

*E. Baker*



65 FR 6399  
Feb. 9, 2000

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**Robert Willis Bishop**  
VICE PRESIDENT &  
GENERAL COUNSEL

April 10, 2000

Mr. David L. Meyer  
Chief, Rules and Directives Branch  
Division of Administrative Services  
Office of Administration  
U.S. Nuclear Regulatory Commission  
Mail Stop T6 D-59  
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Rockville, MD 20852-2738

SUBJECT: Request for Public Comment on the Allegations Program Under the  
New Regulatory Oversight Program  
(65 Fed. Reg. 6399; February 9, 2000)

Dear Mr. Meyer:

On behalf of the nuclear energy industry, the Nuclear Energy Institute<sup>1</sup> is pleased to submit the attached comments on proposed improvements to the NRC's process for handling allegations. Notice of the opportunity to comment was published in Federal Register February 9, 2000 (65 Fed. Reg. 6399).

The industry appreciates the NRC's effort to obtain stakeholder views regarding potential revisions to the NRC's process for handling allegations. In addition to considering written comments on this issue, the Federal Register notice states that the NRC intends to schedule a public meeting to discuss the comments and various options proposed.<sup>2</sup> The industry would welcome the opportunity to participate in any such meeting with the NRC and other stakeholders. We believe that the agency's willingness to consider stakeholder views prior to reaching a decision on

<sup>1</sup> NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear materials licensees, and other organizations and individuals involved in the nuclear energy industry.

<sup>2</sup> 65 Fed. Reg. 6400

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Mr. David Meyer  
April 10, 2000  
Page 2

this matter will lead to more informed decisionmaking and, in turn, should produce an improved process for handling allegations.

The industry strongly supports risk-informing the process for handling allegations. Using risk insights to evaluate allegations is an appropriate method for the NRC to determine whether additional inspection is necessary and the schedule upon which any inspection should proceed. By risk-informing the allegations process, the NRC will align it with the regulatory approach established in the revised oversight program implemented April 2, 2000, and with the risk-informed orientation now being established for Part 50 regulations. The result will be to increase safety by focusing NRC and licensee resources on risk-significant issues. It will also eliminate unnecessary regulatory burden by reducing the expenditure of resources on issues of low or nonsafety significance. In contrast, if the agency does not adopt a risk-informed approach for handling technical issues that are the subject of allegations, this regulatory process will treat these technical issues differently for no other reason than the source of their identification.

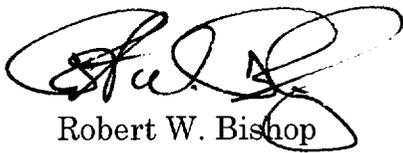
It is our understanding that nothing in the proposed revisions being considered for the allegations process will affect the NRC's current policy on maintaining a safety conscious work environment or its willingness to take action if discrimination under 10 CFR 50.7 is alleged to have occurred.

As is discussed in greater detail in the attached comments, the industry has evaluated the four options identified by NRC staff in SECY 99-273. Although none of the options, in their current form, will fully achieve the objectives set by the NRC, a hybrid of the concepts discussed in the third and fourth options would lead to considerable improvements in the allegations program. Thus, the industry recommends that the revisions to the allegation program include the risk-informed features discussed in Option 3 and the more extensive communication features highlighted in Option 4. We believe that recent agency experience with the 10 CFR 2.206 process – developing a more “user-friendly” process while maintaining the agency's responsibility to evaluate and respond to the technical basis for the petition – is instructive. Incorporating risk-informed insights and increased communication opportunities into a revised allegation program should facilitate achievement of the NRC's stated goals of maintaining adequate protection; enhancing the public confidence; increasing efficiency, effectiveness and realism of key NRC processes; and reducing unnecessary regulatory burden.

Mr. David Meyer  
April 10, 2000  
Page 3

The industry believes that the agency is appropriately pursuing improvements in the allegations process. Please do not hesitate to contact me or Ellen Ginsberg, NEI, Deputy General Counsel, at 202.739.8140 if you have questions regarding the industry's position on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bishop", with a large, stylized flourish extending from the end of the signature.

