



SECRETARY

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

May 11, 2012

COMMISSION VOTING RECORD

DECISION ITEM: SECY-12-0030

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

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of May 11, 2012.

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 "Annette Vietti-Cook", written over a horizontal line.

Annette L. Vietti-Cook
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-12-0030

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACZKO	X				X	4/25/12
COMR. SVINICKI	X				X	4/30/12
COMR. APOSTOLAKIS	X				X	4/19/12
COMR. MAGWOOD	X				X	4/10/12
COMR. OSTENDORFF	X				X	4/12/12

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Chairman Gregory B. Jaczko
SUBJECT: SECY-12-0030 – FINAL RULE: REQUIREMENTS FOR
MAINTENANCE OF INSPECTIONS, TESTS,
ANALYSES, AND ACCEPTANCE CRITERIA
(RIN 3150-A177)

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached X None ___



SIGNATURE

4/25/12

DATE

Entered on "STARS" Yes X No ___

**Chairman Jaczko's Comments on SECY-12-0030,
"Final Rule: Requirements for Maintenance of Inspections, Tests, Analyses, and
Acceptance Criteria (RIN 3150-A177)"**

Inspections, Tests, Analyses, and Acceptance Criteria, known as ITAAC, play a critical role in the new one-step process of 10 CFR Part 52. Verification of hundreds of ITAAC for each plant gives the NRC and the public confidence that the as-built plant meets all relevant expectations determined at the time of issuance of the combined license. This process is what ultimately ensures the as-built plant will be safe to operate. Over the coming years of construction, plant structures, systems, and components and their accompanying ITAAC will be completed. It's vital to ensure that once those ITAAC are completed, that the acceptance criteria are maintained throughout the remainder of the construction period.

Therefore, I approve the staff's proposed final rule for publication in the *Federal Register*. Beginning in 2008, significant effort has led to the completion of this ITAAC maintenance rulemaking, and the staff is to be commended for its work to identify implementation issues with an, as yet, untested process, involve stakeholders early and throughout the process, and ultimately present a well-reasoned final rulemaking. This final rule helps to ensure the Commission is provided sufficient information to make its 10 CFR 52.103(g) finding which ultimately allows the plant to operate, and ensures the public is provided access to necessary information to request a hearing, if desired.

It's important to note that recently issued COLs will be the first applications of the ITAAC process and there will undoubtedly be challenges that the staff and the industry did not foresee during the creation of the program. It's conceivable that emerging issues involving ITAAC, including clarity of ITAAC, will put schedule and resource pressure on both the NRC and licensees. Throughout the process, we must remain focused on ensuring safe and compliant construction, since the time to get things right is before operation.

With the recent issuance of both the Vogtle and Summer combined licenses, safety-related construction and inspection activities have begun in earnest. This places ever greater emphasis to ensure ITAAC, once met, remain met through the time of the Commission's 103(g) finding. As full implementation of the ITAAC program and processes are carried out for the first time, the staff should continue to proactively identify issues and bring them to the attention of the Commission.



Gregory B. Jaczko 4/25/12
Date

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER SVINICKI
SUBJECT: SECY-12-0030 – FINAL RULE: REQUIREMENTS FOR MAINTENANCE OF INSPECTIONS, TESTS, ANALYSES, AND ACCEPTANCE CRITERIA (RIN 3150-A177)

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below XX Attached XX None _____

I approve for publication in the *Federal Register* the notice of final rulemaking (Enclosure 1 to SECY-12-0030), subject to the attached edits. I certify that this rule, if promulgated, will not have significant impact on a substantial number of small entities. I commend the staff for its thorough consideration of the issues and its disciplined development of this final rule. I agree with Commissioner Magwood that the staff has accomplished much in advancing the ITAAC program to this point and that continued work on refining and implementing this and related processes and programs, including those related to the Commission's finding under 10 CFR 52.103(g), should now be the agency's focus.



SIGNATURE

04/20/12

DATE

Entered on "STARS" Yes No _____

notification of ITAAC completion currently required by 10 CFR 52.99(c)(1). The NRC refers to the time after this ITAAC closure notification, but before the date the Commission makes the finding under 10 CFR 52.103(g), as the ITAAC maintenance period. Most recently, the NRC held two public meetings in March 2010 to discuss draft proposed rule text that it made available to the public in February 2010. The NRC considered feedback given from external stakeholders during those meetings in its development of this final rule. Finally, in March 2010, the NRC issued Inspection Procedure 40600, "Licensee Program for ITAAC Management," which provides guidance to verify ^{that} licensees have implemented ITAAC maintenance programs to ensure that structures, systems, and components continue to meet the ITAAC acceptance criteria until the Commission makes the finding under 10 CFR 52.103(g) allowing operation. X

II. Comments on the Proposed Rule and Regulatory Guide

A. Overview of Public Comments

The NRC published a proposed rule on the Requirements for Maintenance of Inspections, Tests, Analyses and Acceptance Criteria in the *Federal Register* on May 13, 2011 (76 FR 27925). The period for submitting comments on the proposed ITAAC Maintenance rule closed on July 27, 2011. The associated draft regulatory guide for the proposed rule, Regulatory Guide (RG) 1.215 "Guidance for ITAAC Closure under 10 CFR part 52" (DG-1250) was also published in the *Federal Register* on May 13, 2011 (76 FR 27924). The period for submitting comments on the draft guidance closed on July 25, 2011.

Types of Comments

The NRC received 1 public comment submission on the proposed rule containing 11 comments from 1 industry organization, the Nuclear Energy Institute (NEI) (ADAMS Accession No. ML11208C708). The NRC received one public comment submission, from NEI, containing twenty-two comments on the regulatory guide (ADAMS Accession No. ML11209C487). Comments on the proposed rule are discussed separately from the comments on the draft

their comment submission on the 2006 proposed part 52 rule (ML011100405). In the 2007 rulemaking revising Part 52, the NRC declined to make the NEI-proposed change. See 72 FR 49352, 49385 (August 28, 2007). NEI does not present any new arguments that would cause the NRC to change its 2007 position rejecting the NEI proposal. No changes to the final rule language were made as a result of this comment.

Comment: The NRC should clarify in the final rule the relationship between paragraphs (c) and (g) of § 52.103, to account for the possibility of interim operation. (Comment 11, p.4)

NRC Response: The NRC disagrees with the comment because the relationship between § 52.103(c) and (g) is outside the scope of this rulemaking, and Section 189b(1)(B)(iii) of the AEA clearly provides the Commission with authority to allow interim operation during a pending hearing on acceptance criteria. The NRC may address the subject of interim operation at a later time. No change was made to the final rule language as a result of this comment.

