



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

REGION IV  
611 RYAN PLAZA DRIVE, SUITE 400  
ARLINGTON, TEXAS 76011-8064

MAR 27 2000

EA 99-287

Mr. C. L. Terry  
TXU Electric  
Senior Vice President & Principal Nuclear Officer  
ATTN: Regulatory Affairs Department  
P.O. Box 1002  
Glen Rose, Texas 76043

SUBJECT: RESPONSE TO BACKFIT CLAIM

Dear Mr. Terry:

This letter is in response to your letter of July 11, 1997, in which you requested a backfit analysis pursuant to the provisions of 10 CFR 50.109. Your request for a backfit analysis related to a 10 CFR 50.59 violation issued in our June 11, 1997, Notice of Violation that was associated with NRC Inspection Report 50-445; 446/97-12. The violation cited your failure to perform written safety evaluations to provide the basis for concluding that four changes to drawings contained in the safety analysis report did not involve unreviewed safety questions. In our September 4, 1997, letter to you, we informed you that we were referring your claim of a backfit to the Office of Nuclear Reactor Regulation. This letter is to inform you of the results of NRC's review (Enclosure 1).

The staff reviewed your request for a backfit analysis to evaluate the apparent change in staff position from that given in NRC Inspection Report 50-445; 446/93-32, dated October 13, 1993, to that expressed in NRC Inspection Report 50-445; 446/97-12. The former report stated, in reference to an issue unrelated to the subject four changes:

This temporary modification should have been identified as a "trivial" type change. That is, a change having "no potential safety impact (e.g., affecting safe shutdown or the safety of operations)."

In each of the four examples of the subject violation, you had invoked Category 7 "trivial" change (minor changes which had no potential safety impact) from your procedure, "10 CFR 50.59 Review Guide," Revision 4, to disposition the associated design change notices as not requiring safety evaluations. Resulting from the backfit review, the staff has concluded that your procedure, with respect to Category 7 "trivial" change, provides guidance, which if implemented as written, could result in a violation of 10 CFR 50.59. In NRC Inspection Report 50-445; 446/93-32, the inspectors provided statements that appeared to accept your guidance to your staff on this matter.

Because the statements in NRC Inspection Report 50-445; 446/93-32 were misleading, the reversal of this previous position, which accepted your interpretation of "trivial" changes, constitutes a change in the staff's position. However, the staff also concluded that this change in the staff's position constitutes a compliance backfit, pursuant to 10 CFR 50.109(a)(4)(i), since this change in the staff's position is necessary to assure compliance with the requirements of 10 CFR 50.59.

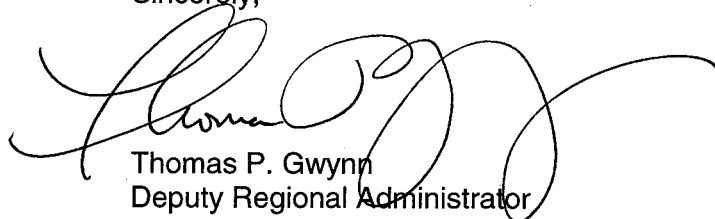
Since the NRC inspection report gave the impression that your "trivial" change process was valid and in accordance with the requirements of 10 CFR 50.59, no violation will be issued pursuant to the discretion provided by the NRC Enforcement Policy, Section VII.B.6. Accordingly, Violation C (9712-05) issued in the Notice of Violation in NRC Inspection Report 50-445; 446/97-12 is hereby withdrawn. Nevertheless, it is our position that the cited subject applications of your "trivial" change process constituted a violation of an NRC requirement.

With the recent publication of the revised 10 CFR 50.59 rule on October 4, 1999, for a situation that violates the "old" requirement, but that would not be a violation had the change been performed under the revised rule, the NRC would exercise enforcement discretion pursuant to Section VII.B.6 of the Enforcement Policy and not take enforcement action. The revised rule will allow screening of certain changes as not needing a full evaluation. The specific procedural guidance as presently used by TXU for "trivial" changes may need to be revised to be consistent with the new rule language. This may be necessary to ensure that changes are made in accordance with the rule requirements.

