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 Regulatory Framework

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

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4 PUBLIC MEETING

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6 REVISING THE REPROCESSING
7 REGULATORY FRAMEWORK

8 + + + + +

9 FRIDAY, SEPTEMBER 18, 2009

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11 ROCKVILLE, MARYLAND

12 + + + + +

13 The Public Meeting convened in Rooms
14 6003-1B13 and 15 at 6003 Executive Boulevard,
15 Marissa Bailey, Moderator, presiding.

16 NRC STAFF PRESENT:

17 MARISSA BAILEY

18 DAN DORMAN

19 CATHERINE HANEY

20 KELLI MARKHAM

21 KEITH McDANIEL

22 MATT BARTLETT

23 STEVE WARD

24 JIM SHAFFNER

25 MAURICE HEATH

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1 NRC STAFF PRESENT:

2 NISHKA DEVASER

3 PHIL REED

4 WENDY REED

5 JAMES FIRTH

6 LISA LONDON

7 BLAKE PARNELL

8 ALEX MURRAY

9 LARRY HARRIS

10 DENNIS DAMON

11 YAWAR FARAZ (via webinar)

12 TERESA MIXON (via webinar)

13

14 COMMENTERS PRESENT:

15 ED LYMAN

16 JIM LIEBERMAN (via webinar)

17 EILEEN SUPKO

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ALSO PRESENT:

ALAN LEVIN

EILEEN SUPKO

SVEN BADER

STEPHEN KUNG

FELIX KILLAR

DAN STOUT

ROBERT HOGG (via webinar)

YAWAR FARAZ (via webinar)

JOHN MASSARI (via webinar)

SARAH LEVERSEE (via webinar)

JOHN GREEVES (via webinar)

MARK LEWIS (via telephone)

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P-R-O-C-E-E-D-I-N-G-S

(1:01 p.m.)

MS. BAILEY: Good afternoon. I'm Marissa Bailey. I'm the deputy director in the Division of Fuel Cycle Safety and Safeguards here in NMSS. And I'd like to welcome you to this public meeting where we plan to discuss NRC's efforts for revising the reprocessing regulatory framework.

This is a Category 3 public meeting, which means that the public will have several opportunities to provide input. The meeting agenda -- if you could get us a meeting agenda. I need to take off my glasses to read. The meeting agenda defines some appropriate times for public comments and questions.

The purpose of today's meeting will be to ensure clarify on NRC's efforts, the scope, and our intent for revising the regulatory framework for licensing reprocessing facilities.

We hope that the series of presentations scheduled for today reflect that purpose.

Additionally, we hope to solicit input from all stakeholders as we begin the process of developing the technical basis to support

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1 rulemaking for reprocessing facilities. Before
2 we get started, I would like to go over some
3 logistics.

4 And first of all, point out that we're
5 trying something new here today. We are
6 conducting this meeting as a webinar and also via
7 teleconference, so for the benefit of those who
8 are offsite, when you do speak, if you do have
9 questions, if you could speak into a microphone
10 before providing questions or comments.

11 Could you go to the next slide,
12 please? If the sound through the webinar fails,
13 you can try calling the bridge line, and the
14 bridge line number is 888-790-3146, and enter
15 pass code 66264.

16 Other logistics. Please turn off your
17 cell phones or, and for those that are listening
18 on the bridge line, if you could mute your phone.

19 Location of the restrooms, they're in the
20 elevator lobby, just turn left past the
21 elevators.

22 You will need an escort to return to
23 the meeting, and we have either Tony or Wendy out
24 there to assist you with that. Also, please
25 remember to return your visitor badges to the

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1 security when the meeting is over. And please
2 remember to sign in on the sign-in sheet that's
3 outside.

4 There are also feedback forms outside
5 for comment and there will be a survey after the
6 webinar asking for feedback, so we encourage you
7 to please complete those feedback forms. Also,
8 there will be a transcript available for this
9 meeting, so to assist the court reporter, please
10 introduce yourself before speaking. In addition,
11 giving a business card to the court reporter
12 could also be very helpful.

13 Paper copies of the presentation are
14 available. They are outside. They can also be
15 found on our public website, which is provided in
16 this screen down here. And I assume that the
17 folks that are viewing this on the website can
18 see the, the slide. Okay.

19 Before we get to our first speaker,
20 I'd like to now go around and have everyone
21 introduce themselves first in this room and then
22 I'll go through bridge line and then do the folks
23 that are on the, on the webinar, so.

24 MS. HANEY: Good afternoon. I'm Cathy
25 Haney. I'm the deputy office director in the

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1 Office of Nuclear Material and Safety and
2 Safeguards.

3 MR. MCDANIEL: Hello, I'm Keith
4 McDaniel. I'm a project manager in the Office of
5 Federal and State Materials and Environmental
6 Management Programs.

7 MS. MARKHAM: Hello. Kelli Markham.
8 I'm a project manager in the Office of Nuclear
9 Material Safety and Safeguards, the Division of
10 Fuel Cycle Safety and Safeguards.

11 MR. DORMAN: And I'm Dan Dorman. I'm
12 the director of the Division of Fuel Cycle Safety
13 and Safeguards.

14 MR. WOODS: I'm Randy Woods. I'm a
15 reporter with Platts Nuclear Group.

16 MR. BADER: I'm Sven Bader from AREVA
17 Federal Services.

18 MR. LEVIN: Alan Levin from AREVA.

19 MR. KUNG: Stephen Kung.

20 MS. REED: I'm Wendy Reed. I'm a
21 radiochemist in the Office of Research.

22 MS. SUPKO: Eileen Supko, Energy
23 Resources International.

24 MS. LONDON: Lisa London, NRC OGC.

25 MR. PARNELL: Blake Parnell, NRC, Fuel

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1 Cycle Division.

2 MR. DAMON: Dennis Damon, NRC, Fuel
3 Cycle Division.

4 MR. LYMAN: Ed Lyman, Union of
5 Concerned Scientists.

6 MR. HEATH: Maurice Heath, NRC with
7 Low-Level Waste.

8 MR. SHAFFNER: Jim Shaffner, NRC Low-
9 Level Waste.

10 MR. DEVASER: Nishka Devaser, NRC Low-
11 Level Waste Branch.

12 MR. FIRTH: James Firth, U.S. Nuclear
13 Regulatory Commission, FSME.

14 MR. KILLAR: Felix Killar, Nuclear
15 Energy Institute.

16 MR. REED: Phil Reed, NRC, Office of
17 Research.

18 MR. MURRAY: Alex Murray, U.S. NRC,
19 Division of Fuel Cycle Safety and Safeguards.

20 MS. BAILEY: Steven, you want to
21 introduce yourself?

22 MR. WARD: Steve Ward, NRC, Fuel Cycle.

23 MR. BARTLETT: My name is Matt
24 Bartlett. I'm also in Fuel Cycle. And on the
25 webinar, we have Jim Lieberman, John Greeves,

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1 Robert Hogg, Sarah Leversee, and Yawar Faraz.

2 MS. BAILEY: All right, would those on
3 the bridge line, please introduce themselves?

4 MR. LEWIS: My name is Mark Lewis. I'm
5 a councilman with Salt River Project in Phoenix,
6 Arizona.

7 MS. BAILEY: Any others?

8 (No response.)

9 MS. BAILEY: Let me go ahead then and
10 introduce our first speaker. Our first speaker
11 is Cathy Haney, which just introduced herself.
12 She is the deputy director of the Office of NMSS.

13 And she will be providing an introduction and
14 also talking about why we are going through the
15 effort of revising our regulatory process for
16 reprocessing.

17 MS. HANEY: Thanks, Marissa. I wasn't
18 expecting the microphone and the webinar. They
19 didn't tell me that when they asked me to make
20 the presentation. I was expecting Friday
21 afternoon a tad more casual, so --and they
22 surprised me with that.

23 But what I'm here for today, as
24 Marissa said, is just to make some introductory
25 remarks for you. I am the deputy office

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1 director, so Mike Weber is the office director,
2 so I'm representing both of you, and just
3 welcoming you to this afternoon's meeting.