2. Specific Comments Regarding the Proposed Rule Supplementary Information

The nine specific comments received on the proposed rule contained recommendations for changes to the supplementary information to correctly reflect common terminology between the rule supplementary information, the associated RG 1.215 and the industry guidance contained within Revision 4 of NEI 08-01 (ADAMS Accession No. ML102010051). These nine specific comments all addressed discussion in the statement^s of considerations (SOC) (the "Supplementary Information" section of the *Federal Register* notice of proposed rulemaking); therefore no changes to the final rule language were made as a result of these comments. The SOC for the final rule reflects the NRC consideration of these nine comments. X

Comment: The phrase "ITAAC closure package" should be replaced with the phrase "ITAAC completion package" in Section III. A, 3d bullet (76 FR 27927) so that the SOC uses terminology which is consistent with that in the associated draft regulatory guide and industry guidance. (Comment 2, p.2)

proposed no changes to Section IV, Subsection on § 52.99(d). (Comment 9, p.3)

NRC Response: The NRC does not agree with this comment. The first sentence of § 52.99(d)(1) contains the following change. "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 ~~has been~~ 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." In addition, 52.99(d)(2) was also changed as follows: "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 ~~has been~~ are met, the licensee may take corrective action to successfully complete that ITAAC or request a license amendment under 10 CFR 52.98(f)."

Comment: Delete the phrase "and detailed" when referring to licensee notifications required by § 52.99(c) for consistency with Section IV.B (Comment 10, p.4)

NRC Response: The NRC agrees with this comment. In the final rule SOC the phrase "and detailed" was deleted. The sentence now reads, "In general, the NRC expects to make the paragraph (c) notifications available shortly after the NRC has received the notifications and concluded that they are complete." The accompanying detail necessary for the ITAAC notifications under paragraph (c) is developed in regulatory guidance, RG 1.215. This change is consistent with the last paragraph in Section III.B of the supplementary information.

C. Comments on the Draft Regulatory Guide DG-1250/RG 1.215

The NRC published the draft regulatory guide for the proposed rule, Regulatory Guide (RG) 1.215 "Guidance for ITAAC Closure under 10 CFR part 52" (DG-1250) in the *Federal Register* on May 13, 2011 (76 FR 27924). The period for submitting comments on the draft guidance closed on July 25, 2011.

The NRC received 1 public comment submission on the regulatory guide containing 25 comments from 1 industry organization, NEI (ADAMS Accession No. ML11209C487). The NRC's responses to the public comments are contained in "Response to Public Comments on Draft Regulatory Guide DG-1250, proposed revision 1 of RG 1.215, Guidance for ITAAC Closure Under 10 CFR Part 52" (ADAMS Accession No. ML11284A006). X

III. Discussion

The NRC is requiring the following new notifications with respect to ITAAC closure:

- ITAAC post-closure notification, and
- All ITAAC complete notification.

In general, the reasons for these new notifications are analogous to the reasons presented in the 2007 rulemaking for the existing 10 CFR 52.99(c) notifications: 1) to ensure that the NRC has sufficient information, in light of new information developed or identified after the ITAAC closure notification under 10 CFR 52.99(c)(1), to complete all of the activities necessary for the NRC to make a determination on ITAAC; and 2) to ensure that interested persons have access to information on ITAAC at a level of detail sufficient to address the AEA Section 189a(1)(B) threshold for requesting a hearing. After evaluating the various means of ensuring that the Commission has sufficient information to make a determination on ITAAC, and that interested persons have access to sufficient ITAAC information, the NRC has provided a rule augmented by guidance. The details of timing and content of the new notifications are captured in guidance that was issued for public comment simultaneously with the proposed rule, as discussed in more detail in Section V, "Availability of Regulatory Guidance," of this document. The NRC believes that this approach allows more flexibility to adjust the guidance based on lessons learned during early implementation of the ITAAC process under the first combined licenses. Based upon the NRC's experience with the overall NRC oversight and verification of ITAAC, the notification provisions of the rule, the ITAAC hearing process, and the

process for making the 10 CFR 52.103(g) finding, the NRC may revise and supplement the final guidance on the timing and content of notifications. The NRC notes that it would not rely solely on the existence of this rulemaking as a primary basis for the 10 CFR 52.103(g) finding. Rather, the NRC 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.

Each of the notification requirements in this rulemaking and the basis^e for each of the requirements, are described in Section III.B, "Additional ITAAC Notifications," of this document. The NRC also included several editorial changes to 10 CFR 52.99 in paragraphs (b), (c)(1), final (c)(3) (former (c)(2)), and (d)(1). In all of these cases, the NRC is replacing the phrase "acceptance criteria have been met" with the phrase "acceptance criteria are met" for consistency with the wording of the requirement in 10 CFR 52.103(g) on the Commission's ITAAC finding, which is derived directly from wording in the AEA. In addition, the NRC changed 10 CFR 52.99(d)(2) to replace the phrase "ITAAC has been met" with the phrase "prescribed acceptance criteria are met" for consistency with the wording in 10 CFR 52.99(d)(1). X

A. Licensee Programs That Maintain ITAAC Conclusions

One essential element in ensuring the maintenance of successfully completed ITAAC involves the use of established licensee programs such as the Quality Assurance Program, Problem Identification and Resolution Program, Maintenance/Construction Program, and Design and Configuration Management Program. Each program credited with supporting the maintenance of completed ITAAC should contain attributes that maintain the validity of the ITAAC determination basis. These program attributes include the following:

- Licensee screening of activities and events for impact on ITAAC,
- Licensee determination of whether supplemental ITAAC notification is required, and

- Licensee supplementation of the ITAAC completion package, as appropriate, to demonstrate that the acceptance criteria continue to be met. X

The NRC expects these programs to be fully implemented and effective before the licensee takes credit for them as an appropriate means of supporting ITAAC maintenance. These programs will be subject to NRC inspection.

B. Additional ITAAC Notifications

ITAAC Post-Closure Notification

The first new notification is contained in 10 CFR 52.99(c)(2), "ITAAC post-closure notifications," and would be required following the licensee's ITAAC closure notifications under 10 CFR 52.99(c)(1) until the Commission makes the finding under 10 CFR 52.103(g). This provision in 10 CFR 52.99(c)(2) would require the licensee to provide the NRC with timely notification of new information materially altering the basis for determining that either inspections, tests, or analyses were performed as required, or that acceptance criteria are met (referred to as the *ITAAC determination basis*).

The licensee is responsible for maintaining the validity of the ITAAC conclusions after completion of the ITAAC. If the ITAAC determination basis is materially altered, the licensee is expected to notify the NRC. Through public workshops and stakeholder interaction, the NRC developed thresholds to identify when activities would materially alter the basis for determining that a prescribed inspection, test, or analysis was performed as required, or finding that a prescribed acceptance criterion is met. One obvious case is that a notification under paragraph (c)(2) is required to correct a material error or omission in the original ITAAC closure notification. The materially altered determination is further developed in RG 1.215 and ⁱⁿ the industry guidance X
NEI 08-01 Revision 4.

Section 52.6, "Completeness and accuracy of information," paragraph (a), requires that information provided to the Commission by a licensee be complete and accurate in all material

circumstances in which reporting under this provision would be required (i.e., reporting thresholds). These reporting thresholds are described in more detail in Section IV, "Section-by-Section Analysis," of this document.

