



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

February 4, 2011

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-10-0117

TITLE: PROPOSED RULE: REQUIREMENTS FOR MAINTENANCE  
OF INSPECTIONS, TESTS, ANALYSES, AND  
ACCEPTANCE CRITERIA (RIN 3150-AI77)

The Commission (with Commissioners Svinicki, Apostolakis, and Ostendorff agreeing in part and disagreeing in part and Chairman Jaczko and Commissioner Magwood agreeing) acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of February 4, 2011.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

A handwritten signature in black ink, appearing to read "Andrew L. Bates", written over a horizontal line.

Andrew L. Bates  
Acting Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Jaczko  
Commissioner Svinicki  
Commissioner Apostolakis  
Commissioner Magwood  
Commissioner Ostendorff  
OGC  
EDO  
PDR

VOTING SUMMARY - SECY-10-0117

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACZKO	X				X	10/27/10
COMR. SVINICKI	X	X			X	12/13/10
COMR. APOSTOLAKIS	X	X			X	1/21/11
COMR. MAGWOOD	X				X	1/19/11
COMR. OSTENDORFF	X	X			X	1/13/11

COMMENT RESOLUTION

In their vote sheets, Commissioners Svinicki, Apostolakis, and Ostendorff approved in part and disapproved in part and Chairman Jaczko and Commissioner Magwood approved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on February 4, 2011.

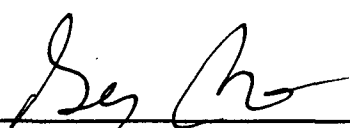
**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary  
**FROM:** CHAIRMAN JACZKO  
**SUBJECT:** SECY-10-0117 – PROPOSED RULE: REQUIREMENTS FOR MAINTENANCE OF INSPECTIONS, TESTS, ANALYSES, AND ACCEPTANCE CRITERIA (RIN 3150-AI77)

Approved  Disapproved  Abstain   
Not Participating

COMMENTS: Below  Attached  None

  
\_\_\_\_\_  
SIGNATURE

10/27/10  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No

**Chairman Jaczko's Vote on SECY-10-0117**

**PROPOSED RULE: REQUIREMENTS FOR MAINTENANCE OF INSPECTIONS,  
TESTS, ANALYSES, AND ACCEPTANCE CRITERIA (RIN 3150-A177)**

I approve publication in the *Federal Register* the proposed rulemaking, "Requirements for Maintenance of Inspection, Tests, Analyses, and Acceptance Criteria (ITAAC) (RIN 3150-A177)." Specifically, I approve of the staff's proposal for new notifications after ITAAC closure, to include notification of new information on ITAAC closure, supplemental ITAAC closure notification, and ITAAC complete notification.

As I previously stated in SECY-08-0117, I believe it is important to ensure to the Commission and the public that pertinent information concerning the construction of a new nuclear power plant is available for review. The issues involving ITAAC maintenance are fundamental to the process for the Commission's finding under 10 CFR 52.103(g). I believe it is equally important to ensure that the Commission and the public have sufficient information of new information developed or identified after the ITAAC closure notification to complete all of the activities necessary for the Commission to make a finding on ITAAC, and to ensure that interested persons have access to information on ITAAC at a level of detail sufficient to address the Atomic Energy Act threshold for requesting a hearing.

  
\_\_\_\_\_  
Gregory B. Jaczko

6/27/10  
\_\_\_\_\_  
Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER SVINICKI  
SUBJECT: SECY-10-0117 – PROPOSED RULE: REQUIREMENTS FOR MAINTENANCE OF INSPECTIONS, TESTS, ANALYSES, AND ACCEPTANCE CRITERIA (RIN 3150-AI77)

Approved XX In Part Disapproved XX In Part Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_ Attached XX None \_\_\_

  
\_\_\_\_\_  
SIGNATURE

12/13 /10  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No \_\_\_\_\_

**Commissioner Svinicki's Comments on SECY-10-0117**  
**Proposed Rule: Requirements for Maintenance of Inspections, Tests, Analyses, and**  
**Acceptance Criteria (RIN 3150-AI77)**

I approve in part and disapprove in part the staff's recommendation to publish in the *Federal Register* the notice of proposed rulemaking (Enclosure 1 to SECY-10-0117) to amend requirements related to inspections, tests, analyses, and acceptance criteria (ITAAC) under a combined license. I support the staff's proposed revisions to 10 CFR Part 2, but would revise the proposed amendments to 10 CFR Part 52, as explained below and reflected in the attached, proposed rule text. Therefore, I approve the *Federal Register* Notice, subject to the attached revisions and conforming changes, which would need to be made to the Statements of Consideration and Congressional notification letters.

