

November 18, 1998

FOR: The Commissioners

FROM: William D. Travers /s/
Executive Director for Operations

SUBJECT: RESULTS OF THE STAFF'S EVALUATION OF ONGOING FEEDBACK FROM LICENSEES REGARDING THE IMPACT OF NRC'S ACTIVITIES ON LICENSEES' OPERATIONS

PURPOSE:

To inform the Commission of the results of the staff's evaluation of ongoing feedback received from power reactor licensees regarding the impact of the NRC's regulatory programs on licensees' operations.

BACKGROUND:

In 1989, the NRC performed a comprehensive regulatory impact survey. The final results of this survey and corrective actions were reported in SECY-91-172, "Regulatory Impact Survey Report - Final," which was issued on June 7, 1991. On December 20, 1991, the Commission issued a staff requirements memorandum requesting that the staff develop a process for obtaining continuing feedback from licensees and that the staff submit the results to the Commission annually.

The process was described in SECY-92-286, "Staff's Progress on Implementing Activities Described in SECY-91-172, 'Regulatory Impact Survey Report - Final,' " which was issued on August 18, 1992. The feedback process affords licensees frequent opportunities to comment on regulatory impact. The feedback process requires deputy directors of projects and their project directors in the Office of Nuclear Reactor Regulation (NRR) and regional division directors and their deputies to solicit informal feedback from their licensee counterparts during routine visits to reactor sites. The managers record this feedback, and the regions and NRR evaluate and take any necessary actions to address the identified concerns. The feedback forms are then forwarded to NRR. Senior NRC managers also receive feedback from staff interactions with senior officials of the Nuclear Energy Institute (NEI) and the Institute of Nuclear Power Operations (INPO). NRR evaluates this feedback, along with any other feedback obtained, such as from limited scope surveys, to determine appropriate generic followup actions. Implementation of this process began in October 1992.

CONTACT: D. K. Allsopp, NRR
415-3073

In response to the "Nuclear Regulatory Review Study" by Towers Perrin, two additional feedback paths were implemented on July 11, 1995. The Office of the Executive Director for Operations (OEDO) established a formal process by which senior power reactor licensee officials could report regulatory action perceived to be inappropriate directly to the OEDO. In addition, each region has developed a process for dealing with concerns related to inappropriate regulatory actions by the NRC staff. In this process, the regions receive, act on, resolve, or forward to other authorities (e.g., the Office of the Inspector General (OIG)) allegations of inappropriate actions by a member of the NRC staff involved in inspections or other matters related to NRC-licensed activities.

This paper reports on feedback received from licensees, INPO, and NEI from September 1, 1997, through August 31, 1998. The feedback is an example of an ongoing regulatory excellence initiative that NRR will continue to report on annually.

DISCUSSION:

From September 1, 1997, through August 31, 1998, the staff received feedback from licensees on 152 specific issues from 43 reactor sites. Of the comments received, 51 percent were favorable and 49 percent were unfavorable. Subjects covered in feedback reports fell into five main categories: formal communications with licensees, inspector professionalism, timeliness of licensing actions, systematic assessment of licensee performance (SALP), and clarity of 10 CFR 50.59 and design and licensing bases. Summaries of the feedback received, the staff's evaluation, and the staff's proposed improvement actions follow.

1. FORMAL COMMUNICATIONS WITH LICENSEES**Feedback**

Approximately a quarter of all comments (40 of 152) received related to the effectiveness of communications between the NRC staff and licensees. Almost two-thirds of the licensees' comments (25 of 40) on communications with the NRC staff were favorable, indicating that issues were communicated clearly and working relationships were effective. Comments were overwhelmingly favorable with regard to communication with resident inspectors (10 of 11) and regional management (9 of 10). Several licensees indicated that communication skills had improved. A few licensees reported instances of communication problems, such as the unclear scope of a team inspection, unclear details regarding a team inspection finding, or an inconsistent assessment in the inspection report that did not match the assessment at the exit meeting.

Three comments dealt with the clarity of NRC policy on 10 CFR 50.59 and design and licensing bases and will be discussed separately.