When making the 10 CFR 52.103(g) finding, the NRC must have sufficient information to determine that the relevant acceptance criteria are met despite the new information prompting the notification under paragraph (c)(2). Apart from the NRC's use of the information, the NRC also believes that public availability of such information is necessary to ensure that interested persons will have sufficient information to review when preparing a request for a hearing under 10 CFR 52.103, comparable to the information provided under paragraph (c)(1), as described in the Statement of Consideration for the 2007 part 52 rulemaking. See August 28, 2007; 72 FR 49352, at 49384 (second and third columns). Accordingly, the NRC requires that after a licensee identifies new information materially altering the ITAAC determination basis, the licensee must then submit what is essentially a "resolution" notification to the NRC in the form of an ITAAC post-closure notification. The ITAAC post-closure notification, described in paragraph (c)(2), requires the licensee to submit a written notification of the resolution of the circumstances surrounding the identification of new information materially altering the ITAAC determination basis. The ITAAC post-closure notification must contain sufficient information demonstrating that, notwithstanding the information that prompted notification, the prescribed inspections, tests, and analyses have been performed as required and the prescribed acceptance criteria are met. The ITAAC post-closure notifications should explain the need for the notification, outline the resolution of the issue, and confirm that the ITAAC acceptance criteria continue to be met. The ITAAC post-closure notifications must include a level of detail similar to the level of information required in initial ITAAC closure notifications under 10 CFR 52.99(c)(1).

Section 52.99(c)(2) states that licensees must make the notification "in a timely manner." Further discussion of what the NRC considers "timely" can be found in the NRC guidance being

for the purpose of making a future staff determination about whether the acceptance criteria for those ITAAC continue to be met.

All ITAAC Complete Notification

Another notification that the NRC is requiring is the "all ITAAC complete" notification under 10 CFR 52.99(c)(4). The purpose of this notification is to facilitate the required Commission finding under 10 CFR 52.103(g) that the acceptance criteria in the combined license are met. After or concurrent with the last ITAAC closure notification required by 10 CFR 52.99(c)(1), the licensee is required to notify the NRC that all ITAAC are complete. When the licensee submits the all ITAAC complete notification, the NRC would expect that all activities requiring ITAAC post-closure notifications have been completed and that the associated ITAAC determination bases have been updated. X

To support the Commission's finding under 10 CFR 52.103(g) that the acceptance criteria in the combined license are met, the NRC staff will, if and when appropriate, send a recommendation to the Commission to make a finding that all of the specified acceptance criteria are met. The staff will consider that all acceptance criteria "are met" if both of the following conditions hold:

- All ITAAC were verified to be met at one time, and
- The licensee provides confidence, in part through the notifications in 10 CFR 52.99(c), that the ITAAC determination bases^{ey} have been maintained and the ITAAC acceptance criteria continue to be met; and the NRC has no reasonable information to the contrary. X

This approach will allow licensees to have ITAAC-related structures, systems, or components, or security or emergency preparedness related hardware, undergoing maintenance or certain other activities at the time of the 10 CFR 52.103(g) finding, if the programs credited with maintaining the validity of completed ITAAC guide those activities and

acceptance criteria are met (under 10 CFR 52.103(a)), the NRC will make available the licensee notifications under paragraphs (c)(1), (c)(2), and (c)(3) that it has received to date.

C. Conforming Changes to Title 10 of the *Code of Federal Regulations* (10 CFR) 2.340

The 2007 10 CFR part 52 rulemaking amended 10 CFR 2.340, "Initial decision in certain contested proceedings; immediate effectiveness of initial decisions; issuance of authorizations, permits, and licenses," to clarify, among other things, the scope of the presiding officer's decision in various kinds of NRC proceedings, and remove the requirement for direct Commission involvement in all production and utilization facility licensing proceedings.

Section 2.340(j) was intended to address these matters in connection with the Commission finding on acceptance criteria and any associated hearing under 10 CFR 52.103. In the course of developing this final rule, the NRC determined that 10 CFR 2.340(j) contains several inconsistencies with the statutory language in Section 185b of the AEA, and could more clearly describe possible ways in which a presiding officer decision may lead to a Commission decision on acceptance criteria. The changes, together with the ^ebasis for the changes, are X described in the following paragraphs.

Section 2.340(j) currently states that the Commission makes a finding under 10 CFR 52.103(g) that acceptance criteria "have been or will be met." This is incorrect; the Commission's finding under 10 CFR 52.103(g) is that the acceptance criteria "are met," which is the statutory requirement under Section 185b of the AEA. To correct this error, the NRC has amended the introductory language of 10 CFR 2.340(j) to use the correct phrase, "acceptance criteria ... are met"

In addition, 10 CFR 2.340(j), as currently written, does not distinguish among the various circumstances in a contested proceeding where a presiding officer's decision (that acceptance criteria have been met, or will be met) is followed by the overall finding under 10 CFR 52.103(g) that acceptance criteria *are* met (as required by Section 185.(b) of the AEA). It is not clear from

acceptance criteria in a combined license are met, under certain circumstances that are delineated in greater detail in paragraphs (j)(1) through (4). This compares with the current rule, which contains only two paragraphs (j)(1) and (2). The matters covered by paragraph (j)(1) of the current rule are described with greater clarity in paragraphs (j)(1) through (3). X

Paragraph (j)(1) clarifies that the Commission may not make the overall 10 CFR 52.103(g) finding unless it is otherwise able to find that all uncontested acceptance criteria (i.e., "acceptance criteria not within the scope of the initial decision of the presiding officer") are met. The phrase "otherwise able to make" conveys the NRC's determination that the Commission's process for supporting a Commission finding on uncontested acceptance criteria is unrelated to and unaffected by the timing of the presiding officer's initial decision on contested acceptance criteria.

Paragraph (j)(2) clarifies that a presiding officer's initial decision, which finds that acceptance criteria have been met, is a necessary, but not sufficient prerequisite for the Commission to make a finding that the contested acceptance criteria (i.e., the criteria ^{that} which are the subject of the presiding officer's initial decision) are met. The Commission must thereafter— even if the presiding officer's initial decision finds that the contested acceptance criteria have been met— be able to make a finding that the contested criteria are met after considering: 1) Information submitted in the licensee notifications pursuant to 10 CFR 52.99, and 2) the NRC staff's findings with respect to these notifications, to issue the overall 10 CFR 52.103 finding. By using the word "thereafter," the NRC intends to emphasize that the Commission would not make a finding that contested acceptance criteria are met in advance of the presiding officer's initial decision on those acceptance criteria. A

Paragraph (j)(3) expresses the same concept as paragraph (j)(2), but as applied to findings that acceptance criteria will be met. Thus, even if a presiding officer's initial decision finds that the contested acceptance criteria will be met, the Commission must thereafter be able

performing the inspections, tests, and analyses and determining that the acceptance criteria are met.

The NRC notes that, even though it did not include a provision requiring the completion of all ITAAC by a certain time prior to the licensee's scheduled fuel load date, the NRC staff will require some period of time to perform its review of the last ITAAC once the licensee submits its notification that the ITAAC has been successfully completed and the acceptance criteria met. In addition, the Commission itself will require some period of time to perform its review of the staff's conclusions regarding all of the ITAAC and the staff's recommendations regarding the Commission finding under 10 CFR 52.103(g).

