

12/25/2010

Key Messages:

- 1) This NEI guidance document could be a way to achieve the consistency and issue management as proposed by NEI.
- 2) A fully developed problem statement is essential to achieve timely resolution of issues.
- 3) Recommended and NRC endorsed solutions will ensure issue closure and timely resolution.
- 4) Industry commitment to implement Issue Resolution Protocol solutions is required to ensure consistency and timely closure.
- 5) NEI should revise the protocol to acknowledge NRC may deviate from solution plans based on new information.
- 6) NRC "concurrence" on issue summary forms is not formal or official and indicates NRC is aware if and will in good faith work on solution plans.

Specific Comments on NEI's Proposed Resolution Protocol:

- 1) Regarding joint decisions, as the regulator the NRC will do what is necessary to achieve safety and security, which may or may not include entering into a resolution path that NEI proposes for a given issue. However, NEI should note that a protocol such as this will not limit regulatory options should new information come to light which would change the safety significance or urgency of an issue from that which was used as a basis for NRC initially entering into an agreement. Suggested revised text for the Evaluation Phase regarding this point is included under "Text Revisions" number 10 below. Most of the success tools mentioned in the protocol such as, closure memos, SRPs, etc. are not legally binding and can not be considered durable. SFST can never predict the form of future rulemaking or statutes that may cause the Division to re-think a position.
- 2) The NRC suggests NEI revise either the Abstract and/or the Objectives portion of the protocol to reflect that the NRC must follow agency process for entering into any binding agreement.
- 3) Regardless of who identifies or proposes an issue, all resolution paths should point to achieving industry or NEI commitment to implementing actions and solutions determined by NEI, industry, and NRC teams. NEI and industry own actions in the implementation phase.
- 4) NRC will not endorse this protocol but will attempt to use it in "good faith" to help resolve generic issues. Use of the tool will not restrict us from using any of our other regulatory tools to resolve issues. To this extent, NEI should consider the protocol as draft and look at revising or continuing in use of the protocol after dispositioning several issues to incorporate lessons learned and feedback.
- 5) Page two and other places discusses Industry *developing guidance that the NRC will endorse*; we can't commit to this in advance; the language needs to be something along the lines that Industry will develop guidance and submit to the NRC for review and possible endorsement. Having said that if we communicate well during the issue resolution phase we should be confident of receiving a product that we can endorse or endorse with comments.
- 6) With regard to acceptance of an issue, the NRC POC will be the cognizant SFST BC. Acceptance means that adequate resources are available to work on the issue. Not having resources available to work on an issue is an acceptable reason for not accepting or delaying acceptance of an issue.
- 7) For clarity, recommend NEI match phases with forms. Therefore, there should be a screening form for the screening phase, a planning form for the planning phase (NEI currently calls the planning phase an evaluation phase), and an implementation form for the implementation phase.

- 8) NEI should tie all success criteria to developing and moving issues to an already existing process or issuance of CoCs.
- 9) NEI should add a measurement phase. NEI should have a way to measure success of the protocol.
- 10) NEI should add provisions to make the protocol and its final products transparent to the public. Any document produced and decisions made need to be on the docket and available to the public. This includes any documents that NEI/Industry share with SFST. Any documents NEI produces to resolve issues but does not share with SFST, and to the extent that we do not use or rely upon can remain private.
- 11) NEI should propose how to obtain agreement regarding prioritization of issues to work on.
- 12) Editorials and suggested text revisions – see below.

Proposed Comment on Pilot Issue:

Suggest the success criteria be focused more on moving the issue, once developed, into an existing NRC process. Suggest the final product be an Information Notice, RIS, or other form of Generic Communication. Additionally, NEI and industry will drive the success criteria by proposing the criteria and drafting resolution. NEI should also expand on what the unique characteristics are as referred to in criteria four.

Editorial, Text Revisions, and Comment:

- 1) Suggest adding a “Measurement Phase” to the Abstract as Phase 5.
- 2) Regarding page 1, second paragraph first bullet, replace “requiring” with “that could benefit from”. Suggest adding a sixth bullet: “Measure the success of the resolution protocol.”
- 3) Regarding page 1, third paragraph, revise the paragraph to recognize that “applicable staff positions”, “Regulatory Guides”, “generic correspondence”, and “industry initiatives” can be comprised of both a licensing and technical basis.
- 4) Regarding page 1, fourth paragraph, revise the paragraph to add a second sentence which states: “If this is not achievable, then need documentation as to why process was not used.”
- 5) Regarding page 2, first paragraph, revise the end of the first sentence to state: “... 10 CFR 71 and/or 72.”
- 6) Regarding the example issue form in the appendix, revise the first screening criteria to state: “... 10 CFR 71 and/or 72.”, revise all screening criteria to query whether the criteria applies and why the criteria applies, and add a conditional statement at the end of the criteria to state: “If yes to all the above screening criteria, then determine the success criteria for resolving the issue.”
- 7) Regarding page 2, third paragraph, revise the end of the third sentence to state: “... NRC **may** endorse.”
- 8) Regarding page 3, suggest adding item 5 to Principles: “Success of process is measured” and adding on page 4, item 5: “Measurement”.
- 9) Page 3 has a note 3 that NRC and Industry agree on the actions required - should probably add a note what to do or how to proceed when alignment on an issue cant be reached.
- 10) Regarding page 6, item 3 in the Evaluation Phase, include a second sentence to state: “The schedule may change based on the emergence of new information, which would change the safety significance or urgency of an issue, as determined by the regulator.”
- 11) Suggest changing the protocol to make clear that the Evaluation/Planning phase begins when the screening form (currently titled the issue summary form) is signed.
- 12) For clarity, suggest changing Evaluation Phase to Planning Phase and redefining the Planning Phase to: “The issue is evaluated and tasks **planned**”, rather than “tasks executed”. Tasks should be executed in the Implementation Phase.

