

Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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.

This rule invites comments on the addition of safeguards and procedures for suspensions of packing holidays, and clarification/removal of section numbers currently prescribed under the California grape order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 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) This action explicitly states safeguards and procedures to facilitate Committee discussions on packing holiday suspension requests; (2) the Committee unanimously recommended the safeguards and procedures at a public meeting and interested parties had an opportunity to provide input; (3) California grape shipments begin approximately April 20, 2003, and this rule should be in effect as soon as possible; and (4) this rule provides for a 60-day comment period and any comments received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements and orders, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

#### **PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA**

■ 1. The authority citation for 7 CFR part 925 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. In § 925.304, paragraphs (a)(2), (b)(3), (b)(4), and (e) are revised to read as follows:

#### **§ 925.304 California Desert Grape Regulation 6.**

\* \* \* \* \*

(a) \* \* \*

(2) Grapes of the Flame Seedless variety shall meet the minimum berry size requirement of ten-sixteenths of an inch and shall be considered mature if the juice meets or exceeds 16.5 percent soluble solids, or contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in juice in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of Title 3: California Code of Regulations (CCR).

(b) \* \* \*

(3) Such containers of grapes shall be plainly marked with the minimum net weight of grapes contained therein (with numbers and letters at least one-fourth inch in height), the name of the variety of the grapes and the name of the shipper, as provided in §§ 1436.30 and 1359 of Title 3: California Code of Regulations.

(4) Such containers of grapes shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, except that such requirement shall not apply to containers in the center tier of a lot palletized in a 3 box by 3 box pallet configuration: *Provided*, That pallets of reusable plastic containers shall have the lot stamp number stamped on two USDA-approved pallet tags, each affixed to opposite sides of the pallet of containers, in addition to other required information on the cards of the individual containers.

\* \* \* \* \*

(e) *Suspension of packing holidays.* Upon recommendation of the committee and approval of the Secretary, the prohibition against packing or repacking grapes on any Saturday, Sunday or on Memorial Day or Independence Day holidays of each year, may be modified or suspended to permit the handling of grapes provided such handling complies with procedures and safeguards specified by the committee as follows:

(1) All requests for suspension of a packing holiday shall be in writing, shall state the reasons the suspension is being requested, and shall be submitted to the Committee manager by noon on Wednesday or at least 3 days prior to the requested suspension date;

(2) Upon receipt of a written request, the Committee manager shall promptly give reasonable notice to producers and handlers and to the Secretary that an assembled Committee meeting will be held to discuss the request(s). The representative of the Secretary shall attend the meeting via speakerphone or in person, and all votes of the Committee members shall be cast in person;

(3) The Committee members shall consider marketing conditions (*i.e.*, supplies of competing commodities to include quantities in inventory, the expected demand conditions for grapes in different markets, and any pertinent documents which provide data on market conditions), weather conditions, labor shortages, the size of the crop remaining to be marketed, and other pertinent factors in reaching a decision to suspend packing holidays;

(4) Once a vote is taken, any documents utilized during the meeting will be forwarded immediately to the Secretary's representative and a summary of the Committee's action and reasons for recommending approval or disapproval will be prepared and also forwarded by the committee; and

(5) The Secretary's representative shall notify the Committee manager of approval or disapproval of the request prior to commencement of the suspended packing holiday and the Committee manager shall notify handlers and producers accordingly.

\* \* \* \* \*

Dated: April 16, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

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## **NUCLEAR REGULATORY COMMISSION**

### **10 CFR Parts 2, 20, and 50**

**RIN 3150–AG56**

#### **Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations to standardize the process for allowing a power reactor licensee to release part of its facility or site for unrestricted use before the NRC

approves the license termination plan (LTP). This type of release is termed a "partial site release." The final rule identifies the criteria and regulatory framework that a licensee will use to request NRC approval for a partial site release and provides additional assurance that residual radioactivity will meet the radiological criteria for license termination, even if parts of the site were released before license termination. The final rule also clarifies that the radiological criteria for unrestricted use apply to a partial site release.

**EFFECTIVE DATE:** November 18, 2003, for § 50.75(g)(4). All remaining sections will be effective on May 22, 2003.

**ADDRESSES:** The final rule is available on the NRC's rulemaking Web site (<http://ruleforum.llnl.gov/>). For information about the interactive rulemaking Web site, contact Carol Gallagher, 301-415-5905 (electronic mail: [cag@nrc.gov](mailto:cag@nrc.gov)). Copies of certain documents related to this rulemaking may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Documents are also available electronically at the NRC's Public Electronic Reading Room on the Internet (<http://www.nrc.gov/reading-rm.html>). From this site, the public can gain entry into the NRC's Agency Document Access and Management System (ADAMS) that provides text and image files of the NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 301-415-4737 or toll-free at 1-800-397-4209, or by e-mail at [pdr@nrc.gov](mailto:pdr@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. Harry Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-3092; or by e-mail to [hst@nrc.gov](mailto:hst@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

Compliance with the decommissioning and license termination rules of 10 CFR parts 20 and 50 ensures adequate protection of the public and the environment from any radioactivity remaining in the facility and site when the reactor license is terminated. The NRC staff makes its determination that the licensee has met the license termination criteria using information submitted by the licensee in its license termination plan (LTP) and final radiation survey. The LTP is required no later than 2 years before the anticipated date of license termination. The license termination radiation survey is required after the licensee

completes its decontamination activities. These requirements were based on the NRC's anticipation that reactor licensees would permanently cease operations and then perform the decommissioning and license termination of the site as one project. However, in 1999, a licensee informed the NRC staff that it intended to sell parts of its facility and site before it permanently ceased operations. As a result, the staff was faced with the need to evaluate the adequacy of the licensee's proposed action before the information required by the license termination rule (LTR) and the final radiation survey.

In evaluating the NRC staff's response to the proposed sale of parts of the licensee's facility and site, a number of actions specific to the case were taken to ensure that the property would meet the radiological release criteria for unrestricted use in 10 CFR part 20, subpart E.

However, the NRC recognized that the current regulations in 10 CFR part 50 do not specifically address the release of part of a reactor facility or site for unrestricted use. Thus, there is no specific guidance as to the release criteria under 10 CFR part 20, subpart E, for a partial site release.

The purpose of the License Termination Rule (LTR) (61 FR 39301; July 29, 1996, as amended at 62 FR 39091; July 21, 1997) and 10 CFR 50.82 is to ensure that the residual radioactivity for the licensed activity is within the criteria of the LTR. To avoid licensees taking a piecemeal approach to license termination, this rule provides that the LTP must consider the entire site as defined in the original license, along with subsequent modifications to the licensed site, to ensure that the entire area meets the radiological release requirements of 10 CFR part 20, subpart E, at the time the license is terminated. This approach is consistent with the intent of the LTR to consider the whole site for application of the release criteria. The rule clarifies this intent and does not establish new policies or standards. Although no further surveys of previously released areas are anticipated, the dose assessment in the LTP must account for possible dose contributions associated with previously released areas in order to ensure that the entire area meets the radiological release requirements of 10 CFR part 20, subpart E, (0.25 mSv/yr (25 mrem/yr) reduced to as low as reasonably achievable (ALARA)) at the time the license is terminated. The requirement that licensees maintain records of property line changes and the

radiological conditions of partial site releases ensures that these potential dose contributions can be adequately considered at the time of any subsequent partial releases and at the time of license termination. Draft NUREG-1757, Volume II, "Consolidated NMSS Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria," was published for public comment on September 26, 2002. When finalized, this document will provide guidance that may assist licensees in identifying and accounting for these potential dose contributions.

Therefore, the rule provides adequate assurance that residual radioactivity from licensed activities that remains in areas released for unrestricted use will meet the radiological criteria for license termination. It should increase public confidence in decisions to release parts of reactor sites and make more efficient use of NRC and licensee resources.

**Discussion**

This rulemaking is applicable to power reactor licensees in order to be responsive to current industry needs, while also protecting the health and safety of the public. A separate rulemaking would be needed to address the wide variety of materials sites, many of which are technically more complex from a decommissioning perspective than reactor sites, to provide a uniform and consistent agency approach to partial site release. The rule requires NRC approval for a partial site release for unrestricted use at a reactor site before NRC approval of the licensee's LTP. Partial releases for restricted use are not permitted prior to LTP approval. Partial releases following LTP approval would be governed by the LTP or changes thereto.

The approval process by which the property is released depends on the potential for residual radioactivity from plant operations remaining in the area to be released. First, for proposed release areas classified as non-impacted and, therefore, having no reasonable potential for residual radioactivity, the licensee would be allowed to submit a letter request for approval of the release containing specific information for NRC approval. In this case, because there is no reasonable potential for residual radioactivity, the NRC would approve the release of the property by letter upon determining that the licensee has otherwise met the criteria of the rule, provided that a change to a license or technical specifications description of the site is not necessary. Guidance for demonstrating that a proposed release area is non-impacted is contained in

NUREG-1575, "Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM)." However, the NRC would generally not perform radiological surveys and sampling of a non-impacted area. The NRC will determine whether the licensee's classification of any release areas as non-impacted is adequately justified. If the NRC should determine that confirmatory surveys and sampling are needed, such surveys and sampling would be performed as part of the NRC's inspection process.

Second, for areas classified as impacted and, therefore, having some reasonable potential for residual radioactivity, the licensee will submit the required information in the form of a license amendment for NRC approval. The license amendment application will include the licensee's demonstration of compliance with the radiological criteria for unrestricted use specified in 10 CFR 20.1402. In both cases, public participation requirements and additional recordkeeping are addressed.

In contrast to the license termination process, the rule does not require a license amendment to release property for unrestricted use in all cases. The NRC believes this difference is justified for the following reasons. First, the license termination process was created to deal with the facility or site as a whole, which inevitably involves handling residual radioactivity, such as that found in plant systems. The rule preserves the license amendment approach for those cases when the potential exists for residual radioactivity and requires that the area meets the radiological criteria for unrestricted use. Second, for cases when the change does not adversely affect reactor safety and it is demonstrated that the area is non-impacted and, therefore, there is no reasonable potential for residual radioactivity, a license amendment is not required to adequately protect the public health and safety. The rule with its clearly defined criteria would be sufficient for the NRC to confirm a licensee's compliance with the partial site release rule. The NRC's oversight role in these cases is to ensure that the licensee meets the relevant criteria.

The rule amends 10 CFR part 2 to provide an opportunity for a Subpart L hearing if the release involves an amendment. The hearing, if conducted, must be completed before the property is released for use. However, for cases where it is demonstrated that the area is non-impacted and, therefore, there is no reasonable potential for residual radioactivity, a license amendment is not required by the rule. A review of a licensee's proposed partial site release

in such cases is essentially a compliance review to determine if the release would otherwise meet the defined criteria of the regulation. Assuming the partial site release does not result in a change to an existing license, the approval of the partial site release under these circumstances does not require a license amendment (*see* Cleveland Electric Illuminating, *et al.* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315, 328 (1996)). In these cases, the opportunity to comment on the licensee's proposal for a partial site release and the required public meeting held before the release approval is granted will serve as forums for public comment on the proposed release.

