations for improvement in case management and will include recommendations regarding administrative risks including time limits to process cases, procedures for assignment of judges to cases, and technology to manage case flow though court system; and

(2) Development by the courts of improved regulations and more effective administrative processes to manage cases and implementation of those regulations and processes. Implementation will include incorporation of recommendations developed in paragraph (1) above which MCA-Benin and MCC deem advisable.

3. Beneficiaries

The intended beneficiaries of the Justice Project will be ordinary citizens as well as MSMEs and other commercial actors. Currently only 8% of commercial cases received in a given year are treated by the system. This case backlog diminishes confidence in the system and increases the potential for corruption. Benin was recently rated by the World Bank's ''Doing Business in 2006'' as among the most difficult countries in the world to do business. By improving the capacity of the court system to resolve claims, the Project will benefit all users hindered by delays and backlogs. It will also support the benefits of the Land Project and Financial Services Project by increasing the likelihood of timely and appropriate enforcement of contracts and resolution of other disputes. The Legal Information Center is expected to reach a large class of beneficiaries including judges, government officials, business

representatives, and the general public. Poorer litigants will benefit from the legal aid services.

4. Donor Coordination; Role of Private Sector and Civil Society

(a) Donors. The Justice Project will benefit significantly from lessons learned by the European Union (''EU'') regarding the construction and equipping of new courthouses. A current EU project is underway to refurbish several existing courthouses and build four new TPIs and appellate court. Assuming the Beninese and others are satisfied with the design of the courts being built by the EU, the Justice Project would follow the same design. Several donors have been engaged with projects related to Access to Justice. Bi-lateral assistance from France and Belgium has supported re-drafting of codes for which MCC will require enactment as conditions precedent to court construction. MCC will coordinate with in particular AFD in connection with the adoption and development of the Procedural Code as the AFD has supported the code redrafting efforts. Their involvement provides some comfort that the codes are modern and harmonized, where appropriate, with codes of neighboring countries. Neither the World Bank nor the African Development Bank have justice sector projects in Benin but both are interested in promoting passage of modernized codes as it will increase the likelihood and degree of success of other World Bank programs. It is anticipated that some of the NGOs supported by the legal aid services activity described in Section 2(c)(iv) may funded as well by other donors and it is also possible that some of the matching funds contemplated with respect to that activity could be provided by other bilateral or multilateral donors (as well as private sector or other sources).

(b) Private Sector. It is anticipated that members of the private bar and business sector will actively participate in the public outreach and other activities of the Business Registration Center, Legal Information Center, and the CAMeC.

(c) Civil Society. Civil society and other stakeholders, including communities or municipalities, will have the opportunity to participate in courthouse selection process or submit proposals for sites as described in Section 2(c)(v)(2).

5. U.S. Agency for International Development

USAID supports a Women's Legal Rights Initiative in Benin that has offered valuable assistance in the development of this Project.

6. Sustainability

To sustain the Justice Project there will need to be sufficient demand for Alternative Dispute Resolution in Benin and satisfaction by the Government of key conditions precedent related to of court construction, and court design and maintenance. To mitigate the risk of insufficient ADR-related demand, market pricing mechanisms will be built into the CAMeC support. This will promote development of a fee-supported ADR system. Initiation of court construction process will be set at the end of year two of the Compact Term, which will give the Government time to make necessary required Project-related legal reforms. Construction and maintenance will also benefit, respectively, from EU experience in court construction, and be sustained by the increased annual budget of the Ministry of Justice. The Government will ensure the sustainability of the Legal Information Center by ensuring support for adequate staffing of Legal Information Center during and following the Compact Term.

The key to ensuring environmental and social sustainability of the Project is ongoing public consultation. By the time specified in the Disbursement Agreement, MCA-Benin shall engage the Environment and Social Assessment Director, subject to MCC approval, as described in Section 3(d)(iii)(3) of Annex I.

Environmental and social analyses of the courthouses and the Legal Information Center will be conducted as part of the technical survey and design to determine the environmental impacts and existence of economic and physical displacement. In addition to the analyses, EMPs satisfactory to MCC will be developed, implemented and monitored during project implementation.

Disbursement of MCC Funding will be contingent upon issuance of environmental licenses, as needed, or any other required permits and subject to the environmental and social assessment review described as requirements under Sections 2(c)(v)(3) and (4).

7. Policy; Legal Reform; and Procedural Changes

The Parties have identified the following policy, legal and regulatory reforms and actions that the Government shall pursue in support, and to reach the full benefits, of the Justice Project, the satisfactory implementation of which will be conditions precedent to certain MCC Disbursements as provided in the Disbursement Agreement:

(a) Passage of the new Procedural Code and other codes as identified in accordance with Section 2(c)(v)(1). The new Procedural Code should include adequate provisions pertaining to the speed with which court cases are heard, and the means by which cases proceed through the courts;

(b) Development and implementation of enhanced case management techniques and implementation of the case management system developed based on recommendations formed pursuant to Section 2(c)(vi), including modernized methods of case assignment and case tracking, even though not required as part of the Procedural Code;

(c) Development of CAMeC activities by measures, acceptable to MCC, to facilitate the removal of old cases from the TPI to CACeM;

(d) Undertake, as necessary, steps to support the enforceability of arbitral awards;

(e) As necessary and if evaluation of Business Registration Center indicates warranted, undertake improvements in regulations, policies or procedures related to business registration and company formation;

(f) Hire and train new judges and court personnel sufficient to staff new courts; and

(g) Commitment by the Government of budgetary resources to support salaries for judges and other court personnel and for the maintenance of those courts constructed under this Project.

8. Proposals

Objective selection criteria for the selection of NGOs to be supported by the legal aid sub-activity of the Courts Activity shall be as specified in Section 2(c)(iv)(2). Objective selection criteria and procedures for determining the locations (towns) of the courthouses to be constructed under the Courts Activity shall be as specified in Section 2(c)(v)(2).

Schedule 4 to Annex I—Access to Markets Project

This Schedule 4 generally describes and summarizes the key elements of an Access to Markets Project that the Parties intend to implement in furtherance of the Markets Objective (the ''Markets Project''). Additional details regarding the implementation of the Access to Markets Project will be included in the Implementation Plan and in relevant Supplemental Agreements.

1. Background

Benin's economy is dependent on cotton production, subsistence agriculture and an increasingly uncompetitive Port of Cotonou (the ''Port''). Key impediments to sustainable economic growth are its poor investment climate and lack of dynamic private sector activity. Benin has long been a strategic trading center and a keystone in the trade corridor that links the landlocked countries of the West African Economic and Monetary Union (''WAEMU'') with Nigeria, Europe, and the Americas. Trade and transport have traditionally made up a large part of the nation's economy, and limitations in Benin's transportation network have increased costs for raw materials to the country and the region. The bottleneck at the Port has impeded access to external markets by agricultural and fish/shrimp producers and processors. Improved Port facilities will lower production and marketing costs and encourage greater agricultural production as well as increased trade between Benin and other countries.

This Project is designed to promote access to markets by improvements to the Port of Cotonou, including a fish inspection facility. This Project aims to improve Port performance and security, expand capacity, and reduce costs. A more efficient Port will contribute to importer and exporter value-added through reducing transportation costs and improving product quality. Moreover, because Benin's road transport industry is relatively competitive, it is likely that the anticipated reduction in shipping costs will be passed on to wholesalers and traders, and ultimately be reflected in consumer prices. Finally, both the Project Activities and the policy or other actions the Government will undertake as set forth in Section 6 of this Schedule 4 are designed to reduce the potential for corruption at the Port.

Expanding the Port to meet Benin's long-term developmental needs will require a significant number of large investments. Due to the complexity and scope of the Port expansion plan, not only will it take several years to design, build and construct the facilities to meet a growing future demand but it will also be necessary to accommodate current demands by upgrading existing Port facilities.

2. Summary of Projects and Activities in Project and Expected Results

The objective of the Markets Project is to improve the Port of Cotonou through increasing the efficiency at the Port and volume of goods flowing through the Port and reducing vehicle operating costs.

The Markets Project includes the following Project Activities:

- Studies and Port Institutional Activity: This Project Activity will include key feasibility studies, environmental assessments and revision of master plan for the Port, as well as the computerization and streamlining of customs clearance procedures for merchandise, technical assistance and training in information systems and Port management, and improvements to legal, fiscal and institutional frameworks that govern the sub-activities.
- Port Security and Landside Improvements: This Project Activity will address the safety and security aspects of the Port for compliance with international safety requirements (conforming to International Ship and Port Security Code (''ISPS'') standards). The expansion and reconfiguration plan for the Port under this Project Activity includes: major improvements to the physical infrastructure including the access gates, access road, vehicle access facilities, storage areas, and the construction of a compulsory inspection facility for fish and seafood products with associated training and technical assistance.
- Waterside Improvements: This Project Activity will support the construction of a new South wharf to accommodate additional containerized merchant marine vessels and a dry bulk conveyor system; environmental management improvements; and, an environmentally appropriate solution to address sedimentation of the Port's entrance.