- 13) Under 2.2.1, second item, editorial in first sentence. Change “indentifying” to “identifying”.
- 14) Under 2.2.3, item 1, suggest revising the introduction to state: “The **planning** phase begins **when the issue summary form is signed**. NEI and NRC....”
- 15) Under 2.2.3, item 2, suggest adding the following sentences to the end: “An example form for the planning phase is provided. The resolution plan is a detailed plan on how to achieve the success criteria outlined on the screening form.”
- 16) Under 2.2.3, item 4, suggest renaming “Issue Resolution Form” to “Screening Form”.
- 17) Under 2.2.3, item 4 (discussion pertaining to resolution of an issue), suggest adding “g. CoC issuance” and “h. Moving issue into an existing process” as potential issue resolutions.
- 18) For clarity, in section 2.2.4, suggest renaming the “Implementation Phase” the “Implementation/**Closeout** phase”.
- 19) Under section 2.2.4, suggest changing “section V of the Issue Summary Form” to “the Implementation Form”. The final phase, the implementation/closeout phase, should have its own form.
- 20) Under section 2.3, suggest the following title: “Revisions to Screening, Planning, and Implementation Forms”. Suggest replacing the three paragraphs in this section with: “Any revisions to signed forms require re-engagement by POCs and new signatures.” The process as currently written may get itself lost in the planning phase. Recommend a formal process and form for all phases, including the planning phase, in order to focus to a resolution for issues.
- 21) In section 2.4, suggest revising the section to state: “Revisions to the three types of forms should be kept as retrievable records by NEI. All final forms will be made publicly available by the NRC.”
- 22) Suggest Appendix B title: “Screening Form Guidance”. Under Success Criteria, suggest a final paragraph stating: “Success criteria should be in one way or another tied to issuing CoCs or moving an issue to an already existing process.” Suggest Section V be titled “Rejection” and retaining item 1 and moving item 2 to a new appendix for Implementation. Suggest a final sentence be added to item 2: “Resolution is documented on the implementation form.”
- 23) Regarding Key Terms and Definitions, definitions for Inspection, Violation, Enforcement Action, Certificate of Compliance, Exemption, Request for Licensing Action, License Amendment Request, Temporary Instruction, and Task Interface Agreement should be provided. NEI should include a preamble to this section which states that NRC does not legally endorse the definitions. However, they are provided by NEI in order to provide the protocol some context.
- 24) Regarding Key Terms and Definitions, under “Applicable Staff Postions”, NEI should make reference to an ISG.
- 25) Regarding Key Terms and Definitions, under “Compliance”, NEI should provide some clarification to: “Compliance is based on the intent of the requirement at the time of its promulgation.”
- 26) Regarding Key Terms and Definitions, under “Precedent”, NEI should provide a more definitive definition stating when, or what properties, a precedent must have. For example, a determination for Part 72 may not always be used in a part 71 forum.
- 27) Regarding Key Terms and Definitions, under “Standard Project Management Techniques”, revise the lead in sentence to state: “The protocol **may** employ ...”.
- 28) Regarding Key Terms and Definitions, under “Technical Basis”, revise the lead in sentence to state: “...for an issue **may be** comprised of:”.
- 29) Regarding Key Terms and Definitions, under “Topical Report”, the definition should be revised to state that Topical Reports should avoid referencing SARs or FSARs.
- 30) Suggest titling Appendix E: “Planning Guidance for Phase 3”.
- 31) Regarding Appendix E, under the Background, revise the last sentence to state: “The following elements **may** be...”. Also, add “Generic” to the third bullet under Regulatory Baseline.

32) Regarding Issue I-10-05, NEI may consider revising the fourth criteria since a portion of the rationale may be the issue is application dependent and therefore not already covered by a generic process.

33) Comment: Should the DSTF be considering I-10-04? Was the issue previously addressed in other formal correspondence between NRC and NEI?