The issue central to this SECY paper is that of ensuring that the Commission has complete and accurate information at the time it is determining whether the acceptance criteria in a combined license are met. As the staff acknowledges, however, "neither the NRC nor the nuclear power industry have any experience with making these determinations." Consequently, in my review of the proposed rule, I am concerned that the staff has drafted too much detailed procedure into the proposed rule text itself and that a number of the elements laid out in detail here could actually be encompassed under one, more broadly written requirement (in the rule itself), leaving much of the mechanics now contained in the proposed rule to be more appropriately addressed in guidance documents. This would also allow NRC staff the flexibility in the future, as NRC gets closer to executing these ITAAC processes, to modify the procedural aspects in guidance -- a process much more expedient than amending a rule.

I believe the current proposal for new sections 52.99(c)(3)(i) and (ii) should be combined into one, revised alternative provision, as follows:

*"ITAAC post-closure notifications.* During the period between the licensee's ITAAC closure notifications under paragraph (c)(1) of the section and the section 52.103(g) finding, the licensee shall notify the NRC of new information that materially alters the bases for determining that inspections, tests, or analyses were performed as required, or that acceptance criteria are met. The notification must contain sufficient information to demonstrate that, notwithstanding the new information, the prescribed inspections, test, or analyses have been performed as required, and the prescribed acceptance criteria are met."

In addition, I believe that existing quality assurance requirements already require the documentation and record retention requirements proposed to be added, rendering their inclusion here unnecessary and the accompanying details, once again, best left to guidance. Regarding the proposed requirement for an ITAAC "All Complete" letter in new section 52.99(f), the rule language should be included as a new paragraph [moved to follow immediately after 52.99(c)(1), with the remaining paragraphs renumbered accordingly], to state simply: "(2) The licensee shall notify the NRC that all ITAAC are complete."

Given the amount of complex detail to be managed in the ITAAC process, I believe the NRC will be best served by addressing strictly the regulatory requirements (the what) in the rule itself, and leaving the detailed, procedural mechanics (the how) to guidance documents.



Kristine L. Svinicki

12/13/10

fuel, the licensee shall submit updates to the ITAAC schedule every 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 preoperational activities, even though the NRC may not have found that any one of the prescribed acceptance criteria are 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) *The licensee shall notify the NRC that all ITAAC are complete.* X

(3) ~~(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 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. X

~~(3) ITAAC post-closure notifications. The requirements in this paragraph apply, with~~

insert (4) [KLS revised paragraph]



~~respect to each ITAAC, after the licensee makes an ITAAC closure notification under paragraph (c)(1) of this section~~

~~(i) *New information on ITAAC closure.* The licensee shall notify the NRC of new information materially altering the basis for determining that a prescribed inspection, test, or analysis was performed as required or finding that a prescribed acceptance criterion is met. The notification shall be by e-mail to [hee-hee@nrc.gov](mailto:hee-hee@nrc.gov), which is the preferred method of notification, by facsimile to the NRC Operations Center at (301) 816-5151, or by telephone at (301) 816-5100 within 7 days following licensee determination that the new information materially alters the basis for determining that a prescribed inspection, test, or analysis was performed as required or finding that a prescribed acceptance criterion is met. Verification that the e-mail or facsimile has been received should be made by calling the NRC Operations Center.~~

~~(ii) *Supplemental ITAAC closure notification.* 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, or 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.~~

~~(4) *ITAAC closure documentation.* The licensee shall maintain records of the bases for determining whether a notification under paragraph (c)(3)(i) of this section is required and the bases for all notifications made under paragraph (c) of this section. The licensee shall retain these records for 5 years after the date the Commission makes the finding under 10 CFR~~

~~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 10 CFR 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 10 CFR 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 10 CFR 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 10 CFR 52.103(a), publish notices in the Federal Register of the licensee's submission of a notification under paragraph (c)(3)(i) of this section 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 (4)~~ <sup>(1)</sup> of this section. The NRC shall make publicly available the licensee notifications under paragraphs (c)(1), (c)(2), ~~and (c)(3)~~ <sup>and (c)(4)</sup> of this section no later than the date of publication of the notice of intended operation required by 10 CFR 52.103(a).

✓  
X  
X

~~(f) All ITAAC Complete notification.~~

~~(1) The licensee shall notify the NRC that all ITAAC are complete.~~ [This item moved to new (c)(2).]