With respect to this specific instance, if you disagree with this NRC staff evaluation of your backfit claim, you may submit a written appeal to the Director, Office of Nuclear Reactor Regulation, in accordance with NRC Management Directive 8.4, "NRC Program for Management of Plant-Specific Backfitting of Nuclear Power Plants," paragraph 044 (Enclosure 2).

Should you have any questions concerning this determination, please contact me at (817) 860-8226 or Mr. A. T. Howell, III, of my staff at (817) 860-8180.

Sincerely,



Thomas P. Gwynn  
Deputy Regional Administrator

Enclosures:

1. Memorandum to Arthur T. Howell from Suzanne C. Black, "Task Interface Agreement - Comanche Peak - Request for Evaluation of Licensee Backfit Claim Concerning a 10 CFR 50.59 Violation (97TIA019) (TACS Nos. M99442 and M99443)," dated May 4, 1999
2. NRC Management Directive 8.4

Docket Nos.: 50-445; 50-446  
License Nos.: NPF-87; NPF-89

cc w/enclosures:

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TXU Electric

-4-

John L. Howard, Director  
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E-Mail report to D. Lange (DJL)  
 E-Mail report to NRR Event Tracking System (IPAS)  
 E-Mail report to Document Control Desk (DOCDESK)

bcc to DCD (IE01)

bcc distrib. by RIV:

Regional Administrator  
 Resident Inspector (2)  
 DRP Director  
 DRS Director  
 RITS System  
 Branch Chief (DRP/A)  
 RIV File  
 Project Engineer (DRP/A)  
 CGoines (AI 99G-0081)  
 RBorchardt, OE (O-14E1)  
 OE:EA File (O-14E1)  
 GSanborn-EA File

**DOCUMENT NAME: S:\DRS\EMB\EMB ACTION ITEMS\ACTION ITEM 99-G-0081 CPSES BACKFIT  
 RESPONSE.WPD**

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D:DRP	D:DNMS	NRR	DRA
KEBrockman*	DDChamberlain*	SBlack	TPGwynn
11/22/99	11/26/99	01/19/00	03/27/00

\*Previously concurred.

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**ENCLOSURE 1**

MEMORANDUM TO ARTHUR T. HOWELL FROM SUZANNE C. BLACK

“TASK INTERFACE AGREEMENT - COMANCHE PEAK - REQUEST FOR EVALUATION OF  
LICENSEE BACKFIT CLAIM CONCERNING A 10 CFR 50.59 VIOLATION (97TIA019) (TACS  
NOS. M99442 AND M99443)”

DATED MAY 4, 1999



PREDECISIONAL INFORMATION - LIMITED DISTRIBUTION  
UNITED STATES

NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

May 4, 1999

MEMORANDUM TO: ~~Arthur H. Howell, Director~~  
Division of Reactor Safety  
Region IV

FROM: Suzanne C. Black, Deputy Director *Suzanne Black*  
Division of Licensing Project Management  
Office of Nuclear Reactor Regulation

SUBJECT: TASK INTERFACE AGREEMENT - COMANCHE PEAK - REQUEST  
FOR EVALUATION OF LICENSEE BACKFIT CLAIM CONCERNING A  
10 CFR 50.59 VIOLATION (97TIA019) (TAC NOS. M99442 AND  
M99443)

The staff has completed its review of the Region IV memorandum dated September 19, 1997, Task Interface Agreement (TIA) 97TIA019, that requested that NRR review Texas Utilities (TU) Electric's (the licensee's) backfit claim dated July 11, 1997, to determine whether the licensee is correct in its assessment that a plant-specific backfit exists that requires a backfit analysis, or if this is a compliance backfit issue not requiring an analysis. The staff reviewed the licensee's request for a backfit analysis to evaluate the change in staff position from that established in NRC Inspection Report (IR) 50-445; 446/93-32, dated October 13, 1993. That report stated, in part:

This temporary modification should have been identified as a "trivial" type change. That is, a change having "no potential safety impact (e.g., affecting safe shutdown or the safety of operations)."