Robert W. Bishop

**Nuclear Energy Institute Comments**  
**On Proposed Improvements to the**  
**NRC Process for Handling Allegations**

A. **Using risk insights to evaluate the safety issue underlying an allegation is sound public policy and would conform the allegations process with other agency regulatory processes.**

The NRC has expressed its commitment to refocusing the agency's regulatory approach to one that is far more risk-informed. For example, the Commission announced March 3, 2000, that it is considering promulgating new regulations to provide an alternative risk-informed approach for special treatment requirements in the current regulations. The Federal Register Notice states that this "action is a result of the Commission's *continuing* efforts to risk-inform its regulations."<sup>1</sup> The same Federal Register notice explains why the Commission is vigorously pursuing its objective: "The Commission expects that making the regulations risk-informed would result in a reduction of unnecessary regulatory burden while maintaining safety because there will be a better focus of the NRC's and industry's resources on the more safety significant structures, systems and components."<sup>2</sup>

Consistent with the Commission's vision of risk-informing NRC regulatory processes, the NRC has just completed an almost two-year effort to improve the agency's inspection, assessment and enforcement processes. The revised processes that resulted from this effort are clearly focused on safety, avoid absorbing NRC or licensee resources on matters not material to safety, and are more understandable to licensees and the public. A fundamental reason that the revised inspection, assessment and enforcement processes will yield those results is that each now uses risk insights to evaluate issues and determine the agency's response to them.

The NRC also is engaged in an extensive effort to revise most of the current body of NRC regulations affecting power reactors to make them risk-informed. The effort to risk-inform Part 50 alone is estimated to consume 49 Full Time Equivalents (FTEs) and \$3 million in technical assistance.<sup>3</sup> By risk-informing its regulations, the NRC is seeking to reorient its regulatory approach away from deterministic regulations, which tend to consume excessive resources for matters having little safety significance, to an approach that more effectively focuses on safety, and is much more efficient. There is no reason that these principles should not be applied to the

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<sup>1</sup> 65 Fed. Reg. 11488 (emphasis added).

<sup>2</sup> *Id.*

<sup>3</sup> SECY 99-256.

regulatory approach to evaluate and address the safety issue or issues underlying an allegation.

The NRC has explained why it is seeking to risk-inform certain features of the allegations program in SECY 99-273:

While the timeliness of follow-up of safety or risk-significant issues is driven by the potential risk to workers or the public, the timeliness of follow-up for less risk-significant issues is driven by the agency's goal to be responsive to the allegor. The performance goal is to complete resolution of technical issues within 180 days, on average . . . To date responsiveness to the allegor has taken precedence over efficient use of staff resources in resolving allegations.

Thus, issues with the same risk significance currently are treated differently depending upon whether they are licensee- or NRC- identified or are related to an allegation. This is illustrated by NRC's own data which demonstrates that out of 143 allegations received in 1999, only 29 were potentially risk significant but, nonetheless, the remaining 114 allegations were assigned priority status as though they were risk significant because they were the subject of an allegation.

The NRC proposes to apply risk insights to the follow-up of allegations involving technical issues determined to have little or no risk/safety significance. Under a risk-informed approach, all allegations will continue to be evaluated and addressed by the NRC based on their risk significance. The action contemplated by options 2, 3, and 4 in SECY 99-273<sup>4</sup> simply is limited to whether risk insights should dictate *if and when follow-up inspection should take place*. The revisions to risk-inform the allegations process proposed in SECY 99-273 are not intended to, nor will they, result in the NRC overlooking risk-significant issues brought forward as allegations. Likewise, risk-informing the allegations program need not ignore the goal of agency responsiveness to allegors.