The M&E Plan (described in Annex III) will set forth anticipated results and, where appropriate, regular benchmarks that may be used to monitor implementation progress. Performance against these benchmarks and the overall impact of the Markets Project will be assessed and reported at the intervals to be specified in the M&E Plan or as otherwise agreed by the Parties from time to time. The Parties expect that additional indicators will be identified during the implementation of the Markets Project. The expected results from, and the key benchmarks to measure progress on the Project, Project Activities and sub-activities undertaken or funded under the Markets Project are set forth in Annex III.

Estimated amount of MCC Funding for the Project Activity for this Markets Project is identified in Annex II of this Compact. Conditions precedent to the Project Activities and sequencing of the Project Activities shall be set forth in the Disbursement Agreement or other relevant Supplemental Agreements or component of the Implementation Plan.

The following summarizes the Markets Project:

The Project will address institutional, landside and waterside improvements necessary to meet the unmet demand and address resulting inefficiencies. Because of the complexity and timing of the sub-activities, the environmental and social assessment requirements will be implemented in a phased manner.

To support the expansion and improvement of the Port, MCC Funding will be used for the following activities:

(a) Project Activity: Feasibility Studies and Assessments (''Studies Activity'').

(i) Conduct of initial technical studies (engineering pre-feasibility, environmental and economic) (''Initial Technical Studies'') to evaluate in further detail the costs, engineering and environmental aspects of the key waterside components of the Markets Project. These Initial Technical Studies will:

(1) Objectively evaluate alternative schemes that address sedimentation of the harbor access, including but not limited, to the use of other studies and proposals related to erosion control and environmental impacts;

(2) Evaluate the dredging for the new South wharf;

(3) Perform any additional sampling and testing of sediments related to the wharf or other areas to be dredged as part of the harbor access;

(4) Determine needs as well as options for disposal of dredged material;

(5) Evaluate the engineering to the pre-feasibility level; and

(6) Provide expanded information on costs and benefits.

Based on the recommendations of the Initial Technical Studies, the Government shall select, subject to MCC approval, its preferred option that will both reduce sedimentation of the Port access channel and not adversely impact coastal erosion and also select, subject to MCC approval, disposal of dredged material and other key waterside component options.

(ii) Following the satisfactory completion of the Initial Technical Studies, conduct of detailed engineering and economic feasibility studies of the entire Markets Project, including studies to ensure appropriate scheduling and budgeting have been established. These feasibility studies shall include, but not be limited to, studies regarding:

(1) Port container scanning system; and

(2) A dry port facility at Tori.

(iii) Following the satisfactory completion of the Initial Technical

Studies, conduct of Environmental and Social Impact Assessments (''ESIAs'') for landside improvements described in Section 2(c)(ii), fish/seafood inspection and handling facility services described in Section 2(c)(iii), and waterside improvements described in Section 2(d). The ESIAs will address landside and waterside in the following manner:

(1) The ESIA for Port landside rehabilitation/ restructuring shall incorporate an Environmental Management Plan/System (based on an audit of existing operations as well as the assessment of the proposed activities), an overall Environmental Management Plan, language for bid solicitations and construction contracts to implement the EMP, and, if needed, a Resettlement Action Plan (consistent with World Bank Policy on Involuntary Resettlement), all of which shall be subject to MCC approval. Port Autonome de Cotonou (''PAC'') shall adopt the EMP/EMS, implement the HIV/AIDS awareness program and implement any RAP, prior to initiation of construction under the landside improvements activity described in Section 2(c)(ii).

(2) The ESIA for waterside improvements will include an EMP as well as language for bid solicitations and construction contracts to implement the EMP, all of which shall be subject to MCC approval. Such language must cover capital and maintenance dredging and dredged material disposal as well as construction work. PAC shall adopt the EMP prior to initiation of any construction. The ESIA for the waterside may be combined with the ESIA for the landside, if timing of construction activity permits.

(iv) Following the satisfactory completion of the Initial Technical Studies and feasibility studies work to be conducted under Section 2(a)(ii), development of a revised master plan for the Port that consolidates the expected improvements, operational environment and land use for long term planning purposes which master plan shall be completed in conjunction with the feasibility studies work to be conducted under Section 2(a)(ii) and which master plan may be updated periodically thereafter.

(b) Project Activity: Port Institutional and Systems Improvements (''Port Institutional Activity'').

(i) Computerization and streamlining of customs clearance procedures for merchandise including information technology systems, warehouse computer management system, and transit cargo system;

(ii) Improvements in the legal, fiscal and institutional frameworks that govern Port activities including restructuring concession agreements with stevedoring companies, conducting independent financial audits and project reviews, and implementing with additional consultants the existing and new Port rules and regulations based upon consultant recommendations for port best practices. PAC and the Government will cooperate with the MCA-Benin consultant(s) including providing unlimited access to the PAC Director General, Customs Department and other PAC related entities for development, recommendation and evaluation of potential improvements in PAC and Customs Department policies, procedures, rules and regulation; and

(iii) Training for tug boat and ship pilots for night docking of petroleum cargo ships.

(c) Project Activity: Port Security and Landside Improvements (the ''Port Security and Landside Improvements Activity'').

Subject to the satisfactory results of the Studies Activity assessments and studies described in Section 2(a), a plan for renegotiation of PAC concessions and reallocation of berths and land usage satisfactory to MCC, implementation of any RAP, adoption of the EMP and implementation of the HIV/AIDS awareness plan, MCC Funding will support the following capital improvements and other goods and services at the Port:

(i) Port security. Acquisition and installation of, and training associated with, an integrated security system for compliance with ISPS standards, including oceanographic monitoring systems, video surveillance systems, and radio communications systems.

(ii) Landside Improvements.

(1) Front-end engineering and design for major civil and mechanical facilities and works, which shall be completed prior to any sub-activities set forth in this Section 2(c)(ii);

(2) Port road construction and rehabilitation including upgrading and expanding existing Port roads, illumination, and gate system. Other works include constructing an east-side gate, rezoning by berth usage, land and warehousing to achieve efficient operations;

(3) Construction of a dry bulk conveyor system leading to storage/ truck loading bins provided by private sector operators;

(4) North wharf structural improvements including reinforcements to wharf substructure (as needed) to accommodate rail mounted gantries and mobile cranes;

(5) Acquisition and implementation of pollution control equipment necessary to respond to significant discharges of hazardous materials in the Port and other equipment and activities related to the EMP/EMS;

(6) Installation of fire control and prevention equipment;

(7) Construction of a compulsory inspection base for fish and seafood products and facilities for efficiently off-loading and handling product before transport to processing centers, market, or ships for export; and

(8) Technical assistance and training of appropriate regulatory agency staff in seafood/fish inspection and safety administration.

(iii) Fish/seafood inspection and handling facility (''BOC'') services.

(1) Development and adoption of a management plan for the BOC including required training and technical assistance program targeted at inspectors, other employees, and user associations;

(2) Adoption of improved design and procedures for BOC including mechanized off-loading based on required demand study; and

(3) Development and implementation of a user fee system to defray some operation and maintenance costs of the BOC.

(d) Project Activity: Waterside Improvements (the ''Waterside Improvements Activity''). Upon completion, satisfactory to MCC, of the Studies Activity described in Section 2(a) and the execution of PAC concessions and reallocation of berths and land usage, each with results satisfactory to MCC and subject to adoption of the EMP and implementation of the HIV/AIDS awareness plan, MCC Funding will support the following waterside improvements:

(i) Front-end engineering and design for major civil and mechanical facilities, works and dredging and dredged material disposal, which shall be completed prior to any sub-activities set forth in this Section 2(d).

(ii) New South wharf construction of approximately 595 meters of berth space for new terminal operations, and mitigating measures associated with dredging and dredged material disposal, in accordance with the results of the Initial Technical Studies.

(iii) Sedimentation control scheme that permits reduction of the sedimentation at the Port entrance and does not adversely impact coastal erosion, in accordance with the results of the Initial Technical Studies.

(iv) Acquisition of additional tug boat with necessary pilot training.

3. Beneficiaries

The principal beneficiaries of the Markets Project are expected to be Beninese importers, exporters and consumers, including individuals and businesses, through improved quality of transportation services and fish processing facilities following the upgrades to and expansion of the Port. The intended beneficiaries will be identified more precisely, and where possible disaggregated by gender, age, location and income level during the initial phases of the implementation of the Markets Project.

The principal intended beneficiaries of this Project are potentially quite broad. As the economy of Benin is driven by foreign trade and that foreign trade is dependent the Port, both consumers of imported products and exporters of Beninese products will benefit directly or indirectly from efficiency gains in Port operations that translate into lower transportation costs of goods or increased operating margins for Beninese operators and businesses.

4. Donor Coordination; Private Sector

(a) Donor Coordination. The World Bank has been working with the Government to expand private management at the Port. The Markets Project Activities will be coordinated with the study of privatization options and competitiveness at the Port that the World Bank expects to complete by December 2006. The Danish and Dutch governments have been active in supporting analyses of improvements at the Port. The Danish and other studies were used to assess the sedimentation and erosion control problems. MCC will coordinate with DANIDA (the Danish aid agency), the Dutch embassy, the Japanese International Cooperation Agency, the World Bank, Islamic Development Bank, African Development Bank, Arab Bank for Economic Development in Africa, OPEC Funds, Saudi Funds, and the Government to (i) assess and address the erosion and port sedimentation problems and (ii) ensure all sub-activities support Port improvements to maximize the benefits available of donor activities.