Section 52.99(c)(2) ITAAC post-closure notifications.

The NRC has added a new paragraph (c)(2) that would require the licensee to notify the NRC, in a timely manner, of new information that materially alters the basis for determining that either 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, tests, or analyses have been performed as required, and the prescribed acceptance criteria are met. Fundamentally, those circumstances requiring notification under proposed paragraph (c)(2) fall into the following two categories:

- The information presented or referenced in the original 10 CFR 52.99(c)(1) notification is insufficient, either because it omits material information, or because the information is materially erroneous or incorrect, and the licensee discovers or determines there is a material omission or error after filing the original 10 CFR 52.99(c)(1) notification.
- The information presented or referenced in the original 10 CFR 52.99(c)(1) notification was complete (i.e., not omitting material information) and accurate (i.e., not materially erroneous), but there is new material information with respect to the subject of the original 10 CFR 52.99(c)(1) notification.

The term "materially altering" refers to situations in which there is information not contained in the 10 CFR 52.99(c)(1) notification that "has a natural tendency or capability to influence an agency decision maker" in either determining whether the prescribed inspection, test, or analysis was performed as required, or finding that the prescribed acceptance criterion is met. See Final Rule; Completeness and Accuracy of Information, December 31, 1987; 52 FR 49362, at 49363. Applying this concept in the context of 10 CFR 52.99(c), information for which notification would be required under paragraph (c)(2) is that information which, considered by itself or when considered in connection with information previously submitted or referenced by the licensee in a paragraph (c)(1) notification, relates to information which is necessary for any of the following:

- The licensee to assert that the prescribed inspections, tests, and analyses have been performed and the acceptance criteria are met;
- The NRC staff to determine if (and provide a recommendation to the Commission as to whether) the prescribed inspections, tests, and analyses were performed and the acceptance criteria are met; or
- The Commission to find that the acceptance criteria are met, as required by Section 185b of the AEA and 10 CFR 52.103(g).

The term "new" information falls into three categories:

- New information (i.e., a "discovery" or new determination identified after the 10 CFR 52.99(c)(1) notification) about the accuracy of material information provided in, referenced by, or necessary to support representations made in that notification.
- New information (i.e., a "discovery" or new determination identified after the 10 CFR 52.99(c)(1) notification) that previously existing information should have been, but was not provided in the notification or referenced in the supporting documentation (i.e., an omission of material information).

supplemental actions; 3) licensee documentation of the issue and any necessary corrective or supplemental actions in order to bring the ITAAC determination basis up to date; and 4) ultimate licensee determination about whether the affected acceptance criteria continue to be met.

The information provided in the notification should be at a level of detail comparable to the ITAAC closure notification under paragraph (c)(1). The dual purposes of the proposed paragraph (c)(2) notification, as described in Section III.B, "Additional ITAAC Notifications," of this document, are comparable to the purposes of the ITAAC closure notification in paragraph (c)(1). Thus, the NRC believes that the considerations for the content of the ITAAC closure notification, as discussed in the final 2007 10 CFR part 52 rule, apply to the paragraph (c)(2) notifications. See 72 FR 49450; August 28, 2007 (second column). Thus, ^{of} it is the licensee's X burden to demonstrate compliance with the ITAAC, taking into account any new information that materially alters the determination that a prescribed inspection, test, or analysis was performed as required or that a prescribed acceptance criterion is met. The NRC expects the paragraph (c)(2) notification to contain more than just a simple statement that the licensee has concluded, despite the material new information, that the prescribed inspection, test, or analysis was performed as required and that a prescribed acceptance criterion is met. The NRC expects the notification to be sufficiently complete and detailed such that a reasonable person could understand the basis for the licensee's determination in the paragraph (c)(2) notification. The term "sufficient information" is comparable to the meaning given to that term in paragraph (c)(1), and requires, at a minimum, a summary description of the basis for the licensee's determination. In addition, "sufficient information" includes, but is not limited to, a description of the specific procedures and analytical methods used or relied upon to develop or support the licensee's determination. The paragraph (c)(2) notification must be in writing, and the records on which it is based should be retained by the licensee to support possible NRC inspection. Licensees should use the same process for submitting ITAAC post-closure notifications as would be used to

submit initial ITAAC closure notifications. The NRC is issuing guidance on implementation of the requirements in proposed paragraph (c)(2), including the level of detail necessary to comply with the requirements of paragraph (c)(2), as discussed in Section V, "Availability of Regulatory Guidance," of this document.

Section 52.99(c)(4) All ITAAC Complete Notification.

The NRC has added a new paragraph (c)(4) which requires the licensee to notify the NRC that all ITAAC are complete (All ITAAC Complete Notification). When the licensee submits the all ITAAC complete notification, the NRC expects that all activities requiring ITAAC post-closure letters have been completed, that the associated ITAAC determination basis^{es} have been updated, and that all required notifications under paragraph (c)(2) have been made. X

Section 52.99(d) Licensee determination of non-compliance with ITAAC.

The NRC has made editorial changes in § 52.99(d)(1) to replace the words "have been met" with, "are met" and in § 52.99(d)(2) to replace the phrase "ITAAC has been met" with the phrase "prescribed acceptance criteria are met." Paragraph (d) states the options that a licensee will have in the event that it is determined that any of the acceptance criteria in the ITAAC are not met. If an activity is subject to an ITAAC derived from a referenced standard design certification and the licensee has not demonstrated that the ITAAC are met, then 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 an application for a license amendment under 10 CFR 52.98(f). The NRC will consider and take action on the request for exemption and the license amendment application together as an integrated NRC action.

Also, if an activity that 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).

Section 52.99(e) NRC inspection, publication of notices, and availability of licensee notifications.

The final rule is substantially the same as the proposed rule with one change to § 52.99(e)(2) to clarify NRC notices to the public. The one language change made to the section, "NRC inspection, publication of notices, and availability of licensee notifications," is to replace the language "The NRC shall make publicly available the licensee notifications under paragraphs (c)(1) through (4) of this section no later than the date of publication of the notice of intended operations required by 10 CFR 52.103(a)" with:

"The NRC shall, no later than the date of publication of the notice of intended operation required by 10 CFR 52.103(a), make publicly available those licensee notifications under paragraph (c) of this section that have been submitted to the NRC at least seven (7) days before that notice."

The NRC will make public all paragraph (c) ITAAC notifications that were submitted to the NRC at least seven days before the date of publication of the notice of intended operation required by 10 CFR 52.103(a) which is, at a minimum, 180 days before the date scheduled for initial loading of fuel. The NRC recognizes that the licensee could submit ITAAC notifications required by paragraph (c) later than the date of publication of the notice of intended operation required by 10 CFR 52.103(a).