4 Steve, if you can go to the first, my
5 first slide?

6 PARTICIPANT: You need to talk a little
7 bit louder. The people on the webinar are having
8 trouble hearing you.

9 MS. HANEY: Okay, all right. We got to
10 get the voice check here. So welcome to today's
11 meeting. First I will start out as really as our
12 main goal in the safety, security, and protecting
13 the environment.

14 Just a couple -- the first bullet
15 there touches on the fact that we are in a
16 regulatory position, we're not the proponent nor
17 an opponent to the reprocessing. We're here to
18 make sure that we have established the regulatory
19 framework should we move forward in this
20 particular area.

21 I do have licensing authority,
22 regulatory authority should someone move forward
23 in the reprocessing area, and we do have several
24 years of experience in this area as far as
25 licensing and, where appropriate, if we moved

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1 into any inspection areas.

2 And that was primarily focused to date
3 on any construction. And this goes back to years
4 ago as compared to more recent experience. We're
5 touching back and going back in history into, as
6 far back as the 19 -- 1966 time frame.

7 The regulation that is in effect right
8 now is Part 50. And, as I said, we do have
9 experience back into the '60s. We have licensed
10 facilities, but they were licensed under Part 50.

11 As you all know, technology has
12 changed since then. Technology has changed NRC's
13 focus in the different licensing areas, as well
14 as inspection. We've learned a lot over the last
15 year, and therefore, in licensing the facility to
16 current technology, we have identified that there
17 are areas where we need, would need to change the
18 regulations, and possibly even move into a new
19 Part as compared to Part 50 as compared Part 50
20 would not possibly be the best place for us to
21 start licensing.

22 And as you've seen on numerous
23 documents that we have produced so far in the
24 public domain that have looked at, is Part 50 the
25 right regulatory basis? And if not, how do we

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1 move forward with the regulatory framework to
2 license a facility, which is really why we're
3 here today.

4 Steven, next slide. Okay, just as far
5 as a few milestones, and I've been looking, I'm
6 looking more in the more recent milestones as
7 comparing, going back and looking at past
8 history.

9 We started out with back in 19, I mean
10 2006. Several of the GNEP initiatives
11 contributed to our interest to start looking into
12 this reprocessing again and specifically focused
13 in DOE-owned reprocessing facility.

14 In 2007, based on interaction between
15 the staff and the Commission taking into account
16 internal and external stakeholder interest, this
17 Commission directed us to move forward with
18 identifying a regulatory gap analysis. And that
19 was where we could look at Part 50 and see what,
20 what changes in our regulatory program are needed
21 in order to establish a framework for moving
22 forward in this particular area.

23 In 2008, as you can see from this
24 slide, we did receive indication from industry
25 that there was a commercial interest in pursuing

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1 reprocessing facility. And based on that, we
2 shifted our focuses from a DOE federal agency
3 interest to moving more at looking at a private
4 interest or the industry's interest in moving
5 forward with reprocessing.

6 In 2009, we did complete our
7 regulatory gap analysis. And what this does is
8 it lays out a regulatory framework for developing
9 a technical basis that would support a
10 rulemaking. Right now, my staff with
11 contributions from the other offices in the
12 agency are moving forward with developing this
13 technical basis that, for a regulatory framework,
14 specifically for a rule, which you'll hear
15 shortly in our next speaker is that, how we get
16 from the technical basis to the rulemaking
17 stages. It's a lot of involvement in technical
18 basis and this particular area would need to be a
19 very detailed document.

20 As part of what we need in developing
21 a good technical basis and to move forward into
22 the rulemaking, we need, do need input from our
23 stakeholders. Again, and I'm using stakeholder
24 term in a very broad sense that being our
25 internal and external stakeholders.

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1 And if you could move on to the next
2 slide. So looking at this slide here without
3 going into details on all the bullets here on
4 this slide, it's just that the stakeholder
5 involvement to us is very important. It will
6 help us in developing a very strong technical
7 basis that could be used to form the basis for a
8 rule.

9 Think of it as a phase one would be a
10 technical basis development. Step two would be
11 the rulemaking. And we would seek your input in
12 the technical basis. And then also as far as if
13 there are any regulatory gaps that you see that
14 we have not addressed to date, for example, in
15 the SECY paper where we did do our gap analysis,
16 that was, we had gone through, those were our
17 ideas.

18 We can obviously learn from those of
19 you in the audience. And your continued support
20 in this area will help us make a better technical
21 basis.

22 Also what happens is that when the
23 technical basis comes out, it forms the basis for
24 the rule and then we need the rule to be
25 something that seems reasonable. It needs to meet

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1 our strategic goal of protecting the public and
2 health and safety and the environment, but yet,
3 it needs to be something that is useable.

4 And that's what we'll be looking for
5 input from you on that. We have had a few
6 interactions in the last months with either in
7 the format of a meeting or in written
8 correspondence. Written correspondence I would
9 make note of any -- documents, white papers
10 they've sent to us where we've had discussions on
11 those.

12 We will have continued interactions
13 with you as we go through this process. And I
14 would encourage you to actively participate
15 because at the end when we do move forward, if we
16 do move forward with the rulemaking and in
17 developing the technical basis, we'll have a
18 better document because of the interactions.

19 So with that, as opening intro
20 remarks, I'd be happy to take any questions.

21 (No response.)

22 MS. HANEY: No.

23 MS. BAILEY: Are there any questions
24 from the bridge?

25 MR. LEWIS: No.

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1 MS. BAILEY: From the webinar?

2 (No response.)

3 MS. BAILEY: Okay, thank you, Cathy.

4 MR. LYMAN: Ed Lyman, Union of
5 Concerned Scientists. You said, "If we proceed
6 with the rulemaking," so what additional
7 information are you going to use to base whether
8 or not to proceed? Is it -- will it be the level
9 of seriousness from the industry applicant?

10 MS. HANEY: There are several things
11 that we consider when we move forward with a
12 rulemaking. And I'll answer it on a general
13 answer. There is -- one is when whether we,
14 public comes to us and requests that we do a
15 rulemaking or our internal staff identifies that
16 we do a rulemaking.

17 When you first start down that
18 process, you hear the issue, it seems like
19 rulemaking is the right solution to that issue.
20 What we have found over the years of rulemaking
21 is that once you start to write the technical
22 basis, you learn a lot of different things.

23 One of them is, and you consider, is
24 the rulemaking still needed? Or is there a --
25 basically, you continually ask yourself, is this

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1 the right process for addressing the problem that
2 we have at hand.

3 I have seen -- I've worked in the
4 rulemaking area for years and I've seen
5 situations where you get almost to the end and
6 you think you've got a firm technical basis and
7 then you learn that, no, you don't have a firm
8 technical basis for moving forward.

9 So one of the criterial is how we
10 develop the technical basis and is it a firm
11 enough one to move forward with the rule. The
12 other thing is developing a technical basis does
13 take, it usually takes a year. It can take
14 longer depending upon the complexity of the
15 issue.

16 And as we know, this is a very complex
17 issue, so I'm not putting a time-line on of a
18 year. But during that rulemaking process, new
19 things come to light and new considerations, so
20 we're constantly, again, asking that question, is
21 this the right way to go?

22 Whether there is a need for this
23 particular action, and I think this is where you
24 were probably going, is if there is an interest
25 for the recycling facility? That will be a

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1 consideration when we look at wise use of
2 resources.

3 If there isn't a need for a facility,
4 I'm sure the Commission at all levels will be
5 asking, you know, do we need to move forward now?

6 Or is this something that we make take resources
7 and devote to another project and come back to
8 this one when there is a need for it? So we're
9 constantly looking at what are the external
10 factors that would play into a decision such as
11 this.

12 I don't know, Keith, anything you want
13 to add or Dan on why we would or wouldn't move
14 forward with the rulemaking? So I did use the
15 term "if" because, you know, nothing is ever 100
16 percent sure, but I will tell you at this point,
17 we are developing a technical basis to support a
18 rulemaking.

19 MR. BARTLETT: There's a question from
20 the webinar. And Jim Lieberman asks, will the
21 technical basis document be put out for comment?