(b) Private Sector. In order to achieve the expected benefits from MCC Funding, several improvements at the Port are dependent on private sector complementary investments and expanded private sector management services associated with the operations of the Port. MCA-Benin will work with PAC to coordinate with existing private sector operators at the Port, and MCA-Benin and PAC will establish the appropriate private sector participation at each stage of the sub-activities including renegotiation of existing concession agreements to provide for the appropriate investments by the private operators in the Port.

5. U.S. Agency for International Development; U.S. Government Agencies

MCC will seek to coordinate with USAID during the Compact Term, as appropriate, though there is not currently any USAID activity in this area. In addition MCC will seek to coordinate with the U.S. Department of Homeland Security and U.S. Coast Guard on the Markets Project.

6. Sustainability

(a) Improvements to the cargo handling operations and the physical layout of the Port will improve the financial performance of the Port. The introduction of private sector participation in operations is also critical to the sustainability of the Markets Project. Part of the restructuring of the Port needs to include revenue from the concessions, which are now paid to a different Government agency as a conduit to the state owned stevedoring company, in order to support port services and to increase transparency and Port efficiency.

(b) Investments by private sector tenants and other users of the Port will provide complementary improvements that will contribute to the long-term sustainability of the Port's ability to meet market demand.

(c) The Port's financial condition has suffered from declining revenues and from increasing labor costs. In addition, its revenues have been declining recently due to restrictions on Nigerian import policies.

(d) A rationalized user fee schedule for the BOC will be developed as part of a required demand study to help defray some of the inspection costs associated with its operation and maintenance.

(e) Essential to the environmental sustainability of the Markets Project is the conduct of the Initial Technical Studies, as well as the landside ESIA, the waterside ESIA and the associated EMPs, each as described in Section 2(a).

(f) The key to ensuring environmental and social sustainability of the Project is ongoing public consultation. By the time specified in the Disbursement Agreement, MCA-Benin shall engage the Environment and Social Assessment Director (''ESI Officer''), subject to MCC approval, as described in Section 3(d)(iii)(3) Annex I.

7. Policy; Legal Reform; and Procedural Changes

The Parties have identified the following policy, legal and regulatory reforms and actions that the Government shall pursue in support, and to reach the full benefits, of the Access to Markets, the satisfactory implementation of which will be conditions precedent to certain MCC Disbursements as provided in the Disbursement Agreement:

(a) Renegotiation of existing lease and concession agreements and port leases on terms acceptable to MCC that provide for capital investment based upon the market demand for Port services; in all cases, for any concession within the port right-of-way the PAC shall be the grantor and the beneficiary of the income resulting from the concession or lease. To the extent not covered in the renegotiation of the existing concession agreements, completion of new concession agreements for terminal operations of the new South wharf berths shall include private capital investments acceptable to MCC based upon the demand for Port services;

(b) The Government and PAC shall agree to enforce maritime-related international and regional conventions and agreements to which they are signatory, including the MARPOL International Convention for the Prevention of Pollution from Ships and the UN Convention on the Law of the Sea, and shall also agree to internationally accepted practices, such as the London Dumping Convention and Protocol (to which Benin is not signatory) for the disposal of dredged material, including contaminated material, and the control of pollution in the harbor, its entrance and the landside Port operations;

(c) By the time specified in the Disbursement Agreement, PAC shall create and fill the permanent staff position of PAC Environmental Manager, whose qualifications, selection and replacement shall be acceptable to MCC. The PAC Environmental Manager shall serve as the PAC representative concerning the environmental aspects of the Project Activities and other environmental management activities of PAC. The Government shall ensure that the PAC provides appropriate resources to the PAC Environmental Manager as identified by PAC and as recommended by MCA-Benin port advisor consultant as provided for in Section 2(b)(ii) above and the ESI Officer.

(d) The Government and PAC shall provide a permanent office for the MCA-Benin port advisor adjacent to the office

of the Director General of the PAC. The Government and PAC Board of Directors shall facilitate and endorse the assistance by the MCA-Benin port advisor to the Director General of the PAC in the implementation of private management activities and operational improvements associated with the Markets Project;

(e) Execution of private management or concession agreements satisfactory to MCC for the dry bulk conveyor, and the BOC, and other new facilities to be constructed at the Port; Satisfactory progress on meeting ISPS certification, in particular implementing recommendations as specified by MCC in the Disbursement Agreement or otherwise;

(g) Development and ongoing satisfactory implementation of a program to accomplish financial control and other recommendations as may be specified by the independent financial auditor contemplated by the Markets Project;

(h) Commitment shall be made by the Government to fund, or commitments shall be made by another funding source satisfactory to MCC, for amounts in excess of budgeted amount in the financial plan including amounts that may be necessary for environmental mitigation and remediation. All Beninese environmental and other permits (including any necessary or advisable environmental certificates under Benin law) shall be issued, valid and in full effect;

(i) Support the redesign of the BOC to ensure that specifications address likely traffic and activity requirements, including equipment for mechanical unloading of seafood cargo, and that a demand study is completed as specified by MCC;

(j) Support the design, approval and implementation of a rationalized user fee system for the BOC;

(k) Support the design, approval, and implementation of a capacity building training and technical assistance plan for cold chain, product quality assurance;

(l) Satisfactory results from customs and warehouse systems implementation reflected in reduced in Port cargo processing time;

(m) The Government agrees not to institute a container scanning system at the Port (1) until after a study of the effectiveness of such a scanning system has been completed pursuant to Section 2(a)(i) or (2) in the event that MCC determines that the Government proposed scanning system would be detrimental to the effectiveness of MCC investments at the Port;

(n) The Government agrees not to institute or continue a tax, levy, duty, or other charge or any delivery procedure or requirement at the Port or elsewhere since commencement of MCC review on August 1, 2005 of the port proposal which may affect the competitiveness of the Port without the prior consent of MCC; and

(o) Completion of the World Bank privatization and competitiveness study by the time specified in the Disbursement Agreement, with commitments by the PAC and other Government Affiliates to implement recommendations as requested by MCC and satisfactory implementation of such recommendations.

Annex II—Summary of Multi-Year Financial Plan

This Annex II to this Compact (the ''Financial Plan Annex'') summarizes the Multi-Year Financial Plan for the Program. Each capitalized term in this Financial Plan Annex shall have the same meaning given such term elsewhere in this Compact.

1. General

A multi-year financial plan summary (''Multi-Year Financial Plan Summary'') is attached hereto as Exhibit A. By such time as specified in the Disbursement Agreement, MCA-Benin will adopt, subject to MCC approval, a Multi-Year Financial Plan that includes, in addition to the multi-year summary of anticipated estimated MCC Funding and the Government's contribution of funds and resources, an estimated draw-down rate for the first year of the Compact Term based on the achievement of performance milestones, as appropriate, and the satisfaction or waiver of conditions precedent. Each year, at least 30 days prior to the anniversary of Entry into Force, the Parties shall mutually agree in writing to a Detailed Financial Plan for the upcoming year of the Program, which shall include a more detailed plan for such year, taking into account the status of the Program at such time and making any necessary adjustments to the Multi-Year Financial Plan.

2. Implementation and Oversight

The Multi-Year Financial Plan and each Detailed Financial Plan shall be implemented by MCA-Benin, consistent with the approval and oversight rights of MCC and the Government as provided in this Compact, the Governing Documents and the Disbursement Agreement.[b]

3. Estimated Contributions of the Parties

The Multi-Year Financial Plan Summary identifies the estimated annual contribution of MCC Funding for Program administration, monitoring and evaluation, and each Project. The Government's contribution of resources to Program administration, monitoring and evaluation, and each Project shall consist of (a) ''in-kind'' contributions in the form of Government Responsibilities and any other obligations and responsibilities of the Government identified in this Compact, including contributions identified in the notes to the Multi-Year Financial Plan Summary, (b) such other contributions or amounts as identified in notes to the Multi-Year Financial Plan Summary, and (c) such other contributions or amounts as may be identified in relevant Supplemental Agreements between the Parties or as may otherwise be agreed by the Parties; provided, in no event shall the Government's contribution of resources be less than the amount, level, type and quality of resources required to effectively carry out the Government Responsibilities or any other responsibilities or obligations of the Government under or in furtherance of this Compact.

4. Modifications

The Parties recognize that the anticipated distribution of MCC Funding between and among the various Program activities and Project and Project Activities will likely require adjustment from time to time during the Compact Term. In order to preserve flexibility in the administration of the Program, in addition to Section 4(a)(iv) of Annex I, the Parties may, upon agreement of the Parties in writing and without amending this Compact, change the designations and allocations of funds between Program administration and a Project, between one Project and another Project, between different activities within a Project, or between a Project identified as of the Entry into Force and a new Project, without amending this Compact; provided, however, that such reallocation (a) is consistent with the Objectives, (b) does not cause the amount of MCC Funding to exceed the aggregate amount specified in Section 2.1(a) of this Compact, and (c) does not cause the Government's obligations or responsibilities or overall contribution

[b] The role of civil society in the implementation of this Compact (including through participants on the Stakeholders' Committee and Steering Committee), the responsibilities of the Government and MCC in achieving the Compact Goal and Objectives, and the process for the identification of beneficiaries are addressed elsewhere in this Compact and therefore are not repeated here.

of resources to be less than specified in Section 2.2(a) of this Compact, this Annex II or elsewhere in this Compact.