Evaluation and Action

The staff concludes that the communication between NRC and licensees is generally effective and that communication problems represent isolated instances, on the basis of the large number of interactions between the NRC and its licensees that occur on a routine basis and the relatively large number of favorable comments.

The staff is aware of the importance of timely and accurate communications and emphasizes this goal in the policy, guidance, and training for the inspection program. Communications will be particularly important as the staff revises and implements significant changes to the current inspection and assessment processes. Effective communications will remain a challenge and will receive continuing attention from regional and NRR management.

2. INSPECTOR PROFESSIONALISM

Feedback

A fifth of all feedback (31 of 152) received related to inspector professionalism. This area covers a wide range of inspector practices but does not include communication issues that are dealt with separately in the preceding section. The vast majority of comments complimented the NRC inspection staff (27 of 31), including the working relationship with licensees and the quality of inspection. Of the comments received in this area, more than 93 percent (14 of 15) indicated that the commenters viewed the effectiveness of the resident inspection staff favorably.

Several licensees stated that region-based or Headquarters inspections, including architect engineering and maintenance rule baseline team inspections, were professional and of high quality. Others stated that NRC inspections were effective and correctly characterized the licensee's performance.

However, some commenters (4 of 31) raised concerns about what they believed were unfavorable actions by inspectors. Examples include the perception that a team leader's "interface" skills were lacking and that an inspector discussed personal preferences during two inspections. Several licensees commented that they believed NRC was too focused on issues of compliance at the expense of more safety-significant issues.

Evaluation and Action

The staff concludes that inspectors were generally professional and established effective working relationships, based on the large number of routine interactions between inspectors and licensees, the large number of favorable comments received, and the relatively small number of unfavorable comments. This year, comments are considerably more favorable in this area, and favorable ratings increased to 87 percent, up from 62 percent last year. Favorable ratings specific to the resident inspection staff also improved significantly, from 58 percent to 93 percent.

The staff continues to emphasize the importance of proper behavior and proper demeanor. Standards for staff professionalism and behavior are addressed in the "NRC Principles of Good Regulation" and in the NRC technical staff performance expectations issued to each employee. These requirements are reinforced by senior NRC managers in the course "Fundamentals of Inspection" and related refresher courses and in inspector counterpart meetings, workshops, and training courses. Management will continue to closely monitor the professionalism and conduct of inspectors.

3. TIMELINESS OF LICENSING ACTIONS

Feedback

Nine comments were received on the timeliness of NRR licensing actions, two were favorable. The favorable comments complimented the staff's coordination and prompt actions, whereas the unfavorable comments complained that staff actions should have been more prompt.

Evaluation and Action

Licensing actions include license amendments, exemptions, reliefs, notices of enforcement discretion, orders, plant-specific topical report reviews, license extensions, and other licensee proposals that require NRC review and approval before the licensee can implement them. The timeliness of NRC's completion of licensing actions has been directly impacted by past budget reductions, as well as by competing high priority work, such as AP600 and Maine Yankee/Millstone issues and lessons learned. At the end of FY 1998, licensees submitted 1318 licensing actions, the staff completed 1425 licensing actions, and the inventory of licensing actions to be completed was 1113 items. Although the NRC has a process to prioritize and monitor licensing actions, the age distribution of the inventory of licensing actions has been increasing over the past two years. To improve the timeliness of NRC licensing actions, the NRC has increased FY 1999 resources for the completion of additional licensing actions and targeted the inventory to be reduced to 1000 actions or less by the end of the fiscal year. The NRC also has a FY 1999 target that the age distribution of licensing actions in the inventory will be 80 percent of actions 1 year old or less, 95 percent 2 years old or less, and 100 percent 3 years old or less.

Based on the proposed budget request, FY 2000 targets for licensing actions have been established such that the inventory and age distribution will be further reduced. In addition, the NRC is evaluating the licensing action review process, including the prioritization for review of licensing actions, in order to achieve efficiency and effectiveness gains. The NRC has already modified the prioritization process by recognizing the importance of risk-informed licensing actions.