22 MS. HANEY: Yes, it will be. I can't
23 tell you at which stages, but again, our desire
24 would be to have as much input in developing the
25 technical basis as we possibly could.

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1 MR. BARTLETT: And does the public have
2 any ability to comment on the technical basis
3 when it's in draft?

4 MS. HANEY: There would be stages. And
5 what I've asked Kelli Markham to do is to address
6 with her specific schedule and plan what those
7 milestones would be.

8 MS. MARKHAM: We're considering various
9 stages throughout the technical basis
10 development. And I think one major milestone for
11 us would be before we compile a draft of the
12 technical basis, we were planning on another
13 Category 3 public meeting.

14 And at that point, we will begin to
15 discuss a lot of details related to the input on
16 this document. And at that point, is going to be
17 another opportunity for the public, as well as
18 some of the public meetings we will have in-
19 between to provide specific input into the
20 document. So there will be opportunities before
21 we do the draft, and after we do the draft, there
22 can be additional opportunities as well.

23 MS. BAILEY: Are there anymore
24 questions?

25 (No response.)

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1 MS. HANEY: Anything more, Matt?

2 MR. BARTLETT: No.

3 MS. BAILEY: Let me just go ahead and
4 introduce our next speaker. Our next speaker is
5 Keith McDaniel. Keith is a project manager for,
6 from the Office of Federal and, Federal and State
7 Materials and Environmental Management Programs,
8 or FSME, where he works in the rulemaking branch
9 developing new regulations and amending existing
10 regulations for nuclear materials facility.

11 Keith is here to discuss the
12 rulemaking process and highlight generally the
13 opportunities for stakeholder involvement in the
14 overall rulemaking process.

15 MR. MCDANIEL: Hi, good afternoon. My
16 name is Keith McDaniel, and I'm here to talk to
17 you today about the NRC rulemaking process. And
18 I emphasize NRC rulemaking process because
19 different government agencies' rulemaking
20 processes can vary slightly from ours. Even our
21 rulemaking process evolve, has evolved with time.

22 The next slide, please. Before we get
23 into rulemaking, I wanted to talk about our
24 overall regulatory process. Our overall
25 regulatory process is a three-pronged approach.

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1 And I always picture a three-legged stool when I
2 think of this process. And the three legs are
3 rulemaking, which is what I'm going to talk
4 about, licensing, and inspection and enforcement.

5 This three-pronged approach to
6 regulating is something that you're probably more
7 familiar with than you realize. Just as we
8 regulate the safe use of nuclear material, the
9 states regulate the safe use as an example of
10 automobiles.

11 The states have the same three-pronged
12 regulatory approach when they do that, they have
13 a rulemaking group that sit down and decide what
14 the, what the traffic laws are going to be, then
15 they have a licensing group. If want to drive an
16 automobile, I'd have to go to the DMV and I take
17 a test and I pass certain requirements and they
18 give me a license.

19 So they have licensing that's a
20 licensing leg and then there's inspection and
21 enforcement. You have the traffic cop out on the
22 street. If I don't follow the rules that were
23 laid out, he will issue me a ticket, so there'd
24 be enforcement action and inspection.

25 We have to take our cars in, get

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1 safety inspection, inspections for emissions to
2 make sure our cars are running right. So this
3 three-pronged regulatory process we're all
4 familiar with whether or not that we realize it.

5 This is the same process we use here at the NRC
6 to regulate the safe use of nuclear material.

7 All right, the next slide, please. So
8 what is rulemaking? Well, rulemaking is the
9 process that government agencies, both federal
10 and state, use for developing regulations. And I
11 just want to focus on a couple of words in that
12 first bullet.

13 First word is process. It is a long
14 process. You may have heard people say, "It's a
15 marathon and not a sprint." It takes a long time
16 and you'll get a sense of that when I go through
17 the four steps here in a minute.

18 The second word in the first bullet,
19 agencies. When we think rulemaking, I want you
20 to think government agencies. Congress passes
21 laws that they put in the U.S. code. Government
22 agencies issues regulations that they put in the
23 Code of Federal Regulations. So rulemaking is a
24 government agency thing.

25 Okay, so what do these regulations do

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1 and who do they apply to? The second bullet says
2 that NRC regulations impose requirements on
3 applicants and licensees that want to use nuclear
4 material or operate a nuclear facility.

5 So NRC rules, we regulate a lot of
6 things in this regard. We regulate the
7 transportation of the nuclear material, we
8 regulate the use of nuclear material at power
9 plants, at fuel cycle facilities, at uranium
10 mills, at waste repositories, we regulate the use
11 of nuclear material for academic and medical and
12 industrial purposes, so there's a whole wide
13 range of nuclear material use that our
14 regulations have to govern.

15 Regulations or rulemaking is a form of
16 law. Sometimes you'll hear it be called,
17 "Administrative law." And you might ask, "Well,
18 what is it -- what am I here at the NRC doing
19 creating this kind of law? I mean, I wasn't, I
20 wasn't voted in by the people. I wasn't, I'm not
21 an elected official, but here I'm making law."
22 And that's a very good point to make and that
23 leaves me to the next slide, please.

24 These are two very important Acts that
25 I want to point out. The first one is what

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1 happened was Congress delegated authority for us
2 at the NRC and other agencies to make
3 regulations.

4 And then the second Act is they didn't
5 just delegate the authority and say, "Go ahead,
6 go forward and do regulations." They laid out
7 some minimal procedural requirements that we all
8 have to follow.

9 So I'd like to take a look at those
10 two Acts for just a moment. Let's take a look at
11 the, the first Act which gave us the authority,
12 the delegation to do rulemaking.

13 This thing of delegation to the
14 federal government to do rulemaking goes all the
15 way back to the very first Congress. The very
16 first Congress delegated authority to the
17 President to do rulemaking to govern our trade
18 with American Indians.

19 Subsequent Congresses after that
20 developed more and more, delegated more and more
21 authority to the federal agencies to do
22 rulemaking. In the early 20th Century,
23 rulemaking really took off with things like the
24 Great Society and the New Deal. So that's how we
25 got the authority to do rulemaking.

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1 The second Act, the Administrative
2 Procedures Act, APA, lays out some minimal
3 procedural requirements that we all have to
4 follow. Congress put this Act in place to bring
5 predictability and regularity into the rulemaking
6 process so that all the federal agencies didn't
7 go off and do their own thing that would make it
8 very hard for the stakeholders, licensees, and
9 members of the public to understand what we do in
10 rulemaking.

11 The other thing the APA does is it
12 ensures what they call "due process and fairness"
13 in our regulatory affairs. The APA 553 provides
14 some requirements for what they call the "Notice
15 and Comment Rulemaking." And the Notice and
16 Comment Rulemaking is the most common type of
17 rulemaking that we do and it's the one that I'll
18 be talking about.

19 The requirements, let me name a few of
20 the main requirements in here that we all have to
21 abide by. We have to publish the proposed rule
22 and the final rule in the Federal Register for
23 the public to see.

24 It also requires that we allow public
25 participation. Remember, we weren't elected

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1 officials, so what we do is we pull the public
2 into the process and we invite them to
3 participate. So when we put the proposed rule
4 out, which will be my step three, we offer that
5 for public comment, and then we need to consider
6 in a meaningful way the comments that we receive
7 from the public.

8 The last thing that this Act, that
9 I'll mention, is it requires that the effective
10 date of the rule will be no less than 30 days
11 from the date it's published. That's to keep us
12 from publishing a rule today and expect licensees
13 to comply with it tomorrow. It goes back to this
14 fairness issue, so there's a 30-day minimum
15 window that we need to allow.

16 So we've talked about what rules are,
17 where we get the authority to do rules, what the
18 minimal procedural requirements are, so that
19 leaves the groundwork for us to talk about the
20 rule process, the rulemaking process.

21 Next slide, please. It's a four-step
22 process, easy to remember. There's got to be a
23 need, there's going to be a regulatory basis,
24 which has been called, "The technical basis," and
25 we very recently are changing that terminology to

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1 regulatory basis. You may catch, catch me saying
2 both, saying it both ways. The third step is a
3 proposed rule and the fourth step is a final
4 rule.