V. Availability of Regulatory Guidance

Concurrent with this final rule, the NRC is issuing Revision 1 to RG 1.215 "Guidance for ITAAC Closure Under 10 CFR Part 52." Revision 1 of RG 1.215 was issued in draft form for public comment with a temporary identification as Draft Regulatory Guide, DG-1250 (76 FR 27924, May 13, 2011). This guidance series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing

specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

In Revision 1 of RG 1.215, the NRC is endorsing Revision 4 to the existing industry ITAAC closure guidance in NEI 08-01, submitted to the NRC for endorsement on July 16, 2010 (Package ADAMS Accession No. ML102010076). The revised guidance is intended to provide an acceptable method by which licensees can implement the new requirements in this final rulemaking.

The proposed final rule requirements for ITAAC maintenance and the draft RG 1.215 were presented to the Advisory Committee on Reactor Safeguards (ACRS) on December 01, 2011 (ADAMS Accession No. ML11342A075). The ACRS conclusion and recommendations were that: 1) The proposed ITAAC rule, "Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria," meets the goal of ensuring maintenance of ITAAC validity and should be approved. 2) The approach in RG 1.215, Revision 1, for closing and maintaining ITAAC should be revised to include an assessment that ensures a change does not introduce unintended consequences. The assessment should also include an evaluation that confirms the original inspections, tests, and analyses and their acceptance criteria are still valid and assures the functionality originally intended. 3) After revision, RG 1.215, Revision 1, should be issued.

indent first line → The NRC agrees to clarify RG 1.215 and the following *sentence* ~~paragraph~~ is included in Section B, where the requirements of NEI 08-01, section 8 are discussed. *!* "The design and configuration control program should include an assessment and evaluation that confirms that the ITAAC potentially affected by a proposed change are still valid and assures the functionality originally intended." *X*
X

VI. Availability of Documents

The NRC is making the documents identified below available to interested persons

through one or more of the following methods as indicated. To access documents related to this action, see the ADDRESSES section of this document.

12-0030 Document	PDR	Web	ADAMS
SECY- XX XXXX , Final Rule: Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria (RIN 3150-AI77)"	X	X	ML113390369
Regulatory Analysis for Final Rule - Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria, January 2012	X	X	ML120100062
Regulatory Analysis for Proposed Rule - Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria, February 2011	X	X	ML110040395
ACRS Letter, Proposed Requirements for ITAAC (Inspections, Tests, Analyses, and Acceptance Criteria) Maintenance and Draft Final Regulatory Guide 1.215, "Guidance for ITAAC Closure Under 10 CFR Part 52	X	X	ML11342A075
Staff Requirements Memorandum for SECY-10-0117, "Proposed Rule: Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria (RIN 3150-AI77)," February 4, 2011	X	X	ML110350185
SECY-10-0117, "Proposed Rule: Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria (RIN 3150-AI77)"	X	X	ML101440146
ITAAC Proposed Rule <i>Federal Register</i> Notice	X	X	ML101440177
Regulatory Analysis for Proposed Rule re ITAAC, May 2010			ML101440359
SECY-09-0119, "Staff Progress in Resolving Issues Associated with Inspections, Tests, Analyses and Acceptance Criteria," August 26, 2009	X	X	ML091980372 (Package)
SRM-M090922, "Staff Requirements - Periodic Briefing on New Reactor Issues - Progress in Resolving Issues Associated with Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC), 9:30 A.M., Tuesday, September 22, 2009, Commissioners' Conference Room, One White Flint North, Rockville, Maryland (Open To Public Attendance)," October 16, 2009	X	X	ML092890658
Inspection Procedure 40600, "Licensee Program for ITAAC Management"	X	X	ML072530607
Regulatory Guide 1.215, "Guidance for ITAAC Closure Under 10 CFR Part 52," Revision 1, January, 2012	X	X	ML112580018
Regulatory Guide 1.215, "Guidance for ITAAC Closure Under 10 CFR Part 52," Revision 0, October 31, 2009	X	X	ML091480076
NEI Comments on ITAAC Maintenance Proposed Rule	X	X	ML11208C708
NEI Comments on DG-1250 Guidance for ITAAC Closure	X	X	ML11209C487

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Apostolakis
SUBJECT: SECY-12-0030 – FINAL RULE: REQUIREMENTS FOR
MAINTENANCE OF INSPECTIONS, TESTS,
ANALYSES, AND ACCEPTANCE CRITERIA
(RIN 3150-A177)

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached X None ___



SIGNATURE

4/19/12

DATE

Entered on "STARS" Yes x No _____

Commissioner Apostolakis' Comments on SECY-12-0030
Final Rule: Requirements for Maintenance of Inspections, Tests, Analyses, and
Acceptance Criteria (RIN 3150-A177)

I approve publication in the *Federal Register* of the notice contained in Enclosure 1 to SECY-12-0030, subject to the attached edits. I commend the staff for its efforts to address the important issues associated with maintaining the validity of completed ITAAC and for working with stakeholders to develop acceptable guidance to implement these new Part 52 provisions.

I join Commissioner Ostendorff in looking forward to the staff's paper addressing issues associated with an interim operation finding during the pendency of ITAAC hearings. This is an area where careful forethought can help ensure predictability and efficiency during the transition between construction and operation.



George Apostolakis

4/19/2012

notification of ITAAC completion currently required by 10 CFR 52.99(c)(1). The NRC refers to the time after this ITAAC closure notification, but before the date the Commission makes the finding under 10 CFR 52.103(g), as the ITAAC maintenance period. Most recently, the NRC held two public meetings in March 2010 to discuss draft proposed rule text that it made available to the public in February 2010. The NRC considered feedback given from external stakeholders during those meetings in its development of this final rule. Finally, in March 2010, the NRC issued Inspection Procedure 40600, "Licensee Program for ITAAC Management," which provides guidance to verify licensees have implemented ITAAC maintenance programs to ensure that structures, systems, and components continue to meet the ITAAC acceptance criteria until the Commission makes the finding under 10 CFR 52.103(g) allowing operation.

II. Comments on the Proposed Rule and Regulatory Guide

A. Overview of Public Comments

The NRC published a proposed rule on the Requirements for Maintenance of Inspections, Tests, Analyses and Acceptance Criteria in the *Federal Register* on May 13, 2011 (76 FR 27925). The period for submitting comments on the proposed ITAAC Maintenance rule closed on July 27, 2011. The associated draft regulatory guide for the proposed rule, Regulatory Guide (RG) 1.215 "Guidance for ITAAC Closure under 10 CFR part 52" (DG-1250) was also published in the *Federal Register* on May 13, 2011 (76 FR 27924). The period for submitting comments on the draft guidance closed on July 25, 2011. [Address the inconsistent capitalization of the word "part" in the title of RG 1.215 in several places and in other text throughout the FRN.](#)

Types of Comments

The NRC received 1 public comment submission on the proposed rule containing 11 comments from 1 industry organization, the Nuclear Energy Institute (NEI) (ADAMS Accession No. ML11208C708). The NRC received one public comment submission, from NEI, containing

NRC Response: The NRC agrees with the comment. The SOC for the final rule uses the phrase, "ITAAC completion package."