5. Conditions Precedent; Sequencing

MCC Funding will be disbursed in tranches. The obligation of MCC to approve MCC Disbursements and Material Re-Disbursements for the Program and each Project is subject to satisfactory progress in achieving the Objectives and on the fulfillment or waiver of any conditions precedent specified in the Disbursement Agreement for the relevant Program activity or Project or Project Activity. The sequencing of Project Activities or sub-activities and other aspects of how the Parties intend the Projects to be implemented will be set forth in the Implementation Plan, including Work Plans for the applicable Project, and MCC Disbursements and Re-Disbursements will be disbursed consistent with that sequencing.

EXHIBIT A.—MULTI-YEAR FINANCIAL PLAN SUMMARY

[In thousands]

Project	Year 1	Year 2	Year 3	Year 4	Year 5	Total
1. Access to Land:						
(a) Policy Activity	520	260	520	0	0	1,300
(b) Registration Activity	3,310	6,550	4,605	4,375	4,320	23,160
(c) Services and Information Activity [1]	510	3,350	3,205	2,775	620	10,460
(d) IEC Activity	100	150	100	100	50	500
(e) Support Strategy Activity	120	120	120	120	120	600
Sub-Total	4,560	10,430	8,550	7,370	5,110	36,020
2. Access to Financial Services:						
(a) Capacity Building Activity	1,770	3,570	3,870	3,570	270	13,050
(b) Financial Enabling Environment Activity	1,380	1,850	1,540	1,140	690	6,600
Sub-Total	3,150	5,420	5,410	4,710	960	19,650
3. Access to Justice Activity:						
(a) Arbitration Center (CAMeC)	400	160	140	180	0	880
(b) Business Registration Activity	470	830	330	200	0	1,830
(c) Courts Activity [2] [3]	2,960	6,860	8,590	6,590	6,560	31,560
Sub-Total	3,830	7,850	9,060	6,970	6,560	34,270
4. Access to Markets:						
(a) Studies Activity	5,993	2,101	0	0	0	8,094
(b) Port Institutional Activity	3,251	4,876	1,196	980	1,016	11,319
(c) Port Security and Landside Improvements Activity [4]	200	23,154	42,158	8,151	200	73,863
(d) Waterside Improvements Activity [5]	0	0	22,939	53,232	0	76,171
Sub-Total	9,444	30,131	66,293	62,363	1,216	169,447
Monitoring and Evaluation	3,190	1,690	1,240	1,240	1,420	8,780
Sub-Total	3,190	1,690	1,240	1,240	1,420	8,780
Program Administration and Control:						
(a) Program Administration [6]	3,395	2,795	2,933	2,919	3,015	15,057
(b) Fiscal and Procurement Agent	3,398,688	3,398,688	3,398,688	3,398,688	3,398,688	16,993,440
(c) Audits	1,416,120	1,416,120	1,416,120	1,416,120	1,416,120	7,080,600
Sub-Total [7]	8,209,808	7,609,808	7,747,808	7,733,808	7,829,808	39,131,040
Total Estimated MCC Contribution [8]	32,383,808	63,130,808	98,300,808	90,386,808	23,095,808	307,298,040

[1] MCC Disbursements in connection with this Activity shall be conditioned upon, among others, the completion, satisfactory to MCC, of the relevant studies in Policy Activity and incorporation of the recommendations into implementation plans as appropriate.

[2] After the first $1 million for the legal aid services sub-activity described in Section 2(c)(iv) of Schedule 3 to Annex I, any additional MCC Disbursement for this sub-activity shall be conditioned upon the Government obtaining matching funds to support the legal aid services program described in Section 2(c)(iv) of Schedule 3 of Annex I.

[3] MCC Disbursements in connection with the new courthouses sub-activity described in Section 2(c)(v) of Schedule 3 to Annex I, shall be conditioned upon, among others, passage of the Procedural Code and certain other codes, which codes should contain adequate provisions in areas as may be specified by MCC in the relevant Supplemental Agreement (including with respect to the Procedural Code, provisions pertaining to the speed with which court cases are heard, and the means by which cases proceed through the courts).

[4] MCC Disbursements in connection within the landside improvements sub-activity described in Section 2(c)(ii) of Schedule 4 of Annex I shall be conditioned upon, among others, the following: (i) Renegotiation of existing concession and lease agreements on terms acceptable to MCC that provide for capital investment based upon the demand for Port services, (ii) a contract management program of the dry bulk conveyor system acceptable to MCC, (iii) the completion of Initial Technical Studies, (iv) a Government commitment of funding, or commitments obtained from another funding source (satisfactory to MCC) for amounts in excess of budgeted amount in the Detailed Financial Plan, including amounts that may be necessary for environmental and mitigation, and (v) subject to results, satisfactory to MCC, of feasibility studies and ESIA that includes an environmental audit and EMP, (vi) redesign of the fish inspection facility, (vii) completion of a World Bank privatization and competitiveness study, and (viii) selection of a construction management agent.

[5] MCC Disbursement in connection with the waterside improvements sub-activity described in Section 2(d) of Schedule 4 of Annex I shall be conditioned upon, among others, the following: (i) Satisfactory results of the Initial Technical Studies, (ii) demonstration, satisfactory to MCC, of improvements in customs and warehouse systems operations, (iii) implementation of recommendations of the independent financial auditor, (iv) obtaining environmental permits, (v) a Government commitment of funding, or commitments obtained from another funding source (satisfactory to MCC) for amounts in excess of budgeted amount in the Detailed Financial Plan, including amounts that may be necessary for environmental and mitigation, (vi) results, satisfactory to MCC, of feasibility studies and ESIA that includes an environmental audit and EMP and (vii) the completion of a long-term management services agreement for the operation of a Port sedimentation facility (or other harbor dredging program, as appropriate) on terms satisfactory to MCC.

[6] The total administration budget as a percentage of the Program cost is equal to 5.61%.

[7] The total implementation budget as a percentage of the Program cost is equal to 14.59%.

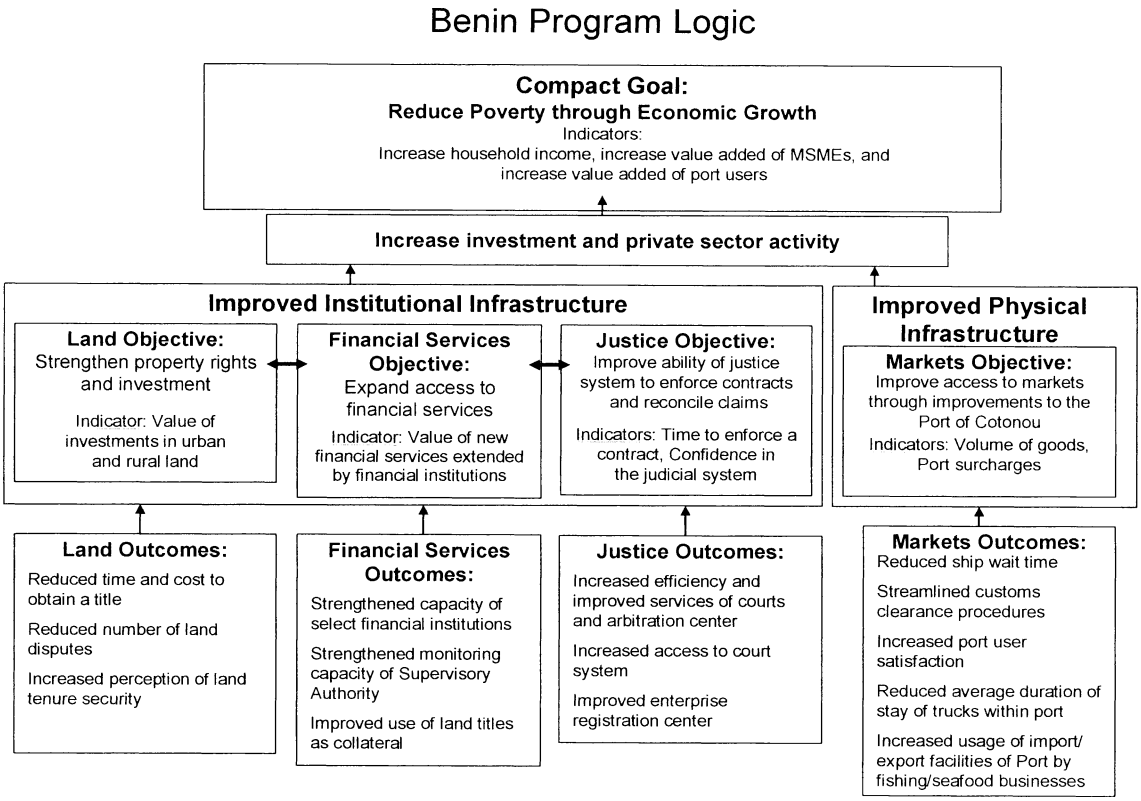
[8] Total Government contribution of 5 billion CFA to be included in the annual national budget (1.25 billion CFA per year during the first four years of Compact) and to be allocated in a manner agreed upon by the Parties in writing.

