

“Industry Guideline for the ITAAC Closure Process under 10 CFR Part 52,” Revision 4, issued July 2010, for the implementation of 10 CFR 52.99, “Inspection during Construction.”

Dated at Rockville, Maryland, this 4th day of May 2011.

For the Nuclear Regulatory Commission.

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 2 and 52

[NRC-2010-0012]

RIN 3150-A177

### Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or the Commission) is proposing to amend its regulations related to verification of nuclear power plant construction activities through inspections, tests, analyses, and acceptance criteria (ITAAC) under a combined license. Specifically, the NRC is proposing new provisions that apply after a licensee has completed an ITAAC and submitted an ITAAC closure notification. The new provisions would require licensees to report new information materially altering the basis for determining that either inspections, tests, or analyses were performed as required, or that acceptance criteria are met, and to notify the NRC of completion of all ITAAC activities. In addition, the NRC is proposing editorial corrections to existing language in the NRC’s regulations to correct and clarify ambiguous language and make it consistent with language in the Atomic Energy Act of 1954, as amended (AEA). **DATES:** Submit comments on this proposed rule by July 27, 2011. Submit comments on the information collection aspects on this proposed rule by June 13, 2011. Comments received after the above dates will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after these dates.

**ADDRESSES:** Please include Docket ID NRC-2010-0012 in the subject line of your comments. You may submit

comments by any one of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2010-0012. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301-492-3668; *e-mail:* [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, *Attn:* Rulemakings and Adjudications Staff.

- *E-mail comments to:* [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1677.

- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (*telephone:* 301-415-1677).

- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement, Section XI.

See Section VI, Availability of Documents, for instructions on how to access NRC’s Agencywide Documents Access and Management System (ADAMS) and other methods for obtaining publicly available documents related to this action.

**FOR FURTHER INFORMATION CONTACT:** Mr. Earl Libby, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; *telephone:* at 301-415-0522; *e-mail:* [Earl.Libby@nrc.gov](mailto:Earl.Libby@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

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#### I. Submitting Comments

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site <http://www.regulations.gov>. Because your

comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

#### II. Background

The Commission first issued Title 10 of the Code of Federal Regulations (10 CFR) part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants,” on April 18, 1989 (54 FR 15371). Section 52.99, “Inspection during construction,” was included to make it clear that the NRC’s inspection carried out during construction under a combined license would be based on ITAAC proposed by the applicant, approved by the NRC staff, and incorporated in the combined license. At that time, the Commission made it clear that, although 10 CFR 52.99 envisioned a “sign-as-you-go” process in which the NRC staff would sign off on inspection units and notice of the staff’s sign-off would be published in the **Federal Register**, the Commission itself would make no findings with respect to construction until construction was complete. See 54 FR 15371; April 18, 1989; at 15383 (second column).

On August 28, 2007 (72 FR 49351), the Commission revised 10 CFR part 52 to enhance the NRC’s regulatory effectiveness and efficiency in implementing its licensing and approval processes. In that revision, the NRC amended 10 CFR 52.99 to require licensees to notify the NRC that the prescribed inspections, tests, and analyses in the ITAAC have been completed and that the acceptance criteria have been met. The revision also requires that these notifications contain sufficient information to demonstrate that the prescribed inspections, tests, and analyses have been performed and that the prescribed acceptance criteria have been met. The NRC added this requirement to ensure that combined license applicants and holders were aware that it was the licensee’s burden to demonstrate compliance with the ITAAC and the NRC expected the notification of ITAAC completion to contain more information than just a simple statement that the licensee

believes the ITAAC had been completed and the acceptance criteria met.

Under Section 185.b of the AEA and 10 CFR 52.97(b), a combined license for a nuclear power plant (a “facility”) must contain those ITAAC that are “necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with” the license, the AEA, and NRC regulations. Following issuance of the combined license, Section 185.b of the AEA and 10 CFR 52.99(e) require that the Commission “ensure that the prescribed inspections, tests, and analyses are performed.” Finally, before operation of the facility, Section 185.b of the AEA and 10 CFR 52.103(g) require that the Commission find that the “prescribed acceptance criteria *are met*” (emphasis added). This Commission finding will not occur until construction is complete, near the date for scheduled initial fuel load.

As currently required by 10 CFR 52.99(c)(1), the licensee must submit ITAAC closure notifications containing “sufficient information to demonstrate that the prescribed inspections, tests, and analyses have been performed and that the associated acceptance criteria have been met.” These notifications perform two functions. First, they alert the NRC to the licensee’s completion of the ITAAC<sup>1</sup> and ensure that the NRC has sufficient information to complete all of the activities necessary for the Commission to determine whether all of the ITAAC acceptance criteria have been or will be met (the “will be met” finding is relevant to any hearing on ITAAC under 10 CFR 52.103) before initial operation. Second, they ensure that interested persons will have access to information on both completed and uncompleted ITAAC at a level of detail sufficient to address Section 189.a(1)(B) of the AEA threshold for requesting a hearing on acceptance criteria. See 72 FR 49352; August 28, 2007, at 49450 (second column).

After completing the 2007 rulemaking, the NRC began developing guidance on the ITAAC closure process and the requirements under 10 CFR 52.99. In October 2009, the NRC issued regulatory guidance for the implementation of the revised 10 CFR 52.99 in Regulatory Guide (RG) 1.215, “Guidance for ITAAC Closure Under 10 CFR Part 52.” This RG endorsed guidance developed by the Nuclear Energy Institute (NEI) in NEI 08–01, “Industry Guideline for the ITAAC

Closure Process Under 10 CFR Part 52,” Revision 3, issued January 2009 (ADAMS Accession No. ML090270415).

After considering information presented by industry representatives in a series of public meetings, the NRC realized that some additional implementation issues were left unaddressed by the various provisions in 10 CFR part 52. In particular, the NRC determined that the combined license holder should provide additional notifications to the NRC following the notification of ITAAC completion currently required by 10 CFR 52.99(c)(1). The NRC refers to the time after this ITAAC closure notification, but before the date the Commission makes the finding under 10 CFR 52.103(g), as the ITAAC maintenance period. Most recently, the NRC held two public meetings in March 2010 to discuss draft proposed rule text that it made available to the public in February 2010. The NRC considered feedback given from external stakeholders during those meetings in its development of this proposed rule. Finally, in March 2010, the NRC issued Inspection Procedure 40600, “Licensee Program for ITAAC Management,” that provides guidance to verify licensees have implemented ITAAC maintenance programs to ensure that structures, systems, and components continue to meet the ITAAC acceptance criteria until the Commission makes the finding under 10 CFR 52.103(g) allowing operation.