Comment: Delete the second sentence in Section III.B paragraph beginning "When making..." to maintain a consistent description of the content of 52.99(c)(1) notifications in the associated draft regulatory guide and industry guidance. (Comment 3, p.2)

NRC Response: The NRC agrees with the comment. The SOC for the final rule deleted the sentence "The licensee's summary statement of the basis for resolving the issue which is the subject of the notification, a discussion of any action taken, and a list of the key licensee documents supporting the resolution and its implementation, would assist the NRC in making its independent evaluation of the issue" to agree with ~~the Regulatory Guide~~ [RG](#) 1.215 and the industry guidance contained within Revision 4 of NEI 08-01.

Comment: Add the term "maintenance" to the list of permissible activities that may be in progress at the time of the 10 CFR 52.103(g) finding. (Comment 4, p.2)

NRC Response: The NRC agrees with the comment because it reflects the intent of the rule and the guidance. The SOC for the final rule added the term "maintenance" to the activities that are allowable during the time of the Commission's 10 CFR 52.103(g) finding if the programs credited with maintaining the validity of completed ITAAC guide those activities and the activities are not so significant as to exceed a threshold for reporting.

Comment: Delete "The NRC understands that the nuclear power industry believes..." in Section III.B First paragraph under heading "ITAAC Closure Documentation" because the language is unnecessary. (Comment 5, p.2)

NRC Response: The NRC agrees with the comment because the language is unnecessary. The SOC for the final rule deleted the phrase "The NRC understands that the nuclear power industry believes..." from the sentence.

Comment: Revise Section III.C, as follows for clarity. "In both cases, if the presiding

officer's decision resolves the contention favorably finds that the contested acceptance criteria have been met, ... (Comment 6, p.3)

NRC Response: The NRC agrees that the sentence should be revised for clarity, but the SOC will use the phrase "have been or will be met" to reflect both types of possible presiding officer findings. The SOC for the final rule was changed to "In both cases, if the presiding officer finds that the contested acceptance criteria have been or will be met, this does not obviate the need for the Commission to make the required finding under Section 185b of the AEA and 10 CFR 52.103(g) that the acceptance criteria are met." This change is consistent with similar language in Section IV of the supplementary information section.

Comment: Add the phrase "... on contested acceptance criteria." to clarify what decision by the presiding officer the paragraph is referencing. (Comment 7, p.3)

NRC Response: The NRC agrees with the comment. The final rule SOC now reads as follows: "The phrase "otherwise able to make" conveys the NRC's determination that the Commission's process for supporting a Commission finding on uncontested acceptance criteria is unrelated to and unaffected by the timing of the presiding officer's initial decision on contested acceptance criteria."

Comment: Replace the term "must" with the term "should" to reflect that ITAAC Maintenance documentation and recordkeeping is an expectation and not a requirement.
(Comment 8, p.3)

NRC Response: The NRC agrees with the comment. The final rule SOC uses the term "should" to reflect expectations regarding documentation and recordkeeping in support of ITAAC post-closure notifications. However, as explained below, regulatory provisions such as [10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,"](#) ~~10 CFR Part 50~~ require the preparation and retention of records supporting the vast majority of ITAAC

proposed no changes to Section IV, Subsection on § 52.99(d). (Comment 9, p.3)

NRC Response: The NRC does not agree with this comment. The first sentence of § 52.99(d)(1) contains the following change. "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 ~~has been~~ 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." In addition, 52.99(d)(2) was also changed as follows: "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 ~~has been~~ are met, the licensee may take corrective **actions** to successfully complete that ITAAC or request a license amendment under 10 CFR 52.98(f)."

Comment: Delete the phrase "and detailed" when referring to licensee notifications required by § 52.99(c) for consistency with Section IV.B (Comment 10, p.4)

NRC Response: The NRC agrees with this comment. In the final rule SOC the phrase "and detailed" was deleted. The sentence now reads "In general, the NRC expects to make the paragraph (c) notifications available shortly after the NRC has received the notifications and concluded that they are complete." The accompanying detail necessary for the ITAAC notifications under paragraph (c) is developed in regulatory guidance, RG 1.215. This change is consistent with the last paragraph in Section III.B of the supplementary information.

C. Comments on the Draft Regulatory Guide DG-1250/RG 1.215

The NRC published the draft regulatory guide for the proposed rule, Regulatory Guide (RG) 1.215 "Guidance for ITAAC Closure under 10 CFR part 52" (DG-1250) in the *Federal Register* on May 13, 2011 (76 FR 27924). The period for submitting comments on the draft guidance closed on July 25, 2011.

The NRC received 1 public comment submission on the regulatory guide containing 25 comments from 1 industry organization, NEI (ADAMS Accession No. ML11209C487). The NRC's responses to the public comments are contained in "Response to Public Comments on Draft Regulatory Guide DG-1250, (proposed ~~revision~~ Revision 1 of RG 1.215) "Guidance for ITAAC Closure Under 10 CFR Part 52" (ADAMS Accession No. ML11284A006).

III. Discussion

The NRC is requiring the following new notifications with respect to ITAAC closure:

- ITAAC post-closure notification, and
- All ITAAC complete notification.

In general, the reasons for these new notifications are analogous to the reasons presented in the 2007 rulemaking for the existing 10 CFR 52.99(c) notifications: 1) to ensure that the NRC has sufficient information, in light of new information developed or identified after the ITAAC closure notification under 10 CFR 52.99(c)(1), to complete all of the activities necessary for the NRC to make a determination on ITAAC; and 2) to ensure that interested persons have access to information on ITAAC at a level of detail sufficient to address the AEA Section 189a(1)(B) threshold for requesting a hearing. After evaluating the various means of ensuring that the Commission has sufficient information to make a determination on ITAAC, and that interested persons have access to sufficient ITAAC information, the NRC has provided a rule augmented by guidance. The details of timing and content of the new notifications are captured in guidance that was issued for public comment simultaneously with the proposed rule, as discussed in more detail in Section V, "Availability of Regulatory Guidance," of this document. The NRC believes that this approach allows more flexibility to adjust the guidance based on lessons learned during early implementation of the ITAAC process under the first combined licenses. Based upon the NRC's experience with the overall NRC oversight and verification of ITAAC, the notification provisions of the rule, the ITAAC hearing process, and the

- Licensee supplementation of the ITAAC completion package as appropriate to demonstrate that the acceptance criteria continue to be met.

The NRC expects these programs to be fully implemented and effective before the licensee takes credit for them as an appropriate means of supporting ITAAC maintenance. These programs will be subject to NRC inspection.

B. Additional ITAAC Notifications

ITAAC Post-Closure Notification

The first new notification is contained in 10 CFR 52.99(c)(2), "ITAAC post-closure notifications," and would be required following the licensee's ITAAC closure notifications under 10 CFR 52.99(c)(1) until the Commission makes the finding under 10 CFR 52.103(g). This provision in 10 CFR 52.99(c)(2) would require the licensee to provide the NRC with timely notification of new information materially altering the basis for determining that either inspections, tests, or analyses were performed as required, or that acceptance criteria are met (referred to as the *ITAAC determination basis*).

