

2. *10 CFR 52.18 should be amended as follows:* Applications filed under this subpart will be reviewed according to the applicable standards set out in 10 CFR part 50 and its appendices and part 100 as they apply to applications for construction permits for nuclear power plants. In particular, the Commission shall prepare an environmental impact statement during a review of the application, in accordance with applicable provisions of 10 CFR part 51, provided, however, that the draft and final environmental impact statements prepared by the Commission focus on the environmental effects of construction and operation of a reactor, or reactors, which have characteristics that fall within the postulated site parameters. The Commission shall determine, after consultation with the Federal Emergency Management Agency, whether the information required of the applicant by § 52.17(b)(1) shows that there is no significant impediment to the development of emergency plans, whether any major features of emergency plan submitted by the applicant under § 52.17(b)(2)(i) are acceptable, and whether any emergency plans submitted by the applicant under Section 52.17(b)(2)(ii) provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

Proposed Modifications to 10 CFR Parts 2, 50 and 51

1. *10 CFR 2.101(a-1)(1) should be amended as follows:* Part one shall include or be accompanied by any information required by §§ 50.34(a)(1) and 50.30(f) of this chapter which relates to the issue(s) of site suitability for which an early review, hearing and partial decision are sought, except that information with respect to operation of the facility at the projected initial power level need not be supplied, and shall include the information required by §§ 50.33 (a) through (e) and 50.37 of this chapter. The information submitted shall also include: (i) Proposed findings on the issues of site suitability on which the applicant has requested review and a statement of the bases or the reasons for those findings, and (ii) a range of postulated facility design and operation parameters that is sufficient to enable the Commission to perform the requested review of site suitability issues under the applicable provisions of parts 50, 51 and 100.

2. *10 CFR 2.603(b)(1) should be amended as follows:* The Director of Nuclear Reactor Regulation will accept for docketing an application for a

construction permit for a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in § 50.21(b)(2) or (3) or § 50.22 or is a testing facility where part one of the application as described in § 2.101(a-1) is complete. Part one of any application will not be considered complete unless it contains proposed findings as required by § 2.101(a-1)(1)(i). Upon assignment of a docket number, the procedures in § 2.101(a)(3) and (4) relating to formal docketing and the submission and distribution of additional copies of the application shall be followed.

3. *10 CFR 2.605(b)(1) should be deleted in its entirety.*

4. *10 CFR Part 50, Appendix Q.2 and 10 CFR Part 52, Appendix Q.2 (which are essentially identical) should be amended as follows:* The submittal for early review of site suitability issue(s) must be made in the same manner and in the same number of copies as provided in §§ 50.4 and 50.30 for license applications. The submittal must include sufficient information concerning a range of postulated facility design and operation parameters to enable the Staff to perform the requested review of site suitability issues. The submittal must contain suggested conclusions on the issues of site suitability submitted for review and must be accompanied by a statement of the bases or the reasons for those conclusions.

5. *10 CFR Part 50, Appendix Q.7(a) and 10 CFR Part 52, Appendix Q.7(a) (which are identical) should be deleted in their entirety.*

6. *The following sentence should be added to the end of 10 CFR 51.45(c):* No discussion of need for power, alternative energy sources, or alternative sites for the facility is required in this report.

7. *10 CFR 51.53(c)(2) should be amended as follows:* * * * In addition, the applicant shall discuss in this report the environmental impacts of alternatives and any other matters described in § 51.45. The report is not required to include discussion of alternative sites, alternative energy sources, or need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action except insofar as such costs and benefits are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation * * *.

8. *The following sentence should be added after the first sentence of 10 CFR 51.71(d):* No discussion of need for power, or of alternative energy sources,

or of alternative sites for the facility will be included in the draft environmental impact statement.

9. *10 CFR 51.95(c)(2) should be amended as follows:* The supplemental environmental impact statement for license renewal is not required to include discussion of alternative sites, alternative energy sources, or need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action except insofar as such benefits and costs are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. . . .

10. *10 CFR Part 51, Appendix A.4 should be amended as follows:* Purpose of and need for action. The statement will briefly describe and specify the need for the proposed action. The alternative of no action will be discussed.

11. *The following sentence should be added to the end of 10 CFR part 51, appendix A.5:* The consideration of alternatives will not include an analysis of alternative sites or alternative energy sources.

