

EDO Principal Correspondence Control

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FINAL REPLY:

Marvin S. Fertel  
Nuclear Energy Institute (NEI)

TO:

Chairman Meserve

FOR SIGNATURE OF :

\*\* PRI \*\*

CRC NO: 02-0489

Chairman

DESC:

ROUTING:

Comments on Notice of Proposed Rulemaking (NOPR)  
for Part 52 and Directs the Staff to Change  
Section 52.229(e) on ITAAC Verification

Travers  
Paperiello  
Kane  
Norry  
Craig  
Burns  
Cyr, OGC

DATE: 07/17/02

ASSIGNED TO:

CONTACT:

NRR

Collins

SPECIAL INSTRUCTIONS OR REMARKS:

Reference: G20020285, G20020325, G20020336 and  
G20020337

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**OFFICE OF THE SECRETARY  
CORRESPONDENCE CONTROL TICKET**

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<b>ACTION OFFICE:</b>	EDO		
<b>AUTHOR:</b>	Marvin Fertel		
<b>AFFILIATION:</b>	NEA		
<b>ADDRESSEE:</b>	Richard Meserve		
<b>SUBJECT:</b>	Concerns Inspections, Tests, and Analysis (ITAAC)		
<b>ACTION:</b>	Signature of Chairman		
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<b>LETTER DATE:</b>	07/12/2002		
<b>ACKNOWLEDGED</b>	No		
<b>SPECIAL HANDLING:</b>	Chairman's Corres		
<b>NOTES:</b>	Staff should prepare response consistant with previous ITAAC correspondence		
<b>FILE LOCATION:</b>	Adams		
<b>DATE DUE:</b>	07/24/2002	<b>DATE SIGNED:</b>	

**EDO --G20020427**



NUCLEAR ENERGY INSTITUTE

**Marvin S. Fertel**SENIOR VICE PRESIDENT  
BUSINESS OPERATIONS

July 12, 2002

The Honorable Richard A. Meserve  
Chairman  
U.S. Nuclear Regulatory Commission  
Mail Stop O-16 C1  
Washington, DC 20555-0001

Dear Chairman Meserve:

In SECY-02-0077, the NRC staff has asked for Commission approval to publish the Notice of Proposed Rulemaking (NPR) for the Part 52 update. The purpose of this letter is to ask that, prior to the Commission approving the publication of the NPR, it direct the staff to change Section 52.229(e) on ITAAC verification. Specifically, this section should conform to the ITAAC verification provision in the three design certification rules, and should reflect the original intent of the Commission as expressed in the 1989 Statements of Consideration for Part 52.

We had expected that the forthcoming NPR would include "lessons learned" from the design certification rulemakings including, for example, a change to Section 52.99 to conform it to the description of ITAAC verification in the three design certification rules. However, the Section 52.99 change proposed in SECY-02-0077 differs from the corresponding Section IX.B.1 of the rules. Further, it seems to significantly change fundamental Part 52 policy without providing any compelling need or justification.

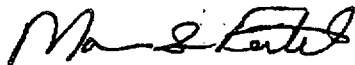
Enclosed is an alternative to the SECY proposal that conforms to the description of the ITAAC verification process in the certifications. A minor change to the language used in the certifications is proposed to clarify the role of the staff in Section 52.99 *vis-à-vis* the Commission's role in Section 52.103(g). It has always been understood that the purpose of Section 52.99 is to notify stakeholders that the NRC staff has verified and agreed that the licensee has completed one or more ITAAC in the combined license. This understanding goes back to the issuance of Part 52 in 1989 when the Statements of Consideration stated that "52.99 now provides that notices of staff approvals of construction will be published in the *Federal Register*." The proposal in SECY-02-0077 would significantly change this policy position by providing only for NRC notification of the licensee's claim that the ITAAC have been completed, without any acknowledgment of the staff's own assessment.

The Honorable Richard A. Meserve  
July 12, 2002  
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We have three reasons for asking that the Commission direct the staff to make this correction before publication of the NOPR for comment. First, the proposed change to Section 52.99 is not a "lesson learned," but a fundamental policy shift proposed without justification. Second, the industry is concerned that a key element of the Part 52 ITAAC process could, after 13 years, be suddenly thrown into doubt for the duration of the NOPR public comment period. Commission affirmation of the original intent of Part 52 is now needed to send a strong, positive message to the public and other stakeholders that the Commission intends to ensure a predictable and stable regulatory environment for new plants. And third, a delay in affirming the intent of Section 52.99 would complicate and likely delay progress by the NRC staff, industry and other stakeholders towards common understanding of the NRC ITAAC verification process and construction inspection program.

For these reasons, we ask that the Commission disapprove the proposed language of Section 52.229(e) and direct the staff to modify the NOPR, before publication in the *Federal Register*, to use language consistent with the ITAAC provisions of the design certification rules.

Sincerely,



Marvin S. Fertel

Enclosure

c: The Honorable Greta J. Dicus  
The Honorable Nils J. Diaz  
The Honorable Edward McGaffigan, Jr.  
Dr. William D. Travers  
Mr. William F. Kane  
Mr. Samuel J. Collins  
Mr. R. William Borchardt  
Mr. James E. Lyons  
Karen D. Cyr, Esq.  
NRC Document Control Desk

EnclosureAlternative language for Section 52.229(e)

The NRC staff shall ensure that the required inspections, tests, and analyses in the ITAAC are performed. The NRC staff shall verify that the inspections, tests, and analyses referenced by the licensee have been successfully completed and, based solely thereon, the prescribed acceptance criteria have been met. At appropriate intervals during construction, the NRC shall publish notices of the successful completion of ITAAC in the *Federal Register*.