

plant-specific orders are governed by the requirements in 10 CFR 52.127(a)(3).

4. Exemptions from Tier 1 information are governed by the requirements in 10 CFR 52.127(b)(1) and 52.227(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 52.127(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 §§ 52.119 or 52.125, 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 50.12(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 technical specifications, or requires a license amendment pursuant to 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 52.231(a), who believes that an applicant or licensee who references this appendix has not complied with Section 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 comply with the general requirements of 10 CFR 2.714(b)(2), the petition must demonstrate that the departure does not comply with Section 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 52.231 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 Section 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 52.127(a)(4).

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 52.231(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 N-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