

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

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~~————(c) Initial decision on finding under 10 CFR 52.103 with respect to acceptance criteria in nuclear power reactor combined licenses. In any initial decision under § 52.103(g) of this chapter with respect to whether acceptance criteria are or will be met, the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties to the proceeding, and on any matters designated by the Commission to be decided by the presiding officer. Matters not put into controversy by the parties shall be referred to the Commission for its determination. The Commission may, in its discretion, treat the matter as a request for action under § 2.206 and process the matter in accordance with § 52.103(f) of this chapter. Depending on the resolution of those matters, the Commission, the Director, Office of New Reactors or Director, Office of Nuclear Reactor Regulation, as appropriate, will make the finding under § 52.103 of this chapter, or appropriately condition that finding.~~

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~~————(f) Immediate effectiveness of certain decisions. An initial decision directing the issuance or amendment of a limited work authorization under 10 CFR 50.10, an early site permit under subpart A of part 52 of this chapter, a construction permit or construction authorization under part 50 of this chapter, an operating license under part 50 of this chapter, a combined license under subpart C of part 52 of this chapter, a manufacturing license under subpart F of part 52 of this chapter, or a license under 10 CFR part 72 to store spent fuel in an independent spent fuel storage facility (ISFSI) or a monitored retrievable storage installation (MRS), an initial decision directing issuance of a license under part 61 of this chapter, or an initial decision under 10 CFR 52.103(g) that acceptance criteria in a combined license are met, is immediately effective upon issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective.~~

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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 issuance of the **presiding officer's** initial decision:

(1) If the Commission or the appropriate Director ~~is otherwise able to make~~**has made** the finding under § 52.103(g) that the prescribed acceptance criteria are met, ~~for those acceptance criteria:~~

~~(i) Those matters~~ not within the scope of the initial decision of the presiding officer; ~~and~~

~~(2) If (ii) Those contested matters for which~~ the presiding officer's initial decision - with respect to contentions ~~finds~~, that the prescribed **acceptance criteria have not been met - finds** that those acceptance criteria have been met, ~~inspections, tests~~ and the Commission or the appropriate Director thereafter is able to make the finding that the acceptance criteria are met;

(3) If the presiding officer's initial decision - with respect to contentions **analyses**

DRAFT 3/10/10

~~will be performed and/or~~ that the prescribed acceptance criteria will not be met - finds that those acceptance criteria have been, or will be, met, and the Commission or the appropriate Director thereafter is able to make the finding that those acceptance criteria are met; and;

~~(42) The presiding officer's initial decision finds, with respect to all contested matters which are not the subject of a finding under paragraph (j)(1)(ii) of this section, that the prescribed acceptance criteria are met; and~~

~~—(3)~~ Notwithstanding the pendency of a petition for reconsideration under § 2.345, a petition for review under § 2.341, or a motion for stay under § 2.342, or the filing of a petition under § 2.206.

§ 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 one (1) year after issuance of the combined license or at the start of construction as defined in 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 six (6) months thereafter and, within one (1) year of its scheduled date for initial loading of fuel, the licensee shall submit updates to the ITAAC schedule every thirty (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 pre-operational activities, even though the NRC may not have found that any one of the prescribed acceptance criteria ~~is~~ met.

(c) *Licensee notifications and documentation.*

(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) *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

DRAFT 3/10/10

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.

(3) *ITAAC post-closure notifications.* The requirements in this paragraph apply, with respect to each ITAAC, after the licensee makes an ITAAC closure notification under paragraph (c)(1) of this section.

- (i) ~~(i) *New information on ITAAC closure.* –The licensee shall notify the NRC Operations Center of new information materially altering the basis for determining raising a reasonable concern that a prescribed inspection, test or analysis was not performed as required, or that a prescribed acceptance criterion is not met. –The notification must be made no later than 7 days after licensee identification of the issue concern or before licensee repair or replacement activities begin, whichever is sooner.~~
- (ii) ~~(ii) *Supplemental ITAAC closure notification.* The licensee shall notify the NRC of its resolution of issues concerns reported under paragraph (c)(3)(i) of this section. The notification must contain sufficient information to demonstrate that, notwithstanding the new information, the prescribed inspections, tests, analyses have been performed as required, and the prescribed acceptance criteria are met. The notification must be made no later than 30 days after licensee resolution of the issue. concern.~~
- ~~(iii) — (4) *ITAAC closure documentation.* If, by the date 225 days before the scheduled date for initial loading of fuel, the licensee has made a notification under paragraph (c)(3)(i) but has not made the notification under paragraph (c)(3)(ii), then the licensee shall notify the NRC of its proposed resolution of the concern which is the subject of the paragraph (c)(3)(i) notification. The notification must be provided no later than the date 225 days before the scheduled date for initial loading of fuel. The notification must provide sufficient information to demonstrate that, upon licensee completion of the proposed resolution, the prescribed inspections, tests, or analyses will have been performed and the prescribed acceptance criteria are met. The notification must include, but is not limited to, a description of the specific procedures and analytical methods for resolving the concern, and any changes or supplements to information previously provided in the notification(s) under paragraph (c)(1) and/or (c)(2), as applicable.~~

DRAFT 3/10/10

~~(iv) **Records.**—The licensee shall maintain records of documenting the basesbasis for determining whether a notification under paragraph (c)(3)(i) of this section is required.~~

~~(4) **ITAAC closure documentation.**—The licensee shall document and maintain the basesbasis for all notifications made required under paragraph (c) of this section. The licensees shall retain these records for a period of three years after the date the Commission makes the finding under § 52.103(g).~~

(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 § 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 § 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 § 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. If such a notice is published and the licensee notifies the NRC in accordance with paragraph (c)(3)(i) of this section before the last date of submission of requests for hearing, then the NRC will, until the last date for submission of requests for hearing under § 52.103(a), publish notices in the *Federal Register* of the licensee's submission of a notification under paragraph (c)(3)(i) and any NRC staff determination that the acceptance criteria for the affected ITAAC are met.

(2) The NRC shall make publicly available the licensee notifications under paragraphs (c) and (f) of this section. No later than the date of publication of the notice of intended operation required by § 52.103(a), the NRC shall make publicly available the licensee notifications under paragraphs (c)(1), (c)(2), and (c)(3).

DRAFT 3/10/10

(f) *All ITAAC Complete notification.*

(1) The licensee shall, ~~after notifying the NRC in accordance with paragraph (c)(1) of this section for the last ITAAC to be completed,~~ notify the NRC that all ITAAC are complete. This notification shall not be submitted if the licensee ~~there~~ is aware of any ~~new~~ information that may result in ~~for which~~ a notification under paragraph (c)(3)(i) of this section ~~is or may be required.~~

(2) If, after making the notification required under paragraph (f)(1) of this section, the licensee identifies new information for which a notification may be required under paragraph (c)(3)(i) of this section, then the licensee must notify the NRC **Operations Center** of its identification within 24 hours. ~~The licensee must submit any notifications required under paragraph (c)(3) of this section and resubmit the notification required by paragraph (f)(1) of this section, if necessary.~~ ~~of the licensee's identification of the new information.~~

~~(3) After making the notification under paragraph (f)(2) of this section, the licensee shall submit a notification in accordance with paragraph (c)(3)(i) of this section, or shall submit a notification explaining why a notification under paragraph (c)(3)(i) of this section is not required.~~

~~(4) If, after submitting the notification required under paragraph (f)(1) of this section, the licensee submits a notification under paragraphs (c)(3)(i) of this section, then it must also resubmit the notification required by paragraph (f)(1) of this section.~~

DRAFT 3/10/10