4. SALP

Feedback

Of the eight comments received on NRC's SALP process, six were favorable. Favorable comments characterized the SALP process and reports as fair and accurate. Of the two unfavorable comments received, one licensee complained that SALP duplicates INPO's evaluations and was not needed, and the other involved a disagreement with a SALP score in a specific functional area.

Evaluation and Action

This feedback is more favorable than last year, which was about evenly split between favorable and unfavorable comments. Some improvement may be credited to initiatives such as NRR's monitoring of SALP scores and the SALP observation program, in which board members visited other regions to observe SALP implementation, to improve consistency between regions.

However, the NRC suspended its SALP program on September 15, 1998, for an interim period until the staff completes a review of its nuclear power plant performance assessment process. The decision to suspend SALP is part of a larger plan to improve NRC's regulatory effectiveness. The plan represents a consolidation, refinement, and acceleration of a set of ongoing initiatives in the following areas: reactor licensee performance assessment; risk-informed, performance-based regulations; reactor inspection and enforcement; licensing activities; NRC's organizational structure; and a number of specific issues requiring prompt and sound decisions. Improvement initiatives developed to improve the consistency and accuracy of the SALP process will be incorporated into the new reactor licensee performance assessment process.

5. CLARITY OF THE 10 CFR 50.59 PROCESS AND DESIGN AND LICENSING BASES

Feedback

Three unfavorable comments and no favorable were received on this subject, which is an improvement over the 10 unfavorable comments received last year. Comments expressed confusion regarding the scope of the current design and licensing bases and NRC's expectations for evaluations associated with 10 CFR 50.59.

Evaluation and Action

Senior management has been actively involved in this area to identify and implement improvements. The staff is engaged in several improvement initiatives, including the following:

- Continued use of an Enforcement Panel to help ensure a consistent approach to 10 CFR 50.59 issues.
- Revision of NRC [Generic Letter \(GL\) 91-18](#), "Information to Licensees Regarding NRC Inspection Manual Section on Resolution of Degraded and Nonconforming Conditions," dated October 8, 1997, to clarify NRC policy regarding the use of 10 CFR 50.59 to resolve degraded and nonconforming conditions.
- Issuance of [SECY-98-087](#), "Proposed Generic Letter 98-XX: Interim Guidance for Updated Final Safety Analysis Reports in Accordance with 10 CFR 50.71(e)," on April 20, 1998, to provide staff guidance for updating plant-specific safety analysis reports to ensure that they reflect changes to the design bases, including the effects of new analyses.
- Evaluation of public comments on draft NUREG-1606, "Proposed Regulatory Guidance Related to Implementation of 10 CFR 50.59 (Changes, Tests, or Experiments)." Draft NUREG-1606 outlined staff positions in 22 topic areas related to the implementation of 10 CFR 50.59. The staff characterized the nature of the comments and proposed resolution in SECY-98-171, "Proposed Rulemaking on 10 CFR Parts 50, 52, and 72 Requirements Concerning Changes, Tests and Experiments and Staff Recommendations on Changes to Other Regulations and Enforcement Policy," on July 10, 1998.
- Issuance of [SECY-98-171](#), which forwarded a proposed rule change to clarify which changes require evaluation by the licensee and the criteria that determine when NRC approval is needed for changes. SECY-98-171 also discussed staff recommendations for changes to other parts of the regulations and for handling violations of [10 CFR 50.59](#) and [72.48](#), including staff plans for exercise of enforcement discretion, while rulemaking is underway. The proposed rulemaking was published in the Federal Register on October 21, 1998 for a 60 day comment period.

Senior management continues to pay considerable attention to this area, and additional activities are anticipated to clarify NRC expectations regarding compliance with regulatory requirements.