In some cases, a reactor or site-specific Independent Spent Fuel Storage Installation (ISFSI) license may contain license conditions or technical specifications that define the licensed site in detail, such as a site map. In these cases, if the partial site release would change the licensed site as described, a reactor licensee would be required to submit a license amendment application for the release regardless of the potential for residual radioactivity in the area to be released. However, under current regulations, a licensee could amend its license to remove the licensed site definition without reference to a partial site release and then proceed to perform the release, without obtaining NRC approval. The rule requires NRC approval for a partial release from the licensed site regardless of the amount of detail defining the site in the operating license.

The rule provides for public participation. The NRC will notice receipt of a licensee's proposal for a partial site release regardless of the potential for residual radioactivity and make it available for public comment. Notwithstanding the opportunity for a hearing if a license amendment is involved, the NRC also will hold a public meeting in the vicinity of the site to discuss the licensee's request for letter approval or license amendment application, as applicable, and obtain comments before approving the release. The NRC has issued a policy statement, "Policy on Enhancing Public Participation in NRC Meetings" (67 FR 36920; May 28, 2002). This policy statement provides a revised policy that the NRC will follow in opening meetings to public observation and participation. The revised policy is discussed in the Comments on the Proposed Rule.

Some commenters have expressed concern that a licensee could use a series of partial site releases to avoid applying the criteria of the license

termination rule. Members of the public are concerned that the lack of a specific regulation for partial site releases could result in inconsistent application of safety standards and insufficient regulatory oversight of licensee actions. They also note that the public participation requirements of the license termination rule do not specifically apply to a partial site release. The rule addresses these concerns.

The rule does not permit a partial site release under restricted conditions prior to NRC approval of the LTP, nor has any reactor licensee expressed interest in releasing property for restricted use. Any partial release for restricted use would be handled on a case-by-case basis through application of an exemption process.

The partial site release rule makes the following changes to 10 CFR part 50:

1. Adds a new section, separate from the license termination process of § 50.82, to address the release of part of a reactor facility or site for unrestricted use before the LTP is approved.

2. Prohibits release for restricted use prior to LTP approval.

3. Specifies criteria for the licensee to fulfill to obtain NRC approval of a partial site release.

4. Allows a written request for release approval and does not require a license amendment for releases of property if the licensee demonstrates that the area is non-impacted and, therefore, there is no reasonable potential for residual radioactivity in the area to be released. The release would be approved upon NRC determination that the licensee has met the criteria of the rule.

5. Requires a license amendment that contains the licensee's demonstration of compliance with the radiological criteria for unrestricted use (0.25 mSv/yr (25 mrem/yr) and ALARA) for releases of property when the area is classified as impacted and, therefore, some reasonable potential for residual radioactivity in the area to be released exists.

6. Revises the LTP requirements to account for previously released property in demonstrating compliance with the radiological release criteria.

7. Requires the NRC to hold a public meeting to inform the public of the partial site release request and receive public comments before acting on the request.

8. Incorporates into the recordkeeping important to decommissioning the records of property subject to the release criteria.

9. Adds supporting definitions of key terms.

The partial site release rule makes the following changes to 10 CFR part 20:

1. Includes releasing part of a facility or site within the scope of the radiological criteria for license termination.

2. Includes releasing part of a facility or site for unrestricted use within the scope of the criteria by which the NRC may require additional cleanup on receiving new information following the release.

The partial site release rule makes the following change to 10 CFR part 2:

1. Provides for informal hearings in accordance with subpart L for amendments associated with partial site releases.

#### *Comments on the Proposed Rule*

This analysis presents a summary of the comments received on the proposed rule, the NRC's response to the comments, and changes made to the final rule as a result of these comments.

The NRC received 11 comment letters. Three were from States (Connecticut, Illinois, and Washington), seven from the industry including six power reactor licensees and the Nuclear Energy Institute (NEI), and one from the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) Workgroup.

The Commission sought input from stakeholders on seven specific issues associated with partial site release. The stakeholder input and the NRC responses to these issues follow.

#### 1. Support for the Proposed Rule

*Comment:* None of the commenters were opposed to the idea of a process for releasing part of a site or facility. Six of the 11 commenters provided specific comments in general support of the concept of the proposed rule. The NEI, representing the industry, stated that recent industry experience with decommissioning power reactors indicates that this rule will provide real value to the reactor licensee and the host community. In addition, operating reactor facilities and their host communities will have the option to use property that does not directly support plant operations. Industry supports this needed regulatory action.

*Response:* The NRC is not making any changes to the final rule that the NRC believes would negate the general support for this rulemaking.

#### 2. Partial Releases Following NRC Approval of the LTP

*Comment:* One reactor licensee and the NEI disagreed with the statement in the proposed rule that, once an LTP has been approved, there is no longer any need for a separate regulatory mechanism for partial releases. They

noted that a significant length of time may pass between approval of the LTP and license termination, and that licensees should retain the opportunity to pursue a partial site release, even after the LTP has been approved, without having to revise the LTP by amendment with its potential for a hearing process.

*Response:* The purpose of the statement in the proposed rule that there is no longer any need for a separate regulatory mechanism for partial site releases once the LTP is approved was to clarify the difference between the partial site release process and the LTP change process. This rule only applies to partial site releases that take place prior to approval of a licensee's LTP. After the LTP has been approved, partial site releases (as subsequent revisions to the LTP), would require NRC approval by license amendment unless the LTP itself contained a sufficient change process or described staged releases of the property prior to license termination. Therefore, no changes to the final rule have been made in response to this comment.

#### 3. Site Boundary Definition

*Comment:* Two reactor licensees and the NEI commented that the definition of Site Boundary in 10 CFR 20.1003 must be changed and clarifications added to the Statements of Consideration on the uses of "site" and "site boundary." The definition of site boundary in § 20.1003 is "that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee." In general, the commenters stated that licensees may own, lease or control property, including property contiguous with their existing site, which is not associated with licensed activities and which should not be subject to the radiological release criteria of Part 20. The NEI commented that, in practical terms, the LTR should apply to all properties directly associated with the use of licensed materials.

Additionally, one reactor licensee commented that, in such cases when the licensee owns, leases, or controls property that is contiguous to the facility but is not for the purpose of receiving, possessing, or using licensed materials, the rule should permit the licensee to make changes to the site boundary under 10 CFR 50.59. Also, when such property is acquired, it should not be required to be incorporated into the site boundary.

*Response:* The Commission disagrees with the commenter's suggestion that the definition of "site boundary" in 10 CFR 20.1003 must be changed but

agrees that clarification of this issue is needed. "Site boundary," as defined in 10 CFR 20.1003 is not the area to be considered in demonstrating compliance with the radiological release criteria for all licensees. As one commenter accurately pointed out, the definition of site boundary was incorporated into 10 CFR part 20 to support the concept of a controlled area. The terms "site" and "site boundary" are used in a number of contexts by licensees and in the Commission's regulations. In the context of 10 CFR part 50, the term site boundary is typically applied for emergency planning purposes to define the point when offsite dose consequences are to be estimated for purposes of defining emergency action classes and making protective action measure recommendations. The site boundary is also often referred to in reactor plant technical specifications for the purpose of defining the point when effluents must meet the dose and concentration limits of part 20.

Because the radiological release criteria provided in 10 CFR part 20, subpart E, does not use the term "site boundary", the NRC does not believe the "site boundary" definition in § 20.1003 requires amending in order to describe the site area which must be considered in demonstrating compliance with the release criteria. Rather, for the purpose of partial site release, the focus is on the current and historic licensed site, meaning the site area as described in the original NRC license application, plus any acquisition of property outside the originally licensed site boundary added for the purpose of receiving, possessing, or using licensed material at any time during the term of the license.

This clarification will apply to the majority of release situations, including those at multi-unit sites. One commenter pointed out, however, that the clarification may complicate terminating the license in the case in which a part of the originally licensed site became part of the licensed site for another licensee at some time in the past, and the originally licensed site is no longer clearly delineated. The partial site release rule is not amended to address these unique license termination issues. A determination of what property must be considered in demonstrating compliance with the release criteria in these circumstances will necessarily be addressed on a case-by-case basis.

Sales or other dispositions of property from within the licensed site area by a power reactor licensee prior to NRC approval of the LTP requires NRC

preapproval under the partial site release rule. Acquisitions, as well as subsequent dispositions, of property located outside of the licensed site area can be made pursuant to 10 CFR 50.59 and NRC pre-approval of these transactions is not required as long as a licensing action is not otherwise required as a result of any regulations impacted as a result of the acquisition or disposition. Depending on the specific site circumstances, acquired property may become part of the several site boundaries established by licensees such as the exclusion area, emergency planning zone, effluent release compliance boundary, restricted area, controlled area, etc., and are therefore subject to applicable regulatory requirements.

In clarifying the area subject to the radiological release criteria, the recordkeeping requirements in 10 CFR 50.75(g) have been revised to require that licensees maintain records of the current and historic licensed site area as well as records associated with partial releases from the licensed site made prior to license termination. By maintaining these records, potential dose contributions from residual radioactivity in the entire area, including any areas previously released, can be assessed in demonstrating compliance with the radiological release criteria when performing a partial site release and when terminating the license. In order to prevent confusion with the site boundary definition in § 20.1003, the term "site boundary" has been changed to "licensed site" in the recordkeeping requirements added to 10 CFR 50.75(g) in the final rule.

#### 4. Dose Contribution of Residual Material to the Environmental Protection Agency's (EPA) Environmental Radiation Standard

*Comment:* One reactor licensee and the NEI commented that the language in the section-by-section analysis of the proposed rule clarifying the relationship between radiation exposure limits associated with 10 CFR part 20 subpart D, subpart E, and the EPA's limits specified in 40 CFR part 190, "Environmental Radiation Protection Standards for Nuclear Power Operations," establishes a new policy position as written and constitutes a backfit if incorporated into the final rule. The commenters believe that the exposures due to residual radioactivity associated with a terminated 10 CFR part 50 license are outside the scope of EPA's limits under 40 CFR part 190 and that it is not necessary to reduce the 10 CFR part 20, subpart E, standard to account for additional exposures that

originate from the operation of nearby uranium fuel cycle facilities. The commenters stated that if this interpretation were to hold it would have significant impact not only on licensees considering partial site release but also on licensees currently proceeding to terminate their part 50 licenses with an onsite ISFSI.

Additionally, a commenter stated that the existence of other sources of exposure to the critical group is already accounted for in the construction of the 0.25 mSv/yr (25 mrem/yr) radiological release criteria for unrestricted use in 10 CFR part 20, subpart E. The commenter also stated that, after a portion of the site is released, it no longer meets the definition of "uranium fuel cycle operation," and therefore takes exception to the statements in the proposed rule that the dose caused by residual material associated with a partial site release is to be considered in combination with the other public doses from fuel cycle facilities.