The licensee is responsible for maintaining the validity of the ITAAC conclusions after completion of the ITAAC. If the ITAAC determination basis is materially altered, the licensee is expected to notify the NRC. Through public workshops and stakeholder interaction, the NRC developed thresholds to identify when activities would materially alter the basis for determining that a prescribed inspection, test, or analysis was performed as required, or finding that a prescribed acceptance criterion is met. One obvious case is that a notification under paragraph (c)(2) is required to correct a material error or omission in the original ITAAC closure notification. The materially altered determination is further developed in RG 1.215 and the industry guidance in NEI 08-01, Revision 4.

Section 52.6, "Completeness and accuracy of information," paragraph (a), requires that information provided to the Commission by a licensee be complete and accurate in all material

performing the inspections, tests, and analyses and determining that the acceptance criteria are met.

The NRC notes that, even though it did not include a provision requiring the completion of all ITAAC by a certain time prior to the licensee's scheduled fuel load date, the NRC staff will require some period of time to perform its review of the last ITAAC once the licensee submits its notification that the ITAAC has been successfully completed and the acceptance criteria met. In addition, the Commission itself will require some period of time to perform its review of the staff's conclusions regarding all of the ITAAC and the staff's recommendations regarding the Commission finding under 10 CFR 52.103(g).

Section 52.99(c)(2) ITAAC post-closure notifications.

The NRC has added a new paragraph (c)(2) that would require the licensee to notify the NRC, in a timely manner, of new information that materially alters the basis for determining that either 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, **tests**, or analyses have been performed as required, and the prescribed acceptance criteria are met. Fundamentally, those circumstances requiring notification under proposed paragraph (c)(2) fall into the following two categories:

- The information presented or referenced in the original 10 CFR 52.99(c)(1) notification is insufficient, either because it omits material information, or because the information is materially erroneous or incorrect, and the licensee discovers or determines there is a material omission or error after filing the original 10 CFR 52.99(c)(1) notification.
- The information presented or referenced in the original 10 CFR 52.99(c)(1) notification was complete (i.e., not omitting material information) and accurate (i.e., not materially erroneous), but there is new material information with respect to the subject of the original 10 CFR 52.99(c)(1) notification.

The term “materially altering” refers to situations in which there is information not contained in the 10 CFR 52.99(c)(1) notification that “has a natural tendency or capability to influence an agency decision maker” in either determining whether the prescribed inspection, test, or analysis was performed as required, or finding that the prescribed acceptance criterion is met. See Final Rule; Completeness and Accuracy of Information, December 31, 1987; 52 FR 49362, at 49363. Applying this concept in the context of 10 CFR 52.99(c), information for which notification would be required under paragraph (c)(2) is that information which, considered by itself or when considered in connection with information previously submitted or referenced by the licensee in a paragraph (c)(1) notification, relates to information which is necessary for any of the following:

- The licensee to assert that the prescribed inspections, **tests**, and analyses have been performed and the acceptance criteria are met;
- The NRC staff to determine if (and provide a recommendation to the Commission as to whether) the prescribed inspections, tests, and analyses were performed and the acceptance criteria are met; or
- The Commission to find that the acceptance criteria are met, as required by Section 185b of the AEA and 10 CFR 52.103(g).

The term “new” information falls into three categories:

- New information (i.e., a “discovery” or new determination identified after the 10 CFR 52.99(c)(1) notification) about the accuracy of material information provided in, referenced by, or necessary to support representations made in that notification.
- New information (i.e., a “discovery” or new determination identified after the 10 CFR 52.99(c)(1) notification) that previously existing information should have been, but was not provided in the notification or referenced in the supporting documentation (i.e., an omission of material information).

through one or more of the following methods as indicated. To access documents related to this action, see the ADDRESSES section of this document.

Document	PDR	Web	ADAMS
SECY- XX-XXXX 12-0030, "Final Rule: Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria (RIN 3150-A177)"	X	X	ML113390369
Regulatory Analysis for Final Rule - Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria, January 2012	X	X	ML120100062
Regulatory Analysis for Proposed Rule - Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria, February 2011	X	X	ML110040395
ACRS Letter, Proposed Requirements for ITAAC (Inspections, Tests, Analyses, and Acceptance Criteria) Maintenance and Draft Final Regulatory Guide 1.215, "Guidance for ITAAC Closure Under 10 CFR Part 52	X	X	ML11342A075
Staff Requirements Memorandum for SECY-10-0117, "Proposed Rule: Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria (RIN 3150-A177)," February 4, 2011	X	X	ML110350185
SECY-10-0117, "Proposed Rule: Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria (RIN 3150-A177)"	X	X	ML101440146
ITAAC Proposed Rule <i>Federal Register</i> Notice	X	X	ML101440177
Regulatory Analysis for Proposed Rule re ITAAC, May 2010			ML101440359
SECY-09-0119, "Staff Progress in Resolving Issues Associated with Inspections, Tests, Analyses and Acceptance Criteria," August 26, 2009	X	X	ML091980372 (Package)
SRM-M090922, "Staff Requirements - Periodic Briefing on New Reactor Issues - Progress in Resolving Issues Associated with Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC), 9:30 A.M., Tuesday, September 22, 2009, Commissioners' Conference Room, One White Flint North, Rockville, Maryland (Open To Public Attendance)," October 16, 2009	X	X	ML092890658
Inspection Procedure 40600, "Licensee Program for ITAAC Management"	X	X	ML072530607
Regulatory Guide 1.215, "Guidance for ITAAC Closure Under 10 CFR Part 52," Revision 1, January, 2012	X	X	ML112580018
Regulatory Guide 1.215, "Guidance for ITAAC Closure Under 10 CFR Part 52," Revision 0, October 31, 2009	X	X	ML091480076
NEI Comments on ITAAC Maintenance Proposed Rule	X	X	ML11208C708
NEI Comments on DG-1250 Guidance for ITAAC Closure	X	X	ML11209C487

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MAGWOOD
SUBJECT: SECY-12-0030 – FINAL RULE: REQUIREMENTS FOR
MAINTENANCE OF INSPECTIONS, TESTS,
ANALYSES, AND ACCEPTANCE CRITERIA
(RIN 3150-A177)

Approved Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached None _____



SIGNATURE

10 April 2012

DATE

Entered on "STARS" Yes No _____

**Commissioner Magwood's Comments on SECY-12-0030 Final Rule:
"Requirements for Maintenance of Inspections, Tests, Analyses
and Acceptance Criteria (RIN 3150-A177)"**

I approve the staff's recommendation to publish in the *Federal Register* a final rule that amends 10 CFR 52.99 relating to verification of nuclear power plant construction activities through inspections, tests, analyses, and acceptance criteria (ITAAC).

A vital element of the ITAAC program is ensuring that the validity of ITAAC are maintained during the interval between ITAAC closure and fuel load, a period that in some cases will be years in duration. This amendment to the ITAAC rule includes new provisions that require licensees to report new information that materially alters the basis under which ITAAC were performed and acceptance criteria were met and to notify NRC of completion of all ITAAC activities. These new requirements will help ensure that the Commission can make a timely and well-informed finding that the acceptance criteria specified in combined licenses are met before fuel is loaded and operation begins.

