

thereafter incorporated by reference into a license). It is true that, unlike an early site permit, a design certification rule is of general applicability and that a complete nuclear power plant design could be provided by an entity other than the original design certification applicant/vendor (*see* § 52.73 (proposed § 52.203)). Nonetheless, unless the other entity provides a design which is subsequently referenced in an NRC license application, there is no "substantial safety hazard" created (although the Commission acknowledges that the entity may incur significant redesign costs if the entity completes substantial parts of the design before submission of the application, only to find upon submission of the application that there were significant defects in the certified design). Upon weighing of all relevant factors, the Commission proposes that part 21 should not apply to the design certification applicant/vendor until a final, Commission-approved design certification rule is referenced by at least one applicant/licensee.

However, the Commission believes that once a design certification rule is referenced by an applicant, the design certification applicant/vendor should be subject to part 21. The Commission's safety review of a license application referencing a design certification rule is limited in accordance with § 52.63 (proposed § 52.127) and § 52.79 (proposed § 52.211). If the design certification applicant/vendor has discovered a significant safety concern with respect to its certified design, it should be reported to the NRC so that it may be considered in the review of the application referencing the design certification rule. While this places a continuing obligation on the design certification applicant/vendor to monitor whether its design has been referenced in a license application, as a practical matter it is likely that the license applicant will have contractually engaged the design certification applicant/vendor prior to submitting the application. In any event, the Commission concludes that the design certification applicant/vendor should be subject to part 21 after its design certification has been referenced by an applicant for a license.

The Commission believes that, with one exception, changes to part 21 are unnecessary to reflect these determinations with respect to design certification applicants/vendors. Designs submitted for certification are "basic components," as defined in § 21.3, as are any supporting analyses inasmuch as they constitute "safety-related design [and] analysis \* \* \*

associated with component hardware whether these services are performed by the component supplier or not." If the design certification applicant/vendor provides the certified design to a license applicant pursuant to contract or agreement, the design certification applicant/vendor "supplies" the basic component, *see* § 21.3. However, there is a possibility that an entity other than the applicant/vendor of a design which was certified in a design certification rule may supply the complete plant design to a referencing license applicant. *See* § 52.73 (proposed § 52.203). For these reasons, the Commission is considering a change to the definition of "supplying or supplies" in § 21.3 to ensure that a design certification applicant/vendor who does not pursuant to contract supply to a license applicant the complete design for the design certification, is also subject to part 21 for this special situation.

For the reasons discussed earlier, the Commission believes that it is reasonable and appropriate to limit the applicability of part 21 such that it is applicable once the design certification rule has been referenced by an applicant, permit holder, or licensee. Therefore, although the potential ambit of part 21 extends to an applicant/vendor of a design certification after issuance of a design certification rule, the Commission has decided not to extend the applicability of part 21 in such a fashion. By contrast, once the design certification rule has been referenced, the potential for a substantial safety hazard exists if a known defect in a design certification rule is not disclosed, the remainder of the plant is designed, the plant constructed, and subsequently allowed to operate. Accordingly, the Commission concludes that part 21 should apply to the design certification applicant/vendor after the design certification rule has been referenced by a license applicant. Finally, the Commission concludes that part 21 should apply to suppliers of safety-related analyses and services to a design certification applicant/vendor in the same manner and extent as part 21 applies to the design certification applicant.

#### *E. 10 CFR Part 50, Domestic Licensing of Production and Utilization Facilities*

The proposed rule would amend paragraph (a)(1) of § 50.109 (backfit rule) to clearly state the applicability of the backfit rule to some of the licensing processes 10 CFR part 52 and the date that backfit protection commences for those licensing processes. The licensing

processes to which the backfitting provisions in § 50.109 apply are standard design approvals, combined licenses, manufacturing licenses, and duplication design licenses issued under subparts E, G, H, and I of 10 CFR part 52, respectively. The backfitting requirement in § 50.109 does not apply to early site permits, early site reviews, and standard design certifications issued under subparts A, B, and D, respectively, in as much as these licensing processes have their own special backfitting provisions (the special backfit requirements set forth in § 52.39, current sections 5 and 6 of Appendix Q (proposed § 52.47), and current § 52.63(a) (proposed § 52.127(a)) apply to early site permits, early site reviews, and standard design certifications, respectively). Section 50.109(a)(1)(vii) sets forth the applicability of these special backfitting provisions for a combined license that references an early site permit, early site review, or design certification rule.

The proposed rule would also remove appendices M, N, O, and Q from 10 CFR part 50. These appendices were transferred to 10 CFR part 52 when it was first promulgated (54 FR 15372; April 18, 1989). However, the Commission failed to remove those appendices from 10 CFR part 50, though the Commission intended to do so (*see* 54 FR 15385; April 18, 1989).

#### *F. 10 CFR Part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions*

The proposed rule would amend paragraph (b)(6) of § 51.20, "Criteria for and identification of licensing and regulatory actions requiring environmental impact statements," to make clear that issuance of a manufacturing license requires preparation of an environmental impact statement or a supplement to an environmental impact statement. Paragraph (b), which defines types of actions that require an environmental impact statement or a supplement to an environmental impact statement would replace the current reference to Appendix M with a reference to subpart H of 10 CFR part 52 which is the proposed subpart that sets forth the process for manufacturing licenses, formerly contained in Appendix M.

#### *G. 10 CFR Part 72, Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste*

The proposed rule would amend § 72.210 to indicate that a general license would be issued for the storage