*Response:* The NRC disagrees with the commenters' assertion that the section-by-section discussion clarifying the relationship between 10 CFR part 20, subparts D and E, and EPA's requirements in 40 CFR part 190 constitutes a new policy position and, therefore, requires a backfit analysis. As discussed in the Background section of these Statements of Consideration, the purpose of the LTR was to ensure that the residual radioactivity for the licensed activity is within the criteria of the LTR. To avoid licensees taking a piecemeal approach to license termination, the LTP must consider the entire site as defined in the original license, along with subsequent modifications to the license, to ensure that the entire area meets the radiological release requirements of 10 CFR part 20, subpart E, at the time the license is terminated. This partial site release rule is consistent with the intent of the LTR and establishes no new policies or standards. The dose contributions associated with previously released areas meet the radiological release requirements of 10 CFR part 20, subpart E, at the time the license is terminated. Draft NUREG-1757, Volume II, "Consolidated NMSS Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria," when finalized, will provide guidance to licensees on how to identify and account for these potential dose contributors. The discussion in the section-by-section analysis represents the NRC's views on the application of existing requirements in 10 CFR part 20 to the new circumstance of partial site

releases. However, power reactor licensees should appreciate that they are subject to 40 CFR part 190 requirements and that site boundaries may need to be reconsidered as a result of a partial site release for purposes of compliance with 40 CFR part 190. In addition, the NRC is reminding licensees that for the purposes of 40 CFR part 190, they must consider all doses from the operating uranium fuel cycle and that doses from portions of sites released may have come from radioactive material released time from an operating uranium fuel cycle facility. This partial site release rule does not amend or reinterpret 40 CFR part 190 or 10 CFR 20.1301(d), which requires certain licensees, including power reactor licensees, to comply with 40 CFR part 190. The NRC staff is developing guidance to implement 10 CFR 20.1301(d) for partial site releases, which will be incorporated into NUREG-1757, Volume II. Except for the information collection requirements in 10 CFR 50.75(g), which are not backfits, the requirements in this final rulemaking arise from the voluntary action of the licensee to seek partial site release and thus do not impose a backfit as defined in 10 CFR 50.109(a). Therefore, the NRC finds that the proposed rule discussion of the relationship between 10 CFR part 20, subparts D and E, and EPA's requirements in 40 CFR part 190 does not constitute a backfit, and that a backfit analysis is not required.

Additionally, the NRC believes that its interpretation of the applicability of EPA's regulations in 40 CFR part 190 is correct and consistent with past NRC regulatory concepts. Neither commenter demonstrated that the NRC's discussion was inconsistent with NRC regulatory concepts as articulated in the past, or inconsistent with past NRC practice with respect to license terminations in general. A review of the Statements of Consideration for the final 40 CFR part 190 rule did not disclose any discussion that supports the commenters' contention (*see* 42 FR 2850, January 13, 1977). On the contrary, the NRC believes that its discussion is entirely consistent with the underlying objective of the EPA requirements in 40 CFR part 190, *viz.*, that the dose to the relevant receptor be based upon the contribution of all radioactive materials/sources attributable to the nuclear fuel cycle operations, regardless of the licensing status of the radioactive materials or the land on which they are located.

The NRC also disagrees that a partially released area no longer meets the definition for "uranium fuel cycle operation," and therefore, the dose contribution attributable to residual

material on the partially released site is not required to be considered in determining compliance with the standards of 40 CFR part 190. It is true that, once a portion of the site is released, it is no longer an active part of a uranium fuel cycle operation. However, as noted above, it is residual material resulting from previous operation of the facility, introduced into the general environment as a result of the licensee's action to release the property for unrestricted use, that contributes to the public exposures within the scope of EPA's regulations at 40 CFR part 190. With respect to the definition of "uranium fuel cycle," the Commission notes that neither the LTR, nor this rulemaking, redefine or limit the definition of uranium fuel cycle. Residual radioactivity does not lose its original pedigree by the NRC's action to terminate a license. The dose from this residual material must be considered in combination with other uranium fuel cycle exposures under 40 CFR part 190. The commenters' position would be true only if the EPA regulation had a temporal component, *i.e.*, they were intended to cover only current and/or future operations at the site. The regulations contain no temporal limitation and simply state that the dose equivalent must consider exposures "from uranium fuel cycle operations." Moreover, the definition of "uranium fuel cycle" in 40 CFR 190.02 covers activities which are sequential in time (*i.e.*, for any given site they may not occur simultaneously). Nonetheless, under 40 CFR 190.10(a) the total contribution must be considered in determining compliance with the 40 CFR part 190 dose standards when releasing radiologically impacted property for unrestricted use. Assuming that the criterion is intended to integrate the instantaneous dose attributable to radioactive materials whose genesis is directly attributable to uranium fuel cycle operations, it is irrelevant that the radioactive materials happen to be located on a site that is no longer used for uranium fuel cycle operations. For these reasons, the NRC continues to believe that its discussion of the applicability of 40 CFR part 190 in the section-by-section analysis is correct.

*Comment:* Section 50.83(a)(1)(i) requires that licensees seeking NRC approval of a partial site release evaluate the effect of releasing the property to ensure that the dose to individual members of the public from the portion of the facility or site remaining under the license does not exceed the limits of 10 CFR part 20, subpart D. One reactor licensee and the

NEI commented that the term "portion of the facility or site remaining under the license" be changed to "portion of the facility or site that has not been released for unrestricted use."

*Response:* As described above, when evaluating compliance with the public dose limits and standards, the dose from a proposed partial site release must be combined with the dose from other fuel cycle sources, which would include the portion of a site or facility remaining under the license as well as residual material from previously released impacted property. However, the proposed rule inappropriately limited the dose to be considered to that associated with the portion of the site remaining under the license. Section 50.83(a)(1)(i) has been changed in the final rule to require licensees to evaluate the effect of releasing the property to ensure all applicable doses are considered with regard to the limits and standards of 10 CFR part 20, subpart D. The evaluation would include consideration of all applicable exposure sources, including relevant fuel cycle sources pursuant to compliance with the EPA's environmental radiation standards incorporated at 10 CFR 20.1301(d). Consequently, rather than adopting the commenter's suggested language, the Commission has adopted broader, more accurate language in the final rule.

##### 5. Use of Distinguishability From Background as a Release Criterion for Impacted Areas

*Comment:* The partial site release rule, as originally envisioned, proposed that radiologically impacted but remediated areas could be released using the same approval process as a non-impacted area if it could be demonstrated that the radioactivity is not distinguishable from the background radioactivity. Prior to publishing the proposed rule, however, the NRC staff concluded that a technical basis for such a criterion has not been established, and the criterion was not incorporated.

One reactor licensee stated that the rule should preserve, as an alternative, the ability to release an impacted area if it can be demonstrated that there is no residual radioactivity distinguishable from the background present. The release process should then follow the same process as that for a non-impacted area, approval by letter as opposed to a license amendment. Additionally, the commenter stated that the burden in this alternative is to develop and present strong reference background radiation data to support and defend the validity of its use, that the appropriate

criterion for indistinguishability from background does exist, and that a potential criterion corresponding to the current free release criterion could be used by licensees.

Additionally, a State commenter suggested that the rule incorporate the MARSSIM approach to include a comparison of statistical distributions (survey vs. background) used to determine if radiation levels in the area surveyed are indistinguishable from background.

*Response:* A distinguishability-from-background release criterion cannot be incorporated into the regulations even as an alternative. In order to demonstrate that a given level of radiation is distinguishable from background, the statistical process for determining the radiation dose or concentration would require the specification of exactly "how hard to look" in order to "see" a difference from the background dose or concentration. Specifying how hard to look would, in effect, be the same as specifying an allowable difference from background that is not statistically important to detect. This would amount to specifying an allowable increment above background. As stated in the proposed rule, because no such increment has been endorsed, the criterion cannot be incorporated into the Commission's regulations.

*Comment:* A State commenter disagreed with the NRC's reasoning for deletion of distinguishability-from-background as a release criterion because for an unrestricted release, the ALARA requirements of 10 CFR 20.1402 may dictate clean up to levels indistinguishable from natural background.

The commenter also stated that, although it is recognized that proper definition of background is problematic because it is not a single value but rather a statistical distribution of values that varies widely with geographic location and other factors, it is a statistical entity (mean  $\pm$  (sd  $\times$  n)) that can be empirically determined on a case-by-case basis. As a result, the "minimum value above mean background against which to compare survey results," which the NRC has stated is a value which is not endorsed, can be established by setting a reasonable value for "n" in the foregoing expression.

*Response:* The Commission disagrees with this comment. There is no connection between ALARA requirements associated with the cleanup of an impacted area and the Commission's decision to delete distinguishability-from-background as a

release criterion. The ALARA requirements dictate clean up to levels which are as low as reasonably achievable. There are no requirements to cleanup an area to "levels indistinguishable from natural background."

Although measurement of background radioactivity is related to the statistical entity referred to by the commenter, the process of setting a reasonable value for "n" would present the same issue as choosing an increment above background for use in establishing a distinguishability criterion. Such a "reasonable value" would have to be established and has no current endorsement as a release criterion.

#### 6. Recordkeeping

*Comment:* The NEI recommended that the rule be clarified to acknowledge that reactor licensees may maintain the records associated with acquisition and disposition of property along with the other records required under 10 CFR 50.75(g) in a distributed fashion. Records would not necessarily reside in a specific file folder, but would be maintained within the overall record management system.

*Response:* The NRC recognizes that licensees may maintain these records in a distributed fashion within the overall record management system. As stated in 10 CFR 50.75(g), if records of relevant information are kept for other purposes, references to these records and their location may be used.

*Comment:* One reactor licensee commented that, for property added over time, it would make sense to place the current site boundary in the decommissioning records at the time of rule implementation, rather than research and separately locate each record of acquisition in the past. Since the goal is to ensure the site boundary is known, and that any dispositions or release of property are known, there is no real benefit in locating and placing records of past individual acquisitions into the decommissioning records.

The commenter also stated that records of licensed activities on property acquired since original licensing should not need to be maintained as separate decommissioning records if the acquired property is assimilated into the licensed site. Acquired property should be treated no differently than originally owned property from a decommissioning record perspective. The existing requirements for decommissioning records should apply to the site equally, regardless of whether the portion of the site was purchased after original licensing or before.

In addition, the commenter stated that the cost portion of the regulatory analysis should also include the costs of researching site history and property additions, and use of the portion of the property that was added, if the requirement for this data to be maintained as separate decommissioning records is retained.