12. Additionally, conforming changes should be made in 10 CFR 2.101(a)(3)(ii) and 10 CFR 51.71 footnote 4.

13. Finally, NRC Regulatory Guide 4.2 and NUREG-1555 should be modified to reflect the Commission's determination that alternative sites, alternative sources of energy, and need for power are not to be evaluated under 10 CFR part 51 provisions pertaining to the siting, construction and operation of new nuclear power plants.

[FR Doc. 01-23791 Filed 9-21-01; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

[Docket No. PRM-52-1]

Nuclear Energy Institute; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Nuclear Energy Institute. The petition has been docketed by the NRC and has been assigned Docket No. PRM-52-1. The petitioner is requesting that the NRC

regulations governing early site permits and combined license applications at existing reactor sites be amended to improve the efficiency of the application and review process for companies seeking early site permits or combined licenses at licensed facilities. The petitioner believes that its proposed amendments would enhance the focus and efficiency of the early site permit and combined license process. The petitioner proposes to eliminate the need for what it believes is duplicate applicant production and NRC review of existing information relating to a licensed facility that has been previously approved by the NRC and subject to a public hearing.

DATES: Submit comments by November 8, 2001. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemakings and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (<http://ruleforum.llnl.gov>). At this site, you may view the petition for rulemaking, this **Federal Register** notice of receipt, and any comments received by the NRC in response to this notice of receipt. Additionally, you may upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415-5905 (e-mail: CAG@nrc.gov).

For a copy of the petition, write to Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Documents related to this action are available for public inspection at the NRC Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301-415-7163 or Toll-Free: 1-800-368-5642 or e-mail: MTL@NRC.Gov.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission received a petition for rulemaking dated July 18, 2001, submitted by the Nuclear Energy Institute (petitioner). The petitioner is requesting that the regulations in 10 CFR part 52 governing early site permits and combined license applications at existing reactor sites be amended. Specifically, the petitioner requests that the NRC amend 10 CFR part 52, subpart A, Early Site Permits, to add proposed § 52.16 and amend 10 CFR part 52, subpart C, Combined Licenses, to add proposed § 52.80.

The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM-52-1. The NRC is soliciting public comment on the petition for rulemaking.

Discussion of the Petition

The petitioner expects that new power reactors will be ordered by existing licensees in the near future and that the new reactors will use many of the programs currently being used by those licensees. Additionally, the petitioner anticipates that many of the new reactors will be located on existing reactor sites. The petitioner believes that, to avoid needless expenditure of NRC and licensee resources, proposed §§ 52.16 and 52.80 would use existing information as a baseline and would provide for NRC review and an opportunity for a hearing to account for changed circumstances, such as new regulations and significant new information.

The petitioner notes that subpart A to part 52 contains provisions governing issuance of early site permits (ESPs). The petitioner proposes that a new § 52.16 be added to subpart A to allow an ESP applicant to incorporate by reference all or portions of the current licensing basis for an existing reactor site to the extent that they are valid and applicable to one or more additional nuclear power plants that fit within the ESP environmental envelope. Proposed § 52.16 would also require that any information incorporated by reference be augmented to include:

- Significant new safety or environmental information that materially affects the ability of the site to support the proposed additional nuclear facility
- Information regarding the cumulative radiological and environmental impacts of the existing facility and the facility as described in the ESP application
- An analysis of the potential safety impacts of the existing facility on the

suitability of the site for the facility as described in the ESP application

- An analysis of the potential safety impacts on the existing facility from the facility as described in the ESP application

- Information that addresses regulations applicable to siting issues that became effective after licensing of the current facility, to the extent that these regulations are not addressed in the current licensing basis

The petitioner states that under proposed § 52.16, the NRC would treat as resolved those matters incorporated by reference, except to the extent that those matters are subject to augmentation with new information described above. The petitioner also states that proposed § 52.16 would allow the NRC to impose a change in the application with respect to the information incorporated by reference to the extent that the change satisfies the principles underlying 10 CFR 50.109, Backfitting. The petitioner believes that in preparing the environmental impact statement for the early site permit, the NRC would adopt the applicable portions of the existing environmental impact statement associated with the site, modified or supplemented as necessary to reflect the NRC's review of the new environmental information described above.