### III. Discussion

In brief, the NRC is proposing the following new notifications subsequent to ITAAC closure:

- ITAAC post-closure notification
- All ITAAC complete notification

In general, the reasons for these proposed new notifications are analogous to the reasons presented in the 2007 rulemaking for the existing 10 CFR 52.99(c) notifications (i.e., to ensure that the NRC has sufficient information, in light of new information developed or identified after the ITAAC closure notification under 10 CFR 52.99(c)(1), to complete all of the activities necessary for the Commission to make a determination on ITAAC, and to ensure that interested persons have access to information on ITAAC at a level of detail sufficient to address the AEA Section 189.a(1)(B) threshold for requesting a hearing). After evaluating the various means of ensuring that the Commission has sufficient information to make a determination on ITAAC, and that interested persons have access to sufficient ITAAC information, the NRC is proposing a performance-based rule

augmented by guidance. The details of timing and content of the proposed new notifications are captured in draft guidance being issued for public comment simultaneously with this proposed rule, as discussed in more detail in Section V, “Guidance,” of this document. The NRC believes that this approach will allow more flexibility to adjust the guidance based on lessons learned during early implementation of the ITAAC process under the first combined licenses. Based upon the NRC’s experience with the overall NRC oversight and verification of ITAAC, the notification provisions of the rule, the ITAAC hearing process, and the process for making the 10 CFR 52.103(g) finding, the NRC may revise and supplement the final guidance on the timing and content of notifications.

The NRC notes that it would not be solely relying on the existence of this proposed rulemaking, if approved as a final rule, as a primary basis for the 10 CFR 52.103(g) finding. Rather, the NRC would use a holistic review using results from the NRC’s construction inspection program and ITAAC closure review process as primary factors supporting a conclusion that the acceptance criteria in the combined license are met.

Each of the proposed notification requirements in this rulemaking, and the basis for each of the proposed requirements, are described in Section III.B, “Additional ITAAC Notifications,” of this document. The NRC is also proposing several editorial changes to 10 CFR 52.99 in paragraphs (b), (c)(1), proposed (c)(3) (current (c)(2)), and (d)(1). In all of these cases, the NRC is proposing to replace the phrase “acceptance criteria have been met” with the phrase “acceptance criteria are met” for consistency with the wording of the requirement in 10 CFR 52.103(g) on the Commission’s ITAAC finding, which is derived directly from wording in the AEA. In addition, the NRC is proposing an editorial change to 10 CFR 52.99(d)(2) to replace the phrase “ITAAC has been met” with the phrase “prescribed acceptance criteria are met” for consistency with the wording in 10 CFR 52.99(d)(1).

#### A. Licensee Programs That Maintain ITAAC Conclusions

One essential element in ensuring the maintenance of successfully completed ITAAC involves the use of established licensee programs such as the Quality Assurance Program, Problem Identification and Resolution Program, Maintenance/Construction Program, and Design and Configuration Management Program. Each program credited with

<sup>1</sup> In this discussion, the phrases “completion of ITAAC” and “ITAAC completion” mean that the licensee has determined that: (1) The prescribed inspections, tests, and analyses were performed, and (2) the prescribed acceptance criteria are met.

supporting the maintenance of completed ITAAC should contain attributes that maintain the validity of the ITAAC determination basis. These program attributes include the following:

- Licensee screening of activities and events for impact on ITAAC;
- Licensee determination of whether supplemental ITAAC notification is required; and
- Licensee supplement of the ITAAC closure package as appropriate to demonstrate that the acceptance criteria continue to be met.

The NRC expects these programs to be fully implemented and effective before the licensee takes credit for them as an appropriate means of supporting ITAAC maintenance. These programs will be subject to NRC inspection.

#### *B. Additional ITAAC Notifications*

The NRC's confidence in the licensee's ability to maintain the validity of completed ITAAC conclusions relies on timely communication. Currently, 10 CFR 52.99 specifies two ITAAC notification requirements for licensees. These notifications are the ITAAC closure notifications required by 10 CFR 52.99(c)(1) and the notification of uncompleted ITAAC required by 10 CFR 52.99(c)(2) (proposed 10 CFR 52.99(c)(3)) no less than 225 days before scheduled fuel load. The NRC believes that additional formal notifications to the NRC are needed that are not currently required by regulation.

#### *ITAAC Post-Closure Notification*

The first new notification is contained in proposed 10 CFR 52.99(c)(2), "ITAAC post-closure notifications," and would be required following the licensee's ITAAC closure notifications under 10 CFR 52.99(c)(1) until the Commission makes the finding under 10 CFR 52.103(g). This provision would require the licensee to notify the NRC, in a timely manner, of new information materially altering the basis for determining that either inspections, tests, or analyses were performed as required, or that acceptance criteria are met (referred to as the *ITAAC determination basis*).

The licensee is responsible for maintaining the validity of the ITAAC conclusions after completion of the ITAAC. If the ITAAC determination basis is materially altered, the licensee is expected to notify the NRC. Through public workshops and stakeholder interaction, the NRC has developed thresholds to identify when activities would materially alter the basis for determining that a prescribed

inspection, test, or analysis was performed as required, or finding that a prescribed acceptance criterion is met. One obvious case is that a notification under proposed paragraph (c)(2) would be required to correct a material error or omission in the original ITAAC closure notification.

Section 52.6, "Completeness and accuracy of information," paragraph (a), requires that information provided to the Commission by a licensee be complete and accurate in all material respects. However, it might be the case that the original closure notification was complete and accurate when sent, but subsequent events materially alter the ITAAC determination bases. Also, a material error or omission might not be discovered until after the ITAAC closure notification is sent. It is possible that new information materially altering the ITAAC determination bases would not rise to the reporting threshold under 10 CFR 52.6(b). As required by 10 CFR 52.6(b), licensees must notify the Commission of information identified by the licensee as having, for the regulated activity, a significant implication for public health and safety or the common defense and security. Given the primary purpose of ITAAC, to verify that the plant has been constructed and will be operated in compliance with the approved design, the NRC believes that it cannot rely on the provisions in 10 CFR 52.6 for licensee reporting of new information materially altering the ITAAC determination bases. The reasons for this conclusion are as follows:

1. Material errors and omissions in ITAAC closure notifications, relevant to the accuracy and completeness of the documented bases for the Commission's finding on ITAAC, may nonetheless be determined in isolation by a licensee as not having a significant implication for public health and safety or common defense and security.

2. A Commission finding of compliance with acceptance criteria in the ITAAC is required, under Section 185.b of the AEA, in order for the combined license holder to commence operation.

3. The addition of specific reporting requirements addressing information relevant and material to the ITAAC finding ensures that the NRC will get the necessary reports as a matter of regulatory requirement, and allows the NRC to determine the timing and content of these reports so that they serve the regulatory needs of the NRC.

Therefore, the NRC intends that these issues will be reported under proposed 10 CFR 52.99(c)(2). In addition to the reporting of material errors and

omissions, the NRC has identified other circumstances in which reporting under this provision would be required (i.e., reporting thresholds). These reporting thresholds are described in more detail in the Section IV, "Section-By-Section Analysis," of this document.

