



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

May 16, 1994

MEMORANDUM FOR: Luis A. Reyes
Acting Associate Director for Projects
Office of Nuclear Reactor Regulation

FROM: Roy P. Zimmerman, Director
RRG Implementation/CBLA Programs

SUBJECT: MEETING WITH NEI ON COMMITMENT MANAGEMENT

On April 26, 1994, the NRC staff met with representatives from the Nuclear Energy Institute (NEI) to discuss the NEI draft guidance document for licensees to use for managing commitments made to the NRC. This was the third public meeting between the staff and representatives of NEI to discuss the issue of commitment management and the development of guidance for licensees to use for changing commitments made to the NRC. Enclosure 1 is the most recent draft NEI guidance document, "Managing NRC Commitments", and Enclosure 2 is a list of the meeting attendees.

NEI described the draft guidance document and provided examples of how commitments made in response to various regulatory vehicles (i.e., licensee event reports, violation responses and NRC Bulletins) would be captured at the different decision points. There were several specific areas of the process which received the most discussion between the staff and NEI. A brief description of these items are as follows:

- o Both the staff and NEI agreed that Figure A-2, the safety significance assessment flowchart, would work best with regard to hardware assessments. Software issues that may not be processed at the safety assessment decision step would be captured at the other decision steps in the process.
- o For commitments changed by the licensee without NRC prior agreement, the staff indicated a need to clarify the guidance regarding information a licensee needs to provide the NRC in subsequent docketed correspondence and the information appropriate to retain onsite for NRC review.
- o For issues in which licensees take credit for existing plant programs, the staff indicated the need for licensees to recognize these existing programs in their commitment management programs. This topic was discussed in the context of lessons-learned from the staff's commitment management audits of seven licensees' programs conducted in 1993.

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Overall, the staff believes that the NEI guidance document, with minor modifications, will be ready for pilot program implementation in the June/July timeframe. NEI agreed to explore potential candidates to exercise the guidance in a pilot program. Both the staff and NEI agreed to hold additional internal meetings to discuss the guidance document and to schedule another NRC/NEI meeting in the near future to continue discussions on the process.

Original signed by

Roy P. Zimmerman, Director
RRG Implementation/CBLA Programs

Enclosures:

1. NEI draft guidance document, "Managing NRC Commitments"
2. Attendees List

cc: Stephen D. Floyd, NEI

DISTRIBUTION:

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PDR

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CCraig

MCutchin

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SFlanders

* See Previous Concurrence

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5/ 13 /94

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MANAGING NRC COMMITMENTS

In Support of

Strategic Plan for Improved Economic Performance

CURRENT SITUATION

Licenses are required to comply with NRC rules, regulations and orders and their license conditions, including their technical specifications and any license conditions. Those requirements are frequently referred to as "obligations" to differentiate them from matters within the licensee's control. The method of compliance with any of these requirements is frequently a subject of NRC guidance provided by a NUREG or a Regulatory Guide. However, the licensee generally has the authority to determine what method of compliance is appropriate for its plant(s) to meet these obligations (see § 50.109(a)(7)).

As part of their daily interface with the NRC staff, licensees typically agree to take actions covering a wide range of topics, some of high safety significance, but most of lesser or no safety significance, that either exceed regulatory requirements or state a specific method for meeting an obligation. The statements of action are referred to as "regulatory commitments." Implementation of regulatory commitments has been burdensome and costly, and often has been without any measurable safety benefit. Further, at a given point in time, a license typically has many open or continuing commitments on its docket. The collective administrative burden on licensees, industry organizations and the NRC staff of tracking, completing, and documenting the closure of such commitments is significant, and, in the case of items of low safety significance, of little real value. Success in managing commitments is often measured by strict compliance or the size of the backlog rather than by the level of performance achieved. Rather than spend resources to quantify the safety significance of each of these commitments, most licensees default to tracking and completing all of them.

The nuclear industry and the NRC have the same fundamental objective -- to identify and accomplish those actions that provide the level of nuclear plant performance necessary to ensure adequate protection of public health and safety. The lack of any distinction between commitments items of high and low (or even no) safety significance, and the lack of a readily acceptable and practical method for eliminating or changing resulting commitments when warranted, impedes the achievement of this objective. Licensees treat commitments seriously and only make changes after due consideration of any safety impacts. At times, licensees hesitate to change commitments, even though justified from a safety standpoint, due to concerns that their management integrity may be

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questioned by the NRC. A uniform practice regarding commitments and commitment change mechanisms within the industry would assist individual utilities in focusing resources on significant issues and in changing past commitments that no longer serve their intended purpose.

RECOMMENDED ACTIONS

Managing Commitments

- Any significant commitment of utility resources, whether to satisfy a concern of an NRC inspector, to respond to a NRC generic communication, or to determine the appropriate manner to implement a regulatory requirement, should be the result of a reasoned management decision-making process. To ensure proper management control of utility resources, an internal process to control commitments should be established. For example:
 - Commitments and their relative priority should be based upon an evaluation of the safety benefit that will be attained; the pertinent legal requirement, if any; the technical bases for the contemplated action or activity; and the resources available, in the context of other requirements and commitments. The cost (both initial costs and those that would be incurred over the life of the unit) and value added of an action being considered in response to an NRC request should be carefully evaluated, including consideration of any pertinent regulatory requirement(s).
 - Commitments should be made only by previously designated persons. Consistent with the utility's management approach, the number of individuals designated could be very few, or the responsibility could be delegated fairly broadly within each individual's area of responsibility.
 - The designated individual(s) should be identified both internally and externally as the only licensee personnel with the authority to commit utility resources. Similarly, the utility should encourage the NRC to designate one or more points of contact to represent the NRC in resolving questions related to the prioritization of issues and utility resource commitments.