The petitioner notes that subpart C to part 52 contains provisions governing issuance of combined construction permits and operating licenses (COLs). The petitioner states that proposed § 52.80 would be added to subpart C and would contain provisions similar to those proposed in § 52.16. The petitioner also states that proposed § 52.80 would allow a COL applicant to incorporate by reference programmatic information identified in the current licensing basis of an existing licensed facility located at the same site or owned or operated by the same licensee. Proposed § 52.80 would require this programmatic information to be augmented to include information that addresses applicable regulations that became effective after the existing facility was licensed, to the extent that these regulations are not addressed by the current licensing basis for the existing facility. The petitioner states that under proposed § 52.80, the NRC would treat as resolved those matters incorporated by reference from the existing facility, except to the extent that those matters are subject to new information as identified above. The petitioner believes that the NRC could direct that a change be made in the COL application with respect to the information incorporated by reference,

to the extent that the change satisfies the principles underlying 10 CFR 50.109.

The petitioner proposes that 10 CFR part 52 be amended to add §§ 52.16 and 52.80 as follows:

Section 52.16 Early site permits for licensed sites.

(a) If an application for an early site permit is filed for a site for which a license or construction permit has been issued, the application may incorporate by reference all or part of the current licensing basis for the site to the extent that it pertains to the siting issues specified in § 52.17.

(b) Information incorporated by reference shall be supplemented to include, to the extent applicable:

(1) Significant new information that materially affects the ability of the site to support the additional nuclear facility as described in the early site permit application;

(2) Information regarding the cumulative radiological impacts of the existing facility and the facility as described in the early site permit application;

(3) An analysis of the potential safety impacts of the existing facility on the suitability of the site for the facility as described in the early site permit application;

(4) An analysis of the potential safety impacts on the existing facility from the facility as described in the early site permit application; and

(5) Information that addresses regulations applicable to siting issues that became effective after licensing of the existing facility, to the extent that such regulations are not addressed by the current licensing basis.

(c) Environmental information incorporated by reference shall be supplemented to include, to the extent applicable:

(1) Significant new information relevant to environmental concerns bearing on the ability of the site to support the additional nuclear facility as described in the early site permit application; and

(2) Information regarding the cumulative environmental impacts of the existing facility and the facility as described in the early site permit application.

(d) The Commission shall treat as resolved the environmental information incorporated by reference under paragraph (a) of this section, except to the extent that those matters are subject to new information under paragraph (b) of this section. In addition, the Commission may impose changes with respect to the information incorporated by reference pursuant to paragraph (a) of this section to the extent that each such change satisfies the criteria in 10 CFR 50.109.

(e) The Commission also shall treat as resolved the environmental information incorporated by reference under paragraph (a) of this section, except to the extent that those matters are subject to new information under paragraph (c) of this section. In preparing its environmental impact statement for the early site permit, the Commission will adopt the applicable portions of the existing environmental impact statement associated with the site (including any supplements), modified or supplemented as necessary to

reflect the Commission's review of the new information identified under paragraph (c) of this section.

* * * * *

Section 52.80 Combined licenses for sites with existing licensed facilities or for applicants holding licenses for other facilities.

(a) If an application is filed for a combined license for a facility located at a site with an existing licensed facility or by an applicant that holds a license for an existing facility at another site, the application may incorporate by reference the type of information described in § 52.16, subject to the requirements of that section.

(b) The application may also incorporate by reference all or part of the type of information identified in 10 CFR 50.33(g); 50.34(b)(6)(i), (ii), (iv), and (v); 50.34(c); 50.34(d); 50.34(f)(2)(ii); and 50.34(f)(3)(i), (ii), and (vii), to the extent such information is contained in the current licensing basis of an existing facility located at the same site or at a site owned or operated by the same licensee or an affiliate of that licensee. The information incorporated by reference shall be supplemented to include:

(1) Information that addresses regulations applicable to the incorporated information that became effective after licensing of the existing facility, to the extent that such regulations are not addressed by the current licensing basis for the existing facility.

(c) The Commission shall treat as resolved those matters incorporated by reference under paragraph (a) of this section, except to the extent that those matters are subject to new information under paragraph (b) of this section. In addition, the commission may direct that changes be made with respect to the information incorporated by reference pursuant to paragraph (a) of this section to the extent that each such change satisfies the criteria in 10 CFR 50.109.