When making the 10 CFR 52.103(g) finding, the NRC must have information sufficient to determine that the relevant acceptance criteria are met despite the new information prompting the notification under proposed paragraph (c)(2). The licensee's summary statement of the basis for resolving the issue which is the subject of the notification, a discussion of any action taken, and a list of the key licensee documents supporting the resolution and its implementation, would assist the NRC in making its independent evaluation of the issue. Apart from the NRC's use of the information, the NRC also believes that public availability of such information is necessary to ensure that interested persons will have sufficient information to review when preparing a request for a hearing under 10 CFR 52.103, comparable to the information provided under paragraph (c)(1), as described in the Statements of Consideration for the 2007 rulemaking. See August 28, 2007; 72 FR 49352, at 49384 (second and third column). Accordingly, the NRC proposes that after a licensee identifies new information materially altering the ITAAC determination basis, it must then submit what is essentially a "resolution" notification to the NRC in the form of an ITAAC post-closure notification. The ITAAC post-closure notification, described in proposed paragraph (c)(2), would require the licensee to submit a written notification of the resolution of the circumstances surrounding the identification of new information materially altering the ITAAC determination basis. The ITAAC post-closure notification must contain sufficient information demonstrating that, notwithstanding the information that prompted notification, the prescribed inspections, tests, and analyses have been performed as required and the prescribed acceptance criteria are met. The ITAAC post-closure notifications should explain the need for the notification, outline the resolution of the issue, and confirm that the ITAAC acceptance criteria continue to be met. The ITAAC post-closure notifications must include a level of detail similar to the level of information required in initial ITAAC closure notifications under 10 CFR 52.99(c)(1).

Proposed 10 CFR 52.99(c)(2) states that licensees must make the notification "in a timely manner."

Further discussion of what the NRC considers “timely” can be found in the NRC guidance being issued simultaneously with this rule, as discussed in more detail in Section V of this document.

The NRC proposes that the notification be available for public review under proposed paragraph (e)(2). This would ensure public availability and accessibility of all NRC information on ITAAC closure. Further explanation of the basis for the availability requirement is presented under the discussion on proposed 10 CFR 52.99(e)(2).

Events that affect completed ITAAC could involve activities that include, but are not limited to, maintenance and engineering, program, or design changes. The NRC expects that licensees will carry out these activities under established programs to maintain ITAAC conclusions and that no post-closure notification will be necessary in most instances. The NRC can have confidence that prior ITAAC conclusions are maintained as long as the ITAAC determination basis established by the original ITAAC closure notification is not materially altered. If the ITAAC determination basis is not materially altered, licensee activities will remain below the notification threshold of proposed 10 CFR 52.99(c)(2). If the ITAAC determination basis is materially altered, the licensee would be required to notify the NRC under proposed 10 CFR 52.99(c)(2).

Although the NRC is proposing that licensees be required to notify the NRC of information materially altering the ITAAC determination basis only after the licensee has evaluated and resolved the issue prompting the notification, the NRC encourages licensees to communicate with the NRC early in its evaluation process. The purpose of this early communication would be to alert the NRC inspection staff to the fact that additional activities may be scheduled that affect a structure, system, or component (including physical security hardware) or program element for which one or more ITAAC have been closed. This will allow the NRC inspection staff to discuss the licensee’s plans for resolving the issue to determine if the staff wants to observe any of the upcoming activities for the purpose of making a future staff determination about whether the acceptance criteria for those ITAAC continue to be met.

#### All ITAAC Complete Notification

Another notification that the NRC is proposing is the all ITAAC complete notification under 10 CFR 52.99(c)(4).

The purpose of this notification is to facilitate the required Commission finding under 10 CFR 52.103(g) that the acceptance criteria in the combined license are met. After or concurrent with the last ITAAC closure notification required by 10 CFR 52.99(c)(1), the licensee would be required to notify the NRC that all ITAAC are complete. When the licensee submits the all ITAAC complete notification, the NRC would expect that all activities requiring ITAAC post-closure notifications have been completed and that the associated ITAAC determination bases have been updated.

To support the Commission’s finding under 10 CFR 52.103(g) that the acceptance criteria in the combined license are met, if and when appropriate, the NRC staff will send a recommendation to the Commission. The staff will consider that all ITAAC “are met” if both of the following conditions hold:

- All ITAAC were verified to be met at one time; and
- The licensee provides confidence that the ITAAC determination bases have been maintained and that the ITAAC acceptance criteria continue to be met.

The staff approach would allow licensees to have ITAAC-related structures, systems, or components, or security or emergency preparedness related hardware, undergoing certain activities at the time of the 10 CFR 52.103(g) finding, if the programs credited with maintaining the validity of completed ITAAC guide those activities, and the activities are not so significant as to exceed a threshold for reporting. If a reporting threshold has been exceeded, the NRC would need to evaluate the licensee’s ITAAC post-closure notification to determine whether the ITAAC continue to be met. Reporting thresholds are discussed in more detail in the Section-by-Section Analysis section of this document.

#### ITAAC Closure Documentation

The proposed rule does not contain specific ITAAC documentation and record retention requirements. The NRC understands that the nuclear power industry believes that holders of combined licenses are already required, under regulatory provisions such as 10 CFR part 50, “Domestic Licensing of Production and Utilization Facilities,” Appendix B, “Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,” to prepare and retain records supporting the vast majority of ITAAC processes, including the activities supporting the notifications that would be required by

the proposed rule. Accordingly, the NRC has not included specific documentation and record retention requirements in this proposed rule. If the NRC inspections disclose substantial issues with licensees’ records on ITAAC maintenance, the NRC will revisit the need for documentation and record retention requirements on ITAAC maintenance.

#### NRC Inspection, Publication of Notices, and Availability of Licensee Notifications

Section 52.99(e)(1) requires that the NRC publish in the **Federal Register** the NRC staff’s determination of the successful completion of inspections, tests, and analyses, at appropriate intervals until the last date for submission of requests for hearing under 10 CFR 52.103(a). Section 52.99(e)(2) currently provides that the NRC shall make publicly available the licensee notifications under current paragraphs (c)(1) and (c)(2). The NRC is proposing to revise paragraph (e)(2) to cover all notifications under 10 CFR 52.99(c). In general, the NRC expects to make the paragraph (c) notifications available shortly after the NRC has received the notifications and concluded that they are complete. Furthermore, by the date of the *Federal Register* notice of intended operation and opportunity to request a hearing on whether acceptance criteria are met (under 10 CFR 52.103(a)), the NRC will make available the licensee notifications under paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) that it has received to date.

#### C. Conforming Changes to 10 CFR 2.340

The 2007 part 52 rulemaking amended 10 CFR 2.340, “Initial decision in certain contested proceedings; immediate effectiveness of initial decisions; issuance of authorizations, permits, and licenses,” to clarify, among other things, the scope of the presiding officer’s decision in various kinds of NRC proceedings, and remove the requirement for direct Commission involvement in all production and utilization facility licensing proceedings.