~~(2) If, after making the notification required under paragraph (f)(1) of this section, the licensee identifies new information material to the basis for determining that a prescribed inspection, test, or analysis was performed as required or finding that a prescribed acceptance criterion is met, the licensee shall determine whether notification is required under paragraph (e)(3)(i) of this section and make the necessary notification within 24 hours of identification of the new information. The notification shall be to the NRC Operations Center in the same manner as notifications made under paragraph (c)(3)(i) of this section. The licensee must submit any notifications required under paragraph (e)(3)(ii) of this section and resubmit the notification required by paragraph (f)(1) of this section.~~

Dated at Rockville, Maryland, this      day of      2010.

For the Nuclear Regulatory Commission

Annette L. Vietti-Cook,  
Secretary of the Commission.

**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary  
**FROM:** Commissioner Apostolakis  
**SUBJECT:** SECY-10-0117 – PROPOSED RULE: REQUIREMENTS FOR MAINTENANCE OF INSPECTIONS, TESTS, ANALYSES, AND ACCEPTANCE CRITERIA (RIN 3150-AI77)

Approved XX Disapproved XX Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below XX Attached \_\_\_ None \_\_\_

I approve in part and disapprove in part the staff's recommendation to publish in the *Federal Register* the notice of proposed rulemaking (Enclosure 1 to SECY-10-0117) to amend requirements related to inspections, tests, analyses, and acceptance criteria (ITAAC) under a combined license. I support the staff's proposed revisions to 10 CFR Part 2. I endorse Commissioner Svinicki's proposal, as edited by Commissioner Ostendorff, to combine and revise sections 52.99(c)(3)(i) and (ii). In addition, I agree with Commissioners Ostendorff and Magwood that the staff should release Regulatory Guide 1.215, Revision 1 (proposed) at the same time or before the proposed rule is published in the *Federal Register*.



\_\_\_\_\_  
SIGNATURE

1/21/11

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DATE

Entered on "STARS" Yes X No \_\_\_

**NOTATION VOTE**


**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary  
**FROM:** COMMISSIONER MAGWOOD  
**SUBJECT:** SECY-10-0117 – PROPOSED RULE: REQUIREMENTS FOR MAINTENANCE OF INSPECTIONS, TESTS, ANALYSES, AND ACCEPTANCE CRITERIA (RIN 3150-AI77)

Approved  Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached  None \_\_\_\_\_

  
\_\_\_\_\_  
SIGNATURE

19 January 2011  
\_\_\_\_\_  
DATE

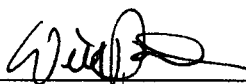
Entered on "STARS" Yes  No \_\_\_\_\_

**Commissioner Magwood's Comments on SECY-10-117**  
**Proposed Rule: "Requirements for Maintenance of**  
**Inspections, Tests, Analyses, and Acceptance Criteria"**

I commend the staff for its diligence in continuing to refine and enhance the ITAAC closure process. Of all the elements of the as-yet untested 10 CFR 52 licensing process, ITAAC closure has consistently appeared as an area to which greater certainty should be applied. The staff's proposal is designed to assure that the Commission and the public have access to complete and accurate information when considering whether the acceptance criteria required for a finding under 10 CFR 52.103(g) have been met. I approve publication of the proposed rule subject to the modifications discussed below.

- *Notification of New Information of ITAAC Closure and Supplemental ITAAC Closure Notification*—SECY-10-0117 provides a solid rationale regarding the need for additional notifications regarding new information, but there appears to be no compelling reason for applicants to provide this information to the NRC in two separate steps. Therefore, I concur with Commissioner Svinicki's proposal to supplant the staff proposed language with the alternative she has provided entitled "*ITAAC post-closure notifications*."
- *ITAAC Closure Documentation*—As pointed out in SECY-10-0117, the current rule was modified in 2007 "to ensure that combined license applicants and holders were aware that it was the licensee's burden to demonstrate compliance with the ITAAC and the NRC expected the notification of ITAAC completion to contain more information than just a simple statement that the licensee believe the ITAAC had been completed and the acceptance criteria met." Rather than implementing a regime of additional reporting, I think it more appropriate to maintain this burden on the applicants as anticipated by the current rule and other applicable requirements. Under the current rule, the agency would have full access to all ITAAC-related information—which will support the licensing basis for a plant subsequent to the 10 CFR 52.103(g) finding. We assure that applicants understand that it is they—and not the NRC—that have the responsibility to assure the full and accurate documentation of all ITAAC information as well as the maintenance of that information. Thus far—based on the continued refinement of industry guidelines for the ITAAC closure process—it appears that industry understands that it owns this burden. I therefore approve the proposed rule contingent on the omission of this provision.
- *All ITAAC Complete Notification*—While I expect the agency will have sufficient and contemporaneous information to know when all ITAAC work has been completed, I believe this notification is appropriate in order to assure that the public is aware of the completion of this important milestone. I therefore approve the publication of new section 10 CFR 52.99(f)(1). However, this approval is contingent on the omission of 10 CFR 52.99(f)(2), which neither provides the agency with information beyond that it should have without the new notification nor does it enhance the public record.