Subsequently, in NRC IR 50-445; 446/97-12, dated June 11, 1997, the staff issued a Notice of Violation including one violation with four examples of failing to perform a written safety evaluation. The licensee had used its "trivial change" process to disposition design change notices as not requiring a safety evaluation. Specifically, in each case, the licensee used its category seven "trivial change" (minor changes, which had no potential safety impact), previously accepted in IR 50-445; 446/93-32.

The staff reviewed the licensee's request for a backfit analysis to evaluate the change in staff position. An October 13, 1993, NRC IR 50-445; 446/93-32 accepted TU Electric's "trivial change." The June 11, 1997, NRC IR 50-445; 446/97-12 identified four examples of trivial changes as a violation.

May 4, 1999

The staff concluded that the TU Electric procedure, "10 CFR 50.59 Review Guide," Revision 4, with respect to category seven "trivial change," is not in compliance with the requirements of 10 CFR 50.59. In NRC IR 50-445; 446/93-32, the inspectors incorrectly accepted the licensee's guidance. The NRC Inspection Manual 9900 guidance for 10 CFR 50.59 dated January 1, 1984, includes the reference to trivial detail in an attempt to establish a threshold for inspectors. However, the licensee may have incorrectly interpreted the NRC inspector guidance in developing its review guide for "trivial changes."

The staff's previous evaluation in IR 50-445; 446/93-32 was in error since TU Electric's procedure would allow changes without safety evaluations that are not in accordance with 10 CFR 50.59. Accordingly, the reversal of the previous error, which accepted the licensee's interpretation of trivial change, is a change in the staff's position and constitutes a backfit. This would be a compliance backfit pursuant to 10 CFR 50.109(a)(4)(i) since the change is necessary to assure compliance with the requirements of Section 50.59. Accordingly, no backfit analysis needs to be performed; however, the attached evaluation provides the basis for the compliance backfit conclusion.

NRR proposes that Region IV inform the licensee that a compliance backfit existed as a result of the positions taken during the second inspection, IR 50-445; 446/97-12. Accordingly, the Notice of Violation issued in IR 97-12 should be withdrawn and enforcement discretion per Section VII.B.6 of the Enforcement Policy should be exercised for this violation because of the erroneous acceptance of the issue in IR 93-32. However, the licensee should be informed that now the NRC staff considers the "trivial changes" interpretation to not be in compliance with 10 CFR 50.59 and further application of this interpretation would also constitute a violation.

Docket Nos. 50-445 and 50-446

Attachment: Evaluation by NRR and OGC

cc w/att: W. Lanning, RI  
B. Mallet, RII  
J. Grobe, RIII





UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION  
TASK INTERFACE AGREEMENT REQUEST FOR EVALUATION  
OF LICENSEE BACKFIT CLAIM CONCERNING A 10 CFR 50.59 VIOLATION  
TEXAS UTILITIES ELECTRIC COMPANY  
COMANCHE PEAK STEAM ELECTRIC PLANT, UNITS 1 AND 2  
DOCKET NOS. 50-445, 50-446

1.0 BACKGROUND

In NRC Inspection Report (IR) 50-445; 446/97-12, dated June 11, 1997, a Notice of Violation was issued to Texas Utilities Electric (TUE), the licensee for Comanche Peak Steam Electric Station (CPSES), Units 1 and 2. One violation involved four examples of failure to perform safety evaluations for configuration changes that involved changes to the facility as represented on drawings in the Final Safety Analysis Report (FSAR). In its response to the Notice of Violation, the licensee requested a backfit analysis be performed based on the inspectors' findings in a previous report NRC IR 50-445; 446/93-32. TUE believes the NRC has modified its position on a previously accepted TUE procedure and, therefore, the position reflected in the violation constitutes a backfit as defined in 10 CFR 50.109. The licensee provided copies of the backfit request to the Region IV Administrator and the Executive Director for Operations.