*Response:* It is not the intent of the recordkeeping requirements added at 10 CFR 50.75(g) to require licensees to research and separately locate each record of acquisition made in the past. The recordkeeping in the proposed rule listed the records of the originally licensed site and those of subsequent acquisitions separately in order to clarify that the entire licensed site area (past and present) is subject to the release criteria and must be accounted for in the recordkeeping.

However, because recordkeeping associated with the current licensed site area may not account for releases of property from the licensed site made prior to the partial site release rulemaking, and may not account for all relevant additions to the licensed site, licensees are cautioned that simply placing the information associated with the current licensed site into the decommissioning records may result in a record inventory which, in aggregate, does not meet the intent of the recordkeeping for records which must be assessed at the time of partial site releases and at the time of license termination.

The listing of records of the originally licensed site and those of subsequent acquisitions added to the recordkeeping requirements at 10 CFR 50.75(g) have been combined in the final rule to avoid the implication that these records must be researched and maintained separately. The cost portion of the regulatory analysis associated with the rule did not assume the maintenance of separate records and, therefore, does not require a revision as a result of this clarification.

*Comment:* One reactor licensee commented that because establishing the records added to 10 CFR 50.75(g) may be time consuming, depending on the site's history, the final rule needs to allow implementation time.

*Response:* Although, as stated by the NEI, licensees are already maintaining these property records in order to be able to comply with the LTR at the time of license termination, the NRC agrees that some period for implementation may be needed by some licensees. Therefore, the implementation date for the changes made to the recordkeeping requirements at 10 CFR 50.75(g)(4) has

been modified to provide a 6-month implementation period.

#### 7. Lack of Clearance Standards

*Comment:* One reactor licensee commented that, for either partial site release without a license termination plan or license termination for the entire site under existing rules, residual radioactivity may remain as long as the exposure criterion of 10 CFR part 20, subpart E, is satisfied. However, prior to license termination, this same residual radioactivity is treated as licensed material—regardless of how little the amount, concentration, or dose significance—and can only be disposed of by transport to a licensed radwaste disposal facility. The commenter stated that this double standard poses an incentive to retain radioactive material onsite to be later abandoned in order to avoid potentially excessive costs for radwaste disposal, while creating a longer term risk for additional site cleanup required by other regulatory authority or a court of law. The commenter further noted that the NRC is seeking to resolve this discrepancy through a study by the National Academy of Sciences and further agency deliberation, a process that may take several years. Prolonged delay contributes to the erosion in public understanding and confidence in government policy as well as the lack of finality for licensees. Public policy is needed to define the quantitative dose and radionuclide characteristics that have no discernible public health consequences.

The commenter stated that the NRC should recognize that post-license termination requirements imposed by other Federal, State or local agencies can prevent the actual release of a site for unrestricted use—in contravention to the purposes of the LTR. Therefore, the NRC should act to assert its authority in matters of radiation protection and management of radioactive materials. This will require definitive clearance standards that establish allowable quantities and concentrations of radionuclides for materials. Such standards, which are fully protective of public health and safety and are in the public interest, can be created.

*Response:* Although the comments are not directly related to the partial site release rulemaking, the NRC is appreciative of the issues raised. The Commission has approved the development of a proposed rule to address the control of solid materials, including whether it is appropriate to set a standard in this area that would apply to all licensees. The points raised

in the comments will be considered as part of the Commission's review of alternative approaches.

#### 8. Finality of Releases

*Comment:* A reactor licensee commented that, after the Commission has released the property, its jurisdiction should end. The commenter recommended that in order to incorporate the doctrine of finality, 10 CFR 20.1401(c) should be changed to state that after a site has been decommissioned and the license terminated, or after part of a facility or site has been released for unrestricted use, the Commission will not require additional cleanup.

*Response:* The Commission disagrees with this comment. The NRC believes that the desired finality of a release is not adversely impacted by the provisions in 10 CFR 20.1401(c). Eliminating the provisions for additional cleanup where a significant public risk may exist could have a negative impact on public health and safety and would degrade public confidence in the license termination process. One reactor licensee concurred with the provisions in § 20.1401(c) by stating these provisions are important in providing for adequate protection of the public if the need for additional cleanup has been identified, but at the same time offering a standard that must be met to ensure that only clear and substantiated conditions exist that would warrant such actions.

It should be noted that there is a low probability that additional cleanup would be required. The Statements of Consideration for the license termination rule (61 FR 39301; July 29, 1996, as amended at 62 FR 39091; July 21, 1997) point out that, under the provisions of the rule, a licensee is allowed to demonstrate compliance with the dose criteria through use of several screening and modeling approaches. Each approach has a degree of conservatism associated with the relationship of the measurable level of a contaminant in the environment to the dose criterion. Because of the surveys performed by the licensee and confirmatory surveys routinely performed by NRC, the chances of discovering previously unidentified contamination exceeding the dose criteria would be very small.

#### 9. State Regulatory Agency Participation

*Comment:* A State commenter noted that the proposed rule is silent with regard to participation by State regulatory agencies. Although there are general provisions for stakeholder input and public participation, notification,

meetings and hearings, there is no explicit provision for "hands-on" involvement by State regulators. The commenter suggested the rule be amended to include explicit provisions for State participation. The commenter also stated that, in their experience, the role of the State in Federally regulated site clearance processes has historically been that of "independent verification." This role assures that the site release process is in compliance with applicable State regulations and lends additional credibility to a process that is inherently predisposed to intense public scrutiny. Participation by the State is also important in the event that portions of the property to be released would be transferred to State ownership and/or control. For these reasons, amending the rule to provide for independent verification by State regulators makes good sense.

*Response:* The Commission has published the policy statement "Cooperation With States at Commercial Nuclear Production or Utilization Facilities" (54 FR 7530; February 22, 1989, as amended at 57 FR 6462; February 25, 1992) which the NRC believes provides an adequate mechanism for State regulatory agencies to participate in the release process. The policy statement is intended to provide a uniform basis for NRC/State cooperation as it relates to the regulatory oversight of commercial nuclear power plants and other nuclear production or utilization facilities. The policy statement allows State officials of host and adjacent States to accompany the NRC on inspections and, under certain circumstances, enables States to enter into instruments of cooperation which could allow States to directly participate in the NRC inspection activities at operating facilities as well as at those undergoing decommissioning.

The interest of the States with regard to the scope of the partial site release rule is expected to be primarily concerned with licensee demonstrations of compliance with the radiological release criteria for unrestricted use. In addition to any direct or independent participation agreed to between the State and the NRC, or between the State and the licensee, it is anticipated that the States will continue to participate in the public meetings held prior to NRC approval of partial site releases, and will continue to coordinate with licensees and the NRC in evaluating proposed partial site releases with regard to the release criteria. Therefore, explicit provisions for direct State participation are not being incorporated into the partial site release rule.

#### 10. Radiological Surveys of Non-Impacted Sites

*Comment:* A State commenter stated that, rather than require the performance of radiological surveys for non-impacted areas, the rule defers to the guidance contained in MARSSIM for demonstrating that a proposed release area is non-impacted. The MARSSIM guidance calls for the performance of a historical site assessment (HSA). The HSA is an investigation to collect information describing a site's complete history from the start of site activities to the present time. Information collected will typically include site files, monitoring data, and event investigations, as well as interviews with current or previous employees to collect firsthand information. The assessment results in a classification of areas according to their potential for containing residual radioactivity. Areas that have no reasonable potential for residual radioactivity in excess of natural background or fallout levels are classified as non-impacted areas, and no surveys are required. The commenter feels that relying on a historical site assessment without the benefit of an up-to-date-radiation survey leads to results which are less reliable and more difficult to defend, and is contrary to the rule's stated purposes related to the assurance of meeting the radiological release criteria and of increasing public confidence.

Additionally, the commenter stated that the NRC supports its position that the rule should not require surveys for non-impacted areas by noting that surveying a truly non-impacted area necessarily involves demonstrating that the radioactivity from any residual contamination is indistinguishable from natural background radioactivity. The commenter also states that the NRC has further supported this position in the Statements of Consideration by stating that, because it has not established a minimum value above mean background to compare survey results, surveying these areas is not feasible.

*Response:* The NRC believes that the rule should not specifically require the performance of radiological surveys for non-impacted areas. However, the rule does not preclude the collection and use of such surveys by the licensee. The MARSSIM provides adequate guidance acceptable to the NRC for determining when additional surveys are appropriate, and for demonstrating that a proposed release area is non-impacted. The MARSSIM approach in evaluating HSA data for the purposes of classifying an area prescribes that process knowledge of events or conditions

which may have led to residual contamination be used in combination with historical analytical information such as survey data. MARSSIM section 3.6, "Evaluation of Historical Site Assessment Data" states that if process knowledge suggests that no residual contamination should be present and the historical analytical data also suggests that no residual contamination is present, the process knowledge provides an additional level of confidence and supports classifying the area as non-impacted. MARSSIM specifically cautions however, that existing radiation data must be examined carefully because previous survey and sampling efforts may not be compatible with the objectives of the HSA, may not be extensive enough to sufficiently characterize the facility or site, and because conditions may have changed since the site was last sampled.

NRC Regulatory Issue Summary 2002-02, "Lessons Learned Related to Recently Submitted Decommissioning Plans And License Termination Plans," states that old records may be inadequate or inaccurate for the purpose of developing either the HSA or site characterization, and suggests that these records not be relied on as the sole source of information for the HSA or site characterization. Interviews with current and former staff and contractors play an essential role in formulating the HSA, but may yield information as inadequate or inaccurate as old records. Experience has shown that old records and results of operational surveys and post-shutdown scoping surveys have been submitted as substitutes for characterization surveys. For example, the results of operational surveys may represent radiological status, describing conditions over a limited time span, or may have been conducted to address specific events (*i.e.*, post-spill cleanup assessment). In a few instances, the results of personnel interviews and information, which can only be considered as anecdotal, have been presented in the HSA. It could not be determined whether this information, in fact, was part of an unbroken chronological history of the site or contained time gaps when operational milestones or occurrences were missing. Although the NRC encourages licensees to review old records and conduct personnel interviews (past and current employees and key contractors), there is a need to present the information obtained in its proper context and qualify its usefulness and how it might be supplemented by additional data searches or characterization surveys.

Paragraphs 50.83(c)(2) and 50.83(d)(2) of the proposed rule stated that, after

receiving an approval request or license amendment application from the licensee, the NRC will determine whether the licensee's historical site assessment is adequate. To avoid the implication that the classification of release areas as non-impacted is based solely on historical process knowledge of events or conditions, these sections have been modified in the final rule to state that the NRC will determine if the licensee's classification of any release areas as non-impacted is adequately justified. Such a determination would require a review of the licensee's use of both analytical data as well as process knowledge of events and conditions in accordance with the MARSSIM guidance.

The NRC maintains its position that the rule should not require surveys of non-impacted areas. However, licensees may choose to survey these areas on their own initiative. The question of whether surveys of non-impacted areas should be performed is solely concerned with whether the HSAs and the site characterization process are adequate bases to conclude that there is no reasonable potential for residual radioactivity.

