

§ 50.43

10 CFR Ch. I (1–1–06 Edition)

the Commission will, in addition to applying the standards set forth in § 50.40, be guided by the following considerations:

(a) The proposed activities will serve a useful purpose proportionate to the quantities of special nuclear material or source material to be utilized.

(b) Due account will be taken of the advice provided by the Attorney General, under subsection 105c of the Act, and to any evidence that may be provided during any proceedings in connection with the antitrust aspects of the application for a construction permit or the facility's initial operating license.

(1) For this purpose, the Commission will promptly transmit to the Attorney General a copy of the construction permit application or initial operating license application. The Commission will request any advice as the Attorney General considers appropriate in regard to the finding to be made by the Commission as to whether the proposed license would create or maintain a situation inconsistent with the antitrust laws, as specified in subsection 105a of the Act. This requirement will not apply—

(i) With respect to the types of class 103 licenses which the Commission, with the approval of the Attorney General, may determine would not significantly affect the applicant's activities under the antitrust laws; and

(ii) To an application for an initial license to operate a production or utilization facility for which a class 103 construction permit was issued unless the Commission, after consultation with the Attorney General, determines such review is advisable on the ground that significant changes have occurred subsequent to the previous review by the Attorney General and the Commission.

(2) The Commission will publish any advice it receives from the Attorney General in the FEDERAL REGISTER. After considering the antitrust aspects of the application for a construction permit or initial operating license, the Commission, if it finds that the construction permit or initial operating license to be issued or continued, would create or maintain a situation inconsistent with the antitrust laws speci-

fied subsection 105a of the Act, will consider, in determining whether a construction permit or initial operating license should be issued or continued, other factors the Commission considers necessary to protect the public interest, including the need for power in the affected area.¹

[21 FR 355, Jan. 19, 1956, as amended at 35 FR 11461, July 17, 1970; 35 FR 19660, Dec. 29, 1970; 65 FR 44660, July 19, 2000]

§ 50.43 Additional standards and provisions affecting class 103 licenses for commercial power.

In addition to applying the standards set forth in §§ 50.40 and 50.42, in the case of a class 103 license for a facility for the generation of commercial power:

(a) The NRC will:

(1) Give notice in writing of each application to the regulatory agency or State as may have jurisdiction over the rates and services incident to the proposed activity;

(2) Publish notice of the application in trade or news publications as it deems appropriate to give reasonable notice to municipalities, private utilities, public bodies, and cooperatives which might have a potential interest in the utilization or production facility; and

(3) Publish notice of the application once each week for 4 consecutive weeks in the FEDERAL REGISTER. No license will be issued by the NRC prior to the giving of these notices and until 4

¹As permitted by subsection 105c(8) of the Act, with respect to proceedings in which an application for a construction permit was filed prior to Dec. 19, 1970, and proceedings in which a written request for antitrust review of an application for an operating license to be issued under section 104b has been made by a person who intervened or sought by timely written notice to the Atomic Energy Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination within 25 days after the date of publication in the FEDERAL REGISTER of notice of filing of the application for an operating license or Dec. 19, 1970, whichever is later, the Commission may issue a construction permit or operating license in advance of consideration of, and findings with respect to the antitrust aspects of the application, provided that the permit or license so issued contains the condition specified in § 50.55b.

weeks after the last notice is published in the FEDERAL REGISTER.

(b) If there are conflicting applications for a limited opportunity for such license, the Commission will give preferred consideration in the following order: First, to applications submitted by public or cooperative bodies for facilities to be located in high cost power areas in the United States; second, to applications submitted by others for facilities to be located in such areas; third, to applications submitted by public or cooperative bodies for facilities to be located in other than high cost power areas; and, fourth, to all other applicants.

(c) The licensee who transmits electric energy in interstate commerce, or sells it at wholesale in interstate commerce, shall be subject to the regulatory provisions of the Federal Power Act.

(d) Nothing herein shall preclude any government agency, now or hereafter authorized by law to engage in the production, marketing, or distribution of electric energy, if otherwise qualified, from obtaining a license for the construction and operation of a utilization facility for the primary purpose of producing electric energy for disposition for ultimate public consumption.

[21 FR 355, Jan. 19, 1956, as amended at 35 FR 19660, Dec. 29, 1970; 63 FR 50480, Sept. 22, 1998]

§ 50.44 Combustible gas control for nuclear power reactors.

(a) Definitions.

(1) *Inerted atmosphere* means a containment atmosphere with less than 4 percent oxygen by volume.

(2) *Mixed atmosphere* means that the concentration of combustible gases in any part of the containment is below a level that supports combustion or detonation that could cause loss of containment integrity.

(b) *Requirements for currently-licensed reactors.* Each boiling or pressurized water nuclear power reactor with an operating license on October 16, 2003, except for those facilities for which the certifications required under § 50.82(a)(1) have been submitted, must comply with the following requirements, as applicable:

(1) *Mixed atmosphere.* All containments must have a capability for ensuring a mixed atmosphere.

(2) *Combustible gas control.* (i) All boiling water reactors with Mark I or Mark II type containments must have an inerted atmosphere.

(ii) All boiling water reactors with Mark III type containments and all pressurized water reactors with ice condenser containments must have the capability for controlling combustible gas generated from a metal-water reaction involving 75 percent of the fuel cladding surrounding the active fuel region (excluding the cladding surrounding the plenum volume) so that there is no loss of containment structural integrity.

(3) *Equipment Survivability.* All boiling water reactors with Mark III containments and all pressurized water reactors with ice condenser containments that do not rely upon an inerted atmosphere inside containment to control combustible gases must be able to establish and maintain safe shutdown and containment structural integrity with systems and components capable of performing their functions during and after exposure to the environmental conditions created by the burning of hydrogen. Environmental conditions caused by local detonations of hydrogen must also be included, unless such detonations can be shown unlikely to occur. The amount of hydrogen to be considered must be equivalent to that generated from a metal-water reaction involving 75 percent of the fuel cladding surrounding the active fuel region (excluding the cladding surrounding the plenum volume).

(4) *Monitoring.* (i) Equipment must be provided for monitoring oxygen in containments that use an inerted atmosphere for combustible gas control. Equipment for monitoring oxygen must be functional, reliable, and capable of continuously measuring the concentration of oxygen in the containment atmosphere following a significant beyond design-basis accident for combustible gas control and accident management, including emergency planning.