The licensee has procedures for performing safety evaluations associated with 10 CFR 50.59 including Administrative Procedure STA-707, "10 CFR 50.59 Reviews," and another procedure titled "10 CFR 50.59 Review Guide," which provides guidance for performing safety evaluations. The review guide defined "trivial changes" as being modifications that do not constitute changes to the facility as described in the Safety Analysis Report. The review guide stated that trivial changes did not require a 10 CFR 50.59 safety evaluation and instructed licensee personnel to answer "NO" to the relevant 10 CFR 50.59 screening questions. The review guide defined seven categories of "trivial changes." The licensee used Inspection and Enforcement Manual Chapter, Part 9800, currently defined as Part 9900, Section D.7.d, dated January 1, 1984, as the basis for the creation of the "trivial change" process.

2.0 EVALUATION

The licensee's backfit analysis request referenced Inspection and Enforcement Manual Chapter, Part 9800, Section D.7.d, dated January 1, 1984, as providing regulatory support for the TUE "trivial" change screening criterion. The licensee stated that this section of the NRC Inspection Manual recognizes a level of detail regarding changes to plant configuration as described in the Final Safety Analysis Report (FSAR) that does not require a written safety evaluation. Section D.7.d states, in part:

Attachment

From a rigid reading of 10 CFR 50.59, it is possible to infer that the removal of a dividing wall between two offices constitutes a change to the facility described in the SAR, and, therefore, requires a safety evaluation. However, the intent of 10 CFR 50.59 is to limit the requirement for written safety evaluations to facility changes, tests, or experiments which could impact the safety of operations.

This guidance, thus, acknowledges that the rule would require such evaluations, but also gives inspectors guidance to focus on changes with potential safety impact. Unlike office dividing walls, changes to components in plant systems do have the potential to impact safe operations, and, thus, should be evaluated.

The staff found, during IR 50-445; 446/97-12, that TUE procedure, "10 CFR 50.59 Review Guide," Revision 4, provided guidance for performing safety evaluations. Specifically, the review guide defined "trivial changes" as being modifications that do not constitute changes to the facility as described in the Safety Analysis Report. The review guide stated that trivial changes did not require a 10 CFR 50.59 safety evaluation and instructed licensee personnel to answer "NO" to the relevant 10 CFR 50.59 screening questions, that is to mark the document that there was no "change to the facility as described in the Safety Analysis Report" (as a result, no 10 CFR 50.59 evaluation was performed). The review guide defined seven categories of "trivial changes" as follows:

1. Editorial changes
2. Clarifications
3. Relocation of information to a more appropriate section
4. Revisions to make supporting sections of the licensing basis document consistent
5. Organizational changes
6. Deletion of existing information, which was believed to be below the level of detail required to be included in the Final Safety Analysis Report
7. Minor changes, which had no potential safety impact

In IR 50-445; 446/97-12, the inspectors identified four examples of failure to perform safety evaluations for configuration changes that involved changes to the facility as represented on drawings in the FSAR. The licensee's backfit claim was based upon the position taken by inspectors in NRC IR 50-445; 446/93-32, Section 2.2.2, Screenings that Temporary Modification 92-1-105, Lifted Thermocouple Leads of Reactor Vessel Level Instrumentation should have been identified as a "trivial" type change. That is, a change having "no potential safety impact (e.g., affecting safe shutdown or the safety of operations)."

The staff concludes that the position taken by the inspectors regarding the use of trivial changes was incorrect in IR 50-445; 446/93-32. In that inspection report, the staff correctly identified Temporary Modification 92-1-105, Lifted Thermocouple Leads of Reactor Vessel Level Instrumentation, as a change to the facility as described in the safety analysis report. The staff also correctly identified that the licensee failed to use its own procedure in screening the changes as not needing a safety evaluation. The inspectors independently concluded the item was not safety significant and having made that decision, the inspectors then stated that the licensee's "trivial change" process could be used.