Additionally, I note that staff's current draft revision to Regulatory Guide 1.215 presumes that the proposed rule will be issued as drafted. As some changes appear likely, I recommend that the staff coordinate the issuance of RG 1.215 to assure its consistency with the final version of the proposed rule and that it be released concurrent with or before the proposed rule in order to inform stakeholder comments. Finally, I recommend that subsequent to the closure of the ITAAC processes for the first two applications, staff prepare a report and voting paper to the Commission that documents lessons learned from these initial experiences and presents options to further enhance the process.

  
\_\_\_\_\_  
William D. Magwood, IV      1/19/11  
Date

**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary  
**FROM:** Commissioner Ostendorff  
**SUBJECT:** SECY-10-0117 – PROPOSED RULE: REQUIREMENTS FOR MAINTENANCE OF INSPECTIONS, TESTS, ANALYSES, AND ACCEPTANCE CRITERIA (RIN 3150-AI77)

Approved  X in part  Disapproved  X in part  Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_ Attached  X  None \_\_\_

  
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1/13/11   
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  X  No \_\_\_

## Commissioner Ostendorff's Comments on SECY 10-0117

### "Proposed Rule: Requirements for Maintenance of Inspections, Test, Analyses, and Acceptance Criteria (RIN 3150-A177)"

I approve in part and disapprove in part the staff's proposed rulemaking for publication in the *Federal Register*. I commend the staff for thinking ahead and addressing potential ITAAC issues that may impact a Commission §52.103(g) finding. I believe this contingency planning is appropriate for regulatory guidance. I support the concept that licensees shall maintain the ITAAC between the time of a completion notification and the Commission's §52.103(g) finding. I also believe a licensee should notify the Commission, in a timely manner, when new information substantively alters the basis for a previously reported inspection, test, or analysis that was performed as required or when prescribed acceptance criterion had been met. I approve of the administrative and editorial changes to 10 CFR Parts 2 and 52. However, I disapprove of having a prescriptive notification rule at this time.

In my view, it is premature to have a prescriptive ITAAC notification rule without sufficient regulatory experience with the ITAAC closure process. In reviewing the transcript from the September 2009 Commission meeting on progress in resolving ITAAC, I note that the staff advocated a more performance-based rule at that time. I believe that is an appropriate vision for such a rule given the current level of ITAAC experience. In lieu of a prescriptive notification rule that the staff now has proposed in SECY 10-0117, I join Commissioner Svinicki in her proposal to have a simple, performance based rule and remand the details to interpretive NRC regulatory guidance. I believe she has captured the major themes of such a rule in her proposed language and restructuring of the proposed rule. The details of timing, context, and examples would be captured in NRC guidance as proposed by the staff. Because the contents of a notification report may be germane to the Commission's §52.103(g) finding, I believe a reporting rule, at a minimum, should specifically require that notification to the NRC must be done in a timely manner. I propose supplementing Commissioner Svinicki's proposed rule language highlighted as follows:

*"ITAAC post-closure notifications.* During the period between the licensee's ITAAC closure notifications under paragraph (c)(1) of the section and the section 52.103(g) finding, the licensee shall notify, in a timely manner, the NRC of new information....."

Regarding the matter of having specific notification time(s) incorporated in the final rule, I reserve final



judgment pending stakeholder feedback on the proposed rule and related NRC regulatory guidance. A nominal time of 30 days would not be unreasonable for most circumstances. I also support the staff's proposal to solicit public comments on specific reporting times for certain situations as noted in Section VI, *Specific Request for Comments*.

The staff should make appropriate conforming changes to the Statements of Consideration (SOC) and explain the basis for a performance based rule augmented by guidance. The SOC should also acknowledge that the Commission would not be solely relying on the existence of this proposed rulemaking, if approved as a final rule, as a primary basis for §52.103(g) finding. Rather, the Commission would use a holistic review using results from the NRC's construction inspection program and ITAAC closure review process as primary factors supporting a conclusion that the acceptance criteria in the combined license are met. Given the above, the staff should provide the Commission with a revised proposed rule for information 30 days before it is delivered to the *Federal Register* for publication. Finally, to enhance stakeholder comments on the proposed rule, the staff should publically release Regulatory Guide 1.215, *Guidance for Closure Under 10 CFR Part 52, Revision 1* (proposed) at the same time or before the proposed rule is published in the *Federal Register*.