#### 11. Final Radiation Survey and Associated Documentation

*Comment:* Section 50.82(a)(11)(ii) provides the criteria for license termination with regard to the terminal or final radiation survey and its documentation. One reactor licensee and the NEI commented that adding the phrase "including any parts released for use before approval of the license termination plan" as suggested in the proposed rule implies that final surveys at license termination apply to previously released property and might force a licensee to perform remediation or conduct surveys on land which has been previously released for use when not otherwise required. One of the commenters also stated that the phrase "released for use" should be changed to "released for unrestricted use." Additionally, a commenter stated that the phrase "are suitable for release" with regard to the property being released should more appropriately be changed to indicate that the release meets the applicable release criteria.

*Response:* As stated in the proposed rule, the NRC does not anticipate further surveys of a previously released area, but rather is seeking to account for, in the radiation survey and associated documentation demonstrating compliance with the release criteria, potential dose contributions associated with previously released areas. The language at 10 CFR 50.82(a)(11)(ii) in

the final rule has therefore been modified to indicate that the final radiation survey and associated documentation is to include an assessment of dose contributions associated with any parts previously released for use in demonstrating that the facility and site meet the radiological release criteria. The term "released for use" is retained because the intent is that the documentation assess dose contributions from previously released parts of the facility or site whether they were released for restricted or unrestricted use. Additionally, the phrase "are suitable for release" is changed to "have met the applicable criteria."

#### 12. Question From the "Issues for Public Comment" Section of the Proposed Rule: Are There Rulemaking Alternatives to This Proposed Rule That Were Not Considered in the Regulatory Analysis for This Proposed Rule?

*Comment:* The NEI and one reactor licensee commented that some licensees have expressed a desire to have the option to use the license amendment approach even for non-impacted lands to provide additional assurance to future owners, and that this option should be included in the proposed rule.

*Response:* The Commission disagrees with this comment. There is no need to provide this option because the staff has determined that this approval is not an amendment to a license pursuant to the analysis in *Cleveland Electric Illuminating, et al.* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315, 328 (1996). The NRC's oversight role in these cases is essentially a confirmation to ensure that the licensee complies with the clearly defined criteria found in the rule. This is in contrast to an impacted area where the staff must analyze and evaluate the information and survey documentation provided by the licensee in order to determine if release of the impacted area poses a threat to public health and safety. For these cases, the license amendment process is appropriate. Allowing a licensee to seek a license amendment for release of non-impacted areas would also decrease the efficiency and effectiveness of the staff's review process. The staff believes that a letter approval of a release will be sufficient to provide future property owners with assurance that the land poses no risk to public health and safety. Moreover, the rule established a process for the NRC to obtain public comments before making a decision to approve a release.

13. Question From the “Issues for Public Comment” Section of the Proposed Rule: Are the Proposed Definitions in § 50.2 Clear?

*Comment:* The MARSSIM Workgroup commented that the definitions of impacted and non-impacted areas proposed for incorporation into 10 CFR 50.2 are inconsistent with MARSSIM. The workgroup recommends that the definitions be taken verbatim from the MARSSIM glossary as follows:

**Impacted Area**—Any area that is not classified as non-impacted. Areas with a possibility of containing residual radioactivity in excess of natural background or fallout levels.

**Non-Impacted Area**—Areas where there is no reasonable possibility (extremely low probability) of residual contamination. Non-impacted areas are typically located off-site and may be used as background reference areas.

*Response:* The definitions of impacted and non-impacted areas being added to 10 CFR 50.2 will remain as presented in the proposed rule. These definitions were not taken from the MARSSIM glossary but were, for the most part, taken from the definitions provided in section 2.2 of the MARSSIM text, titled “Understanding Key MARSSIM Technology.” The text in section 2.2 states that areas that have no reasonable potential for residual contamination are classified as non-impacted areas, and that areas with some potential for residual contamination are classified as impacted areas.

In the definitions of impacted and non-impacted areas incorporated into the rule, the term “residual contamination” found in the MARSSIM text was replaced with the term “residual radioactivity” for consistency with the definition of residual radioactivity found in 10 CFR 20.1003. For clarity, the definitions also specify that the radioactivity referred to is that which is in excess of natural background or fallout levels.

In addition, the word “reasonable” was added to the definition of impacted areas in order for the definitions of impacted and non-impacted areas to be mutually exclusive. Without the opposition between the two definitions, an area could conceivably meet both definitions. The MARSSIM glossary definition of impacted area states that it is an area not classified as non-impacted. Therefore, this change is consistent with the MARSSIM intent that the definitions be mutually exclusive. Also, non-impacted areas are defined in the MARSSIM glossary as those areas with no reasonable possibility of residual contamination. Impacted areas are defined as those

areas with a possibility for residual radioactivity—meaning no matter how slight a possibility, because the word “reasonable” is omitted. Because the word “reasonable” is omitted from the MARSSIM glossary definition of impacted areas, the two glossary definitions are not mutually exclusive as intended.

Finally, the statement in the MARSSIM glossary definition that non-impacted areas are typically located off-site and may be used as background reference areas is irrelevant to the determination of whether an area is non-impacted and is therefore inappropriate for incorporation into the definition.

*Comment:* One reactor licensee and the NEI recommended that the definitions for Historical Site Assessment, Impacted areas, and Non-impacted areas be incorporated into 10 CFR 50.2 and be changed to specify that the residual material or radioactivity is that from licensed activities.

*Response:* The radioactivity referred to in the definition of Historical Site Assessment cannot be limited to that resulting from licensed activities and the definition is not revised. Residual radioactivity is a defined term in 10 CFR 20.1003 referring to radioactivity at a site resulting from any activities under the licensee’s control, and includes radioactivity from both licensed and unlicensed sources.

14. Question From the “Issues for Public Comment” Section of the Proposed Rule: Is Public Involvement Adequately Considered?

*Comment:* The NEI commented that the rule adequately considers public involvement. A State commenter stated, however, that there is no mechanism described in the proposed rule that addresses how or if stakeholders can challenge the “non-impacted designation” by a licensee. Though the proposed rule states that it provides for public participation through a public meeting, a public meeting to inform stakeholders of NRC decisions is not a participatory process. It gives no right of intervention, no right of appeal, and no right of a meaningful review. How does a public meeting address a material dispute in fact? The NRC is not bound to consider any information brought forward during the public meeting. At the very least a mandatory public hearing is needed.

*Response:* The Commission disagrees with this comment and believes that the public will have ample opportunity to be involved with partial site release issues. The partial site release rule provides for public participation

through review and comment on a licensee’s proposed release plans and through participation in a public meeting whether or not an amendment is involved. This process enables the public to collect information, to comment on and question the actions at the site with regard to the proposed release, and to discuss relevant issues among stakeholders. The NRC will consider any information or concerns brought forward by members of the public during the public review and comment period or during the public meeting.

The NRC has issued a policy statement, “Policy on Enhancing Public Participation in NRC Meetings” (67 FR 36920, May 28, 2002). This policy statement articulates the NRC’s revised policy concerning opening meetings to public observation and participation. It defines three categories of public meeting, each with an increasing level of public participation. The public meeting required by the partial site release rule will be classified as a Category 3 meeting with the highest level of public participation. In these meetings, public participation is actively sought. The meetings are specifically tailored for the public to discuss relevant issues with the NRC and other stakeholders, to make comments, and ask questions throughout the meeting. Questions or concerns that cannot be resolved at the meeting will be assigned to a designated NRC staff person for action.

Although there is no mandatory public hearing provided for in this rule, there are ways in which the public may participate in hearings on partial site release issues. First, in the event that a license amendment associated with a partial site release is challenged, there will be the opportunity for a hearing on the license amendment. Second, NRC regulations in 10 CFR 2.206, “Requests for Action under this Subpart,” allow any member of the public to raise potential health and safety concerns and petition the NRC to take specific actions to resolve a dispute identified in the petition. The NRC believes that a mandatory hearing is not warranted in light of the many opportunities for public participation. Consequently, no change has been made to the final rule in response to this comment.

15. Question From the "Issues for Public Comment" Section of the Proposed Rule: Should the License Amendment Process Be Required for All Partial Site Release Approvals, Regardless of Whether the Site Has Been Classified as Non-Impacted?

*Comment:* The NEI commented that requiring the license amendment process for NRC approval of partial site releases of non-impacted lands is not justified. The comment states, however, that some licensees have expressed a desire to have the option to use the license amendment approach even for non-impacted lands and recommends that this approach be offered as an option.

*Response:* The NRC agrees that requiring its approval for the release of a non-impacted area should not require a license amendment when an amendment is not otherwise required as a result of any regulations, license conditions, or technical specifications impacted as a result of the change.

16. Question From the "Issues for Public Comment" Section of the Proposed Rule: Does the Proposed Rule Make it Adequately Clear That When Performing Partial Site Releases and When Releasing the Entire Site at License Termination, Licensees Must Consider Potential Dose Contributions From Previous Partial Releases in Demonstrating Compliance With the Radiological Release Criteria?

*Comment:* The NEI stated that the rule makes this issue adequately clear and also stated that the guidance promised in the proposed rule for assessing potential dose contributions will help identify how consideration of potential dose contributions can best be accomplished. The comment further stated that the guidance is needed before the final rule is issued to ensure that the partial site release process and the ultimate license termination can be accomplished practically as envisioned.

*Response:* The NRC agrees that the rule makes this issue adequately clear. The NRC recognizes that licensees seeking partial site releases will require guidance as to how to account for dose contributions from previous releases. In order to provide this guidance, on September 26, 2002, the NRC published a notice of availability of draft NUREG-1757, Volume II, "Consolidated NMSS Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria," in the **Federal Register** for public comment and expects to publish it as a final document upon resolution of the public comments.

*Comment:* A State commenter questioned how the partial site release rule addresses issues when, following release, contamination is found in an area classified and released as non-impacted, or where contamination is found to be in excess of the criteria established in the LTP, or, in the above conditions, when the property was transferred to another entity.

Additionally, the commenter questioned what rights a potential purchaser would have against the licensee if contamination is found following the release.

*Response:* Although the partial release removes the property from the license and activities conducted on the property are no longer under NRC jurisdiction, the rule amends 10 CFR 20.1401(c) to bring partial site releases within the scope of the criteria by which the Commission may require additional cleanup on the basis of new information received following the release. As stated in 10 CFR 20.1401(c), additional cleanup would only be required if the new information reveals that the radiological release requirements of 10 CFR part 20, subpart E, were not met and there continues to be a significant threat to public health and safety from residual radioactivity. The rule does not address any other matters of a commercial nature which may be associated with released property, including issues related to contamination found on released property, the magnitude of which falls short of the additional cleanup criteria in 10 CFR 20.1401(c).