### 3.0 BACKFIT DETERMINATION

The staff has reviewed the backfit claim and determined the staff's change in position would constitute a backfit. However, the staff guidance in the NRC Inspection Manual, as well as any staff "approval" of the use of TUE category seven "trivial changes," are inconsistent with the requirements of 10 CFR 50.59. The licensee may, pursuant to 10 CFR 50.59(a)(1), "(i) make changes in the facility as described in the safety analysis report, (ii) make changes in the procedures as described in the safety analysis report, or (iii) conduct tests or experiments not described in the safety analysis report, without prior Commission approval, unless the proposed change, test or experiment involves a change in the technical specifications incorporated in the license or an unreviewed safety question." However, a change must be considered an unreviewed safety question pursuant to 10 CFR 50.59(a)(2), "(i) if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased, (ii) if a possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report may be created, or (iii) if the margin of safety as defined in the basis for any technical specification is reduced." The TUE procedure, category seven is inconsistent with the requirements of Section 50.59, and a change to that procedure to delete category seven would be necessary for compliance with Section 50.59. Therefore, the staff's current position (taken in IR 50-445; 446/97-12) constitutes a "compliance backfit" under Section 50.109(a)(4)(i).

Although not specifically a part of the licensee's backfit appeal, the staff reviewed TUE category six "trivial changes" and determined that regulations, including 10 CFR 50.71(e), do not explicitly address removal of information from the FSAR, which is not associated with a change to the facility or procedures. The staff and the Commission are currently reviewing this issue. The NRC issued Regulatory Guide (RG), DG-1083, "Content of the Updated Final Safety Analysis Report in accordance with 10 CFR 50.71(e)" on March 4, 1999. The draft RG endorses NEI 98-03, "Guidelines for Updating Final Safety Analysis Reports" (October 1998). Appendix A to NEI 98-03 provides guidance for controlling modifications to the updated final safety analysis report, including removal of excessive detail. The guidance discusses how licensees should report information removed from the UFSAR to the NRC as part of their update submittal. However, licensees removing such information do so at their own risk.

### 4.0 CONCLUSION

The staff concluded that the TUE procedure, "10 CFR 50.59 Review Guide," Revision 4 provided incorrect and inappropriate guidance on the use of "trivial change" in that TUE category seven "trivial changes" are contrary to required 10 CFR 50.59 evaluations. In IR 50-445; 446/93-32 the inspectors inappropriately endorsed the licensee's incorrect guidance and, therefore, created a potential backfit scenario. This is a compliance backfit and, therefore, no backfit analysis needs to be performed for category seven "trivial changes"; however, the preceding evaluation provides the documented basis for the compliance backfit conclusion.

Regulations, including Section 50.71(e), do not explicitly address removal of information from the FSAR which is not associated with a change to the facility or procedures. However, as noted above, licensees removing such information do so at their own risk.

NRR proposes that Region IV inform the licensee that a compliance backfit existed as a result of the positions taken during the second inspection, IR 50-445; 446/97-12. Accordingly, the

Notice of Violation issued in IR 97-12 should be withdrawn and enforcement discretion per Section VII.B.6 of the Enforcement Policy should be exercised for this violation because of the erroneous acceptance of the issue in IR 93-32. However, the licensee should be informed that now the NRC staff considers the "trivial changes" interpretation to not be in compliance with 10 CFR 50.59 and further application of this interpretation would also constitute a violation.

#### 5.0 ACTIONS

The licensee should be informed that although a compliance backfit existed for the category seven "trivial change," the violation will be withdrawn and enforcement discretion exercised due to the prior endorsement of the licensee's practices in IR 93-32. Additionally, no action will be taken on the category six "trivial change" at this time. However, until the issue is resolved, if licensees remove such information, they do so at their own risk.

Principal Contributor: T. Polich

Date: May 4, 1999

**ENCLOSURE 2**

NRC MANAGEMENT DIRECTIVE 8.4

“NRC PROGRAM FOR MANAGEMENT OF PLANT-SPECIFIC  
BACKFITTING OF NUCLEAR POWER PLANTS”

- i. A schedule for staff actions involved in implementation and verification of implementation of the backfit, as appropriate.
- j. Importance of the proposed backfit considered in light of other safety-related activities underway at the affected facility.
- k. A statement of the consideration of the proposed plant-specific backfit as a potential generic backfit.

044 Appeal Process. The appeal processes described in this section are of two types, applied to two distinctly different situations:

- a. Appeal to an Office/Region to modify or withdraw a proposed backfit which has been identified, and for which a regulatory analysis has been prepared and transmitted to the licensee; or
- b. Appeal to an Office/Region to reverse a denial of a prior licensee claim either that a staff position, not identified by the NRC as a backfit, is one, or that a backfit which staff believes falls within one of the exceptions from the requirement for a regulatory analysis, does not.