5 So let's take a look at each one of
6 these steps and focus on where the public can get
7 involved. Step one is a need for a rule. That
8 makes sense. Somebody has to have a need for a
9 rule.

10 I work in the division that does
11 rulemakings for material licensees, so the need
12 that comes to us can be in a number of different
13 ways. Let me mention three of them. I have them
14 up there.

15 One is that we can be petitioned to do
16 rulemaking. Our 10 CFR 2.802 allows anybody that
17 wants to petition us to do rulemaking they can.
18 It can be an individual, it can be a private
19 company, it can be a licensee, it can be another
20 government agency, but they can, through 2.802,
21 they can petition us to do rulemaking.

22 The petition process is very
23 straightforward. They submit to NRC a petition,
24 NRC takes that petition and we, we publish it in
25 the Federal Register. We invite people to

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1 comment on the petition. They have a 75-day
2 comment period.

3 NRC reviews the comments and the merit
4 of the petition. The -- we have a petition
5 review board made up of high-level managers that
6 will make a decision as to what the resolution of
7 the petition is, either we'll accept it or deny
8 it. And then the NRC will publish a Federal
9 Register notice letting the public know how we
10 resolved the petition.

11 So that's one way that we can get a
12 need is through the petition process. Another
13 way that we can get rulemaking requests is
14 through congressional mandate or an executive
15 order.

16 Congress could pass a new law, say the
17 Energy Policy Act. That would trigger the need
18 for us to revise our regulations or to add new
19 regulations so they would be consistent with the
20 law that Congress passed.

21 But usually the way that we get a
22 request for rulemaking is internal. It's NRC
23 initiated. The Commission could direct us to do
24 rulemaking or we could get a request from another
25 office or division.

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1 For instance in this rule, in this,
2 for this rulemaking, the requesting office and
3 division would be NMSS and the Fuel Cycle
4 Division. So at some point, they will come to us
5 and request that we do rulemaking, and I'll get
6 to that point in a minute.

7 All right, so there is a need and we
8 can see where the public can get involved in step
9 one. They can get involved right away. They can
10 actually ask the NRC to do a rulemaking. It
11 doesn't mean that we will do one, but it does
12 mean that we will consider doing one.

13 That takes me to step two. It's the
14 regulatory basis or the technical basis is what
15 you'll hear it said many times. I should point
16 out that steps one and steps two are considered
17 pre-rulemaking activities, and the steps three
18 and steps four are rulemaking activities. All
19 four steps are part of the rulemaking process
20 though.

21 So the rulemaking basis, the
22 requesting office, and in this case, would be
23 NMSS and the Fuel Cycle Division, will be
24 responsible for developing the regulatory basis.

25 Rulemaking will not start until the regulatory

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1 basis has been developed and sent to us and then
2 we'll review it and then we'll accept it. Once
3 we accept it then rulemaking can start.

4 The technical basis is the foundation
5 upon which the rulemaking stands. It's the
6 rationale for why we're going to do the rule. It
7 answers a lot of the why questions as to what we
8 want to do so that we don't just list that we're
9 going to do this, we're going to do this, we're
10 going to do this. It's going to fill in a lot of
11 the information as to why we're going to do this.

12 What has changed that has caused the
13 need for us to revise our regulations? What new
14 information has come up that we've become aware
15 of that would require a new regulation? Where is
16 the regulatory gap? What is the regulatory gap
17 that needs to be filled? And they had talked
18 about the regulatory gap earlier and I think that
19 there's going to be more discussion about that.

20 The regulatory basis does not
21 necessarily and doesn't usually contain rule
22 text. The rule text will come in in steps three
23 and steps four, but it will identify the
24 regulatory concepts and requirements that are
25 going to be considered for the rulemaking.

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1 There has to be enough information in
2 a regulatory basis to have a meaningful
3 interaction with the public because the public
4 interaction, this is a, step number two is a big
5 step for public interaction. We like to try to
6 get the public involved in this process as early
7 as we can.

8 All right. An inadequate technical
9 basis, if we don't, if it doesn't get done right
10 in step two, it can throw everything off in steps
11 three and steps four, so it's very important that
12 the technical basis be complete at the beginning.

13 Now, the, as far as the public
14 involvement goes, we do like to get the public
15 involved in a lot of rules at step two. We don't
16 have to. It's outside of the APA box. The APA
17 requirement requires us to get the public
18 involved in step three in the proposed rule
19 stage.

20 So when we get the public involved in
21 step two, the regulatory process, it's what we
22 call "Enhanced public participation," beyond what
23 the APA requires. Some of the things that we can
24 do to engage the public is we can post the draft
25 technical basis, and that was mentioned I think

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1 from somebody in the webinar.

2 We can post that on our website and
3 invite the public to comment on it and then we
4 can review the comments and can even then post
5 what our responses were to the comments. We
6 could hold public meetings, just like what we are
7 doing today. This is where you are in this
8 rulemaking. You're in this step two, developing
9 the technical basis.

10 Meaningful stakeholder involvement at
11 this point will help ensure that we've looked at
12 all the relevant issues and will help identify
13 any unintended consequences. And I really think,
14 I'm a real big fan of stakeholder interaction at
15 this point because I've seen too many times where
16 it wasn't done here, we get to steps three and
17 four, and we bring the public in here, and then
18 we end up going in a different direction.

19 Whereas, if we had figured that out in
20 step two during the technical basis development
21 we would have started the end of the rulemaking
22 on the right course. So early stakeholder
23 involvement in step two many times will result in
24 fewer public comments in step three when we put
25 the proposed rule out because you've taken care

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1 of a lot of questions.

2 So that's step two. When we go from
3 step two to step three, it represents a
4 transition not only in organizational
5 responsibilities, but in the process itself. For
6 the regulatory basis step, the requesting
7 organization has a lead in that. In this case,
8 it's the Division of Fuel Cycle.

9 Once they develop the technical basis,
10 they will send it to us and as an attachment to a
11 user need memo. In step three, the
12 responsibility shifts over to my division in my
13 office.

14 So we're in step three. We've
15 reviewed the technical basis, we've accepted it,
16 we've moved to step three, and we put together a
17 proposed rule. It takes about a year, as you can
18 see up here.

19 It's sort of the generic length of
20 time that we use for a proposed rule and a year
21 for the final rule. And Cathy had already
22 mentioned today, regulatory basis can take up to
23 a year to develop or longer depending on the
24 complexity of the rule.

25 Some agencies call this the "Draft

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1 rule." We call it the "Proposed rule." So you
2 may have heard the term "Draft rule" used in
3 other places.

4 The, as I mentioned, the APA requires
5 that during this step that we engage the public,
6 so step three is our first formal engagement of
7 the public. When we put the proposed rule out,
8 they will have, there'll be a comment period
9 where they can provide us comments.

10 So for step three, the staff puts
11 together a proposed rule package. A lot goes
12 into the package, for instance, a Commission
13 paper. A Commission paper will be made public.
14 It's around five pages long, give or take five
15 pages, you know, it's about that long.

16 Attached to the Commission paper is a
17 Federal Register Notice. Now, the Federal
18 Register Notice is really the heart of the
19 proposed rule.

20 We will publish the Federal Register
21 Notice in the FR, in the Federal Register. And
22 they're very picky about the format and the style
23 and how it looks because what they're interested
24 in is consistency throughout all the agencies, so
25 it's more user-friendly to the members of the

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1 public.

2 So we publish the Federal Register
3 Notice. Generally, we give the public 75 days to
4 comment, and this is the, the APA requirement is
5 to do this, not the 75 days, but that's, but to
6 put it out there for public comment.

7 The Federal Register Notice has some
8 key elements to it. It has what they call, what
9 we call, "Statements of consideration." Other
10 agencies call this a "Preamble," so you may have
11 heard the term "Preamble" used.

12 It has information in it that's laid
13 out in the way that makes it very user-friendly
14 for the public to read and understand. It has
15 like the point of contact, where you would send
16 in your comments, it has background information
17 on what you want to do for the rule.

