

Commission's determination that the NRC staff should be 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. Currently, § 52.99 states that "the Commission shall ensure that the required inspections, tests, and analyses are performed and, prior to operation of the facility, shall find that the prescribed acceptance criteria are met." When part 52 was first adopted by the Commission in 1989 (54 FR 15372, April 18, 1989), § 52.99 provided that the NRC staff shall ensure that the inspections, tests and analyses in the ITAAC are performed, and did not refer to the Commission finding on acceptance criteria being met. The requirement for a Commission finding on acceptance criteria was contained in § 52.103(g). The Commission adopted the current language of § 52.99 in 1992 (57 FR 60975, December 23, 1992) to reflect changes to Section 185 of the AEA made by Congress in the Energy Policy Act of 1992 (1992 EPA), which states:

Following issuance of the combined license, the Commission shall ensure that the prescribed inspections, tests, and analyses are performed and, prior to operation of the facility, shall find that the prescribed acceptance criteria are met.

Thus, the revisions to § 52.99 adopted by the Commission in 1992 simply reflect the language of the 1992 EPA. However, the Commission does not believe that Congress, by adopting language in section 185 stating that the Commission shall ensure that the ITAAC are performed, intended to alter the Commission's determination that the NRC staff is responsible for ensuring that "the required inspections, tests and analyses in the ITAAC are performed," and by doing so alter the Commission's long-standing delegation of inspection and oversight activities to the NRC staff. For these reasons, the Commission proposes that § 52.99 (proposed § 52.229(e)) state that the NRC staff shall be responsible for ensuring that inspections, tests and analyses in the ITAAC have been performed. The requirement for a Commission finding on acceptance criteria will continue to be addressed separately in § 52.103(g) (proposed § 52.231(g)).

In a letter dated February 22, 1993, the Nuclear Management and Resources Council, Inc. (NUMARC) stated:

There is nothing in Title XXVIII or its legislative history which compels a change in the Staff responsibilities from that reflected in prior § 52.99. Indeed, any other implementation of § 52.99 would be wholly unworkable. Accordingly, it is our

understanding that the reference to "the Commission" in amended § 52.99 is to be read as authorizing the Commission to delegate to the Staff the responsibility for overseeing ITAAC performance during the period of facility construction; and further that this is the Commission's intention. Responsibility for the pre-operational finding of acceptance criteria conformance would, of course, be the responsibility of the Commission, as reflected in both amended §§ 52.99 and 52.103(g).

The proposed rule is consistent with NUMARC's recommendation.

The requirements in the proposed § 52.229(e) will be limited to the responsibilities of the NRC staff. The staff will ensure that the inspections, tests, and analyses in the ITAAC have been performed and will publish notices in the **Federal Register** of the successful completion of inspections, tests, and analyses. The NRC staff will perform periodic inspections during construction of the facility and implementation of the licensee's operational programs, *e.g.*, emergency planning and training. The NRC staff will issue reports on these inspections and will make these reports publically available. At the conclusion of construction, the staff will make a recommendation to the Commission on its assessment of the licensee's completion of ITAAC. If the Commission determines that all of the acceptance criteria in the ITAAC for the combined license have been met, it will make the finding required under proposed § 52.231(g).

Consistent with the language in proposed § 52.229(e), the proposed rule would also amend the current § 52.83 (proposed § 52.215(c)) to state that the requirements in 10 CFR part 50 that are applicable to holders of operating licenses become applicable to holders of combined licenses after the Commission's finding of successful ITAAC completion under current § 52.103(g) (proposed § 52.231(g)), rather than referring to the Commission finding under the current § 52.99. As discussed above, the Commission's 1992 rulemaking amended § 52.99 to refer to the Commission's finding of ITAAC completion, and amended § 52.83 to refer to the Commission's finding under § 52.99. Inasmuch as the Commission finding and authorization of operation would be addressed in proposed § 52.231(g), it follows that proposed § 52.215(c) should refer to the Commission's authorization of operation under § 52.231(g) rather than the NRC staff's activities under proposed § 52.229(e).

#### Combined License Change Process

The proposed rule would amend the current § 52.97 (proposed § 52.227) to clarify the applicability of the change processes in 10 CFR part 50 and Section VIII of the design certification rules in 10 CFR part 52 to a combined license. This amendment will add § 52.227(c), which states that the change processes in 10 CFR part 50 apply to a combined license that does not reference a design certification rule. This amendment will also add § 52.227(d), which states that the change processes in Section VIII of the design certification rules apply to changes within the scope of the referenced certified design. However, if the proposed change affects the design information that is outside of the scope of the design certification rule, the part 50 change processes apply unless the change also affects the design certification information. For that situation, both change processes may apply.

In a letter dated November 13, 2001 (comment 21(a)(2)), NEI recommended that proposed §§ 52.227(c) and (d)(2) state that changes outside the scope of a certified design are subject to "the applicable change control requirements in 10 CFR part 50, *e.g.*, 10 CFR 50.59, 50.54 or 50.90." The Commission has decided to propose this amendment to clarify which change processes are applicable to a combined license and this amendment is consistent with NEI's recommendation.

#### Design Certifications for ABWR, System 80+, and AP600

The proposed rule would amend paragraphs VI.B.4, 5, and 6 of the three design certification rules in 10 CFR part 52, Appendices A, B, and C (for U.S. ABWR, System 80+, and AP600 designs, respectively), by substituting the phrase "but only for that plant" for the erroneous phrase "but only for that proceeding" (emphasis added). The new phrase correctly characterizes the scope of issue resolution in three situations. Paragraph VI.B.4 describes how issues associated with a design certification rule are resolved when an exemption has been granted for a plant referencing the design certification rule. Paragraph VI.B.5 describes how issues are resolved when a plant referencing the design certification rule obtains a license amendment for a departure from Tier 2 information. Paragraph VI.B.6 describes how issues are resolved when the applicant or licensee departs from the Tier 2 information on the basis of paragraph VIII.B.5, which waives the requirement to get NRC approval. Thus, once a matter (*e.g.*, an exemption in the