The petitioner believes that proposed §§ 52.16 and 52.80 are consistent with and promote the NRC's performance goals to: Maintain safety; protection of the environment, and the common defense and security; increase public confidence; make NRC activities and decisions more effective, efficient, and realistic; and reduce unnecessary burden on stakeholders. The petitioner states that the proposed amendments not only are consistent with NRC's mission to ensure adequate protection of the public health and safety, the common defense and security, and the environment; but also, would focus NRC reviews on new information and what the petitioner believes would be an incremental impact of an additional unit at an existing site. The petitioner states that even in the absence of new information, the proposed regulations would provide the NRC with the authority to impose new requirements on previously approved information if required to ensure adequate protection

of the public health and safety and the environment.

The petitioner states that the proposed amendments would serve to enhance the efficiency of the regulatory process by eliminating duplicate reviews of matters resolved in previous proceedings by focusing agency resources on new and material information and the impact of potential new units on the site. The petitioner also states that proposed §§ 52.16 and 52.80 would ensure that the public has an opportunity for a hearing on all material issues, including significant new information that would warrant further NRC review. The petitioner believes that proposed §§ 52.16 and 52.80 would reduce regulatory burden by focusing attention on matters that have not been previously decided in other proceedings.

The petitioner notes that 10 CFR 51.29(a)(3) provides that the NRC may exclude issues that have been subject to a previous environmental review. The petitioner believes that its proposed amendments support NRC initiatives to place emphasis on the early identification of regulatory issues and process improvements to handle new license applications. The petitioner states that because the costs of a new facility are affected by application preparation expenses, responding to requests for additional information (RAIs), and possible hearing expenses, ensuring that costs are predictable and commensurate with the safety significance of issues associated with ESP and COL applications and reducing the time for a new facility to be available will be determining factors in business decisions on whether to proceed with new nuclear projects.

The petitioner acknowledges that the NRC has the authority and discretion to adopt new regulations under the Atomic Energy Act of 1954, as amended (AEA), and the Administrative Procedure Act (APA) by either rulemaking or adjudication. The petitioner cites *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978) in which the Supreme Court held that the NRC is free to promulgate rules of procedure and methods for making factual findings if they satisfy APA requirements. The petitioner believes that nothing in the AEA or APA would preclude adoption of proposed §§ 52.16 and 52.80 or prohibit the NRC from promulgating a rule that would treat information the NRC reviewed and approved in a previous licensing proceeding as resolved. The petitioner emphasizes that proposed §§ 52.16 and 52.80 would require NRC consideration of new

information that has not been previously reviewed or subject to a hearing.

The petitioner notes that §§ 52.39(a)(2), 52.63(a)(4), and 52.103 treat information the NRC has reviewed and approved in previous proceedings as resolved and that the courts have held that these provisions do not deprive individuals of rights to a hearing under § 189 of the AEA. The petitioner also notes that § 52.73 allows a COL application to reference a design certification and that in the COL proceeding, § 52.63(a)(4) requires the NRC to treat matters relating to issuance of the design certification as resolved, even if the design certification proceeding was a different proceeding that may have taken place 15 or more years earlier and probably did not involve the parties in the COL hearing. (See also, §§ 52.55 and 52.61.)

The petitioner indicates that § 52.73 also allows a COL application to reference an ESP and that § 52.39(a)(2) requires the NRC to treat matters resolved in the ESP proceeding as final, even though the ESP decision was a different matter that may have taken place at least 20 years earlier and may not have involved the same COL hearing parties. (See also, §§ 52.27 and 52.33.) In *Nuclear Information & Resource Service v. NRC*, 918 F.2d 189, 196–97 n. 14 (D.C. Cir. 1990), *aff'd* on rehearing 969 F.2d 1169, 1172 (D.C. Cir. 1992), the petitioner notes that the court rejected a challenge to the NRC's decision to treat matters approved in the ESP and design certification proceedings as resolved in a COL hearing in stating "that the Commission has wide latitude in structuring the scope and timing of its hearings." The petitioner notes further that this decision found that § 189 of the AEA does not contain specific instruction on how the hearing is to be conducted or if the NRC must rehear issues already settled earlier in the licensing process. The petitioner believes that the scope and timing of ESP and COL hearings contemplated in proposed §§ 52.16 and 52.80 are fully consistent with existing provisions and court decisions.