18 It'll have a section that will contain
19 the draft environmental assessment. If the draft
20 environmental assessment is too big, it could be
21 a separate document, but this section would point
22 to it.

23 NEPA requires that we, whenever we do
24 rulemaking, we look at it to see if there's any
25 environmental impacts. If there's significant

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1 environmental impact, then we have to do
2 environmental impact statement.

3 So we do this environmental assessment
4 and we'll determine if there's a significant
5 environmental impact or not. If there's not, we
6 issue what we call a "FONSI," a finding of no
7 significant impact. If there is, we'll take the
8 next step and develop an environmental impact
9 statement.

10 Also, in the Federal Register Notice
11 is a draft regulatory analysis. This examines
12 the cost and benefits of all the alternatives
13 that the Commission considered for this
14 rulemaking. It provides some checks and balances
15 so that we as an agency don't move forward on a
16 path that's very costly, but there's no benefit
17 to it, so it provides some checks and balances in
18 the system.

19 And lastly, the FRN at the end of it
20 has the draft rule text. Now, step three is the
21 first step where rule text actually gets
22 introduced. Now, all these pieces that go in
23 here, as you notice, I said, "draft" in front of
24 all of them, a draft environmental assessment, a
25 draft regulatory analysis, draft rule text. It's

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1 all draft at this stage and then we publish it.

2 Separate from the FRN, but just as
3 important I think, is regulatory guidance
4 documents that have to be developed. The
5 responsibility for developing those falls on the
6 requesting office, so Fuel Cycle would be
7 developing regulatory guidance documents if they
8 feel it's needed. Those guidance, the guidance
9 in those documents are to help licensees
10 implement the new regulations that the rule is
11 putting out.

12 Also as part of step three, we issue a
13 press release, and we also provide, we send
14 letters to the Congress to let them know that
15 we're doing a proposed rule. A separate OMB
16 package goes out to the Office of Management and
17 Budget whenever there's a change and information
18 collection requirements. We have to provide them
19 with the rule and supporting statements to show
20 what those changes are.

21 So this step three takes about a year.
22 We post the proposed rule out for public
23 comment, so then we give them 75 days to comment,
24 and now we move to step four, the last step.

25 Step four, the final rule has to be

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1 what they call a "Logical outgrowth of the
2 proposed rule." If there's a big disconnect
3 between the two, if they don't fit together, if
4 you don't recognize one from the other then what
5 we may have to do is reissue the rule as a
6 proposed rule and go back to step three and start
7 over then.

8 Normally, that's not the case. We are
9 allowed to make changes to the proposed rule
10 based on the comments that we get from the
11 public. That's the whole point of getting public
12 comments. We're not just taking a pole to find
13 out what their views are. We're giving them a
14 meaningful interaction so that they can have an
15 impact on the rule.

16 So the final rule may look different
17 than the proposed rule and that's okay, but there
18 can't be a huge disconnect between the two. The
19 final rule package makeup is very similar to the
20 rule package makeup for the proposed rule.

21 It'll have a Commission paper.
22 There'll be an FRN attached to the Commission
23 paper. This FRN though will have a section in
24 the statements of consideration that includes a
25 summary of all the comments that we received and

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1 our response to those comments.

2 Now instead of having a draft
3 environmental assessment, we'll have a final
4 environmental assessment and a final regulatory
5 analysis. And instead of having draft rule text,
6 there'll be final rule text at the end of the
7 FRN.

8 And then separately, the requesting
9 organization or office will finalize their
10 rulemaking documents, their guidance documents,
11 and publish those as well. What we try to do is
12 get the guidance documents published about the
13 same time that the proposed rule and the final
14 rule are published so that the public can see
15 them, see them together, that's what the goal is.

16 So the final rule takes about a year.

17 So it's a marathon. It's not a sprint. The
18 whole process can take two-three years or longer.

19 So that's it in a nutshell. I hope
20 you learned something about the rulemaking
21 process. There's a poster outside that is a
22 poster of this if anybody afterwards wants to go
23 out and look at that they can, but you have the
24 slide.

25 So is there any questions?

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1 MR. LYMAN: This is Ed Lyman, Union of
2 Concerned Scientists. Two questions. The first
3 is when a rulemaking, when the technical basis
4 potentially involves nonpublic, either safeguards
5 or classified information, what procedures do you
6 use to address, including the public, to the
7 maximum extent possible so that the, the
8 technical basis is, can be understood within the
9 limits of constraints and information, is the
10 first question.

11 And the second is with regard to the
12 authority of the NRC, could you clarify if a, if
13 the Department of Energy hires a contractor to
14 construct the processing plant at a Department of
15 Energy site then the NRC wouldn't have the
16 authority right now under the Atomic Energy Act,
17 it would have to be granted separately. Is that
18 correct? Thank you.

19 MR. MCDANIEL: Regarding your first
20 question, if there is security-related issues,
21 safeguards information, we have to be very
22 careful about that. We'd still want to hold
23 public meetings. We'll do so though and we will
24 not introduce any safeguards' information. We
25 have to be very careful about that.

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1 You asked about what procedures do we
2 use when that's the case, and I don't know what
3 the, I don't know what the procedure is for that.

4 MR. DORMAN: This is Dan Dorman. I
5 think to the extent that we can redact any
6 technical basis to the point that it can be
7 shared with the public, that would be our first
8 objective would be to share as much as we could
9 to the extent that there may be safeguards or
10 classified information that would inform the
11 technical basis of a rule that the, I think, the
12 one that comes to my mind when that comes up is
13 the design basis threat rule in Part 73.

14 As part of the Commission's
15 policymaking process on the design basis threat,
16 it includes outreach to authorize federal
17 agencies to receive their comments on the
18 information that goes into the technical basis.
19 So to the extent that we can reach out to
20 authorized stakeholders to get as broad a
21 perspective as we can, we will do that, and to
22 the extent that we can get information out to the
23 public, we will do that.

24 MR. MCDANIEL: Dan, do you want to take
25 a crack at his second question?

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1 MR. DORMAN: The second question, if
2 DOE under its authorities chose to, or was
3 directed and authorized and appropriated by
4 Congress to construct and operate a reprocessing
5 facility on a DOE facility, my understanding
6 would be in line with yours, Dr. Lyman, that that
7 would not be under NRC's authority to regulate
8 unless Congress made a specific Act as they did
9 with the, the MOX Fuel Fabricating Facility,
10 which is funded through DOE and is a commercially
11 operated as proposed by Shaw AREVA MOX Services
12 on the DOE reservation at Savannah River, that
13 when there is specific legislation authorizing
14 the NRC to license that facility.

15 So I think the answer to the question
16 is unless Congress passed similar legislation of
17 such a facility as you described, would be under
18 DOE's authority and not NRCs.

19 MS. BAILEY: Any questions from the
20 bridge line?

21 (No response.)

22 MR. MCDANIEL: All right. Well, thank
23 you.

24 MS. BAILEY: Our last presentation is
25 from Kelli Markham. Kelli is the project manager

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1 for reprocessing regulatory development at NMSS.

2 She was the principal author of the gap analysis
3 and is here to discuss the regulatory gaps and
4 explain the areas where we are requesting
5 stakeholder feedback. Kelli.

6 MS. MARKHAM: Can I be heard? Yes,
7 okay, good. Well, thank you, Marissa, for the
8 introduction. I would like to start also by
9 taking this opportunity to thank you all for your
10 participation in today's meeting, both here and
11 ABB, ***1:51:54 as well as via the web.

12 As Cathy has indicated, stakeholder
13 involvement in this process is vital to its
14 success. The outcome that I'm striving for with
15 my presentation to describe the gap analysis that
16 we have put forth is to establish clarity and a
17 mutual understanding among the NRC and our
18 stakeholders of the regulatory gaps that were
19 identified.

20 So in slide two, as we've mentioned,
21 the gap analysis has been completed and the, we
22 have identified 23 gaps and prioritized these
23 gaps. We prioritized them as high, moderate, and
24 low-priority gaps.

