

case of paragraph VI.B.4) was 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 discussed above, the Commission agrees, and the Commission proposes to substitute the phrase "but only for that plant," in order to clarify that issue resolution on a matter applies in subsequent proceedings for that plant.

Each of the design certification rules in 10 CFR part 52 (Appendices A, B, and C) 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 rules 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 revised § 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 (paragraph II.G) for "departure from a method of evaluation" to support the evaluation criterion in VIII.B.5.b(8).

In an earlier rulemaking (see 64 FR 53582; October 4, 1999), the Commission revised § 50.59 to incorporate new thresholds for permitting changes to a plant as described in the final safety analysis report without NRC approval. For consistency and clarity, similar changes are now 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 Commission is including is the definition from the new § 50.59 for a "departure from a method of evaluation," which is appropriate to include in this rulemaking so that the eighth criterion in Section VIII.B.5.b of the design certification rules will be implemented as intended.

B. 10 CFR Part 2, Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders

The proposed rule would amend §§ 2.110, 2.400, 2.401, 2.402, 2.403, 2.404, 2.406, 2.500, 2.501, and 2.502 to correct references to former 10 CFR part 52 appendices that have been redesignated as subparts.

C. 10 CFR Part 20, Standards for Protection Against Radiation

The proposed rule would amend § 20.1002 to clarify that the regulations in 10 CFR part 20 also apply to licenses issued under 10 CFR part 52. This conforming change was inadvertently overlooked when the Commission originally promulgated 10 CFR part 52.

D. 10 CFR Part 21, Reporting of Defects and Noncompliance

The proposed rule would amend §§ 21.2, 21.3, and 21.21 to clarify the applicability of 10 CFR part 21 to individuals, corporations, partnerships, or other entities doing business within the United States, and directors and responsible officers of such organizations, that hold a permit or license under 10 CFR part 52. These conforming changes would correct an oversight when the Commission first adopted 10 CFR part 52, to ensure that the requirements in 10 CFR part 21 apply to applicants for, and holders of licenses under 10 CFR part 52, as well as to suppliers of basic components to such licensees.

Combined Licenses, Manufacturing Licenses, Duplicate Design Licenses

The proposed rule would make 10 CFR part 21 applicable to applicants for, and holders of combined licenses, manufacturing licenses, and duplicate design licenses under 10 CFR part 52, and suppliers of basic components to such applicants and holders, by amending paragraphs (a), (b), and (c) of § 21.2 regarding the scope of 10 CFR part 21 and amending the definitions of basic component, commercial grade item, critical characteristics, dedicating

entity, dedication, defect, and substantial safety hazard in § 21.3. In addition, the proposed rule would amend § 21.21 to clearly state when a director or responsible officer subject to 10 CFR part 21 must notify the Commission that the director or officer has information reasonably indicating a failure to comply or a defect affecting the construction or operation of a facility or an activity that is subject to the licensing requirements under 10 CFR part 52 or affecting a basic component supplied for a facility or an activity that is subject to the licensing requirements under 10 CFR part 52. The Commission notes that a supplier of safety-related analyses and services to a licensee under part 52 is subject to part 21, inasmuch as such services constitute "basic components;" this is no different than the applicability of part 21 to a supplier of such analyses and services to a licensee under part 50.

Early Site Permits

With respect to early site permits, the Commission proposes to use a different approach, such that the requirements of part 21 do not apply to applicants for early site permits, or holders of early site permits so long as the early site permit is not referenced in any license application. During the pendency of the early site permit application before the NRC, the applicant would be required by 10 CFR 50.9, "Completeness and accuracy of information," to notify the Commission of any information having a "significant implication for public health and safety or the common defense and security" with respect to the matters covered in the application, pursuant to proposed § 52.111. Failure to abide by the completeness and accuracy requirements in § 50.9 would subject the applicant to potential criminal liability under § 52.113 (proposed § 52.403). In addition, under current § 52.9, the early site permit applicant would be subject to penalties for deliberate misconduct, including submission to the NRC of information known to be incomplete or inaccurate in some material aspect. Finally, during the pendency of an early site permit application, the application has no operative effect with respect to issue resolution under § 52.39; consequently, an early site permit application itself could not result in a "substantial safety hazard" by virtue of the application being referenced in a nuclear power plant licensing proceeding. Therefore, the Commission does not believe that adopting the regulatory overlay of part 21 during the pendency of an early site permit application is necessary to effectuate the Commission's regulatory