REPORTING OF INAPPROPRIATE NRC ACTIONS TO THE OEDO OR TO REGIONAL ADMINISTRATORS

In July 1995, the EDO issued a procedure for managing the resolution of concerns raised by licensees related to perceived inappropriate regulatory action by NRC staff and stated that the regions would follow a similar process. This action was taken in response to the Towers Perrin "Nuclear Regulatory Review Study," which described examples in which NRC employees were said to have taken inappropriate regulatory action. For all cases reported the procedure requires that an investigation be undertaken that considers all aspects of potential misconduct. This process has in several instances resulted in adverse personnel actions being taken where it has been determined that NRC employees acted inappropriately. During this reporting period, no reports of inappropriate behavior by NRC employees were received by the OEDO; 26 cases were reported to the regions by power reactor licensees.

Feedback

Three cases were reported to Region I; of these, one was substantiated and the others were not. Fourteen cases were reported to Region II; of these, one case was substantiated, two cases were substantiated in part, three cases were not substantiated, and eight cases are still open. Two cases were reported to Region III and each case is still open. Seven cases were reported to Region IV; of these, one case was partially substantiated, three cases

were not, and three cases are still open. The vast majority of cases involved professional performance issues such as the inspector's professional skills in conducting inspections or communicating with licensee personnel. OIG investigated seven cases in Region II and three cases in Region IV.

Evaluation and Action

All four regions continue to use written procedures that are fundamentally similar for dealing with complaints of improper action by NRC employees. Each procedure requires a determination as to whether the issue should be pursued by the OIG or the region. If the allegation is referred to the OIG, the matter is handled in accordance with Management Directive 7.4, "Reporting Suspected Wrongdoing and Processing OIG Referrals." For allegations reviewed by the region, the regional administrator approves a course of action, including any specific remedial actions.

Last year, Region IV initiated an effort to revise their existing procedure for handling of allegations of improper actions by NRC staff. Development of this procedure revision has been conducted by labor-management partnership representatives in Region IV. A draft version of this procedure revision was sent to the Deputy Regional Administrators and the Union Vice Presidents in the other regions for comment and the Region IV revised procedure should be implemented in the near future. The Region IV revised procedure will be considered by the Agency Labor-Management Partnership for generic use by other offices to improve consistent implementation. The results of regional cases associated with alleged improper actions by the staff are reported annually to management in the annual Commission paper on regulatory impact. Also, each region has conducted training on their existing regional procedures for dealing with complaints of improper action by NRC staff, and additional training is scheduled in some regions in the next 3 months.

ADDITIONAL FEEDBACK

In addition to soliciting feedback from licensees during site visits, the staff routinely provides opportunities for the industry to provide feedback on the impact of NRC programs and processes. In the period covered, feedback was provided by plant managers during meetings with the Chairman and the EDO on two separate occasions (December 17, 1997, and March 26, 1998), as well as during breakout sessions conducted during the NRC Regulatory Information Conference in April 1998. The appropriate staff carefully evaluated the issues raised by utility managers and submitted a written response on each issue to the EDO. Several of the issues raised (timeliness of licensing actions, clarity of the 10 CFR 50.59 process, and communication issues) were addressed earlier in this paper. A discussion of the feedback received follows.

Utility managers raised concerns regarding the perceived changing standard for the difficulty level of some examinations prepared by facility licensees under the revised examination program and the requirement to make five reactivity changes for qualification.

The NRR staff has focused on maintaining the quality, the level of difficulty, and the consistency of licensing examinations during the transition from NRC authorship to facility-prepared authorship. The staff carefully considered these issues and others while designing the revised examination process and discussed them at some length in the rulemaking plan (SECY-96-206). The NRR staff worked closely with NEI and facility licensees during public meetings and workshops in an effort to refine the process and incorporate lessons learned during the pilot program into the final rule and staff guidance. The staff believes, as does NEI, that some of the current issues can be attributed to the decision to proceed with rulemaking, thereby significantly extending the transition period. Even though the revised process has continued on a voluntary basis, the industry is waiting for NRC final actions before facility licensees fully embrace the change.

The NRR staff acknowledges that some of the facility-prepared examinations were more difficult than others and that some of the variation can likely be traced to individual differences among the NRC examiners. Such was also the case when the NRC or its contractors wrote the examinations. The NRR staff is continuing to monitor the results of the examinations prepared by the NRC and facility licensees to ensure that efficiency, effectiveness, and consistency are maintained.