Section 2.340(j) was intended to address these matters in connection with the Commission finding on acceptance criteria and any associated hearing under 10 CFR 52.103. In the course of developing this proposed rule, the NRC determined that 10 CFR 2.340(j) contains several errors and ambiguous statements. The proposed changes, together with the proposed bases for the changes, are described below.

Section 2.340(j) currently states that the Commission makes a finding under 10 CFR 52.103(g) that acceptance criteria “have been or will be met.” This is incorrect; the Commission’s finding under 10 CFR 52.103(g) is that the acceptance criteria “are met,” which is the statutory requirement under Section 185.b of the AEA. To correct this error, the NRC proposes to amend the introductory language of 10 CFR 2.340(j) to use the correct phrase, “acceptance criteria \* \* \* are met \* \* \*.”

In addition, 10 CFR 2.340(j), as currently written, does not clearly address the circumstances in a contested proceeding that could lead to a Commission finding under 10 CFR 52.103(g) that acceptance criteria are met. To provide clarity, the NRC proposes to further amend 10 CFR 2.340(j) to clearly explain when the Commission may make the 10 CFR 52.103(g) finding, by further delineating between the presiding officer’s decisions on contentions that acceptance criteria have not been met and decisions on contentions that acceptance criteria will not be met. In both cases, if the presiding officer’s decision resolves the contention favorably this does not obviate the need for the Commission to make the required finding under Section 185.b of the AEA and 10 CFR 52.103(g) that the acceptance criteria are met. For example, the presiding officer’s initial decision upon summary disposition that a particular acceptance criterion has been met may be rendered before the occurrence of an event which is ultimately resolved as reported in a 10 CFR 52.99(c)(2) notification. In such a circumstance, the Commission must independently come to the conclusion that the acceptance criterion is met. That conclusion must be based upon consideration of both the presiding officer’s initial decision and information relevant to the 10 CFR 52.99(c)(2) notification. Accordingly, the NRC concludes that it is necessary to clarify the language of paragraph (j). To accommodate the proposed clarifications, the Commission proposes to redesignate current paragraph (j)(2) as paragraph (j)(4), but without any change to the regulatory language.

#### IV. Section-by-Section Analysis

The primary changes on ITAAC maintenance being proposed by the NRC in this rulemaking are to 10 CFR 52.99. The changes to 10 CFR 2.340 are corrections.

Section 2.340 Initial decision in certain contested proceedings; immediate effectiveness of initial decisions; issuance of authorizations, permits and licenses

Section 2.340(j) Issuance of Finding on Acceptance Criteria Under 10 CFR 52.103

Paragraph (j) would be amended to allow the Commission (or the appropriate staff Office Director) in a contested proceeding to make the finding under 10 CFR 52.103(g) that the acceptance criteria in a combined license are met, under certain circumstances that are delineated in greater detail in paragraphs (j)(1) through (4). This compares with the current rule, which contains only two paragraphs (j)(1) and (2). The matters covered by paragraph (j)(1) of the current rule would be described with greater clarity in proposed paragraphs (j)(1) through (3).

Proposed paragraph (j)(1) clarifies that the Commission may not make the overall 10 CFR 52.103(g) finding unless it is otherwise able to find that all uncontested acceptance criteria (i.e., “acceptance criteria not within the scope of the initial decision of the presiding officer”) are met. The phrase “otherwise able to make” conveys the NRC’s determination that the Commission’s process for supporting a Commission finding on uncontested acceptance criteria is unrelated to and unaffected by the timing of the presiding officer’s initial decision.

Proposed paragraph (j)(2) clarifies that a presiding officer’s initial decision which finds that acceptance criteria have been met, is a necessary but not sufficient prerequisite for the Commission to make a finding that the contested acceptance criteria (i.e., the criteria which are the subject of the presiding officer’s initial decision) are met. The Commission must thereafter, even if the presiding officer’s initial decision finds that the contested acceptance criteria have been met, be able to make a finding that the contested criteria are met after considering: (1) Information submitted in the licensee notifications which the NRC proposes to be included in 10 CFR 52.99; and (2) the NRC staff’s findings with respect to these notifications, to issue the overall 10 CFR 52.103 finding. By using the word “thereafter,” the NRC intends to emphasize that the Commission would not make a finding that contested acceptance criteria are met in advance of the presiding officer’s initial decision on those acceptance criteria.

Proposed paragraph (j)(3) expresses the same concept as paragraph (j)(2) but

as applied to findings that acceptance criteria will be met. Thus, even if a presiding officer’s initial decision finds that the contested acceptance criteria will be met, the Commission must thereafter be able to make a finding that the contested criteria are met after considering: (1) Information submitted in an ITAAC closure notification pursuant to 10 CFR 52.99(c)(1); (2) information submitted in the licensee notifications which the NRC proposes to be included in 10 CFR 52.99; and (3) the NRC staff’s findings with respect to such notifications, to issue the overall 10 CFR 52.103 finding.

Proposed paragraph (j)(4) is the same as the existing provision in 10 CFR 2.340(j)(2). This paragraph provides that the Commission may make the 52.103(g) finding notwithstanding the pendency of a petition for reconsideration under 10 CFR 2.345, a petition for review under 10 CFR 2.341, a motion for a stay under 10 CFR 2.342, or a petition under 10 CFR 2.206.

The NRC notes that 10 CFR 2.340(j) is not intended to be an exhaustive “roadmap” to a possible 10 CFR 52.103(g) finding that acceptance criteria are met. For example, this provision does not directly address what must occur for the Commission to make a 10 CFR 52.103(g) finding where the presiding officer finds, with respect to a contention, that acceptance criteria are not met. The NRC also notes that this provision applies only to contested proceedings. If there is no hearing under 10 CFR 52.103, or if the hearing ends without a presiding officer’s initial decision on the merits (e.g., a withdrawal of the sole party in a proceeding), then 10 CFR 2.340(j) does not govern the process by which the Commission (or the appropriate staff Office Director) makes the 10 CFR 52.103(g) finding.

Section 52.99 Inspection During Construction; ITAAC Schedules and Notifications; NRC Notices

Although the NRC is not making changes to every paragraph under 10 CFR 52.99, for simplicity, this rulemaking would replace the section in its entirety. Therefore, the NRC is providing a section-by-section discussion for every paragraph in 10 CFR 52.99. For those paragraphs where little or no change is being proposed, the NRC is repeating the section-by-section discussion from the 2007 major revision to 10 CFR part 52 with editorial and conforming changes, as appropriate.

The purpose of this section is to present the requirements to support the NRC’s inspections during construction, including requirements for ITAAC

schedules and notifications and for NRC notices of ITAAC closure.