The petitioner also believes that limitations on the scope of issues contained in proposed §§ 52.16 and 52.80 are consistent with NRC practice in other areas such as, license renewal and amendments, environmental effects associated with the nuclear fuel cycle, spent fuel storage casks, quality assurance (QA) programs, and the facility and procedure change process. The petitioner notes that the scope of issues appropriate for review in operating license renewal proceedings is

limited under 10 CFR parts 51 and 54 that eliminate matters previously considered in prior licensing proceedings or rulemaking actions. The petitioner cites Vermont Yankee Nuclear Power Corp. (Vermont Yankee nuclear Power Station), ALAB–235, 8 AEC 873, 875 (1974) and Georgia Power Co. (Vogtle Nuclear Plant, Units 1 and 2) ALAB–291, 2 NRC 404, 415 (1975) in stating that the right to intervene and raise contentions in license amendment proceedings is limited to issues that directly relate to the proposed change and that it is inappropriate to revisit issues considered in initial licensing that are not affected by the amendment.

The petitioner also cites *Baltimore Gas and Electric Corp. v. NRDC*, 462 U.S. 87 (1983) in which the Supreme Court upheld the NRC's approach in the Table S–3 rulemaking proceeding in stating that the generic disposition of environmental issues is proper and precludes unnecessary and repetitive litigation. The petitioner notes that 10 CFR 72.46(e) prohibits review of spent fuel storage cask design issues during licensing hearings for a site-specific independent fuel storage installation (ISFSI) and when a cask was approved in a generic proceeding. The petitioner also notes that 10 CFR 72.210 and 72.212 allow use of generically approved storage casks without providing any opportunity for a plant-specific hearing. The petitioner cites *Kelly v. Selin*, 42 F.3d 1501 (6th Cir. 1995), *cert. denied* 515 U.S. 1159 (1995) in which the courts have held that this process does not deprive individuals of any hearing rights under § 189 of the AEA.

The petitioner states that 10 CFR 50.54(a) has been recently revised to eliminate the need for prior NRC review and changes to a QA program description when the change involves a QA alternative or exception previously approved in an NRC safety evaluation for another plant. The petitioner also states that 10 CFR 50.59(a)(2)(ii) and NRC Regulatory Guide 1.187 permit licensees to adopt evaluation methods approved by the NRC for use by other licensees if the method has been approved for the intended application and the licensee satisfies the applicable terms and conditions for its use. The petitioner believes that proposed §§ 52.16 and 52.80 are fully consistent with precedents in which the NRC has treated prior decisions made in rulemaking or licensing proceedings as resolved and has not permitted further review and litigation of those issues in subsequent proceedings.

The petitioner notes that § 102 of the National Environmental Policy Act of

1969 (NEPA) requires an environmental impact statement (EIS) for major Federal actions that significantly affect the quality of the environment and that 10 CFR 52.18 and 52.89 require an EIS for an ESP and a COL. However, NEPA does not require the NRC to reconsider previously settled issues to assess the environmental impacts of approving a license application to locate an additional reactor at an existing site. The petitioner cites the Council on Environmental Quality (CEQ) regulations that became effective in 1979 to standardize the NEPA process to reduce delays and eliminate duplication of governmental efforts. These regulations allow agencies to use previous environmental analyses when drafting a new EIS or to supplement an EIS if an agency makes substantive changes in a proposed action or when new circumstances or information arise that affect the environment. The petitioner acknowledges that the NRC incorporated these regulations into 10 CFR Part 51 but cites *Deukmejian v. NRC*, 751 F.2d 1287 (D.C. Cir. 1984) in noting that although the NRC gives substantial deference to the CEQ's regulations, it is not bound by them.

The petitioner states that 10 CFR 51.29(a)(3) permits the NRC to exclude issues that have been covered by a previous environmental review and that an EIS may provide a reference to a prior document that settled a particular environmental issue. The petitioner believes that although the NRC's regulations specifically refer to adoption of an EIS prepared by another Federal agency, nothing prevents the NRC from using a previous NRC EIS. The petitioner also believes that proposed §§ 52.16 and 52.80 are consistent with NRC and CEQ guidance on referencing and adopting previous EISs.