17. Question From the "Issues for Public Comment" Section of the Proposed Rule: Is There a Reason To Limit the Size or Number of Partial Site Releases?

*Comment:* The NEI and a reactor licensee stated that there is no reason to limit the size or number of partial site releases. They stated that as long as the final license termination addresses the entire site, the intent of the license termination rule is met.

*Response:* The NRC agrees that there is no reason to limit the size or number of partial site releases. Partial releases performed prior to license termination require a demonstration of compliance with the radiological release criteria at 10 CFR part 20, subpart E, as well as a demonstration of compliance with other regulatory requirements that may be impacted as a result of changing site boundaries. Additionally, the dose contributions from residual radioactivity in previously released impacted areas are considered with respect to the release criteria when performing subsequent partial releases

and when releasing the entire site at license termination.

18. Question From the "Issues for Public Comment" Section of the Proposed Rule: Are There Other Potential Impacts on Continued Operation or Decommissioning Activities as a Result of Partial Site Releases That Should Specifically Be Considered in the Rule?

*Comment:* A State commenter stated that the impact of future operation or use of the area released under a partial site release must be considered with regard to potential threats to the storage of spent nuclear fuel or operation of the nuclear power plant prior to allowing control of the released area to be transferred to a non-licensee. The commenter referred to a situation in which a licensee proposes a partial site release with the intent to sell the released property for development of a gas fired electrical generating plant in close proximity to spent fuel stored on the remainder of the site. If no safety analysis is performed in advance of the release, future threats to the nuclear fuel will not be addressed. The commenter states that placing requirements on an existing licensee only after threats are identified as a result of future activities on a released area is not an acceptable mechanism for protecting public health and safety.

*Response:* The NRC believes that consideration of the potential hazards associated with the future or end use of property proposed for partial site release should not be incorporated into the partial site release rule. Future use of property as an approval criteria based on expectations existing at the time of the release request holds little practical value because the actual future use of property released for unrestricted use cannot be anticipated and could, in any event, change following the release.

As part of its application for a construction permit and operating license for a power reactor facility, the licensee is required to perform an analysis of the effects the reactor facility will have on the environment, including the effects from nearby industrial facilities and transportation under the siting criteria at 10 CFR part 100. The partial site release rulemaking specifically requires licensees requesting a partial site release to evaluate their continued compliance with these siting criteria.

Additionally, the licensee must continue to ensure that its bases and conclusions as presented in the Final Safety Analysis Report which form part of the basis for its operating license remain valid under 10 CFR 50.71. Therefore, the licensee must ensure that

the licensed facility is adequately protected and that operations can be conducted with an acceptable degree of safety with respect to offsite activities as they are identified. The NRC would review any necessary changes to the nuclear plant license or changes to the plant licensing basis that evolve from the licensee's evaluation. To the extent that the future use of the property to be released is known, these reviews and evaluations would be performed as part of the licensee's overall assessment of the viability of obtaining NRC approval for a partial site release.

The NRC recognizes that a non-licensed third party may elect to locate potentially hazardous facilities, or engage in hazardous activities, on property adjacent to a licensed site, including property released for unrestricted use. Although the NRC has no authority to regulate activities that are outside the scope of the NRC's jurisdiction of non-licensed third parties or to prevent third parties from constructing facilities or engaging in such activities which present a potential hazard to the licensee's plant, the NRC does have authority to take action against the licensee. Assuming that the potential hazard is such that the NRC would not have allowed the siting of the plant if the conditions were known, then under section 186 of the Atomic Energy Act, the NRC could revoke the license to prevent the hazard. Since the license can be revoked, lesser actions can be taken as well—such as suspending the license, issuing an order, or issuing a demand for information, depending on the circumstances.

#### 19. Rule Language Comments

*Comment:* One reactor licensee and the NEI commented that the language contained in § 50.75(g)(4) is not consistent with existing § 50.75(g) which states "Information the Commission considers important to decommissioning consist of \* \* \* (4) Licensees shall maintain property records containing the following information: \* \* \*" The term "Licensees shall maintain" should be deleted.

*Response:* The NRC agrees with the commenters and the final wording in § 50.75(g) reflects the comment.

*Comment:* One reactor licensee and the NEI commented on the wording in § 50.75(g)(4)(iv) of the proposed rule, stating that the word "disposition" should be changed to "release and final disposition" the first time it appears, and change "disposition" to "release" the second time it appears.

*Response:* The NRC agrees with the commenters and the final wording in § 50.75(g) reflects the comment.

*Comment:* One reactor licensee and the NEI commented on the wording in § 50.82(a)(9)(ii)(H) of the proposed rule, stating that the term "released for use" should be changed to "released for unrestricted use."

*Response:* The comment is not incorporated. The intent of the wording in § 50.82(a)(9)(ii)(H) is that the LTP identify previously released parts of the facility or site whether they were released for restricted or unrestricted use.

*Comment:* One reactor licensee and the NEI commented that §§ 50.83(c) and 50.83(e) should include references to the satisfaction of the public meeting requirements specified in § 50.83(f).

*Response:* The NRC believes that including references to the public meeting requirement in §§ 50.83(c) and 50.83(e) is redundant and unnecessary. The requirement to hold a public meeting described in § 50.83(f) applies, as stated, to either an approval request for a partial site release or a license amendment application and, therefore applies to the submittals described in §§ 50.83(c) and 50.83(e).

*Comment:* One reactor licensee and the NEI commented that for a release of impacted areas under the proposed partial release rule, 10 CFR 50.59 will not apply because a license amendment would be required. Therefore, the wording in § 50.83 should be modified to delete the reference to complete a 10 CFR 50.59 evaluation for these release requests.

*Response:* The NRC agrees with the commenters. § 50.83(b) has been modified in the final rule to only require a § 50.59 evaluation for the case when a written release request is submitted.

#### Section-by-Section Analysis

This final rule amends the NRC's requirements in 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings," 10 CFR part 20, "Standards for Radiation Protection," and 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," as follows:

##### 1. 10 CFR 2.1201

This final rule amends 10 CFR 2.1201 by adding a new paragraph (a)(4) which permits the use of informal hearing procedures for amendments associated with partial site releases at nuclear power reactors. This change is needed in order to provide an opportunity for a hearing on a license amendment request for a partial site release. The

staff believes that informal hearings are appropriate in this situation since the issues would be similar to the materials licensing issues that are currently subject to subpart L under § 2.1201(a)(1). It should be noted that the rule does not provide for license amendments to authorize partial site releases when there is no reasonable potential for residual radioactivity in the area to be released. Because there are no license amendments in these cases, there are no corresponding opportunities for hearings. However, the NRC will notice receipt of a licensee's proposal for a partial site release and make it available for public comment. The NRC will also hold a public meeting in the vicinity of the site to discuss the licensee's release approval request or license amendment application, as applicable.

##### 2. 10 CFR 20.1401

Paragraphs 20.1401(a) and (c) have been revised to expand the scope of radiological criteria for license termination to include the release of part of a facility or site for unrestricted use in accordance with § 50.83. In 10 CFR part 20, the NRC provides standards for protection against radiation. These modifications are necessary because the NRC's regulations did not address cases when part of a facility or site is to be released for unrestricted use. The expansion in scope pursuant to §§ 20.1401 is related to the radiation dose limits to individual members of the public and to radiological criteria for license termination which are specified in 10 CFR part 20, subparts D and E, respectively.

With respect to 10 CFR part 20, subpart D, the requirements specified set the annual dose limit for an individual member of the public at 1.0 mSv/yr (100 mrem/yr). However, there are a number of more stringent dose standards applicable to power reactor licensees that must also be considered. These standards include the EPA environmental radiation standards incorporated in § 20.1301(d), the subpart D compliance standards in § 20.1302(b), the radiological effluent release objectives to maintain effluents ALARA in Appendix I to 10 CFR part 50, and any dose standards that may be established by special license conditions.

A licensee performing a partial site release must continue to comply with the public dose limits and standards as they pertain to the area remaining under the license. In addition, the licensee must comply with the public dose limits for effluents entering the released

portion of the site. A licensee must demonstrate that moving its site boundary closer to the operating facility would not result in a dose to a member of the public that exceeds these criteria. If residual radioactivity exists in the area to be released for unrestricted use, the dose caused by the release must be considered along with that from the licensee's facility, as well as, in the case of the EPA's environmental radiation standard (40 CFR part 190) incorporated in § 20.1301(d), that from any other uranium fuel cycle operation in the area, for example, a facility licensed under 10 CFR part 72, to determine compliance with the above standards. As a consequence, a partial site release for unrestricted use that contains residual radioactivity may have to meet a standard less stringent than the radiological criteria of 10 CFR part 20, subpart E, because the combined dose from the partial site release and the dose from these other sources must meet the public dose limits and standards described above.

With respect to 10 CFR part 20, subpart E, the scope applies to decommissioning reactor facilities. However, as currently written, it does not specifically apply to operating reactors. The reactor remains "operating" until a licensee submits the certifications of permanent cessation of operations specified in § 50.82(a)(1), when its status changes to "decommissioning."

Radiological criteria for license termination at 10 CFR part 20, subpart E, limit radiation exposure to the "average member of the critical group." The limit applicable to release for unrestricted use is 0.25 mSv/yr (25 mrem/yr) total effective dose equivalent (TEDE), with additional reductions consistent with the ALARA principle. The determination of ALARA in these cases explicitly requires balancing reduction in radiation risk with the increase from other health and safety risks resulting from decontamination activities, such as adverse health impacts from transportation accidents that might occur if larger amounts of waste soil are shipped for disposal. The standard applies to doses resulting from "residual radioactivity distinguishable from background radiation" and includes doses from ground water sources of drinking water. The standard for unrestricted use at 10 CFR part 20, subpart E, does not include doses from effluents or direct radiation from continuing operations. However, as noted in the above section on public dose limits, the dose from these sources must be considered when demonstrating

compliance with the radiological release criteria.

Section 20.1401(c) limits additional cleanup following the NRC's termination of the license. Additional cleanup would only be required if new information reveals that the requirements of subpart E were not met and a significant threat to public health and safety remains from residual radioactivity. Similarly, the rule applies to portions of the site released for use within the scope of the criteria by which the Commission may require additional cleanup on the basis of new information received following the release.

The rule is intended to apply subpart E to power reactor licensees, both operating and decommissioning, that have not received approval of the LTP. Because an LTP is required for license termination under restricted conditions (§ 20.1403(d)) or alternate criteria (§ 20.1404(a)(4)), only the "unrestricted use" option would be available to licensees for a partial site release before they receive approval of the LTP.