#### Section 52.99(a) Licensee Schedule for Completing Inspections, Tests, or Analyses

The NRC is not proposing any changes to this paragraph. Paragraph (a) requires that the licensee submit to the NRC, no later than 1 year after issuance of the combined license or at the start of construction as defined at 10 CFR 50.10, whichever is later, its schedule for completing the inspections, tests, or analyses in the ITAAC. This provision also requires the licensee to submit updates to the ITAAC schedule every 6 months thereafter and, within 1 year of its scheduled date for initial loading of fuel, licensees must submit updates to the ITAAC schedule every 30 days until the final notification is provided to the NRC under 10 CFR 52.99(c). The information provided by the licensee will be used by the NRC in developing the NRC's inspection activities and activities necessary to support the Commission's finding whether all of the ITAAC are met prior to the licensee's scheduled date for fuel load. Even in the case where there were no changes to a licensee's ITAAC schedule during an update cycle, the NRC expects the licensee to notify the NRC that there have been no changes to the schedule.

#### Section 52.99(b) Licensee and Applicant Conduct of Activities Subject to ITAAC

The NRC is proposing an editorial change to the last sentence of 10 CFR 52.99(b) to replace the words "have been met" with "are met" for consistency with the requirements of Section 185.b of the AEA, as implemented in 10 CFR 52.103(g). The purpose of the requirement in 10 CFR 52.99(b) is to clarify that an applicant may proceed at its own risk with design and procurement activities subject to ITAAC, and that a licensee may proceed at its own risk with design, procurement, construction, and preoperational testing activities subject to an ITAAC, even though the NRC may not have found that any particular ITAAC are met.

#### Section 52.99(c) Licensee Notifications

##### Section 52.99(c)(1) ITAAC Closure Notification and Section 52.99(c)(3) Uncompleted ITAAC Notification

The NRC is proposing editorial changes in 10 CFR 52.99(c)(1) to replace the words "have been met" with "are met." Section 52.99(c)(1) would require the licensee to notify the NRC that the prescribed inspections, tests, and analyses have been performed and that the prescribed acceptance criteria are

met. Section 52.99(c)(1) would further require that the notification contain sufficient information to demonstrate that the prescribed inspections, tests, and analyses have been performed and that the prescribed acceptance criteria are met.

The NRC is proposing to renumber current 10 CFR 52.99(c)(2) as proposed 10 CFR 52.99(c)(3). In addition, the NRC is proposing an editorial change to the last sentence in proposed 10 CFR 52.99(c)(3) (current 10 CFR 52.99(c)(2)) to replace the words "have been met" with "are met." Proposed paragraph 52.99(c)(3) would require that, if the licensee has not provided, by the date 225 days before the scheduled date for initial loading of fuel, the notification required by paragraph (c)(1) of this section for all ITAAC, then the licensee shall notify the NRC that the prescribed inspections, tests, or analyses for all uncompleted ITAAC will be performed and that the prescribed acceptance criteria will be met prior to operation (consistent with the AEA Section 185.b requirement that the Commission, "prior to operation," find that the acceptance criteria in the combined license are met). The notification must be provided no later than the date 225 days before the scheduled date for initial loading of fuel, and must provide sufficient information to demonstrate that the prescribed inspections, tests, or analyses will be performed and the prescribed acceptance criteria for the uncompleted ITAAC will be met.

Section 52.99(c) ensures that: (1) The NRC has sufficient information to complete all of the activities necessary for the Commission to make a finding as to whether all of the ITAAC are met prior to initial operation; and (2) interested persons will have access to information on both completed and uncompleted ITAAC at a level of detail sufficient to address the AEA Section 189.a(1)(B) threshold for requesting a hearing on acceptance criteria. It is the licensee's burden to demonstrate compliance with the ITAAC, and the NRC expects the information submitted under paragraph (c)(1) to contain more than just a simple statement that the licensee believes the ITAAC have been completed and the acceptance criteria met. The NRC would expect the notification to be sufficiently complete and detailed for a reasonable person to understand the bases for the licensee's representation that the inspections, tests, and analyses have been successfully completed and the acceptance criteria are met. The term "sufficient information" would require, at a minimum, a summary description of the bases for the licensee's conclusion

that the inspections, tests, or analyses have been performed and that the prescribed acceptance criteria are met.

Furthermore, with respect to uncompleted ITAAC, it is the licensee's burden to demonstrate that it will comply with the ITAAC and the NRC would expect the information that the licensee submits under proposed paragraph (c)(3) to be sufficiently detailed such that the NRC staff can determine what activities it will need to undertake to determine if the acceptance criteria for each of the uncompleted ITAAC are met, once the licensee notifies the NRC that those ITAAC have been successfully completed and their acceptance criteria met. The term "sufficient information" requires, at a minimum, a summary description of the bases for the licensee's conclusion that the inspections, tests, or analyses will be performed and that the prescribed acceptance criteria will be met. In addition, "sufficient information" includes, but is not limited to, a description of the specific procedures and analytical methods to be used for performing the inspections, tests, and analyses and determining that the acceptance criteria are met.

The NRC notes that, even though it did not include a provision requiring the completion of all ITAAC by a certain time prior to the licensee's scheduled fuel load date, the NRC staff will require some period of time to perform its review of the last ITAAC once the licensee submits its notification that the ITAAC has been successfully completed and the acceptance criteria met. In addition, the Commission itself will require some period of time to perform its review of the staff's conclusions regarding all of the ITAAC and the staff's recommendations regarding the Commission finding under 10 CFR 52.103(g).

#### Section 52.99(c)(2) ITAAC Post-Closure Notifications

The NRC is proposing to add new paragraph (c)(2) that would require the licensee to notify the NRC, in a timely manner, of new information that materially alters the bases for determining that either inspections, tests, or analyses were performed as required, or that acceptance criteria are met. The notification must contain sufficient information to demonstrate that, notwithstanding the new information, the prescribed inspections, tests, or analyses have been performed as required, and the prescribed acceptance criteria are met.

Fundamentally, those circumstances requiring notification under proposed

paragraph (c)(2) fall into the following two categories:

- The information presented or referenced in the original 10 CFR 52.99(c)(1) notification is insufficient, either because it omits material information, or because the information is materially erroneous or incorrect, and the licensee discovers or determines there is a material omission or error after filing the original 10 CFR 52.99(c)(1) notification.

- The information presented or referenced in the original 10 CFR 52.99(c)(1) notification was complete (i.e., not omitting material information) and accurate (i.e., not materially erroneous), but there is new material information with respect to the subject of the original 10 CFR 52.99(c)(1) notification.

The term “materially altering” refers to situations in which there is information not contained in the 10 CFR 52.99(c)(1) notification that “has a natural tendency or capability to influence an agency decision maker” in either determining whether the prescribed inspection, test, or analysis was performed as required, or finding that the prescribed acceptance criterion is met. See Final Rule; Completeness and Accuracy of Information, December 31, 1987; 52 FR 49362, at 49363.