Option 3 appears to most closely resemble the risk-informed approach the NRC has adopted in its new reactor oversight program. Under Option 3, all allegations would be evaluated through the Significance Determination Process (SDP). Based

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<sup>4</sup> We do not discuss Option 1 because it retains the current allegation program, which is not sufficiently risk-informed. Option 2 uses risk insights to a limited extent but continues to contemplate follow-up of issues determined to be of low significance consistent with the baseline inspection schedule. Under Option 2, the NRC proposes to inspect issues of low-risk significance because they are the subject of an allegation despite the fact that the issue would not merit such inspection if it were identified through other NRC or licensee processes. Both options fail to strike the proper balance between the level of risk presented and timeliness in responding to allegations and the allegors who submit them.

on the level of risk assigned to the issue underlying the allegation, the allegor would be informed regarding future actions the NRC or the licensee will take (i.e., no NRC follow-up inspection for issues of no risk significance,<sup>5</sup> and referral to the licensee's Corrective Action Program (CAP) for issues of low risk significance). For issues of moderate or high risk, the NRC would conduct a follow-up inspection and inform the allegor of the results following completion of staff action, as is currently done.

This risk-informed approach is an appropriate means of handling underlying safety issues which are the subject of an allegation because it treats the issues in the same manner as any other safety-based issues (e.g., inspection findings). Under Option 3, the manner in which the information is received (e.g., an allegation) would not cause the agency to overreact to technical issues of no or low risk significance. And, it is undeniably sound public policy not to expend public resources needlessly or inefficiently. On this last point, the NRC estimates that there would be a net savings of 4 FTE if this approach is implemented,<sup>6</sup> and no reduction in safety. Also, by determining in advance how the agency will respond to issues of specific risk levels, the agency's response to allegations of a particular risk significance will be consistent throughout the industry.

The industry supports Option 3's provision for submitting low-risk issues subject of an allegation to the licensee's corrective action program. These programs are reviewed and inspected by the NRC and recently have been the subject of extensive scrutiny in the development of the new oversight program. The process of developing corrective actions provides for timely review and disposition of a wide variety of conditions. Reliance on the CAP to address an allegation simply provides for consistency among regulatory processes. While the deadline developed by the NRC for purposes of responding to an allegor may be the appropriate amount of time to resolve the safety concern subject of the allegation, that is not necessarily the case. We would expect that the NRC would respond to the allegor promptly after receiving the allegation, even though the priority assigned to the issue may not lead to its being addressed until sometime thereafter.

Unfortunately, Option 3 lacks a robust discussion of the steps the NRC would take to communicate with an allegor about the risk-informed allegation evaluation process and its potential outcomes. Option 4 identifies steps the NRC would take to communicate with the allegor. The substance of the communication between the NRC staff and the allegor identified in Option 4 should be grafted onto Option 3's risk-informed approach. Indeed, NRC staff should indicate support for the allegor's decision to come forward with his or her concern and encourage the allegor to raise

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<sup>5</sup> The NRC's decision not to take further action on a technical issue underlying an allegation determined to be of no safety significance is an appropriate regulatory response. In addition, however, the NRC should refer these issues to the licensee, which entity should also be permitted to evaluate the issue and determine whether additional licensee action should be taken the issue.

<sup>6</sup> SECY 99-273.

issues in the future. As is also provided for in Option 4, NRC staff should explain to the allegor how the significance determination process is used to evaluate allegations and report on their risk significance. The NRC staff should explain that the NRC's actions, as well as the licensee's, are determined by the risk significance of the allegation and the agency action associated with issues of that risk level. Finally, the staff's communication with the allegor should explain how the licensee's CAP will be used to resolve issues and why such a referral is appropriate.

As is the case of individuals who submit 10 CFR 2.206 petitions, experience indicates that most allegors sincerely believe that the issue that is the subject of their allegation merits agency attention, and that the agency should provide them with a reasonably prompt and thorough response to their allegation. Under recent changes to the 10 CFR 2.206 process, the NRC will obtain greater input from the petitioner earlier in the process and maintain closer communications with petitioners while the petition is being reviewed. These changes to the 10 CFR 2.206 process should promote public confidence by ensuring petitioners have a better understanding of the agency's evaluation process and the reasoning underlying the NRC's ultimate decision on the petition. The NRC can promote public confidence in its allegation program by including similar provisions for timely and full communication.