25 High-priority gaps are those that must

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1 be resolved to establish an effective framework
2 and these are the gaps that will be included in
3 the technical basis development, if applicable.
4 And I'll describe that a little bit further on in
5 the presentation.

6 Moderate-priority gaps are those that
7 should be resolved, but are not essential to
8 license reprocessing facilities. In the gap
9 analysis, we've indicated that moderate-priority
10 gaps would be evaluated and could be included in
11 the technical basis.

12 So inclusion of these moderate gaps
13 would be dependent upon a combination of your
14 stakeholder input, as well as available
15 resources. And this why we need your involvement
16 here.

17 We're looking for your input as we
18 determine the scope of the technical basis and
19 determine which moderate gaps should be included.

20 And I'll outline some of those areas as I go
21 through some individual discussion of the gaps.

22 So to complete the discussion on the
23 prioritization, low-priority gaps are gaps that
24 could be resolved, but the technical basis
25 development of these gaps is not essential for

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1 licensing reprocessing facilities. So at this
2 stage, we won't be including low-priority gaps in
3 the technical basis development. And we'll
4 discuss this further when we describe some of the
5 gaps.

6 Additionally, indicated on this slide,
7 the requirements for Part 50, the requirements in
8 Part 50 for production and reprocessing
9 facilities will be consulted. And this is to
10 ensure rigor and completeness of our technical
11 basis. Additionally, we have active
12 participation from our General Counsel to assist
13 with ensuring that statutory requirements are
14 appropriately addressed and included.

15 And on this slide here, I have
16 indicated four categorizations of our gaps, areas
17 of groupings. And those, and those four areas
18 are the areas that we will be describing on the
19 next few slides.

20 Next slide, please. In the area of
21 waste, we have four, these four gaps indicated on
22 the slide. Two of these gaps are moderate gaps,
23 and again, those are the areas, those are the
24 gaps that we will be seeking stakeholder
25 involvement for the scope of the technical basis.

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1 The first gap is independent storage
2 of high-level waste. And this is a gap that
3 identifies that there is a lack of available
4 interim independent storage options to
5 accommodate and solidify high-level waste.

6 And I want to be clear that this gap
7 is not referring specifically to a geologic
8 repository, but rather interim high-level waste
9 storage, such that could be found in Part 72.

10 Currently, the only storage option for
11 solidified high-level waste is a monitored
12 retrievable storage installation, or an MRS. An
13 MRS is a DOE facility that would be licensed by
14 the NRC.

15 There are currently no existing or
16 planned, as far as we know, MRS facilities.
17 Therefore, to accommodate solidified high-level
18 waste, our framework for reprocessing facilities
19 will need to include some type of interim storage
20 facility.

21 The next gap indicated on the slide is
22 waste incidental to reprocessing, sometimes
23 referred to as WIR. The next -- this is
24 necessary. This gap was necessary to define
25 certain waste streams from spent fuel

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1 reprocessing to be classified as incidental waste
2 rather than high-level waste.

3 And the nature of this gap, there are
4 prior commissioned decisions about criteria for
5 incidental waste. The NRC staff has long been
6 involved in discussions with DOE in evaluating
7 the criteria in classification for some of these
8 waste streams. And there is some relatively
9 recent legislation that we are using collectively
10 to inform our technical basis to support an
11 incidental waste classification.

12 The last two gaps on this slide deal
13 with waste classification and confidence. These
14 gaps are the moderate gaps. And they -- and the
15 first gap is the waste classification gap. And
16 there is a current effort within the NRC to
17 revise the waste classification rules and that's
18 being led by our Office of Federal State and
19 Materials and Environmental Management Programs,
20 or FSME.

21 And for -- but the purposes of
22 reprocessing, the waste classification tables in
23 61.55, do not define all the radionuclides found
24 in reprocessing waste. As a result, by default,
25 some of these waste streams from reprocessing

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1 facilities, could be considered Class A, but may
2 not generally be acceptable for near-term surface
3 disposal.

4 In the ongoing effort for the waste
5 classification revision, the Commission has
6 directed the staff to risk-inform the waste
7 classification scheme in the long-term. Such an
8 effort will include unique wastes such that would
9 result from reprocessing facilities.

10 This gap was prioritized as moderate
11 since there is an ongoing effort currently to
12 look at these rules and it is possible to address
13 this gap through guidance in the interim, if
14 necessary, to accommodate reprocessing facility
15 licensing, but we need to hear from our
16 stakeholders with respect to this gap.

17 What are some of the thoughts of the
18 public about addressing this gap in our technical
19 basis? And what is the current prognosis from
20 industry regarding this gap and the need for it
21 to be addressed to support their licensing
22 intentions?

23 The, the last gap on this slide, the
24 waste confidence rule, that is indicated in
25 Section 51.23, applies only to the interim

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1 storage of spent fuel generated by light water
2 reactors. Reprocessing waste forms were
3 considered in the waste confidence decision, but
4 not included in the rule.

5 Therefore, in order to have the waste
6 confidence rule include reprocessing waste forms,
7 staff will need to undertake a rulemaking. There
8 is already a great deal of work done to support a
9 technical basis for waste confidence for
10 reprocessing waste forms.

11 However, reprocessing applicants could
12 consider the impacts of long-term storage in
13 their environmental assessments. As a result,
14 this gap was prioritized as a moderate gap.

15 So as far as the scope of the
16 technical basis goes, we need some input from our
17 stakeholders relating to this gap. What are the
18 industry's intentions? Is the industry
19 considering one to two facilities or ten to
20 twenty? This kind of information is going to
21 better inform our decision-making as we proceed
22 in this process.

23 Next slide. This slide outlines the
24 regulatory gaps as they relate to physical
25 protection and MC&A. They're currently isn't --

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1 the first gap is, indicates that there's
2 currently an inclusion for reprocessing
3 facilities from Category 1, MC&A requirements in
4 Section 74.51. This exclusion will be deleted in
5 the MC&A rulemaking that is underway.

6 The next two gaps are related and
7 involve risk informing the physical protection
8 and material control and accounting rules, MC&A.

9 These gaps are also the subject of the most
10 recent NEI letter that Cathy mentioned.

11 The current quantity-based material
12 categorization scheme in Part 73 and 74 may pose
13 an undue regulatory burden for facility
14 operations, such as shipments of MOX fuel
15 assemblies. Risk-informing these regulations
16 would consider other factors that contribute to
17 the attractiveness of the material, such as
18 chemical form.

19 In considering the attractiveness of
20 these materials, certain fissile materials, such
21 americium and neptunium, would be treated as
22 special nuclear material and subject to the
23 appropriate requirements indicated by the revised
24 categorization scheme. Reclassification of
25 americium and neptunium was not supported by the

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1 Commission at this time.

2 For the reprocessing framework, staff
3 needed to consider the impacts of what rule
4 changes were needed to adequately and
5 appropriately address safety for reprocessing
6 facilities. The gap analysis indicates a high-
7 propriety gap for either risk-informing Part 73
8 and 74, or instituting specific requirements.
9 Both of these are options that would address
10 shipments of MOX fuel assemblies.

11 Considering the Commission direction
12 regarding the reclassification of americium and
13 neptunium, staff evaluated the existing
14 technology for separating these materials in a
15 reprocessing scheme. Based on our knowledge from
16 interactions and information sharing with DOE,
17 staff determined that advanced separations
18 resulting in pure or relatively pure streams of
19 such materials as americium or neptunium was
20 commercially immature.

21 As a result, we did not feel that a
22 diversion from the Commission direction was
23 necessary at this time. Therefore, for the
24 reprocessing framework, we prioritized the
25 reclassification of americium and neptunium as

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1 low due to our assessment that the technology was
2 not yet commercially viable.

3 However, if such advanced fuel cycles
4 are intended, we need to know as this would raise
5 the priority of this gap to high and thus be
6 included in our framework efforts. This is an
7 area that we are also seeking stakeholder
8 feedback for.

9 The last two gaps indicated on this
10 slide are moderate gaps, and those involved,
11 diversion path analysis, and some approaches
12 toward material control and accounting.