Applying this concept in the context of 10 CFR 52.99(c), information for which notification would be required under paragraph (c)(2) is that information which, considered by itself or when considered in connection with information previously submitted or referenced by the licensee in a paragraph (c)(1) notification, relates to information which is necessary for any of the following:

- The licensee to assert that the prescribed inspections, tests, and analyses have been performed and the acceptance criteria are met;

- The NRC staff to determine if (and provide a recommendation to the Commission as to whether) the prescribed inspections, tests, and analyses were performed and the acceptance criteria are met; or

- The Commission to find that the acceptance criteria are met, as required by Section 185.b of the AEA and 10 CFR 52.103(g).

The term “new” information embraces three different kinds of information:

- New information (i.e., a “discovery” or new determination identified after the 10 CFR 52.99(c)(1) notification) about the accuracy of material information provided in, referenced by, or necessary to support representations made in that notification.

- New information (i.e., a “discovery” or new determination identified after the 10 CFR 52.99(c)(1) notification) that previously existing information should have been, but was not provided in the notification or referenced in the supporting documentation (i.e., an omission of material information).

- Information on a “new” event or circumstance (i.e., an event or circumstance occurring after the 10 CFR 52.99(c)(1) notification) that materially affects the accuracy or completeness of the basis, as reported or relied upon in the 52.99(c)(1) notification, for the licensee’s representation that the acceptance criteria are met.

Applying these concepts, the NRC believes that the circumstances for which reporting under this provision would be required include:

- *Material Error or Omission*—Is there a material error or omission in the original ITAAC closure notification?

- *Post Work Verification (PWV)*—Will the PWV performed following work undertaken to resolve an issue reportable under 10 CFR 52.99(c)(2) use a significantly different approach than the original performance of the inspection, test, or analysis as described in the original ITAAC notification?

- *Engineering Changes*—Will an engineering change be made that materially alters the determination that the acceptance criteria are met?

- *Additional Items To Be Verified*—Will there be additional items that need to be verified through the ITAAC?

- *Complete and Valid ITAAC Representation*—Will any other licensee activities materially alter the ITAAC determination basis?

Additional guidance on implementing these reporting thresholds is being proposed in a draft revision to RG 1.215, being issued for public comment simultaneously with this proposed rule. This proposed guidance is discussed further in Section V, “Guidance,” of this document.

Proposed paragraph (c)(2) would require the licensee to submit an ITAAC post-closure notification documenting the resolution of the circumstances surrounding the identification of new material information. By “resolution,” the NRC means: (1) The completion of the licensee’s technical evaluation of the issue and the determination as to whether the prescribed inspection, test, or analysis was performed as required; (2) licensee completion of any necessary corrective or supplemental actions; (3) licensee documentation of the issue and any necessary corrective or supplemental actions in order to bring the ITAAC determination basis up to date; and (4) ultimate licensee

determination about whether the affected acceptance criteria continue to be met.

The information provided in the notification should be at a level of detail comparable to the ITAAC closure notification under paragraph (c)(1). The dual purposes of the proposed paragraph (c)(2) notification, as described in Section III.B, “Additional ITAAC Notifications,” of this document, are comparable to the purposes of the ITAAC closure notification in paragraph (c)(1). Thus, the NRC believes that the considerations for the content of the ITAAC closure notification, as discussed in the final 2007 rulemaking, apply to the proposed paragraph (c)(2) notifications. See 72 FR 49450; August 28, 2007 (second column). Thus, it is the licensee’s burden to demonstrate compliance with the ITAAC, taking into account any new information that materially alters the determination that a prescribed inspection, test, or analysis was performed as required or that a prescribed acceptance criterion is met. The NRC expects the paragraph (c)(2) notification to contain more than just a simple statement that the licensee has concluded, despite the material new information, that the prescribed inspection, test, or analysis was performed as required and that a prescribed acceptance criterion is met. The NRC expects the notification to be sufficiently complete and detailed for a reasonable person to understand the bases for the licensee’s determination in the paragraph (c)(2) notification. The term “sufficient information” is comparable to the meaning given to that term in paragraph (c)(1), and requires, at a minimum, a summary description of the bases for the licensee’s determination. In addition, “sufficient information” includes, but is not limited to, a description of the specific procedures and analytical methods used or relied upon to develop or support the licensee’s determination. The paragraph (c)(2) notification must be in writing, and the records on which it is based must be retained by the licensee to support possible NRC inspection. Licensees should use the same process for submitting ITAAC post-closure notifications as would be used to submit initial ITAAC closure notifications. The NRC is issuing draft guidance on implementation of the requirements in proposed paragraph (c)(2), including the level of detail necessary to comply with the requirements of proposed paragraph (c)(2), as discussed in Section V of this document.

Section 52.99(c)(4) All ITAAC Complete Notification

Section 52.99(c)(4) would require the licensee to notify the NRC that all ITAAC are complete (All ITAAC Complete Notification). When the licensee submits the all ITAAC complete notification, the NRC would expect that all activities requiring ITAAC post-closure letters have been completed, that the associated ITAAC determination bases have been updated, and that all required notifications under proposed paragraph (c)(2) have been made.

Section 52.99(d) Licensee Determination of Non-Compliance With ITAAC

Paragraph (d) states the options that a licensee will have in the event that it is determined that any of the acceptance criteria in the ITAAC are not met. If an activity is subject to an ITAAC derived from a referenced standard design certification and the licensee has not demonstrated that the ITAAC are met, the licensee may take corrective actions to successfully complete that ITAAC or request an exemption from the standard design certification ITAAC, as applicable. A request for an exemption must also be accompanied by an application for a license amendment under 10 CFR 52.98(f). The NRC will consider and take action on the request for exemption and the license amendment application together as an integrated NRC action.

Also, if an activity that is subject to an ITAAC not derived from a referenced standard design certification and the licensee has not demonstrated that the ITAAC has been met, the licensee may take corrective actions to successfully complete that ITAAC or request a license amendment under 10 CFR 52.98(f).

Section 52.99(e) NRC Inspection, Publication of Notices, and Availability of Licensee Notifications

Paragraph (e)(1) of this section indicates that the NRC is responsible for ensuring (through its inspection and audit activities) that the combined license holder performs and documents the completion of inspections, tests, and analyses in the ITAAC. Paragraph (e)(1) requires the NRC to publish, at appropriate intervals until the last date for submission of requests for hearing under 10 CFR 52.103(a), notices in the **Federal Register** of the NRC staff's determination of the successful completion of inspections, tests, and analyses. Paragraph (e)(2) provides that the NRC shall make publicly available the licensee notifications under paragraph (c). In general, the NRC expects to make the paragraph (c) notifications available shortly after the NRC has received the notifications and concluded that they are complete and detailed. Further, by the date of the **Federal Register** notice of intended operation and opportunity to request a hearing on whether acceptance criteria are met (under 10 CFR 52.103(a)), the NRC will make available the licensee notifications under paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) received to date.