Option 4 also provides that, regardless of the agency's assessment of risk, an allegor can insist on independent staff follow-up within the current timeliness goal for the allegations process – 180 days. This approach is untenable because it would prevent the NRC from exercising its independent authority to regulate. More specifically, although it is referred to as an opportunity for allegor "input," the provision in Option 4 is, in reality, a "veto" opportunity for the allegor. It would allow the allegor to override the agency's risk-significance determination and its policy decision to treat allegations of a particular risk significance with a set response. It would further allow the allegor to dictate how the agency will expend its inspection and other resources. If a referral is made to the licensee, the allegor will have been able to force the licensee to expend its resources to develop a response to a technical issue determined to be of low or no risk significance by the regulatory agency responsible for nuclear safety.

SECY 99-273 states that including the "veto" feature will avoid potential adverse impact on public confidence "inherent" in Option 3 (wherein the NRC would simply determine how to address the underlying safety issue and communicate with the allegor about the process and result of that determination). The NRC's premise that it is necessary to provide allegors with the opportunity to veto the agency's risk-informed action in order to develop public confidence misses the point. Public confidence will develop if the NRC fully evaluates safety concerns that are the subject of allegations, and fully communicates to the allegor the NRC's process for evaluating and responding to such concerns. Public confidence also is likely to be

bolstered by timely communication by the NRC to the allexer. Nothing in the implementation of a risk-informed allegations process prevents the NRC from informing the allexer of the agency's process and potential actions shortly after (e.g., within 30 days) the allegation is received.

**B. Risk Informing the Follow-Up to Allegations Should Result in a More Timely and Comprehensive Review Process, Bolstering Public Confidence in the NRC's Allegations Program.**

We understand that there has been some concern that, by risk informing the allegations process, the NRC may be seen as signaling to the worker community that the agency is not taking seriously allegations submitted by workers. This appears to misapprehend the limited nature of the NRC's various options (2, 3 and 4) in SECY 99-273, which only seek to risk inform the follow-up to safety concerns determined to be of low or no risk. The concern about the seriousness with which the agency views allegations also seems to flow from an unwillingness to accept that there are technical issues that simply do not or are not likely to affect safety and, therefore, merit no or a limited response. In fact, by seeking to assign a risk level to every safety issue underlying an allegation – and by addressing those issues in the same manner as issues identified through an NRC inspection or licensee action – the agency demonstrates its commitment to taking safety concerns underlying allegations very seriously. Not following up an allegation with an inspection, or withholding that inspection until the next planned baseline inspection is to take place, says nothing about the NRC's *level of concern* with the allexer's safety issue. It simply connotes the agency's best judgement regarding the kind of and need for agency or licensee response to the issue, once the risk-informed evaluation has been performed.

To avoid any misconceptions, the NRC should state more explicitly that its effort to risk inform the allegation process is focused only on technical issues. It is our understanding that no changes to the current process are being proposed for allegations that involve non-technical issues (e.g., harassment and intimidation; personnel matters). That is, to the extent allegations to the NRC are not only an expression of a safety concern, but also an expression of the worker's unwillingness to identify the issue to the licensee, the current proposal does not affect the NRC's commitment to ensuring that workers feel free in raising safety concerns without fear of retaliation.

The NRC also should explain to workers and the public that the agency has determined that it is sound regulatory policy to allow some technical issues (including Level IV violations that meet the criteria for Non-Cited Violations) to be addressed by the licensee's corrective action program. There is no basis for concluding that the NRC should not follow its preset determination that issues of a particular risk level are appropriately addressed by the licensee's corrective action

program simply because an alleged who goes to the NRC may have lost confidence in the individual CAP.

**C. Conclusion.**

For the reasons stated herein, the industry recommends that the NRC proceed with its initiative to risk-inform the agency's process for handling allegations. The revised process should provide for timely communication with the alleged in order to help promote to promote public confidence.