Annex III—Description of the M&E Plan

This Annex III to the Compact (the ''M&E Annex'') generally describes the components of the Monitoring and Evaluation (M&E) Plan for the Benin Program, and how progress toward the Compact Goal will be measured. Each capitalized term in this Annex III shall have the same meaning given such term elsewhere in this Compact. This Annex represents the agreement between the Government of Benin and the MCC on the Goals and Objectives of the MCA program and the timeline for achieving them.

1. Overview

Prior to disbursement for any Project (other than administrative expenses), the parties shall formulate an M&E Plan that specifies (a) how the implementation of the Program and progress toward the Compact Goal and Objectives will be monitored (the ''Monitoring Component''), (b) a methodology, process and timeline for the evaluation of planned, ongoing, or completed Project Activities to determine their impact and likely sustainability (the ''Evaluation Component''), and (c) other components of the M&E Plan described below. Information regarding the Program's performance, including the M&E Plan, and any amendments or modifications thereto, as well as periodically-generated reports, will be made publicly available on the MCA-Benin Web site and elsewhere. The Compact Goal, Objectives and Outcomes of the MCA-Benin Program are summarized in the following diagram:



2. Monitoring Component

To monitor progress toward the achievement of the Compact Goal, Objectives and Outcomes, the Monitoring Component of the M&E Plan shall contain the following elements:

(a) Indicators. The M&E Plan shall measure the results of the Program using quantitative, objective and reliable data (''Indicators''). Each Indicator will have one or more targets that quantifies the result and the expected time by which that result will be achieved (''Target''). The M&E Plan will detail the process for measuring and reporting on Indicators at several levels. First, the indicators for the Compact Goal (each, a ''Compact Goal Indicator'') will measure the results for the overall Program on the intended beneficiaries (collectively, the ''Beneficiaries'').

Second, the indicators for each Objective (each, an ''Objective Indicator'') will measure the ultimate

result for each of the individual Projects. Third, intermediate indicators (each, an ''Outcome Indicator'') will measure the intermediate results achieved under each of the Project Activities in order to provide early measures of progress towards the accomplishment of the Project Objective. Further, other indicators will be included in the M&E Plan to measure the direct outputs of the Project Activities (each, an ''Output Indicator'').

Benin's national household living standards measurement survey (L'Enquéte Modulaire Integrée sur les Conditions de Vie (''EMICoV'') will provide baseline data where identified. MCC Funding will support the 2006 baseline survey as well as regular follow-up surveys as described in the M&E Plan (''2006 Baseline Data Survey''). The Government will also fund a portion of the 2006 baseline survey. All EMICoV data will be disaggregated by gender, income and age group where appropriate. MCC Funding in connection with the 2006 Baseline Data Survey shall support activities such as the following:

- Training of field and data entry staff;
- Conducting pilot test of survey questionnaire;
- Communication and transportation for survey staff;
- Supervision and Quality Assurance; and
- Data Management.

For all indicators, data collection will be disaggregated by gender, income level and age, where appropriate and to the extent practicable. For some indicators baseline data was not available as of the date of conclusion on the Compact. For such indicators identified in the tables that follow, the M&E Plan and Disbursement Agreement will specify requirements for baseline data collection that shall be met prior to disbursing funds for each Project or Project Activity. Subject to prior written approval from MCC, MCA-Benin may modify and add Indicators or refine the Targets of existing Indicators.

(i) Compact Goal Indicators. The M&E Plan shall contain the Compact Goal Indicators and their definitions, as listed in the table below. The corresponding Targets to be achieved are in the tables that follow.

COMPACT GOAL INDICATORS

Purpose	Indicator	Definition of indicator
Increase household income in land and finance-targeted areas.	Average annual household income in the land and finance areas.	Average revenue and consumption level per household land/finance areas measured through the national living standards measurement survey (EMICoV).
Increase value added to MSMEs	Profits and wages of MSMEs benefiting from Access to Finance capacity building activity.	Additional profits and wages of MSMEs that are clients of institutions that are beneficiaries of the Challenge Facility.
Increase value added due to port infrastructure improvements.	Profits and wages of Port users	Additional profits and wages of Port users.

COMPACT GOAL TARGETS

Indicators	Baseline	Year 1	Year 2	Year 3	Year 4	Year 5
Average household income in the land and finance areas.	TBD [1]					Estimated at 7% increase in treated areas compared to untreated areas
Profits and wages of MSMEs benefiting from the Capacity Building Activity.	Zero [2]					USD$5 million.
Additional annual profits and wages of Port users.	Zero					USD$36 million.[3]

[1] EMICoV will provide baseline data to be available starting in August 2006. 2004 GNP per capita is estimated at USD$538.
[2] Benin will estimate current wages and profits of client enterprises of MFIs in the Demand Study at the end of the third quarter, Year 1 of the Compact Term.
[3] Port users include: Ship-owners, firms operating within the port and trucks transporting cargo to and from the Port.

(ii) Objective and Outcome Indicators. The M&E Plan shall contain the Objective and Outcome Indicators and their definitions, as listed in the tables below. The corresponding Targets to be achieved are in the tables following the definitions.

ACCESS TO LAND PROJECT INDICATORS

Purpose	Indicator	Definition of indicator
Objective:		
Strengthen property rights and increase investment in rural and urban land.	Total value of additional investment in targeted rural land parcels.	Value of investments made to rural land parcels per year; land investment data will come from self-reported data through EMICoV.
	Total value of additional investment in targeted urban land parcels.	Value of investments made to urban land parcels per year; land investment data will come from self-reported data through EMICoV.
Outcomes:		

ACCESS TO LAND PROJECT INDICATORS—Continued

Purpose	Indicator	Definition of indicator
Reduced time to obtain new land title	Average time required to obtain a new land title.	Average time associated with obtaining land title, disaggregated by rural and urban areas.[1]
Reduced costs to obtain new land title	Average cost required to obtain a new land title.	Average cost associated with obtaining land title, disaggregated by rural and urban areas.[1]
Perception of land tenure security increased.	Percent of respondents perceiving greater land security.	Share of respondents perceiving land tenure security; as measured through EMICoV. Data should be disaggregated by inhabitants of communities benefiting from the Registration Activity and those that are not.
Reduction in number of land disputes	Number of land disputes brought to court	Total number of land disputes registered at TPIs, per year.
	Number of land disputes reported by commune heads.	Total number of land disputes (not brought to formal court) as reported by commune heads as measured through EMICoV.

[1] Disaggregated time and costs to obtain a land title was not available as of the date of conclusion of the Compact. Going forward, data will be collected and reported for the rural and urban areas separately.

ACCESS TO LAND PROJECT TARGETS

	Baseline	Year 1	Year 2	Year 3	Year 4	Year 5
Objective Level Indicators (Metric of Project success observable by end of Compact Term).						
Total value of additional investment in targeted rural land parcels.	Zero [1]			5% increase from baseline.		10% increase from baseline.
Total value of additional investment in targeted urban land parcels.	Zero (Current level for Cotonou only is USD$310 million).			8% increase from baseline.	15% increase from baseline.	20% increase from baseline.
Outcome Level Indicators (Early indicators of Project Activities impact on Objectives).						
Average time required to obtain a new land title.	12 months			10 months		6 months.
Average cost required to obtain a new land title.	USD$1,300					USD$180.
Percent of respondents perceiving greater land security.	TBD [1]			30% increase from baseline for beneficiary communes.		50% increase from baseline for beneficiary communities.
Number of land disputes brought to court	8000 [2]					50% reduction in MCA–targeted zones.
Number of land disputes reported by commune heads.	TBD [1]					.

[1] EMICoV will provide baseline data to be available starting in August 2006.
[2] This baseline figure is an estimate. Data will be verified by quarter 3 of Year 1 of the Compact Term.

ACCESS TO FINANCE PROJECT INDICATORS

Purpose	Indicator	Definition of Indicator
Objective:		
Expand access to financial services	Value of new financial services offered by financial institutions.	Total incremental increase in value of new credit extended and savings received by financial institutions participating in the project.[1]
Outcomes:		

ACCESS TO FINANCE PROJECT INDICATORS—Continued

Purpose	Indicator	Definition of Indicator
Strengthened capacity of select financial institutions.	Average portfolio-at-risk > 30 days participating MFIs.	Share of value of all loans outstanding that have one or more installments of principal past due over 30 days. Participating institutions institutions will be compared to a national average.
	Operational self-sufficiency of participating MFIs (%).	Operating revenue/(financial expense + loan loss provision + operating expense). Measures extent of cost coverage from operating revenues. Participating institutions will be compared to national average. Indicator values are illustrative of each class/cohort's performance.
Strengthened monitoring capacity of Supervisory Authority.	Number of MFIs supervised by the Microfinance Cellule.	Total number of micro finance institutions that are supervised and have received recommendations from the Ministry of Finance Supervisory Authority.
Improved use of land titles as collateral	Number of new bank credits guaranteed with land titles.	Total number of loans guaranteed by land titles, per year.

[1] Indicator and target will be amended if services other than credit and savings are offered.