V. Guidance

In conjunction with the issuance of this proposed rule, the NRC is issuing a proposed revision to its regulatory guidance in RG 1.215 on implementation of the requirements in 10 CFR 52.99. In this proposed revision, the NRC is endorsing Revision 4 to the existing industry ITAAC closure guidance in NEI 08-01, submitted to the NRC for endorsement on July 16, 2010 (ADAMS Accession No. ML102010076). The revised guidance is intended to provide an acceptable method by which

licensees can implement the new requirements being proposed in this rulemaking. The staff will consider any comments received on the proposed rule in its final revisions to RG 1.215. The NRC expects that all guidance necessary to implement this rule will be available at the time that the final rule becomes effective.

VI. Availability of Documents

You can access publicly available documents related to this proposed rule using the following methods:

- *NRC's Public Document Room (PDR)*: The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS)*: Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).
- *Federal Rulemaking Web site*: Public comments and supporting materials related to this proposed rule can be found at <http://www.regulations.gov> by searching on Docket ID: NRC-2010-0012.

The NRC is making the documents identified below available to interested persons through one or more of the following methods as indicated:

Document	PDR	Web	ADAMS
SECY-09-0119, "Staff Progress in Resolving Issues Associated with Inspections, Tests, Analyses and Acceptance Criteria" (August 26, 2009).	X	X	ML091980372
SRM-M090922—Staff Requirements—Periodic Briefing on New Reactor Issues—Progress in Resolving Issues Associated with Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC), 9:30 A.M., Tuesday, September 22, 2009 (October 16, 2009).	X	X	ML092890658
Inspection Procedure 40600, "Licensee Program for ITAAC Management" .....	X	X	ML072530607
Regulatory Guide 1.215, "Guidance for ITAAC Closure Under 10 CFR Part 52," Revision 0 (October 31, 2009).	X	X	ML091480076
NEI 08-01, "Industry Guideline for the ITAAC Closure Process Under 10 CFR Part 52," Revision 3 (January 2009).	X	.....	ML090270415
NEI 08-01, "Industry Guideline for the ITAAC Closure Process Under 10 CFR Part 52," Revision 4.	X	.....	ML102010076
Regulatory Analysis for Proposed Rule—Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria (February 2011).	X	X	ML110040395
NUREG/BR-0058, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," Revision 4 (September 2004).	X	X	ML042820192



## VII. Plain Language

The Presidential memorandum, "Plain Language in Government Writing" published June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the NRC as explained in the **ADDRESSES** caption of this document.

## VIII. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement States Programs," approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this rule is classified as compatibility "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of 10 CFR. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws. Category "NRC" regulations do not confer regulatory authority on the State.

## IX. Voluntary Consensus Standard

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. The requirements in this rulemaking address procedural and information collection and reporting requirements necessary to support the NRC's regulatory activities on combined licenses under 10 CFR part 52, and to facilitate the NRC's conduct of hearings on ITAAC which may be held under Section 189 of the AEA. These requirements do not establish standards or substantive requirements with which combined license holders must comply. Thus, this rulemaking does not constitute establishment of a standard containing generally applicable requirements falling within the purview of the National Technology Transfer and Advancement Act and the implementing guidance issued by the Office of Management and Budget (OMB).

## X. Environmental Impact—Categorical Exclusion

The NRC has determined that these amendments fall within the types of actions described as categorical exclusions under 10 CFR 51.22(c)(2) and (c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

## XI. Paperwork Reduction Act Statement

This proposed rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the OMB for review and approval of the information collection requirements.

1. *Type of submission, new or revision:* Revision.
  2. *The title of the information collection:* 10 CFR Parts 2 and 52; Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria.
  3. *Form number, if applicable:* N/A.
  4. *How often the collection is required:* On occasion. Reports required under 10 CFR 52.99(c)(2) and (c)(4) are collected and evaluated during construction, (1) whenever a licensee determines that it has new information materially altering the basis for an ITAAC determination; and (2) once, when all ITAAC are complete.
  5. *Who is required or asked to report:* Combined license holders, during the period of construction.
  6. *An estimate of the number of annual responses:* 48 (44 annual responses plus 3.66 annualized one-time responses).
  7. *The estimated number of annual respondents:* 7.33.
  8. *The number of hours needed annually to complete the requirement or request:* 1,056 hours.
  9. *Abstract:* The NRC is proposing to amend its regulations in 10 CFR 52.99 related to verification of nuclear power plant construction activities through ITAAC under a combined license. Specifically, the NRC is proposing new provisions that apply after a licensee has completed an ITAAC and submitted an ITAAC closure notification. The new provisions would require licensees to (1) report new information materially altering the basis for determining that either inspections, tests, or analyses were performed as required, or that acceptance criteria are met; and (2) notify the NRC of completion of all ITAAC activities.
- The NRC is seeking public comment on the potential impact of the

information collections contained in this proposed rule and on the following issues:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
  2. Is the burden estimate accurate?
  3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
  4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?
- A copy of the OMB clearance package may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, Maryland 20852. The OMB clearance package and rule are available at the NRC Web site, <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>, for 60 days after the signature date of this document.

Send comments on any aspect of these proposed regulations related to information collections, including suggestions for reducing the burden and on the above issues, by June 13, 2011 to the Information Services Branch (T-5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail to [Infocollects.Resource@NRC.gov](mailto:Infocollects.Resource@NRC.gov) and to the Desk Officer, Christine Kymn, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0151), Office of Management and Budget, Washington, DC 20503. Comments on the proposed information collections may also be submitted via the Federal rulemaking Web site, <https://www.regulations.gov>, Docket ID NRC-2010-0012. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

## 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.

## XII. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission.

The Commission requests public comment on the draft regulatory

analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** section of this document. The analysis is available for inspection in the NRC's PDR (ADAMS Accession No. ML110040395), 11555 Rockville Pike, Rockville, Maryland 20852. The analysis may also be viewed and downloaded electronically via the Federal rulemaking Web site at <http://www.regulations.gov> by searching for Docket ID NRC-2010-0012.

### XIII. Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed 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 size standards established by the NRC (10 CFR 2.810).

### XIV. Backfitting and Issue Finality

The NRC has determined that neither the backfit rule, 10 CFR 50.109, nor any of the finality provisions in 10 CFR part 52, apply to this proposed rule.

Therefore, a backfit analysis is not required because the proposed ITAAC maintenance rule does not contain any provisions that would impose backfitting as defined in the backfit rule, nor does it contain provisions that are inconsistent with the finality provisions applicable to applicants for or holders of combined licenses in 10 CFR part 52.

The proposed rule would apply only to holders of combined licenses. The backfitting provisions in 10 CFR 50.109 protect holders of combined licenses, and the finality provisions in Subpart C of part 52 protect holders of combined licenses (with the exception discussed further in this document). There are no current holders of combined licenses; hence, those backfitting and finality provisions do not apply to this rulemaking. Subpart C of part 52 contains issue finality provisions which protect combined license applicants, but that protection extends only to issue resolution of matters resolved in referenced early site permits, standard design certifications, standard design approvals, or manufactured reactors. This proposed rule does not alter issue resolution associated with referenced early site permits, standard design certifications, standard design approvals, or manufactured reactors.