The Petitioner's Conclusions

The petitioner has concluded that the NRC requirements governing early site permits and the combined license process in 10 CFR Part 52 should be amended to permit the NRC to treat applicable information approved in previous licensing proceedings as resolved. The petitioner also has concluded that proposed §§ 52.16 and 52.80 would accomplish this objective and ensure consideration of significant new information that could materially affect the NRC's findings. The petitioner has also concluded that the proposed amendments are consistent with § 189 of the AEA and NRC and court decisions that authorize the NRC to limit the scope of licensing proceedings to avoid additional review and litigation of previously settled issues. Lastly, the

petitioner has concluded that the proposed amendments would conserve NRC resources and streamline the agency's administrative processes to eliminate what it believes are unnecessary costs and burdens on applicants for new licenses.

Dated at Rockville, Maryland, this 18th day of September, 2001.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

[FR Doc. 01-23790 Filed 9-21-01; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM195; Notice No. 25-01-04-SC]

Special Conditions: Boeing Model 777-200 Series Airplanes; Overhead Crew Rest Compartments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for Boeing Model 777-200 series airplanes, modified by the Boeing Commercial Airplane Group, Wichita. The proposed modification consists of the installation of an overhead flightcrew rest (OFCR) and an overhead attendant rest (OAR). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before October 24, 2001.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM-113), Docket No. NM195, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM195. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jayson Claar, FAA, Airframe/Cabin

Safety Branch, ANM-115, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone (425) 227-2194; facsimile (425) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this action may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this action must include with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to NM195." The postcard will be date stamped and returned to the commenter.

Background

On September 18, 2000, the Boeing Commercial Airplane Group (BCAG)—Wichita Division Designated Alteration Station (DAS) applied for a Supplemental Type Certificate (STC) from the Wichita Aircraft Certification Office (ACO). The STC is to install an overhead flightcrew rest (OFCR) and an overhead attendant rest (OAR) on Boeing Model 777-200 series airplanes. The OFCR compartment adjacent to door one will include a maximum of two private berths and two seats. Occupancy of the OFCR will be limited to a maximum of four occupants. The OAR compartment, adjacent to door three, will include a combination of private berths and seats for a maximum of twelve occupants. Occupancy of the OAR will be limited to a maximum of twelve occupants. Follow-on designs may locate the OAR at either door three, or door four depending on the Model 777-200 airplane and option(s) selected by the customer.

Both crew rests, OFCR and OAR, will be accessed from the main deck by

stairs. In addition, an emergency hatch which opens directly into the cabin area will be provided for each compartment. A smoke detection system, an oxygen system, and occupant amenities will also be provided. These compartments will only be occupied in flight, not during taxi, takeoff, or landing.

The Boeing Model 777-200 series airplanes are large twin engine airplanes with various passenger capacities and ranges depending upon airplane configuration, and currently do not incorporate OFCR and OAR compartments in production. While the installation of a crew rest compartment is not a new concept for large transport category airplanes, each crew rest compartment has unique features based on design, location, and use on the airplane. Crew rest compartments have been installed and certified in the main passenger area, above the main passenger area and below the passenger cabin area within the cargo compartment of the Boeing Model 777-200/-300 series airplanes. Also, overhead crew rest compartments have been installed on the Boeing Model 747 series airplanes.

The FAA has previously issued special conditions, which contain the additional safety standards that must be met for the overhead crew rests on Boeing Model 747 series airplanes. The FAA certified the lower lobe attendant rest on the Boeing Model 777-200 series airplanes by equivalent level of safety finding to the requirements of 25.819. In addition, the FAA recently issued Special Conditions No. 25-169-SC, dated December 1, 2000, for 777-200 series airplanes for overhead crew rest to support a STC for Flight Structures Inc (FSI) of Arlington, Washington. The Flight Structures, Inc. (FSI) Special Conditions No. 25-169-SC were amended on May 2, 2001.

These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Certification requirements for pilot "sleeping quarters" per the requirements of 121.485 are not addressed in these special conditions. The applicant must work directly with the Aircraft Evaluation Group (AEG) with regard to the adequacy of onboard sleeping quarters/facilities for compliance with 121.485(a), 121.523(b) and 135.269(b)(5). The AEG is responsible for making this finding.

Type Certification Basis

Under the provisions of 21.101, Boeing must show that the Model 777-