

Industry Comments on NRC Draft ITAAC Maintenance Rule Language

SECY-09-0119, *Staff Progress in Resolving Issues Associated with Inspections, Tests, Analyses, and Acceptance Criteria* (August 26, 2009), summarizes the considerable progress achieved by the NRC staff and the industry in developing guidance for ITAAC completion and closure documentation, ITAAC maintenance, the programs that maintain ITAAC conclusions and post-closure ITAAC notifications to the NRC. These notifications relate to events or conditions that could materially alter the bases for prior ITAAC conclusions. Progress has also been made regarding the staff's approach to making its recommendation to the Commission in support of the 10 CFR 52.103(g) finding.

The industry has worked closely and cooperatively with the staff to address NRC concerns relating to ITAAC. We have devoted considerable time, effort, and industry resources to this subject, and we are optimistic that the guidance will be useful to COL holders as well as the NRC staff. However, as the industry has emphasized both in its briefing to the Commission in October 2009 and during our discussions with the NRC Staff over the past 12 months, we do not believe that rulemaking to amend 10 CFR Part 52 is needed to address the topic of additional ITAAC-related notifications to the NRC.

The draft proposed rule language would significantly expand 10 CFR 52.99.¹ In our view, the proposed changes to Section 52.99 are not necessary. Rather, as explained further below, we believe that issuance of regulatory guidance on these topics will provide the most appropriate and effective vehicle for memorializing this information. Proposed rule changes for consistency with other sections of NRC regulations or statutory language (e.g., ~~have been~~ are met) are neither urgent nor controversial and could be made by means of a direct final rule or in connection with a further lessons learned rulemaking envisioned by the staff in 2012 or beyond.

The following pages provided section-by-section comments on the March 25 draft ITAAC Maintenance rule language.

¹ The staff also proposed conforming changes to Section 2.340. The industry has not yet completed its evaluation of these NRC staff proposals.

Draft changes to Section 52.99 proposed March 25 by the NRC staff

Industry comments on staff proposed changes to § 52.99

<p><u>§ 52.99 Inspection during construction; ITAAC schedules and notifications; NRC notices.</u></p> <p>(a) <u>Licensee schedule for completing inspections, tests or analyses.</u> 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.</p>	<p><i>No comment.</i></p>
<p>(b) <u>Licensee and applicant conduct of activities subject to ITAAC.</u> 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 <u>is</u> met.</p>	<p><i>No comment.</i></p>
<p>(c) <u>Licensee notifications and documentation.</u> (1) <u>ITAAC closure notification.</u> The licensee shall notify the NRC that prescribed inspections, tests, and analyses have been performed and that the prescribed acceptance criteria <u>are</u> 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 <u>are</u> met.</p>	<p><i>No comment.</i></p>
<p>(2) <u>Uncompleted ITAAC notification.</u> If the licensee has not provided, by the date 225 days before the scheduled date for initial</p>	

<p>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 <u>are</u> met.</p>	<p><i>No comment.</i></p>
<p>(3) <i>ITAAC post-closure notifications.</i> 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.</p> <p>(i) <u>New information on ITAAC closure.</u> The licensee shall notify the NRC Operations Center of new information materially altering the basis for determining that a prescribed inspection, test or analysis was performed as required, or that a prescribed acceptance criterion is met. <u>The notification must be made no later than 7 days after licensee identification of the issue.</u></p>	<p>No need for draft (c)(3)(i) – No new requirement on prompt notification of NRC upon identification of new information that materially alters the ITAAC determination bases is necessary or appropriate. The primary purpose identified by the staff for such a notification is to inform NRC inspection staff of such information. Communication between the licensee and NRC Resident and Region inspection staff regarding ITAAC related activities and closure status will be thorough and prompt. Absent experience to the contrary, we see no need or basis for new regulations.</p> <p>Without experience that indicates the expected volume of ITAAC-related notifications, the staff proposal to expand the mission of the NRC Operations Center to include new plant construction issues raises questions about burden and potential loss of Operations Center focus on its core public safety mission.</p> <p>The industry has already included guidance in draft NEI 08-01 on the importance of prompt communication to the NRC of conditions that materially alter a prior ITAAC conclusion. We are prepared to work with the staff to ensure this</p>

<p>(ii) <u>Supplemental ITAAC closure notification.</u> The licensee shall notify the NRC of its resolution of issues 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.</p>	<p>guidance meets the staff's needs and objectives.</p> <p>For example, a template could be developed that would assure clear, consistent licensee notifications to the appropriate NRC officials and facilitate tracking of corrective actions by the staff. Staff concerns about burden placed on Resident Inspectors to keep track of conditions material to prior ITAAC conclusions are also mitigated by the licensee's own documentation and tracking of such conditions. Conditions material to a closed ITAAC will be documented in a Condition Report and tracked in the CAP. Resident Inspectors will have access to licensee Condition Reports and the CAP.</p>
<p>(ii) No need for draft (c)(3)(ii) – The requirement to maintain ITAAC closure is sufficiently implied by existing requirements on individual ITAAC closure and the requirement for the final NRC finding that all ITAAC are met. Moreover, consistent with 10 CFR 52.6, licensees understand well their obligation to notify the NRC of new information that is material to information previously provided to the NRC, such as an ITAAC Closure notification. Thus no new requirements are necessary in this regard.</p> <p>We have already included guidance in draft NEI 08-01 on submittal of supplemental ITAAC closure notifications. In particular, guidance and examples of information “that materially alters the ITAAC determination bases” are provided in NEI 08-01 consistent with the four thresholds established through public workshops by the industry and NRC. This guidance will be ultimately be endorsed in RG 1.215. To fully meet the intent of proposed Section 52.99(c)(2), we are prepared to work with the staff to include in NEI 08-01/RG 1.215 guidance such as the following that is equivalent to proposed Section 52.99(c)(3)(2):</p>	<p>No need for draft (c)(3)(ii) – The requirement to maintain ITAAC closure is sufficiently implied by existing requirements on individual ITAAC closure and the requirement for the final NRC finding that all ITAAC are met. Moreover, consistent with 10 CFR 52.6, licensees understand well their obligation to notify the NRC of new information that is material to information previously provided to the NRC, such as an ITAAC Closure notification. Thus no new requirements are necessary in this regard.</p> <p>We have already included guidance in draft NEI 08-01 on submittal of supplemental ITAAC closure notifications. In particular, guidance and examples of information “that materially alters the ITAAC determination bases” are provided in NEI 08-01 consistent with the four thresholds established through public workshops by the industry and NRC. This guidance will be ultimately be endorsed in RG 1.215. To fully meet the intent of proposed Section 52.99(c)(2), we are prepared to work with the staff to include in NEI 08-01/RG 1.215 guidance such as the following that is equivalent to proposed Section 52.99(c)(3)(2):</p>