Section 20.1402 specifies the radiological criteria to be used to determine that a site is acceptable for unrestricted use. This final rule does not require an analysis to demonstrate that the area to be released meets the criteria of § 20.1402 for cases when the licensee is able to demonstrate that there is no reasonable potential for residual radioactivity in the area to be released. In these cases, compliance with § 20.1402 is demonstrated by providing documentation of an evaluation of the site to identify areas of potential or known sources of radioactive material. The evaluation must conclude that the area is non-impacted and there is no reasonable potential for residual radioactivity. Acceptable guidance describing the performance of this demonstration is contained in draft NUREG-1575, "Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM)."

For areas classified as impacted, the rule requires a license amendment that includes a demonstration of compliance with § 20.1402 for the area that is released for unrestricted use.

This amendment to part 20, subpart E, revises §§ 20.1401(a) and (c) and adds the release of part of a facility or site for unrestricted use to the provisions and scope of 10 CFR part 20, subpart E.

### 3. 10 CFR 50.2

Paragraph § 50.2 is amended to add definitions of "Historical Site Assessment," "Impacted Areas," and "Non-impacted Areas." Clear definitions of these terms, which are also defined in draft NUREG-1575,

"Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM)," are critical to implementing the amended regulations.

In order for a licensee to adequately demonstrate compliance with the radiological criteria for license termination in 10 CFR part 20, subpart E, the licensee must evaluate its site to identify areas of potential or known sources of radioactive material and classify those areas according to the potential for radioactive contamination. The evaluation is known as a historical site assessment. The historical site assessment is an investigation to collect information describing a site's complete history from the start of site activities to the present time. Information collected will typically include site files, monitoring data, and event investigations, as well as interviews with current or previous employees to collect firsthand information.

The MARSSIM approach in evaluating HSA data for the purposes of classifying an area prescribes that process knowledge of events or conditions that may have led to residual contamination be used in combination with analytical information such as survey data. This approach is discussed in the "Comments on the Proposed Rule" section of this notice. The HSA assessment process results in classifying areas according to the potential for containing residual radioactivity. Areas that have no reasonable potential for residual radioactivity in excess of natural background or fallout levels are classified as non-impacted areas. Areas with some reasonable potential for residual radioactivity in excess of natural background or fallout levels are classified as impacted areas. Further discussion regarding the meaning and use of these terms is contained in NUREG-1575, "Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM)."

### 4. 10 CFR 50.75

This final rule amends § 50.75 to add a new paragraph (g)(4). The recordkeeping requirements in § 50.75(g)(4) are necessary to ensure that potential dose contributions associated with partial site releases can be adequately considered at the time of any subsequent partial releases and at the time of license termination. Records to be retained include the licensed site area (including property acquired or used for the purpose of receiving, possessing, or using licensed materials), licensed activities carried out on the property acquired or used, and information demonstrating licensee compliance with the radiological release

criteria at the time of the partial site release.

In § 50.75(c), the NRC defines the amount of financial assurance required for decommissioning power reactors. There is no provision to adjust the amount to account for the costs of a partial site release. While a partial site release may reduce the cost of decommissioning for the remainder of the site, the NRC is not reducing the required amount for the following reasons. Costs incurred for purposes other than reduction of residual radioactivity to permit release of the property and termination of the license are not included in the amount required for decommissioning financial assurance. A partial site release may incur costs that do not fit the definition of decommissioning. Therefore, an evaluation of the costs would be necessary to determine what adjustment, if any, is appropriate. In addition, the cost of a partial site release is expected to be a small fraction of the cost of decommissioning. Such a small adjustment can be considered within the uncertainty of the amount specified in § 50.75(c) and does not provide a compelling reason to undertake the technical justification of adding a generically applicable adjustment factor to the requirement.

In § 50.75(g), the NRC requires keeping records of information important to decommissioning. Currently, there are three categories of information required: (1) Spills resulting in significant contamination after cleanup; (2) as-built drawings of structures and equipment in restricted areas; and (3) cost estimates and funding methods. Information on structures and land that were included as part of the site is also important to decommissioning in order to ensure that the dose effects from partial releases are adequately accounted for when the license is terminated.

Records relevant to decommissioning must be retained until the license is terminated. The rule requires a licensee to identify its licensed facility and site, as defined in the original license application, to include a map, and to record any additions to or deletions from the licensed site after original licensing, along with records of the radiological conditions of any partial site releases. As previously noted, these records will ensure that potential dose contributions associated with partial site releases can be adequately considered at the time of any subsequent partial releases and at the time of license termination. As a result of comments received on the proposed rule, the implementation date for the

changes made to the recordkeeping requirements at 10 CFR 50.75(g)(4) has been modified in the final rule to provide a 6-month implementation period.

The purpose of the License Termination Rule (LTR) (61 FR 39301, July 29, 1996, as amended at 62 FR 39091, July 21, 1997) and 10 CFR 50.82 is to ensure that any residual radioactivity associated with licensed activity is within the radiological release requirements of 10 CFR part 20, subpart E, at the time the license is terminated. Although not previously codified, the requirement to maintain records of the entire licensed site as defined in the original license, along with subsequent modifications to the licensed site, clarifies the intent of the LTR and is necessary to ensure that potential dose contributions from the entire area can be adequately considered in demonstrating compliance with the release criteria. The recordkeeping applies to all licensees, including those who modify the licensed site by releasing a part of their site prior to license termination. It is expected that licensees are maintaining property records in order to comply with the LTR at the time of license termination and, therefore, these recordkeeping requirements do not establish new policies, standards, or requirements not already inherent to compliance with the radiological release criteria of the LTR.

#### 5. 10 CFR 50.82

With respect to section 50.82(a)(9)(ii) a new subparagraph (H) is added to include the identification of parts of the site previously released for use with the information listed in the LTP. Section 50.82(a)(9) requires the submittal of an application for license termination that includes an LTP. Section 50.82(a)(11) requires that the NRC make a determination that the final survey and associated documentation provided by a licensee demonstrates that the site is suitable for release at the time the license is terminated. These sections codify the NRC's views that certain information is required to evaluate the adequacy of a licensee's compliance with the radiological criteria for license termination in 10 CFR part 20, subpart E, and the license termination criteria are applicable to the entire site. However, because the LTP is not required until 2 years before the anticipated date of license termination, a licensee may perform a partial site release before it submits the necessary information. The information required when the LTP is submitted refers to the "site." It is not clear that a licensee could be required to include the areas

released because they no longer are part of the "site." The NRC is concerned that a licensee could adopt partial site releases as a piecemeal approach to relinquish responsibility for a part of its site without going through the license termination process and without ensuring that the release criteria of 10 CFR part 20, subpart E, are met.

With respect to section 50.82(a)(11)(ii), this final rule clarifies that the final radiation survey shall include an assessment of the dose contribution associated with portions of the site that have been released before approval of the license termination plan. The objective is to ensure that the entire area meets the radiological release requirements of 10 CFR part 20, subpart E (0.25 mSv/yr (25 mrem/yr) reduced to ALARA) at the time the license is terminated. This amendment to § 50.82(a)(11)(ii) requires that the final radiation survey and associated documentation include an assessment of dose contributions associated with any parts previously released for use in demonstrating that the facility and site meet the radiological release criteria in accordance with 10 CFR part 20, subpart E. Although no further surveys of previously released areas are anticipated, the dose assessment must account for possible dose contributions associated with previous releases in order to ensure that the entire area meets the radiological release requirements of 10 CFR part 20, subpart E (0.25 mSv/yr (25 mrem/yr) reduced to ALARA) at the time the license is terminated.

#### 6. 10 CFR 50.83

This rule adds a new section § 50.83, separate from the current decommissioning and license termination rules, that identifies the criteria and regulatory framework for power reactor licensees that seek to release part of a facility or site for unrestricted use at any time before NRC approval of its LTP. This section is also required because NRC regulations do not address cases in which the NRC may release portions of the site or facility before the approval of the license termination plan.

The rule requires NRC approval for a partial site release. The approval process under which the property will be released depends on the potential for residual radioactivity from plant operations remaining in the area to be released. First, for proposed release areas classified as non-impacted and, therefore, having no reasonable potential for residual radioactivity, the licensee will be allowed to submit a letter containing specific information

and requesting approval of the release. Because there is no reasonable potential for residual radioactivity in these cases, the NRC will approve the release of the property by letter after determining that the licensee has met the criteria of the rule. Guidance for demonstrating that a proposed release area is non-impacted is contained in NUREG-1575, "Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM)." The NRC would generally not perform radiological surveys and sampling of a non-impacted area. However, if the NRC determines that surveys and sampling are needed to verify that a proposed release area is properly classified as "non-impacted," they would be performed as part of NRC's inspection process. Second, for areas classified as impacted and having some reasonable potential for residual radioactivity, the licensee will submit the required information in the form of a license amendment for NRC approval. The proposed amendment will also include the licensee's demonstration of compliance with the radiological criteria for unrestricted use specified in 10 CFR 20.1402.

Licensees may find it beneficial to review their survey plans and design with the NRC staff before performing the surveys. As warranted, the NRC will conduct parallel and/or confirmatory radiation surveys and sampling to ensure that the licensee's conclusions are adequate.

Because an LTP is required for license termination under restricted conditions (§ 20.1403(d)) or alternate criteria (§ 20.1404(a)(4)), only the "unrestricted use" option is available to licensees for a partial site release prior to LTP approval.

The rule also requires a licensee to evaluate the effect of releasing the property to ensure that the licensee will continue to comply with all other applicable statutory and regulatory requirements that may be impacted by the release of property and changes to the site boundary. This includes, for example, regulations in 10 CFR parts 20, 50, 72, and 100. In those instances involving license amendments, licensees are also required to provide a supplement to the existing environmental report to address the planned release. This requirement is similar to the requirement of 10 CFR 50.82(a)(9)(ii)(G).

The rule provides for public participation. The NRC will notice receipt of a licensee's proposal for a partial site release, regardless of the amount of residual radioactivity involved, and make it available for public comment. The NRC also will

hold a public meeting in the vicinity of the site to discuss the licensee's release approval request or license amendment application, as applicable.

#### Referenced Documents

Copies of NUREG-1575 and NUREG-1757 may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. These documents are also accessible on the NRC Web site (<http://www.nrc.gov>).

#### Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC standardizes the process for allowing a licensee to release part of its reactor facility or site for unrestricted use before the NRC approves the LTP. This action does not constitute the establishment of a standard that establishes generally applicable requirements, and the use of a voluntary consensus standard is not applicable.

#### Finding of No Significant Environmental Impact: Availability

The Commission has determined that under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51 that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

There are no significant radiological environmental impacts associated with this action. This action does not involve non-radiological plant effluents and has no other environmental impact. Therefore, the NRC expects that no significant environmental impact will result from this rule.

The Environmental Assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the Environmental Assessment and the finding of no significant impact are available from Harry Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-3092.

#### Paperwork Reduction Act Statement

This final rule contains information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval number 3150-0011.