ACCESS TO FINANCE PROJECT TARGETS

	Baseline	Year 1	Year 2	Year 3	Year 4	Year 5
Objective Level Indicators (Metric of Project success observable by end of Compact Term):						
Value of new financial services offered by financial institutions	USD$155 Million in Credit and USD$73 Million in savings.[1].	.....	.....	USD$24 Million.	.....	USD$59 Million.
Outcome Level Indicators (Early indicators of Project Activities impact on Objectives):						
Average portfolio-at-risk > 30 days of participating financial institutions.	10%[2]	.....	8%	7%	6%	5%
Operational self-sufficiency of participating financial institutions.	103%[2]	.....	106%	109%	.....	112%
Number of MFIs supervised by the Microfinance Cellule.	27	.....	35	40	50	75
Number of new bank credits guaranteed with land titles.	60	.....	.....	100	150	200

[1] Current aggregate value of savings and credit offered in system as cited in National Policy for Micro finance.
[2] These baseline values represent the national average. Once financial institutions are selected, baselines will be recalculated. Targets values are average values for cohort/class entering the Program after 2, 3, 4, and 5 years.

ACCESS TO JUSTICE PROJECT INDICATORS

Purpose	Indicator	Definition of Indicator
Objective:		
Improved ability of justice system to enforce contracts and reconcile claims.	Average time required to enforce a contract ...	Number of days associated with filing payment dispute in court until moment of actual payment.
	Percent of firms reporting confidence in the judicial system.	Percent of manufacturing firms who agree with statement "I have confidence in the judicial system."
Outcomes:		
Increased efficiency and improved services of courts and the arbitration center.	Number of cases processed at Arbitration Center.	Number of cases processed at Chamber of Commerce Arbitration Center, per year.
	Percent of all cases resolved in TPI courts per year.	Share of number of cases resolved of total cases filed at all TPIs, per year.
	Percent of all cases resolved in court of appeals per year.	Share of number of cases resolved of total cases filed at court of appeals, per year.
Increased access to court system	Average distance required to reach TPI (km)	Distance between village and jurisdictional TPI in kilometers.

ACCESS TO JUSTICE PROJECT INDICATORS—Continued

Purpose	Indicator	Definition of Indicator
Improved enterprise registration center	Number of enterprises registered through the registration center.	Annual number of enterprises registered with Chamber of Commerce Guichet Unique central or satellite offices.
	Average time required to reigster an enterprise (days).	Number of days associated with registering enterprise with Chamber of Commerce Guichet Unique central or satellite offices, per year.

ACCESS TO JUSTICE PROJECT TARGETS

	Baseline	Year 1	Year 2	Year 3	Year 4	Year 5
Objective Level Indicators (Metric of Project success observable by end of Compact Term):						
Average time required to enforce a contract (days).	570			470		370
Percent of firms reporting confidence in the judicial system.	35%			47%		60%
Outcome Level Baseline Year Indicators (Early indicators of Project Activities impact on Objectives)						
Number of cases processed at Arbitration Center.	0		25	150	200	250
Percent of all cases resolved in TPIs per year.	40%			45%		50%
Percent of all cases resolved in court of appeals per year.	8%	12%	15%	18%	21%	24%
Average Distance required to reach TPI (km).	50					34
Number of enterprises registered through the business registration center.	9,600 (total to 2004).			1,400	1,000	500
Average time required to register an enterprise (days).	20			10		3

ACCESS TO MARKETS PROJECT INDICATORS

Purpose	Indicator	Definition of indicator
Objective:		
Improve access to markets through improvements to the Port of Cotonou.	Volume of merchandise traffic through the PAC (million metric tons).	Total volume of exports and imports passing through Port of Cotonou, per year in million metric tons.
	Port surcharges due to delay	Surcharge associated with congestion per twenty-foot equivalent unit (“TEU”), in Euro.
Outcomes:		
Reduced ship wait time	Bulk ship carriers waiting times at the Port (days).	Number of days bulk carrier must wait at anchor (before proceeding to berth) and at berth.
Streamlined customs clearance procedures	Average customs clearance times at Port	Time associated with moving merchandise through customs procedures.
Increased satisfaction with Port operations among users.	Port user satisfaction	Share of port users satisfied with Port operations, estimated through Port user survey.
Reduced average duration of stay of trucks at Port.	Average duration of stay of trucks at Port	Average duration of stay trucks at Port.
Increased usage of import/export facilities of Port among fishing/seafood businesses.	Volume of seafood exports processed through BOC (tons).	Total volume of seafood exports processed through the BOC (tons).

ACCESS TO MARKETS PROJECT TARGETS

	Baseline	Year 1	Year 2	Year 3	Year 4	Year 5
Objective Level Indicators (Metric of Project success observable by end of Compact Term):						
Volume of merchandise traffic through the PAC (million metric tons)	4.1	4.9	5.2	5.6	5.9	6.3
Port surcharges due to delay (Euros)	125				50	25
Outcomes—Bulk ship carriers waiting times at the Port (days):	7				5	3

ACCESS TO MARKETS PROJECT TARGETS—Continued

	Baseline	Year 1	Year 2	Year 3	Year 4	Year 5
Average customs clearance times at the Port (days)	5			3		1
Port user satisfaction	50%			65%	70%	75%
Average duration of stay of trucks at Port (hours)	24			18	12	7
Volume of seafood exports processed through BOC (tons)	0				250	500

Note: Attainment of most targets in the Markets Project tables in the years specified depends on the successful completion of early sub-activities.

(iii) The final M&E Plan will also include a number of activity-level (Output) measures that will track progress toward realizing the direct outputs of the Projects and Activities. Examples of the indicators likely to be included are:

(1) Number of villages with plan foncier rural (PFRs);

(2) Number of urban land titles transformed from permis d'habiter or living permits in Cotonou, Parakou and Porto Novo;

(3) Number of clients of financial service providers trained;

(4) Average cost of registering an enterprise with Chamber of Commerce Guichet Unique;

(5) Number of judicial employees receiving pre-service training; and

(6) Port meeting ISPS standards.

(b) Beneficiaries. The M&E plan shall describe the beneficiaries of the Program in detail, including the expected number of beneficiaries, their income, gender and other general demographic characteristics.

(c) Data Collection and Reporting. The M&E Plan shall establish guidelines for data collection and a reporting framework, including a schedule of Program reporting and responsible parties. In addition, MCA-Benin shall conduct regular assessments of program performance to measure progress on the Goals and Objectives and to alert all parties to any problems in implementation. These assessments will report actual results compared to the Targets on the Indicators referenced in the Monitoring Component, explain deviations between these actual results and Targets, and describe any planned actions to address performance problems. With respect to any data or reports received by MCA-Benin, MCA-Benin shall promptly deliver such reports to MCC along with any other related documents, as specified in the M&E Plan or as may be requested from time to time by MCC, and will make these assessments available to the public on their Web site.

(d) Data Quality Reviews. As determined in the M&E Plan or as otherwise requested by MCC, the quality of the data gathered through the M&E Plan shall be reviewed to ensure that data reported are as reliable, timely and valid as resources will allow. The objective of any data quality review will be to verify the quality and the consistency of performance data, across different implementation units and reporting institutions. Such data quality reviews also will serve to identify where consistent levels of quality are not possible, given in-country capacity or other constraints.

3. Evaluation Component

The Program shall be evaluated on the extent to which the interventions contribute to the Compact Goal and Objectives. The Evaluation Component shall contain the methodology for conducting the most rigorous impact evaluations feasible and cost-effective, as well as the process and timeline for analyzing data. The Evaluation Component shall contain two types of reports: A Final Program Evaluation and Project, Project Activity, or Interim Evaluations.

(a) Final Evaluation. MCC will engage an independent evaluator to conduct a program evaluation at the expiration or termination of the Program (''Final Evaluation''). The evaluation methodology, timeline, data collection, and analysis requirements will be finalized and detailed in the M&E Plan. The Final Evaluations must at a minimum (i) estimate quantitatively and in a statistically valid way, the causal relationship between the Compact Goals (to the extent possible), the Objectives and Outcomes; (ii) determine if and analyze the reasons why the Compact Goals, Objectives and Outcomes were or were not achieved; and (iii) assess the overlapping benefits of the Projects.

(b) Project or Interim Evaluations. The Evaluation Component in the M&E Plan will also describe other individual Project, Project Activity, or Interim Evaluations. The evaluation methodology, timeline, data collection, and analysis requirements will be finalized and detailed in the M&E Plan. Determination of the evaluation methodologies will be condition precedent for specified MCC Disbursements.

(c) Ad Hoc Evaluations or Special Studies. In addition to the evaluations described in the M&E Plan, MCC may require ad hoc evaluations or special studies prior to the expiration of the Compact Term. If MCA-Benin engages an evaluator, the evaluator will be an externally contracted independent source subject to the prior written approval of MCC for terms of reference and final selection, following a tender in accordance with the Procurement Guidelines, and otherwise in accordance with any relevant Implementation Letter or Supplemental Agreement. The cost of an independent evaluation or special study may be paid from MCC Funding. If MCA-Benin requires an ad hoc independent evaluation or special study at the request of the Government for any reason, including for the purpose of contesting an MCC determination with respect to a Project or Project Activity or to seek funding from other donors, no MCC Funding or MCA-Benin resources may be applied to such evaluation or special study without MCC's prior written approval.

4. Other Components of the M&E Plan

In addition to the Monitoring and Evaluation Components, the M&E Plan shall include the following components for the Program, Projects and Project Activities, including, where appropriate, roles and responsibilities of the relevant parties and Providers:

(a) Costs. A detailed annual budget estimate for all components of the M&E Plan.