The staff is aware that some facility licensees have reported having difficulty finding opportunities to complete the five reactivity or power changes required by 10 CFR 55.31(a)(5) and that the training costs may have increased as a result of delays or having to maneuver the plant power level to accomplish the required changes. Two facility licensees that responded to the NRC's request for comments on a proposed amendment to the initial operator licensing examination requirements in Part 55 recommended that the NRC permit some or all of the required reactivity or power changes to be performed on the plants' certified plant-reference simulators. The NRR staff will initiate a rulemaking plan to amend 10 CFR 55.31(a)(5) during FY 1999 to address this regulatory burden. If a facility licensee submits a request for exemption from the requirements of 10 CFR 55.31(a)(5), the NRR staff will evaluate it on a case-by-case basis.

The NRR staff is in the process of issuing Draft Guide-1080 (proposed Revision 3 of Regulatory Guide 1.149, "Nuclear Power Plant Simulation Facilities for Use in Operator License Examinations") which proposes to endorse the recently issued American National Standards Institute/American Nuclear Society (ANSI/ANS) 3.5-1998, "Nuclear Power Plant Simulators for Use in Operator Training and Examination," without exceptions. Concurrently, the NRR staff will initiate a rulemaking plan to revise 10 CFR 55.45(b) and 55.59(c)(4)(iv) to make the language of the rule conform to both the new national standard and industry practices. This rulemaking will resolve regulatory ambiguity and reduce unnecessary regulatory burden by eliminating duplicative and inefficient simulator testing and reporting requirements while maintaining safety.

Utility managers expressed the viewpoint that new generic requirements need to be carefully evaluated. The impact of the NRC staff's generic communications on industry resources was the subject of a letter to NEI from the EDO dated November 26, 1997. This letter addressed specific examples raised by NEI and encouraged licensees to use the public comment process for generic communications to raise concerns and comments.

The agency process for the identification and resolution of generic issues is outlined in NRC Management Directive 8.5, "Operational Safety Data Review." As part of this process, proposed bulletins and generic letters undergo extensive review, including (1) an initial review by the Generic Issues and Events Assessment Panel, a multi-office group composed of staff from NRR, AEOD, and RES; (2) review by the sponsoring organization; (3) review by the Office of the General Counsel; (4) review by the Committee To Review Generic Requirements; (5) review by the Advisory Committee on Reactor Safeguards, if

requested; (6) publication in the Federal Register to solicit public comment; and (7) Commission review.

The nuclear power industry and the public regularly take the opportunity to comment on the appropriateness of proposed generic communications that are published in the Federal Register. There have also been instances of interaction between the nuclear power industry and the NRC staff following the issuance of generic communications that have prompted the NRC to reconsider its position. Nevertheless, the NRC has begun to reevaluate its overall generic communication process with a view to involving the nuclear power industry early on, at the formative stages of an emergent safety issue, in assessing issue significance and scope, and in formulating effective resolution approaches that carefully consider the burden to be imposed on licensees and the efficient utilization of NRC resources to achieve closure.

Topics of discussion at the NRC Regulatory Information Conference in April 1998 included enforcement issues, 10 CFR 50.59 issues, architect engineering inspections, licensing actions and technical specifications conversions, and improvements to the NRC's performance assessment process, and each region individually discussed interactions with licensees and communications issues. Breakout sessions were held to obtain feedback from meeting attendees on these and other topics.

The staff has implemented improvements to address regulatory impact concerns and continues to make progress in eliminating those activities and practices that inappropriately affect licensees' operations. The staff will continue to solicit, evaluate, and address feedback and to identify and resolve specific and generic concerns related to the impact of NRC's regulatory actions on licensees' operations. It will report any significant concerns to the Commission, as appropriate.

The Office of the Chief Financial Officer has reviewed this Commission Paper for resource implications and has no objections.

original /s/ by Malcolm R. Knapp for
William D. Travers
Executive Director for Operations