The staff has accomplished a great deal in advancing the ITAAC program to this point. ITAAC policy development is essentially complete and the focus now can be shifted to refining and implementing these processes and programs. I commend the staff for their efforts.

 4/10/12

William D. Magwood, IV date

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER OSTENDORFF
SUBJECT: SECY-12-0030 – FINAL RULE: REQUIREMENTS FOR MAINTENANCE OF INSPECTIONS, TESTS, ANALYSES, AND ACCEPTANCE CRITERIA (RIN 3150-A177)

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below X Attached _____ None _____

I approve the staff's proposed final rule for publication in the *Federal Register*, subject to the attached edits. Accurate and complete ITAAC closure information is critical for a sound Commission § 52.103(g) finding that could enable new plant operations. In support of prospective § 52.103(g) findings, I commend the staff for its diligent work to resolve anticipatory issues for licensees to maintain the validity of ITAAC closure information. This enhancement to the NRC's regulations is timely now that the combined licenses have been issued for the construction and operation of a new generation of reactors at Vogtle Units 3 and 4 and V.C. Summer Units 2 and 3. Because the Commission may allow a period of interim new plant operation pending completion of a hearing granted on one or more ITAAC, the staff indicated they will provide the Commission with a paper on this subject. I consider this prudent contingency planning and I look forward to the staff's paper.



SIGNATURE

4/12/12

DATE

Entered on "STARS" Yes X No _____

acceptance criteria are met (under 10 CFR 52.103(a)), the NRC will make available the licensee notifications under paragraphs (c)(1), (c)(2), and (c)(3) that it has received to date.

C. Conforming Changes to Title 10 of the Code of Federal Regulations (10 CFR) 2.340

The 2007 10 CFR part 52 rulemaking amended 10 CFR 2.340, "Initial decision in certain contested proceedings; immediate effectiveness of initial decisions; issuance of authorizations, permits, and licenses," to clarify, among other things, the scope of the presiding officer's decision in various kinds of NRC proceedings, and remove the requirement for direct Commission involvement in all production and utilization facility licensing proceedings.

Section 2.340(j) was intended to address these matters in connection with the Commission finding on acceptance criteria and any associated hearing under 10 CFR 52.103. In the course of developing this final rule, the NRC determined that 10 CFR 2.340(j) contains several inconsistencies with the statutory language in Section 185b of the AEA, and could more clearly describe possible ways in which a presiding officer decision may lead to a Commission decision on acceptance criteria. The changes, together with the basis for the changes, are described in the following paragraphs.

Section 2.340(j) currently states that the Commission makes a finding under 10 CFR 52.103(g) that acceptance criteria "have been or will be met." This is incorrect; the Commission's finding under 10 CFR 52.103(g) is that the acceptance criteria "are met," which is the statutory requirement under Section 185b of the AEA. To correct this error, the NRC has amended the introductory language of 10 CFR 2.340(j) to use the correct phrase, "acceptance criteria ... are met"

In addition, 10 CFR 2.340(j), as currently written, does not distinguish among the various circumstances in a contested proceeding where a presiding officer's decision (that acceptance criteria have been met, or will be met) is followed by the overall finding under 10 CFR 52.103(g) that acceptance criteria *are* met (as required by Section 185⁹⁹(b) of the AEA). It is not clear from

acceptance criteria in a combined license are met, under certain circumstances that are delineated in greater detail in paragraphs (j)(1) through (4). This compares with the current rule, which contains only two paragraphs (j)(1) and (2). The matters covered by paragraph (j)(1) of the current rule are described with greater clarity in paragraphs (j)(1) through (3).

Paragraph (j)(1) clarifies that the Commission may not make the overall 10 CFR 52.103(g) finding unless it is otherwise able to find that all uncontested acceptance criteria (i.e., "acceptance criteria not within the scope of the initial decision of the presiding officer") are met. The phrase "otherwise able to make" conveys the NRC's determination that the Commission's process for supporting a Commission finding on uncontested acceptance criteria is unrelated to and unaffected by the timing of the presiding officer's initial decision on contested acceptance criteria.

Paragraph (j)(2) clarifies that a presiding officer's initial decision, which finds that acceptance criteria have been met, is a necessary, but not sufficient prerequisite for the Commission to make a finding that the contested acceptance criteria (i.e., the criteria which are the subject of the presiding officer's initial decision) are met. The Commission must thereafter— even if the presiding officer's initial decision finds that the contested acceptance criteria have been met—^{be} able to make a finding that the contested criteria are met after considering: 1) ^{information} submitted in the licensee notifications pursuant to 10 CFR 52.99, and 2) the NRC staff's findings with respect to these notifications, to issue the overall 10 CFR 52.103 finding. By using the word "thereafter," the NRC intends to emphasize that the Commission would not make a finding that contested acceptance criteria are met in advance of the presiding officer's initial decision on those acceptance criteria.

Paragraph (j)(3) expresses the same concept as paragraph (j)(2), but as applied to findings that acceptance criteria will be met. Thus, even if a presiding officer's initial decision finds that the contested acceptance criteria will be met, the Commission must thereafter be able

X to make a finding that the contested criteria are met after considering: (1) Information submitted in an ITAAC closure notification pursuant to 10 CFR 52.99(c)(1); 2) information submitted in the licensee notifications pursuant to 10 CFR 52.99(c)(2) and (c)(4); and 3) the NRC staff's findings with respect to such notifications, to issue the overall 10 CFR 52.103 finding. X

Paragraph (j)(4) is the same as the existing provision in 10 CFR 2.340(j)(2). This paragraph provides that the Commission may make the 10 CFR 52.103(g) finding notwithstanding the pendency of a petition for reconsideration under 10 CFR 2.345, a petition for review under 10 CFR 2.341, a motion for a stay under 10 CFR 2.342, or a petition under 10 CFR 2.206.

The NRC notes that 10 CFR 2.340(j) is not intended to be an exhaustive "roadmap" to a possible 10 CFR 52.103(g) finding that acceptance criteria are met. For example, this provision does not directly address what must occur for the Commission to make a 10 CFR 52.103(g) finding where the presiding officer finds, with respect to a contention, that acceptance criteria have not been or will not be met. The NRC also notes that this provision applies only to contested proceedings. If there is no hearing under 10 CFR 52.103 or if the hearing ends without a presiding officer's initial decision on the merits (e.g., a withdrawal of the sole party in a proceeding), then 10 CFR 2.340(j) does not govern the process by which the Commission (or the appropriate staff Office Director) makes the 10 CFR 52.103(g) finding.

Section 52.99 Inspection during construction; ITAAC schedules and notifications; NRC notices.

Although the NRC is not making changes to every paragraph under 10 CFR 52.99, for simplicity, this rulemaking would replace the section in its entirety. Therefore, the NRC is providing a section-by-section discussion for every paragraph in 10 CFR 52.99. For those paragraphs where little or no change is being proposed, the NRC is repeating the section-by-section discussion from the 2007 major revision to 10 CFR part 52 with editorial and conforming changes, as appropriate.