(b) Assumptions and Risks. Any assumptions and risks external to the Program that underlie the accomplishment of the Objectives and Outcomes; provided such assumptions and risks shall not excuse performance of the Parties, unless otherwise expressly agreed to in writing by the Parties.

5. Implementation of the M&E Plan

(a) Approval and Implementation. The approval and implementation of the M&E Plan, as amended from time to time, shall be in accordance with this M&E Annex, and any other relevant Supplemental Agreement. Stakeholders' Committee's review of the completed portions of the M&E Plan shall be required prior to the expiration of the first year of the Program. Review and approval of the M&E Plan shall be completed by time specified in the Disbursement Agreement.

(b) MCC Disbursement and Re-Disbursement for a Project Activity. As a condition to each MCC Disbursement or Re-Disbursement there shall be satisfactory progress on the M&E Plan for the relevant Project or Project Activity, and substantial compliance with the M&E Plan, including any reporting requirements. In addition, for certain activities, collection of baseline data will be condition precedent for specified MCC Disbursements.

(c) Modifications. Notwithstanding anything to the contrary in the Compact, including the requirements of this M&E Annex, the Parties may modify or amend the M&E Plan or any component thereof, including those elements described herein, without amending the Compact; provided, any such modification or amendment of the M&E Plan is reviewed by the Stakeholders' Committee and has been approved by MCC in writing and is otherwise consistent with the requirements of this Compact and its Objectives, and any relevant Supplemental Agreement between the Parties.

[FR Doc. 06–2252 Filed 3–10–06; 8:45 am]

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Federal Register

Monday,
March 13, 2006

Part IV

Department of Housing and Urban Development

Regulatory and Administrative Waivers Granted for Public and Indian Housing Programs To Assist With Recovery and Relief in Hurricane Wilma Disaster Areas; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5058–N–01]

Regulatory and Administrative Waivers Granted for Public and Indian Housing Programs To Assist With Recovery and Relief in Hurricane Wilma Disaster Areas

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice makes available to entities that administer HUD's Public and Indian Housing programs and are located in an area declared by the President to be a Federal disaster area as a result of Hurricane Wilma, the regulatory waivers and alternative administrative requirements that were made available to entities located in Hurricane Katrina and Hurricane Rita disaster areas, under the same processes described in the November 1, 2005, **Federal Register** notice.

DATES: *Effective Date:* March 7, 2006.

FOR FURTHER INFORMATION CONTACT: PIH Disaster Relief Officer, Office of Policy Programs and Legislation, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4116, Washington, DC 20410–5000, telephone number (202) 708–4016, extension 4245, or (202) 708–0713, extension 7651. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Responding to Hurricanes Katrina and Rita

On October 3, 2005 (70 FR 57716) and November 1, 2005 (70 FR 66222), HUD published **Federal Register** notices designed to assist with relief to areas affected by Hurricane Katrina and Hurricane Rita respectively. Both notices advised the public of HUD regulations and other administrative requirements governing HUD's Office of Public and Indian Housing (PIH) programs that were being waived in order to facilitate the delivery of safe and decent housing under these programs to families and individuals who have been displaced from their housing by Hurricane Katrina and Hurricane Rita.

The October and November 2005 notices advised that entities that administer PIH programs, which include public housing agencies (PHAs), Indian and tribally designated housing entities (TDHEs), and local and tribal governments, and are located in an area declared by the President to be a Federal disaster area as a result of Hurricane Katrina or Hurricane Rita (depending upon the notice), were eligible to defer compliance with the regulations and other requirements listed in the notices for an initial period of 12 months or such other period as may be specified in the notice.

Both notices also advised that PIH program administrators that are not located in a disaster area but that were assisting, respectively, with Hurricane Katrina or Hurricane Rita recovery and relief, were eligible to request waiver of the regulations and administrative requirements listed in these notices, and HUD review and response would occur through an expedited waiver request and response process. PIH program administrators, located in an area declared a federal disaster area as a result of Hurricane Katrina or Hurricane Rita, or PIH program administrators not located in such an area but assisting with Hurricane Katrina or Hurricane Rita relief and recovery efforts, were eligible under these notices to request waiver of a regulation or other administrative requirement through the expedited waiver process provided in this notice.

Finally, both **Federal Register** publications emphasized that the notices applied only to PIH programs or to cross-cutting regulatory or administrative requirements that are applicable to PIH program administrators.

B. Responding to Hurricane Wilma

The relief and recovery efforts that have been underway in the Gulf States, since the Hurricanes Katrina and Rita occurred, have revealed that Hurricane Wilma, which struck South Florida on October 23, 2005, resulted in greater damage than initially realized. Therefore, to assist PIH program administrators located in Hurricane Wilma disaster areas, which are mapped and can be found at *http://www.fema.gov/news/event.fema?id=5145*, similar to the relief provided to PIH program administrators located in Hurricane Katrina and Rita disaster areas, this notice makes available to PIH program administrators in Hurricane Wilma disaster areas the regulatory waivers and alternative administrative requirements set forth in the November 1, 2005, notice, which was a slightly more expansive notice than the October 3, 2005 notice.

II. Waiver Process for Hurricane Wilma Disaster Areas

A. For PIH Program Administrators in Declared Hurricane Wilma Disaster Areas

Entities that administer public or Indian housing or voucher programs and are located in the areas declared a Federal disaster area as a result of Hurricane Wilma may defer or suspend compliance with the regulations and other administrative requirements listed in HUD's November 1, 2005, **Federal Register** notice (70 FR 66222) with the exception of the waiver of the payment standard provision in section III.B.12 of the November 1, 2005, notice. With that one exception, PIH program administrators in the Hurricane Wilma disaster areas may defer or suspend compliance with the regulations or other administrative requirements upon the effective date of this notice, for an initial period of 12 months or for such other period as may be specified in this notice. These entities, however, should notify HUD within two weeks of determination of the need to utilize the waived requirements in this notice, or as soon as possible, by contacting HUD in the manner detailed in the following paragraph.

An official of the PHA, TDHE, tribal or local government that seeks the suspension of compliance with requirements listed in this notice must contact HUD in writing (e-mail communication is allowed) and identify the requirements by section and number utilized in the November 1, 2005, notice (*e.g.*, section III.A.2., section III.B.1, 2, 3, etc., or ''all of the waived or suspended requirements applicable to public housing and voucher programs or to Indian housing in section III''). The following e-mail address has been established in order to expedite the process: *Pih_Wilmadisaster_Relief@hud.gov*. Please note that this e-mail address is different from the e-mail addresses provided for Hurricane Katrina and Hurricane Rita. In addition, identical checklists of the waived or suspended requirements identified and numbered in section III of the notices for Hurricanes Katrina and Rita are available at HUD's Web site at *http://www.hud.gov/katrina/proguidance.cfm*, and an eligible PHA THDE, tribal or local government can use either of these checklists to identify the waived or suspended requirements that it will utilize, but should strike references to Katrina or Rita, and insert Wilma, and follow the instructions in this notice for submitting the checklist to HUD.

This is a notification process only, and HUD asks that this notification be made to HUD no later than two weeks after a PHA determines the need to rely on one or more or all of the waived or suspended requirements in this notice. While, as noted earlier, HUD does not want to impose additional administrative requirements on PIH program administrators located in the disaster areas during this period, it is important and helpful for HUD to know how these entities are administering their PIH programs during the recovery period, as HUD has tried to make this notification process as easy as possible. HUD will maintain information on the names of the PHAs, Indian tribes, or TDHEs that have deferred compliance with certain regulatory and administrative requirements in accordance with this notice. The regulation or administrative requirement will remain inapplicable for a period of 12 months and will be considered waived or suspended by HUD for an additional three months upon notification to HUD following the same notification process described above.

B. For PIH Program Participants in Non-Disaster Declared Areas

PIH program administrators that are not located in a Hurricane Wilma disaster area but are contributing to Hurricane Wilma relief and recovery efforts may request a waiver of the regulations or administrative requirements listed in the November 1, 2005, notice by sending the checklist referenced in section II (A.) above, and request for waiver(s) to the *Pih_Wilmadisaster_Relief@hud.gov* e-mail address. The request must specify the need, including justification, for the waiver of the requirement. Waiver requests submitted through this e-mail address will receive priority processing.

C. Regulations and Requirements Not Waived in the November 1, 2005, Notice

Based on experience to date with Hurricane Katrina and Hurricane Rita recovery efforts, PIH believes that the November 1, 2005, notice contains a comprehensive list of waivers that will assist with relief efforts for Hurricane Wilma. However, for any regulation or other administrative requirement not listed in the November 1, 2005, notice for which a PIH program administrator seeks waiver or suspension, the program administrator may seek a waiver by sending a request to the *Pih_Wilmadisaster_Relief@hud.gov* e-mail address. The request must specify the need, including justification, for the waiver of the requirement. As noted earlier, waiver requests submitted through this e-mail address will receive priority processing, and HUD will respond to the requestor by e-mail.

The expedited waiver process is provided only for waiver or suspension of requirements that will assist with the Hurricane Wilma relief and recovery efforts. HUD will not respond to any waiver requests submitted to this e-mail address that are unrelated to relief and recovery of the disaster areas.