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	<p>“After the licensee makes an ITAAC closure notification under paragraph (c)(1) of this section, the licensee should notify the NRC of new information or conditions that materially alter the ITAAC determination bases described in ITAAC closure notifications submitted in accordance with paragraph (c)(1) of this section. This notification should be made no later than thirty (30) days after licensee resolution of the concern and should contain sufficient information to demonstrate that, notwithstanding the new information or conditions, the prescribed acceptance criteria continue to be met.”</p>
<p><u>(4) Records.</u> The licensee shall maintain records of the bases for determining whether a notification under paragraph (c)(3)(i) of this section is required for all notifications under paragraph (c) of this section. The licensee shall retain these records for a period of three years after the date the Commission makes the finding under §52.103(g).</p>	<p>No need for draft (c)(4) – Guidance is already contained in NEI 08-01 that records concerning identification, evaluation and correction of conditions affecting closed ITAAC will be maintained in accordance with QAP requirements. New NRC regulations concerning recordkeeping for ITAC notifications are not necessary.</p> <p>Because essentially all conditions will be screened in some fashion for ITAAC impacts, a requirement to maintain records on “whether” a notification is required is so broad in scope as to be problematic to implement.</p> <p>We are prepared to work with the staff to ensure that NEI 08-01 meets the needs and objectives of the staff with respect to record retention and other matters.</p>
<p>(d) <i>Licensee determination of non-compliance with ITAAC.</i></p> <p>(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 <u>prescribed acceptance criteria are met</u>, the licensee may take corrective actions to successfully complete that ITAAC or request an exemption from the standard design</p>	<p>No comment.</p>

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<p>certification ITAAC, as applicable. A request for an exemption must also be accompanied by a request for a license amendment under § 52.98(f).</p>	
<p>(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 <u>prescribed acceptance criteria are met</u>, the licensee may take corrective actions to successfully complete that ITAAC or request a license amendment under § 52.98(f).</p>	<p>No comment.</p>
<p>(e) <u>NRC inspection, publication of notices, and availability of licensee notifications.</u> The NRC shall ensure that the prescribed inspections, tests, and analyses in the ITAAC are performed.</p>	<p>No comment.</p>
<p>(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 <i>Federal Register</i> of the NRC staff's determination of the successful completion of inspections, tests, and analyses. <u>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 <i>Federal Register</i> 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.</u></p>	<p>No need to modify (e)(1) – The NRC staff has stated that it intends to include supplemental ITAAC closure notifications in periodic <i>Federal Register</i> notices, and this will be reflected in NEI 08-01 and RG 1.215. This is consistent with the existing regulation and thus no change to Section 52.99 is necessary in this regard.</p>
<p>(2) The NRC shall make publicly available the licensee notifications under paragraphs (c) and (f) of this section. <u>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).</u></p>	<p>No need to modify (e)(2)</p>
<p>(f) <u>All ITAAC Complete notification.</u> (1) The licensee shall notify the NRC that all ITAAC are complete. This notification shall not be submitted if the licensee is aware of any</p>	<p>No need for draft (f)(1-4) – Section 52.99 already includes a requirement for submittal of ITAAC closure notifications and a requirement for the Commission to make a finding that all ITAAC are met. We have already proposed</p>

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information that may result in a notification under paragraph (c)(3)(i) of this section.

(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 (f)(1) of this section, if necessary.

guidance for NEI 08-01 that calls for licensees to submit an "All ITAAC Complete" letter to facilitate the staff recommendation to the Commission regarding the completion status of ITAAC. This is a process implementation issue that is consistent with the existing requirements and well suited to address in regulatory guidance. New NRC regulations are not necessary on this matter.

Language requiring notification of the Operations Center within 24 hours of identifying information for which a Supplemental ITAAC Closure notification "may be required" is so broad as to be problematic and could lead to a number of notifications to the Operations Center.

In any event, safety concerns about eleventh-hour emergent issues are mitigated by the fact that plant Technical Specifications take effect upon the Section 52.103(g) finding. If plant conditions do not support fuel load and operation, those activities will not proceed until Technical Specifications are satisfied.

We are prepared to work with the staff to ensure that NEI 08-01 meets the needs and objectives of the staff with respect to the "All ITAAC Complete" and the handling of potential emergent issues arising after submittal of the "All ITAAC Complete" letter.