In the first type of situation described, licensees should address an appeal of a proposed backfit to the Office Director or Regional Administrator whose staff proposed the backfit with a copy to the EDO. The appeal should provide arguments against the rationale for imposing a backfit as presented in the staff's regulatory analysis. The Office Director or Regional Administrator shall report to the EDO within 3 weeks after receipt of the appeal concerning the plan for resolving the issue. The licensee should also be promptly and periodically informed in writing regarding the staff plans. The decision of the Office Director on an appeal of plant-specific backfit may be appealed to the EDO unless resolution is achieved at a lower management level. The EDO shall promptly resolve the appeal and shall state his reasons therefor. Summaries of all appeal meetings shall be prepared promptly, provided to the licensee, and placed in appropriate Public Document Rooms. During the appeal process, primary consideration shall be given to how and why the proposed backfit provides a substantial increase in overall protection and whether the associated costs of implementation are justified in view of the increased protection. This consideration should be made in the context of the regulatory analysis as well as any other information that is relevant and material to the proposed backfit.

In the second type of appeal situation the appeal should be addressed to, and will be decided by, the Director of the program office having responsibility for the program area relevant to the staff position, unless resolution is achieved at a lower management level. A copy of the appeal should also be sent to the Executive Director for Operations. The appeal should take into account the staff's evaluation, the licensee's response, and any other information that is relevant and material to the backfit determination. The EDO may review and may modify a decision either at his or her own initiative or at the request of the licensee. If the licensee appeals to the EDO, the EDO

shall promptly resolve the appeal and shall state the reasons therefor. Backfit claims and resultant staff determinations that are reevaluated in response to an appeal, and that are again determined by the NRC not to be backfits, or are excepted from the requirement for a regulatory analysis, are not to be treated further in the context of this chapter. Such matters are to be dealt with within the normal licensing or inspection appeal process and are not subject to the requirements of this chapter.

045 Implementation of Backfits. Following approval of any required regulatory analysis by the appropriate Office Director or Regional Administrator, review if any by the EDO, and issuance of the backfit to the licensee, the licensee will either implement the backfit or appeal it. After an appeal and subsequent final decision by the appropriate Office Director or EDO, the licensee may elect to implement a backfit resulting from the decision. If the licensee does not elect to implement the backfit, it may be imposed by Order of the appropriate Office Director.<sup>3</sup>

Implementation of plant-specific backfits will normally be accomplished on a schedule negotiated between the licensee and the NRC. Scheduling criteria should include the importance of the backfit relative to other safety related activities underway, or the plant construction or maintenance planned for the facility, in order to maintain high quality construction and operations. For plants that have integrated schedules, the integrated scheduling process can be used for this purpose.

A staff-proposed backfit may be imposed by Order<sup>3</sup> prior to completing any of the procedures set forth in this chapter provided the NRC official authorizing the Order determines that immediate imposition is necessary to provide adequate protection to the public health and safety or the common defense and security. In such cases, the EDO shall be notified promptly of the action and a documented evaluation as described in Section 042 performed, if possible, in time to be issued with the order.

If "immediate imposition" is not necessary, staff proposed backfits shall not be imposed, and plant construction, licensing action, or operation shall not be interrupted or delayed by NRC actions, during the staff's evaluation and backfit transmittal process, or a subsequent appeal process, until final action is completed under this chapter.

046 Recordkeeping and Reporting. The proposing Headquarters Office or Regional Office shall administratively manage each proposed plant-specific backfit using one agency recordkeeping system that provides for prompt retrieval of current status, planned and accomplished schedules, and ultimate disposition. The system shall provide reference to all documents issued or received by NRC staff relative to a plant-specific backfit, including requests, positions, statements, and summary reports. Access to make changes to the system will be limited to those designated within each Office and Region. Specific data required will include, but are not limited to:

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<sup>3</sup>Once an Order is issued, whether or not it is immediately effective, this chapter no longer applies and appeals are governed by the procedures in 10 CFR Part 2, Subpart B.