The burden to the public for these information collections is estimated to average 582 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of this information collection, including suggestions for reducing the burden, to the Records Management Branch (T-6 E6), U.S. Nuclear Regulatory Commission, Washington DC 20555-0001, or by e-mail to [INFOCOLLECTS@nrc.gov](mailto:INFOCOLLECTS@nrc.gov); and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0011), Office of Management and Budget, Washington DC, 20503.

#### 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.

#### Regulatory Analysis

The Commission has prepared a Regulatory Analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the Regulatory Analysis are available from Harry Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-3092.

#### Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in 10 CFR 2.810.

### Backfit Analysis

The NRC has determined that the backfit rule does not apply to this rule; and therefore, a backfit analysis is not required for this final rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

Section 50.75(g) of the final rule, which specifies new information collection and reporting requirements is not subject to the backfit rule, 10 CFR 50.109, inasmuch as information collection and reporting requirements are not within the purview of the backfit rule. The remaining requirements in this rule are voluntary and pertain only to licensees choosing to request a partial site release prior to approval of their license termination plan and are also not subject to the provisions of the backfit rule.

### Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

### List of Subjects

#### 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 20

Byproduct material, Criminal penalties, Licensed material, Nuclear material, 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 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974,

as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2, 20, and 50.

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

- 1. The authority citation for Part 2 continues to read as follows:

**Authority:** Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948-951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101-410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104-134, 110 Stat. 1321-373 (28 U.S.C. 2461 note). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133), and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135).

- 2. In § 2.1201, paragraph (a)(4) is added to read as follows:

#### § 2.1201 Scope of subpart.

(a) \* \* \*

(4) The amendment of a Part 50 license to release part of a power reactor facility or site for unrestricted use in accordance with § 50.83. Subpart L hearings for the partial site release plan,

if conducted, must be complete before the property is released for use.

\* \* \* \* \*

### PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

- 3. 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).

- 4. In § 20.1401, paragraphs (a) and (c) are 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, 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, 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 to uranium solution extraction facilities.

\* \* \* \* \*

(c) After a site has been decommissioned and the license terminated in accordance with the criteria in this subpart, or after part of a facility or site has been released for unrestricted use in accordance with § 50.83 of this chapter and in accordance with the criteria in this subpart, the Commission will require additional cleanup only, if based on new information, it determines that the criteria of this subpart were not met and residual radioactivity remaining at the site could result in significant threat to public health and safety.

\* \* \* \* \*

### PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

- 5. 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, 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, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102-486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 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 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).

■ 6. Section 50.2 is amended by adding "Historical site assessment," "Impacted areas," and "Non-impacted areas" in alphabetical order to read as follows:

#### § 50.2 Definitions.

\* \* \* \* \*

*Historical site assessment* means the identification of potential, likely, or known sources of radioactive material and radioactive contamination based on existing or derived information for the purpose of classifying a facility or site, or parts thereof, as impacted or non-impacted.

*Impacted areas* mean the areas with some reasonable potential for residual radioactivity in excess of natural background or fallout levels.

\* \* \* \* \*

*Non-impacted areas* mean the areas with no reasonable potential for residual radioactivity in excess of natural background or fallout levels.

\* \* \* \* \*

■ 7. In § 50.8, paragraph (b) is revised to read as follows:

#### § 50.8 Information collection requirements: OMB approval.

\* \* \* \* \*

(b) The approved information collection requirements contained in this part appear in §§ 50.30, 50.33, 50.33a, 50.34, 50.34a, 50.35, 50.36, 50.36a, 50.36b, 50.44, 50.46, 50.47, 50.48, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.60, 50.61, 50.62, 50.63, 50.64, 50.65, 50.66, 50.68, 50.71, 50.72, 50.74, 50.75, 50.80, 50.82, 50.83, 50.90, 50.91, 50.120, and Appendices A, B, E, G, H, I, J, K, M, N, O, Q, R, and S to this part.

\* \* \* \* \*

■ 8. In § 50.75, paragraph (g)(4) is added to read as follows:

#### § 50.75 Reporting and recordkeeping for decommissioning planning.

\* \* \* \* \*

(g) \* \* \*

(4) Records of:

(i) The licensed site area, as originally licensed, which must include a site map and any acquisition or use of property outside the originally licensed site area for the purpose of receiving, possessing, or using licensed materials;

(ii) The licensed activities carried out on the acquired or used property; and

(iii) The release and final disposition of any property recorded in paragraph (g)(4)(i) of this section, the historical site assessment performed for the release, radiation surveys performed to support release of the property, submittals to the NRC made in accordance with § 50.83, and the methods employed to ensure that the property met the radiological criteria of 10 CFR Part 20, Subpart E, at the time the property was released.

■ 9. In § 50.82, paragraph (a)(9)(ii)(H) is added and paragraph (a)(11)(ii) is revised to read as follows:

#### § 50.82 Termination of license.

\* \* \* \* \*

(a) \* \* \*

(9) \* \* \*

(ii) \* \* \*

(H) Identification of parts, if any, of the facility or site that were released for use before approval of the license termination plan.

\* \* \* \* \*

(11) \* \* \*

(ii) 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 10 CFR part 20, subpart E.

\* \* \* \* \*

■ 10. A new § 50.83 is added to read as follows:

#### § 50.83 Release of part of a power reactor facility or site for unrestricted use.

(a) Prior written NRC approval is required to release part of a facility or site for unrestricted use at any time before receiving approval of a license termination plan. Section 50.75 specifies recordkeeping requirements associated with partial release. Nuclear power reactor licensees seeking NRC approval shall—

(1) Evaluate the effect of releasing the property to ensure that—

(i) The dose to individual members of the public does not exceed the limits

and standards of 10 CFR Part 20, Subpart D;

(ii) There is no reduction in the effectiveness of emergency planning or physical security;

(iii) Effluent releases remain within license conditions;

(iv) The environmental monitoring program and offsite dose calculation manual are revised to account for the changes;

(v) The siting criteria of 10 CFR Part 100 continue to be met; and

(vi) All other applicable statutory and regulatory requirements continue to be met.

(2) Perform a historical site assessment of the part of the facility or site to be released; and

(3) Perform surveys adequate to demonstrate compliance with the radiological criteria for unrestricted use specified in 10 CFR 20.1402 for impacted areas.

(b) For release of non-impacted areas, the licensee may submit a written request for NRC approval of the release if a license amendment is not otherwise required. The request submittal must include—

(1) The results of the evaluations performed in accordance with paragraphs (a)(1) and (a)(2) of this section;

(2) A description of the part of the facility or site to be released;

(3) The schedule for release of the property;

(4) The results of the evaluations performed in accordance with § 50.59; and

(5) A discussion that provides the reasons for concluding that the environmental impacts associated with the licensee's proposed release of the property will be bounded by appropriate previously issued environmental impact statements.

(c) After receiving an approval request from the licensee for the release of a non-impacted area, the NRC shall—

(1) Determine whether the licensee has adequately evaluated the effect of releasing the property as required by paragraph (a)(1) of this section;

(2) Determine whether the licensee's classification of any release areas as non-impacted is adequately justified; and

(3) Upon determining that the licensee's submittal is adequate, inform the licensee in writing that the release is approved.

(d) For release of impacted areas, the licensee shall submit an application for amendment of its license for the release of the property. The application must include—

(1) The information specified in paragraphs (b)(1) through (b)(3) of this section;

(2) The methods used for and results obtained from the radiation surveys required to demonstrate compliance with the radiological criteria for unrestricted use specified in 10 CFR 20.1402; and

(3) A supplement to the environmental report, under § 51.53, describing any new information or significant environmental change associated with the licensee's proposed release of the property.

(e) After receiving a license amendment application from the licensee for the release of an impacted area, the NRC shall—

(1) Determine whether the licensee has adequately evaluated the effect of releasing the property as required by paragraph (a)(1) of this section;

(2) Determine whether the licensee's classification of any release areas as non-impacted is adequately justified;

(3) Determine whether the licensee's radiation survey for an impacted area is adequate; and

(4) Upon determining that the licensee's submittal is adequate, approve the licensee's amendment application.

(f) The NRC shall notice receipt of the release approval request or license amendment application and make the approval request or license amendment application available for public comment. Before acting on an approval request or license amendment application submitted in accordance with this section, the NRC shall conduct a public meeting in the vicinity of the licensee's facility for the purpose of obtaining public comments on the proposed release of part of the facility or site. 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.

Dated in Rockville, Maryland, this 14th day of April, 2003.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 03-9866 Filed 4-21-03; 8:45 am]

**BILLING CODE 7590-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2003-NM-23-AD; Amendment 39-13126; AD 2003-08-13]

RIN 2120-AA64

#### **Airworthiness Directives; Various Surplus Military Airplanes Manufactured by Consolidated, Consolidated Vultee, and Convair**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to various surplus military airplanes manufactured by Consolidated, Consolidated Vultee, and Convair. This action requires repetitive inspections to find fatigue cracks in the lower rear cap of the wing front spar, front spar web, and lower skin of the wings; repair or replacement of any cracked part with a new part; and follow-on inspections at new intervals. This action is necessary to find and fix fatigue cracking, which could result in structural failure of the wings and consequent loss of control of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective May 7, 2003.

Comments for inclusion in the Rules Docket must be received on or before June 23, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2003-NM-23-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: [9-anm-iarcomment@faa.gov](mailto:9-anm-iarcomment@faa.gov). Comments sent via fax or the Internet must contain "Docket No. 2003-NM-23-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this AD may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft

Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** John Cecil, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5228; fax (562) 627-5210.

**SUPPLEMENTARY INFORMATION:** On July 18, 2002, while dropping retardant on a fire near Lyons, Colorado, a United States Department of Agriculture (USDA) Forest Service Model P4Y-2 airplane was involved in an accident, resulting from the structural failure of the center wing. Investigation revealed fatigue cracking in the lower rear cap of the wing front spar, front spar web, and lower skin of the wings. The fatigue cracking has been attributed to the age, time-in-service, and flight cycles of the airplane. Such fatigue cracking, if not found and fixed in a timely manner, could result in structural failure of the wings and consequent loss of control of the airplane.

#### **FAA's Determination**

We have determined that high-cycle fatigue cracks in the area of the lower rear cap of the wing front spar, front spar web, and lower skin of the wings are likely to occur on various surplus military airplanes. Repetitive inspections of these areas are necessary to ensure that fatigue cracks will be found in a timely manner, and corrective action taken, to preclude crack growth to a size that would create an unacceptable risk of structural failure. While inspection methodologies exist that can be used to find cracks, we are currently unaware of any for the subject airplanes. Therefore, owners and operators must submit inspection procedures and repetitive inspection intervals to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, for approval. The inspection procedures must be sufficiently reliable to determine the location, size, and orientation of cracks that are very small, so that the crack will not grow to a critical length at limit load before the next scheduled inspection.

If any crack is found during any inspection, operators must replace the cracked part with a new part; or repair and inspect at new intervals per a method approved by the FAA.

#### **Explanation of the Requirements of the Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other surplus military airplanes of the same type design, this