13 Diversion path analysis would be a new
14 material control and accounting requirement and
15 proposed to make, and would be proposed to make
16 Part 74 more risk-informed by requiring
17 facilities to consider a wide range of malevolent
18 activities that might involve overt or covert
19 adversaries.

20 Reprocessing facilities would then be
21 required to conduct the diversion path analysis
22 and address any identified vulnerabilities. The
23 gap addressing the approaches towards material
24 accounting management would add regulations
25 consistent with our guidance on hold-up material

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1 management to facilitate more accurate accounting
2 measurements.

3 So hold-up material is the amount of
4 residual material that is determined to be
5 throughout the process, piping ***2:04:06 and
6 equipment, for example, that cannot be flushed
7 out for material control and accounting purposes.

8 So, again, these two gaps, these two moderate
9 gaps, as well as the other ones are looking for
10 input relating to inclusion of these gaps in the
11 technical basis.

12 The next slide has grouped the gaps
13 that relate to the increased risk of a
14 reprocessing facility over fuel cycle facilities.

15 Staff is evaluating how to appropriately assess
16 risk for reprocessing facilities.

17 Qualitative risk assessments are
18 required under Part 70. Reactor facilities use a
19 more quantitative approach. The risk and
20 consequences reprocessing facilities pose is
21 somewhere between that of a reactor facility and
22 currently licensed Part 70 fuel cycle facilities.

23 As part of our tech basis, we are seeking
24 contracted assistance to help us accurately
25 assess this high-priority gap.

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1 The next gap indicated involves
2 baseline design criteria. The baseline design
3 criteria in Part 70 are not sufficient for a
4 reprocessing facility, and the general design
5 criteria in Part 50, are somewhat more specific
6 for reactor facilities.

7 Therefore, a technical basis to
8 support BDCs for reprocessing facilities, will
9 need to be developed. The Atomic Energy Act
10 requires technical specifications for any
11 production facility, but this is not as simple as
12 including a requirement for tech specs, technical
13 specifications, for reprocessing facilities.

14 There is some overlap between tech
15 specs as defined in Part 50, and so the risk
16 analyses indicated in Part 70, specifically items
17 relied on for safety, or IROFS, and the ISA
18 methodology. Since the reprocessing framework
19 will either be a subpart to Part 70 or a new part
20 based on Part 70, our framework will need to
21 provide a basis for requirements that are
22 comparable to Part 50, yet also embraces the
23 primary controls on risk incorporated into Part
24 70, and that being the ISA and IROFS.

25 Additionally, licensed operators are

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1 required by the Act for production facilities.
2 Part 55 provides requirements for licensed
3 operators of reactor facilities, but it is
4 specific to reactor facilities. We will need to
5 develop a similar framework for reprocessing
6 facilities.

7 And the last gap on this slide is
8 effluent controls and monitoring. This gap was
9 prioritized as a moderate gap since there are
10 many requirements addressing this gap in Part 50.

11 As we mentioned earlier, Part 50 will be
12 consulted for appropriate requirements in our
13 framework development efforts.

14 And the next slide is the last
15 grouping of gaps. And these gaps are all related
16 to licensing. Industry has indicated their need
17 for one-step licensing for reprocessing
18 facilities, and the NRC has statutory authority
19 to accommodate one-step licensing.

20 But one-step licensing involves the
21 need to verify that the constructive facilities
22 conform to the approved licensed design. For
23 reactors, 10 CFR Part 52, identifies these
24 requirements as inspection, testing, and
25 acceptance criteria, or ITAACs.

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1 So for one-step licensing for
2 reprocessing facilities, something similar to
3 ITAACs, will be needed to be established.
4 Currently, staff is devoting resources toward
5 tech basis development for one-step licensing
6 only. We need current input from industry as to
7 their intentions to pursue other licensing
8 options.

9 Some of the other gaps indicated on
10 this slide, indemnity-related protection and fee-
11 related gaps do not require a technical basis, so
12 that was what I referred to earlier. These gaps
13 will not be included in the technical basis, but
14 are high-priority gaps since they will still be
15 needed to license reprocessing facilities.

16 And the table set forth in 10 CFR 51,
17 Section 51.51, and -- well, Section 51.51
18 includes tables of uranium fuel cycle
19 environmental data, and Section 51.52 includes
20 environmental impact, environmental effects of
21 transportation of fuel and waste.

22 These data do not provide impacts for
23 a closed fuel cycle that includes anything other
24 than a uranium fuel cycle. So the data in those
25 tables is based on a uranium fuel cycle and not

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1 on a MOX fuel cycle, for example.

2 The data in those tables are used to
3 support the preparation of environmental
4 assessments by power reactor applicants. So if
5 other fuel cycles, such as the plutonium fuel
6 cycle, were developed, power reactor applicants
7 would then need to consider and address the
8 environmental impacts of the other fuel cycles.

9 Staff has prioritized this as a low-
10 priority gap and there is no planned effort to
11 broaden this rule to include reprocessing
12 facilities. The content of an application, as
13 indicated on this slide, will differ for
14 different licensing options, i.e., one-step
15 versus two-step.

16 This is a low-priority gap since staff
17 is focusing efforts on one-step licensing at this
18 time. Sorry. The content of an application, as
19 I said, will differ depending on whether a
20 facility undergoes one-step licensing or two-step
21 licensing.

22 We've identified this as a low-
23 priority gap because currently our efforts are
24 being focused on one-step licensing. Again, if
25 this is not according to what industry has

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1 intentions, we will need input for these
2 alternate options.

3 Part 110 indicated or contains the
4 requirements for import/export of nuclear
5 equipment and material. Appendix I to this Part
6 is an illustrative list of reprocessing plant
7 components. And this list is focused mainly on
8 aqueous separation methods, so equipment relating
9 to aqueous separation methods.

10 This list does not include components
11 of pyroprocessing or other processing,
12 reprocessing-related facilities, such as
13 vitrification facilities. The NRC has export and
14 import licensing authority over production
15 facilities as identified by the Act.

16 And this list was not intended to be
17 all inclusive. Therefore, this gap was
18 prioritized as a low-priority gap. So the next
19 slide.

20 We're looking at establishing the
21 scope of the technical basis in the next couple
22 months, so we are requesting that you provide us
23 with your input by October 19. The staff will
24 evaluate all stakeholder input and our resource
25 allocations and we will use that information to

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1 prioritize our moderate gaps.

2 The gap analysis is the foundation for
3 the technical basis development and is currently
4 underway. Industry has indicated intentions of
5 potential licensed application submittal in the
6 2012-14 time frame.

7 We need input from industry as to
8 their current intentions. Regulations and
9 guidance will need to be established prior to
10 receipt of an application for effective and
11 efficient licensing.

12 And with that, I would like to again
13 thank you for your participation, and am willing
14 to take any questions you may have.

15 MR. LYMAN: Hi. Ed Lyman, Union of
16 Concerned Scientists. I'm confused about a few
17 things. First of all, you said that the
18 Commission doesn't support at this stage the re-
19 designation of americium and neptunium.

20 But my understanding, my recollection
21 was that their SRM on the revision of Part 74 was
22 that it wasn't to be considered in the revision
23 of Part 74, but you should consider it in the
24 reprocessing plant regulation. Now, unless maybe
25 there's an SRM for this, for the regulatory gap

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1 analysis that I didn't see. Is that --

2 MS. MARKHAM: That's the SRM that I'm
3 referring to and it says in there that the
4 Commission doesn't support reclassification at
5 this time and that we should consider -- it
6 broadly focused on all of the items associated
7 with that rulemaking package.

8 MR. LYMAN: Well, that simply doesn't
9 make sense for a number of reasons. And also,
10 two out of the three vendors who've expressed
11 interest in the reprocessing plant application
12 have processes which wouldn't involve the
13 inclusion of minor actinides along with
14 plutonium.

15 One is the Energy Solutions and NUEX,
16 the other is the PRISM and pyroprocessing, so
17 that's two out of three already satisfy that
18 criterion where you should flip it to high, so it
19 makes absolutely no sense.