Instead, this proposed rule addresses requirements concerning the Commission's finding that ITAAC are met, and the conduct of hearings addressing whether prescribed inspections, tests, and analyses have been performed and the acceptance criteria are met. To the extent that the proposed rule would revise these requirements for future combined licenses, the requirements would not constitute backfitting or otherwise be inconsistent with the finality provisions in 10 CFR part 52, because the requirements are prospective in nature and effect. Neither the backfit rule nor the issue finality provisions in 10 CFR part 52 were intended to apply to every NRC action, which substantially changes the obligations of future licensees under 10 CFR part 52. Accordingly, the NRC has not prepared a backfit analysis or other evaluation for this proposed rule.

### 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 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set out 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. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 2 and 52.

### 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; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 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, 2.321 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. 161b, 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). Subpart C also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Section 2.301 also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.712 also issued under 5 U.S.C. 557. Section 2.340 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.390 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. 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 2.800 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). Subpart N also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-550, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.340, paragraph (j) is revised to read as follows:

#### § 2.340 Initial decision in certain contested proceedings; immediate effectiveness of initial decisions; issuance of authorizations, permits, and licenses.

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(j) *Issuance of finding on acceptance criteria under 10 CFR 52.103.* The Commission, the Director of New Reactors, or the Director of Nuclear Reactor Regulation, as appropriate, shall make the finding under 10 CFR 52.103(g) that acceptance criteria in a combined license are met within 10 days from the date of the presiding officer's initial decision:

(1) If the Commission or the appropriate Director is otherwise able to make the finding under 10 CFR 52.103(g) that the prescribed acceptance criteria are met for those acceptance criteria not within the scope of the initial decision of the presiding officer;

(2) If the presiding officer's initial decision, with respect to contentions that the prescribed acceptance criteria have not been met, finds that those acceptance criteria have been met, and the Commission or the appropriate Director thereafter is able to make the finding that those acceptance criteria are met;

(3) If the presiding officer's initial decision, with respect to contentions that the prescribed acceptance criteria will not be met, finds that those acceptance criteria will be met, and the Commission or the appropriate Director thereafter is able to make the finding that those acceptance criteria are met; and

(4) Notwithstanding the pendency of a petition for reconsideration under 10 CFR 2.345, a petition for review under 10 CFR 2.341, or a motion for stay under 10 CFR 2.342, or the filing of a petition under 10 CFR 2.206.

\* \* \* \* \*

## PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

3. The authority citation for part 52 continues to read as follows:

**Authority:** Secs. 103, 104, 161, 182, 183, 185, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2235, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005), Secs. 147 and 149 of the Atomic Energy Act.

4. Revise § 52.99 to read as follows:

### § 52.99 Inspection during construction; ITAAC schedules and notifications; NRC notices.

(a) *Licensee schedule for completing inspections, tests, or analyses.* The licensee shall submit to the NRC, no later than 1 year after issuance of the combined license or at the start of construction as defined at 10 CFR 50.10(a), whichever is later, its schedule for completing the inspections, tests, or analyses in the ITAAC. The licensee shall submit updates to the ITAAC schedules every 6 months thereafter and, within 1 year of its scheduled date for initial loading of fuel, the licensee shall submit updates to the ITAAC schedule every 30 days until the final notification is provided to the NRC under paragraph (c)(1) of this section.

(b) *Licensee and applicant conduct of activities subject to ITAAC.* With respect to activities subject to an ITAAC, an applicant for a combined license may proceed at its own risk with design and

procurement activities, and a licensee may proceed at its own risk with design, procurement, construction, and preoperational activities, even though the NRC may not have found that any one of the prescribed acceptance criteria are met.

(c) *Licensee notifications.* (1) *ITAAC closure notification.* The licensee shall notify the NRC that prescribed inspections, tests, and analyses have been performed and that the prescribed acceptance criteria are met. The notification must contain sufficient information to demonstrate that the prescribed inspections, tests, and analyses have been performed and that the prescribed acceptance criteria are met.

(2) *ITAAC post-closure notifications.* Following the licensee's ITAAC closure notifications under paragraph (c)(1) of this section until the Commission makes the finding under 10 CFR 52.103(g), the licensee shall notify the NRC, in a timely manner, of new information that materially alters the bases for determining that either inspections, tests, or analyses were performed as required, or that acceptance criteria are met. The notification must contain sufficient information to demonstrate that, notwithstanding the new information, the prescribed inspections, tests, or analyses have been performed as required, and the prescribed acceptance criteria are met.

(3) *Uncompleted ITAAC notification.* If the licensee has not provided, by the date 225 days before the scheduled date for initial loading of fuel, the notification required by paragraph (c)(1) of this section for all ITAAC, then the licensee shall notify the NRC that the prescribed inspections, tests, or analyses for all uncompleted ITAAC will be performed and that the prescribed acceptance criteria will be met prior to operation. The notification must be provided no later than the date 225 days before the scheduled date for initial loading of fuel, and must provide sufficient information to demonstrate that the prescribed inspections, tests, or analyses will be performed and the prescribed acceptance criteria for the uncompleted ITAAC will be met, including, but not limited to, a description of the specific procedures and analytical methods to be used for performing the prescribed inspections, tests, and analyses and determining that the prescribed acceptance criteria are met.

(4) *All ITAAC complete notification.* The licensee shall notify the NRC that all ITAAC are complete.

(d) *Licensee determination of non-compliance with ITAAC.* (1) In the event

that an activity is subject to an ITAAC derived from a referenced standard design certification and the licensee has not demonstrated that the prescribed acceptance criteria are met, the licensee may take corrective actions to successfully complete that ITAAC or request an exemption from the standard design certification ITAAC, as applicable. A request for an exemption must also be accompanied by a request for a license amendment under 10 CFR 52.98(f).

(2) In the event that an activity is subject to an ITAAC not derived from a referenced standard design certification and the licensee has not demonstrated that the prescribed acceptance criteria are met, the licensee may take corrective actions to successfully complete that ITAAC or request a license amendment under 10 CFR 52.98(f).

(e) *NRC inspection, publication of notices, and availability of licensee notifications.* The NRC shall ensure that the prescribed inspections, tests, and analyses in the ITAAC are performed. (1) At appropriate intervals until the last date for submission of requests for hearing under 10 CFR 52.103(a), the NRC shall publish notices in the **Federal Register** of the NRC staff's determination of the successful completion of inspections, tests, and analyses.

(2) The NRC shall make publicly available the licensee notifications under paragraph (c) of this section. The NRC shall make publicly available the licensee notifications under paragraphs (c)(1) through (4) of this section no later than the date of publication of the notice of intended operation required by 10 CFR 52.103(a).

Dated at Rockville, Maryland, this 6th day of May 2011.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

RIN 3245–AG08

### Small Business Size Standards: Transportation and Warehousing

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Small Business Administration (SBA) proposes to increase small business size standards