Dated: March 7, 2006.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 06–2394 Filed 3–10–06; 8:45 am]

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USA PATRIOT Improvement and Reauthorization Act of 2005 (Mar. 9, 2006; 120 Stat. 192)

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29 Parts:			
0–99	(869–056–00104–5)	50.00	July 1, 2005
100–499	(869–056–00105–3)	23.00	July 1, 2005
500–899	(869–056–00106–1)	61.00	July 1, 2005
900–1899	(869–056–00107–0)	36.00	[7]July 1, 2005
1900–1910 (§§ 1900 to 1910.999)	(869–056–00108–8)	61.00	July 1, 2005
1910 (§§ 1910.1000 to end)	(869–056–00109–6)	58.00	July 1, 2005
1911–1925	(869–056–00110–0)	30.00	July 1, 2005
1926	(869–056–00111–8)	50.00	July 1, 2005
1927–End	(869–056–00112–6)	62.00	July 1, 2005
30 Parts:			
1–199	(869–056–00113–4)	57.00	July 1, 2005
200–699	(869–056–00114–2)	50.00	July 1, 2005
700–End	(869–056–00115–1)	58.00	July 1, 2005
31 Parts:			
0–199	(869–056–00116–9)	41.00	July 1, 2005
200–499	(869–056–00117–7)	33.00	July 1, 2005
500–End	(869–056–00118–5)	33.00	July 1, 2005
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–056–00119–3)	61.00	July 1, 2005
191–399	(869–056–00120–7)	63.00	July 1, 2005
400–629	(869–056–00121–5)	50.00	July 1, 2005
630–699	(869–056–00122–3)	37.00	July 1, 2005
700–799	(869–056–00123–1)	46.00	July 1, 2005
800–End	(869–056–00124–0)	47.00	July 1, 2005
33 Parts:			
1–124	(869–056–00125–8)	57.00	July 1, 2005
125–199	(869–056–00126–6)	61.00	July 1, 2005
200–End	(869–056–00127–4)	57.00	July 1, 2005
34 Parts:			
1–299	(869–056–00128–2)	50.00	July 1, 2005
300–399	(869–056–00129–1)	40.00	[7]July 1, 2005
400–End & 35	(869–056–00130–4)	61.00	July 1, 2005
36 Parts:			
1–199	(869–056–00131–2)	37.00	July 1, 2005
200–299	(869–056–00132–1)	37.00	July 1, 2005
300–End	(869–056–00133–9)	61.00	July 1, 2005
37	(869–056–00134–7)	58.00	July 1, 2005
38 Parts:			
0–17	(869–056–00135–5)	60.00	July 1, 2005
18–End	(869–056–00136–3)	62.00	July 1, 2005
39	(869–056–00139–1)	42.00	July 1, 2005
40 Parts:			
1–49	(869–056–00138–0)	60.00	July 1, 2005
50–51	(869–056–00139–8)	45.00	July 1, 2005
52 (52.01–52.1018)	(869–056–00140–1)	60.00	July 1, 2005
52 (52.1019–End)	(869–056–00141–0)	61.00	July 1, 2005
53–59	(869–056–00142–8)	31.00	July 1, 2005
60 (60.1–End)	(869–056–00143–6)	58.00	July 1, 2005
60 (Apps)	(869–056–00144–4)	57.00	July 1, 2005
61–62	(869–056–00145–2)	45.00	July 1, 2005
63 (63.1–63.599)	(869–056–00146–1)	58.00	July 1, 2005
63 (63.600–63.1199)	(869–056–00147–9)	50.00	July 1, 2005
63 (63.1200–63.1439)	(869–056–00148–7)	50.00	July 1, 2005
63 (63.1440–63.6175)	(869–056–00149–5)	32.00	July 1, 2005
63 (63.6580–63.8830)	(869–056–00150–9)	32.00	July 1, 2005
63 (63.8980–End)	(869–056–00151–7)	35.00	[7]July 1, 2005
64–71	(869–056–00152–5)	29.00	July 1, 2005
72–80	(869–056–00153–5)	62.00	July 1, 2005
81–85	(869–056–00154–1)	60.00	July 1, 2005
86 (86.1–86.599–99)	(869–056–00155–0)	58.00	July 1, 2005
86 (86.600–1–End)	(869–056–00156–8)	50.00	July 1, 2005
87–99	(869–056–00157–6)	60.00	July 1, 2005
100–135	(869–056–00158–4)	45.00	July 1, 2005
136–149	(869–056–00159–2)	61.00	July 1, 2005
150–189	(869–056–00160–6)	50.00	July 1, 2005
190–259	(869–056–00161–4)	39.00	July 1, 2005
260–265	(869–056–00162–2)	50.00	July 1, 2005
266–299	(869–056–00163–1)	50.00	July 1, 2005
300–399	(869–056–00164–9)	42.00	July 1, 2005
400–424	(869–056–00165–7)	56.00	[8]July 1, 2005
425–699	(869–056–00166–5)	61.00	July 1, 2005
700–789	(869–056–00167–3)	61.00	July 1, 2005
790–End	(869–056–00168–1)	61.00	July 1, 2005
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–056–00169–0)	24.00	July 1, 2005
101	(869–056–00170–3)	21.00	July 1, 2005
102–200	(869–056–00171–1)	56.00	July 1, 2005
201–End	(869–056–00172–0)	24.00	July 1, 2005
42 Parts:			
1–399	(869–056–00173–8)	61.00	Oct. 1, 2005
400–429	(869–056–00174–6)	63.00	Oct. 1, 2005
430–End	(869–056–00175–4)	64.00	Oct. 1, 2005
43 Parts:			
1–999	(869–056–00176–2)	56.00	Oct. 1, 2005
1000–end	(869–056–00177–1)	62.00	Oct. 1, 2005
44	(869–056–00178–9)	50.00	Oct. 1, 2005
45 Parts:			
1–199	(869–056–00179–7)	60.00	Oct. 1, 2005
200–499	(869–056–00180–1)	34.00	Oct. 1, 2005
500–1199	(869–056–00171–9)	56.00	Oct. 1, 2005
1200–End	(869–056–00182–7)	61.00	Oct. 1, 2005
46 Parts:			
1–40	(869–056–00183–5)	46.00	Oct. 1, 2005
41–69	(869–056–00184–3)	39.00	[9]Oct. 1, 2005
70–89	(869–056–00185–1)	14.00	[9]Oct. 1, 2005
90–139	(869–056–00186–0)	44.00	Oct. 1, 2005
140–155	(869–056–00187–8)	25.00	Oct. 1, 2005
156–165	(869–056–00188–6)	34.00	[9]Oct. 1, 2005
166–199	(869–056–00189–4)	46.00	Oct. 1, 2005
200–499	(869–056–00190–8)	40.00	Oct. 1, 2005
500–End	(869–056–00191–6)	25.00	Oct. 1, 2005
47 Parts:			
0–19	(869–056–00192–4)	61.00	Oct. 1, 2005
20–39	(869–056–00193–2)	46.00	Oct. 1, 2005
40–69	(869–056–00194–1)	40.00	Oct. 1, 2005
70–79	(869–056–00195–9)	61.00	Oct. 1, 2005
80–End	(869–056–00196–7)	61.00	Oct. 1, 2005
48 Chapters:			
1 (Parts 1–51)	(869–056–00197–5)	63.00	Oct. 1, 2005
1 (Parts 52–99)	(869–056–00198–3)	49.00	Oct. 1, 2005
2 (Parts 201–299)	(869–056–00199–1)	50.00	Oct. 1, 2005
3–6	(869–056–00200–9)	34.00	Oct. 1, 2005
7–14	(869–056–00201–7)	56.00	Oct. 1, 2005
15–28	(869–056–00202–5)	47.00	Oct. 1, 2005

Title	Stock Number	Price	Revision Date
29–End	(869–056–00203–3)	47.00	Oct. 1, 2005
49 Parts:			
1–99	(869–056–00204–1)	60.00	Oct. 1, 2005
100–185	(869–056–00205–0)	63.00	Oct. 1, 2005
186–199	(869–056–00206–8)	23.00	Oct. 1, 2005
200–299	(869–056–00207–6)	32.00	Oct. 1, 2005
300–399	(869–056–00208–4)	32.00	Oct. 1, 2005
400–599	(869–056–00209–2)	64.00	Oct. 1, 2005
600–999	(869–056–00210–6)	19.00	Oct. 1, 2005
1000–1199	(869–056–00211–4)	28.00	Oct. 1, 2005
1200–End	(869–056–00212–2)	34.00	Oct. 1, 2005
50 Parts:			
1–16	(869–056–00213–1)	11.00	Oct. 1, 2005
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17.95(c)–end	(869–056–00215–7)	32.00	Oct. 1, 2005
17.96–17.99(h)	(869–056–00215–7)	61.00	Oct. 1, 2005
17.99(i)–end and 17.100–end	(869–056–00217–3)	47.00	Oct. 1, 2005
18–199	(869–056–00218–1)	50.00	Oct. 1, 2005
200–599	(869–056–00218–1)	45.00	Oct. 1, 2005
600–End	(869–056–00219–0)	62.00	Oct. 1, 2005
CFR Index and Findings Aids	(869–056–00050–2)	62.00	Jan. 1, 2005
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Complete set (one-time mailing)		325.00	2004

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2005. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2004, through April 1, 2005. The CFR volume issued as of April 1, 2004 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2004, through October 1, 2005. The CFR volume issued as of October 1, 2004 should be retained.