20 MS. MARKHAM: Inclusion of the minor
21 actinides is different than pure and separate
22 streams of them.

23 MR. LYMAN: But unless you, unless you
24 classify americium and neptunium properly as
25 special nuclear material, how are you going to

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1 come up with a regulatory scheme for safeguarding
2 a pyroprocessing plant?

3 MS. MARKHAM: Again, we need continued
4 input from industry as to their intentions for
5 pursuing pyroprocessing and some of the other
6 technologies. Our current understanding from
7 what we have received relating to the technology
8 is that these technologies for having pure and
9 separate streams of these fissile materials is
10 not industrially mature. If that's not the case,
11 then we need to, to reevaluate it.

12 MR. LYMAN: Right, but that's, again,
13 that's the separate issue from if someone comes
14 to you and says, "We're going to be producing,
15 we're going to be separating a mixture of
16 plutonium and minor actinides. The dilution is
17 such it shouldn't be considered Category 1
18 material under this new scheme because we have
19 these minor actinides in it."

20 Now, if those are weapons used in
21 minor actinides, but you don't consider them
22 strategic special nuclear material, you're not
23 going to be having the appropriate
24 characterization of the, of the security
25 potential of the material.

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1 MS. MARKHAM: Are you suggesting that,
2 that the minor actinides would dilute the
3 plutonium so that it would be lower --

4 MR. LYMAN: I'm not suggesting it, but
5 that's what some people do. They --

6 MS. MARKHAM: Again, we --

7 MR. LYMAN: That they argue that the
8 minor actinides should be considered a lower
9 security or diversion risk and separate
10 plutonium. And I'm saying that this scheme is
11 going to have to recognize that that's not true.

12 MS. MARKHAM: Again, we're looking at
13 this from the point and perspective of having
14 pure streams, which is what I have understood to
15 be the point of incorporating some of these
16 fissile requirements. Now, again, if this is not
17 the case, and industry has different intentions,
18 then we need to understand that.

19 MR. LYMAN: So you're, so what you're
20 saying is that at this point, you don't intend to
21 change the regulations that would even
22 acknowledge -- well, let's say, the current
23 definition of plutonium is a strategic -- would
24 not be changed even if there were admixtures of
25 the neptunium and americium in the stream.

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1 MS. MARKHAM: That is not what I said.
2 What I'm saying is that we need to understand
3 better what the technology is that's going to be
4 out there. And definitely, if we were to receive
5 something of that nature, we need to be prepared
6 for something like that. That's the point of
7 this meeting.

8 MR. LYMAN: Right, but like I said,
9 NUXE is going to have admixtures of minor
10 actinide, so you're just going back-and-forth.
11 All I know is that if, you can adopt a material
12 attractiveness table that, where you're going to
13 risk-inform, whatever that means, the -- you're
14 going to dilute or reduce the, the safeguards and
15 physical protection requirements for reprocessing
16 plant unless you actually take into account the,
17 what is known about the weapons useable
18 properties of the entire spectrum of weapons
19 useable actinides, and otherwise it's not a
20 technically defensible approach.

21 MS. MARKHAM: I am not, I am not here
22 to evaluate specific technologies at this point.
23 I understand your point and we are here to
24 debate some of these topics and to move forward
25 with them and to understand them better so that

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1 we can better inform our process.

2 MR. LYMAN: And you are familiar with
3 the National Lab study of material attractiveness
4 that said that, that there is virtually no
5 benefit to, with regard to material
6 attractiveness for incorporation of minor
7 actinides for dilution of plutonium with uranium
8 unless the dilution is below, plutonium is below
9 20 percent, and even so, it's still a weapons-
10 usable, directly weapons-usable mixture according
11 to this paper. How are you going to accommodate
12 that, those findings?

13 MS. MARKHAM: Again, we need input to
14 know if that's really the intentions. Our
15 current understanding is that that's, we need to
16 evaluate it a little bit better.

17 MR. LYMAN: But why -- all right, I'm
18 not going to belabor the point, but I mean this
19 is going to be a major -- this a major effort.
20 Why would you go through this effort and then
21 have to redo it a couple of years later when
22 someone else wants to submit an application with
23 a different technology? It seems like a waste of
24 time, and, you know, we're going to be taking
25 this up with the Commission again. Thanks.

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1 MS. BAILEY: Well, we appreciate your
2 comment and we note that it's actually in the,
3 it's going to be in the transcript, so it's
4 something that we may need to take a closer look
5 at as we move forward in developing the gap
6 analysis, or I'm sorry, in developing the
7 technical basis. So, thank you, and your comment
8 is noted.

9 Anymore questions?

10 MS. MARKHAM: Other questions.

11 MS. SUPKO: Eileen Supko, Energy
12 Resources International. You mentioned that you
13 identified a gap associated with independent
14 storage of high-level waste. Have you also
15 identified any gaps associated with
16 transportation of high-level waste or any of the
17 other materials?

18 MS. MARKHAM: We have looked
19 comprehensively at Part 72. We do have rules in
20 place for transportation of high-level waste
21 currently.

22 Other questions?

23 MS. BAILEY: Questions from the bridge
24 line?

25 MR. BARTLETT: There's currently no

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1 questions from the webinar.

2 MS. MARKHAM: Okay. Well, with that,
3 I'd like to thank you once again for your
4 participation.

5 MR. DORMAN: Okay. In closing out the
6 meeting, first, I want to thank all of you for
7 your participation in the meeting. I think
8 you've got a quick overview sense of the level of
9 complexity and the broad scope that this effort
10 will undertake.

11 This is the first of what we
12 anticipate will be a series of meetings. Our
13 intent in this meeting was twofold through
14 Keith's presentation to give you a sense of the
15 opportunities for a public participation in the
16 process and through Kelli's discussion to give a
17 general sense of the scope that we anticipate in
18 the rulemaking and some particular areas where we
19 have need of input into the, the, into defining
20 the scope of the rulemaking.

21 I think you've got a sense of the
22 broad scope and the complexity, both from a
23 technical and policy aspects of this, and so we
24 hope that this meeting has helped to provide that
25 mutual understanding of the nature of what we

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1 presented to the Commission in the paper earlier
2 this year, as well as the scope of the issues
3 that we need input on as we define the scope of
4 the technical basis and further develop the
5 technical basis.

6 I appreciated Keith pointing to the,
7 to the authorities because I think when we get
8 several years down the road here to presenting a
9 rule to the Commission, what we need to do is
10 achieve our principal missions as laid out in the
11 Atomic Energy Act of providing a rule that is
12 sufficiently comprehensive to provide assurance
13 that there is adequate protection in the public
14 health and safety, that there is promotion of the
15 common defense and security, and protection of
16 the environment, which are the principal missions
17 that we are given.

18 And so the input that we get from
19 everybody in that process will be critical to our
20 success in doing that. I think we do plan to
21 have more public meetings that will delve down
22 into the specific issues more, including the, the
23 physical protection, the MC&A aspects, so Dr.
24 Lyman, I appreciate your comment and we will be
25 delving into that more, and hopefully, in the

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1 relatively near future.

2 And so finally, I want to thank Matt
3 and Steve for their support in helping to
4 organizing the webinar aspect of this meeting and
5 to facilitate that process, and our reporter, who
6 will get us a transcript so that we can glean out
7 the key points from your comments, Dr. Lyman and
8 others, and incorporate that into our process.

9 Looking at Keith's presentation, we
10 are in step two of the process. It is the more
11 informal part of the process, but as you look
12 through the items that were in Kelli's slide or
13 you read through the paper, we welcome the
14 public's participation and comments at any point
15 in the process. And so, just keep connected with
16 us and keep an eye out for these additional
17 meetings that will be forthcoming in the near
18 future.

19 Just as one final logistical reminder,
20 we do have the feedback forms out on the table if
21 you didn't pick one up on the way in. We do
22 appreciate feedback on the conduct and the
23 content of the meetings. And on your way out,
24 for the visitors, please remember to return your
25 security badges. And the presentations that were

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1 provided here will be available on the NRC
2 website. Thank you.

3 (Whereupon, proceedings in the above-
4 entitled matter concluded at 2:24 p.m. on
5 September 18, 2009.)

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