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- The NRC should be advised that oral statements to take certain action represent an intent to make a commitment, but do not constitute a commitment until submitted in writing, on the docket by a designated utility representative. (This would not apply to "discretionary enforcement" situations.)
- Oral statements to take specific actions should only be made at meetings, in telephone conversations, in enforcement conferences, or in discussions or correspondence with the NRC after obtaining the approval of the designated senior management person responsible. In general, oral statements to take certain actions should not be made in response to observations made during either routine or special inspections until (1) after receipt of the written inspection report that identifies the particular matter and describes the NRC concern regarding that matter and (2) after the utility has completed an evaluation to ensure that the root cause of the NRC's concern will be corrected by the proposed action. However, nothing in these guidelines should be construed to suggest that a licensee should not immediately correct a noncompliance with a rule or regulation that might be identified during an inspection or otherwise.
- Confirmatory Action Letters, NRC Inspection Reports and NRC Safety Evaluation Reports should be carefully reviewed to ensure that statements of licensee commitments are accurate. Inaccurate statements should be promptly corrected by written notification to the NRC.
- Correspondence that includes commitments should clearly distinguish regulatory commitments from voluntary enhancements and other descriptive information. For example, responses to Notices of Violation and Licensee Event Reports identify actions to minimize recurrence of the adverse condition. Historically, not all such actions were necessary to minimize recurrence -- some represented enhancements to ongoing practices not directly related to the cause of the event. Future correspondence should not identify these actions as commitments.

Changing Commitments

- Changes to commitments should also be the result of a reasoned management decision-making process. To ensure continued management

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control of resources applied to commitments, the following commitment change practices are recommended:

- Each licensee should periodically consider evaluating its outstanding commitments and the manner in which its commitments have been implemented, to the extent that the conduct of the evaluation itself is cost-effective (e.g., focuses on those commitments that have a major impact on the utility's costs). The licensee should determine whether the current commitment represents the most cost-effective way of satisfying the issue that prompted the commitment and should change those commitments as appropriate.
- Each licensee should establish a practical commitment change process that distinguishes the relative safety significance and regulatory interest of commitments communicated to the NRC staff. Attachment A to this guideline provides an example commitment change process.
- Each licensee should consider including a "sunset clause" in commitments, where appropriate, to establish a period of time to evaluate the effectiveness of the commitment.

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ATTACHMENT A

COMMITMENT CHANGE PROCESS

The purpose of this guidance document is to describe a baseline set of commitment change concepts that licensees can use to supplement plant-specific programs used to change both past and future commitments. It applies to action items communicated to the NRC under the current regulatory structure. It is important to understand that the guidance does not imply that licensee managers act only in response to regulatory requirements or initiatives; indeed, licensees take many actions designed to maintain or improve safety without interacting with the NRC staff.

DEFINITIONS

The following definitions and their bases are intended to facilitate a common understanding of the distinction between the safety importance and regulatory significance of different types of licensee actions communicated to the NRC.

Obligation means any condition or action that is a legally binding requirement imposed on licensees through applicable rules, regulations, orders, and licenses (including technical specifications and license conditions).

The NRC has been given statutory authority under Atomic Energy Act Section 161.b to "establish by rule, regulation, or order, such standards and instructions...as the Commission deems necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property." A condition of each operating license is full compliance with these regulatory directives, consistent with the provisions of Sections 103 and 104 of the Atomic Energy Act.

Regulatory Commitment means an explicit statement to take a specific action agreed to or volunteered by a licensee that has been submitted on the docket to the Commission, by designated licensee management, in writing.

Licensees frequently communicate their intent to take certain actions to restore compliance with Obligations, to define a certain method for meeting Obligations, to correct or preclude the recurrence of adverse conditions or to make improvements to the plant or plant processes. A Regulatory Commitment is an intentional undertaking by a licensee to complete a specific action. In contrast,

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factual statements and descriptive information in submittals do not constitute commitments in the absence of such explicit statements. Because Regulatory Commitments are not legally binding requirements, licensee management has the latitude to decide the scope and details of the intended actions without significant interaction or guidance from NRC management.)

CHANGE PROCESS

The following outlines a recommended change process intended to provide licensee management with the necessary flexibility to effectively manage the safe and efficient operation of their nuclear plants, while ensuring that changes that are significant to safety and/or of high regulatory interest are communicated to the NRC.

Obligations

No changes from current requirements are needed. The available statutory-based mechanisms include petitions for rulemaking under 10 CFR 2.802, exemption requests under 10 CFR 50.12, license amendment requests under 10 CFR 50.90, changes to certain plans under 10 CFR 50.54 and requests to modify or rescind orders issued under 10 CFR 2.202.

Regulatory Commitments

The attached flowcharts, Figures A-1 and A-2, outline a regulatory commitment management change process that (1) delineates commitments that have safety significance and/or regulatory interest; (2) establishes guidance for notifying the NRC of changes to commitments that have safety significance and/or regulatory interest; and, (3) establishes a rationale for eliminating past regulatory commitments that have negligible safety significance and/or regulatory interest. Figure A-3 is a summary sheet that provides an adequate level of documentation for the decisions made in revising a commitment using this change process.

The flowchart has five major decision steps described below:

STEP 1: IS THERE A CODIFIED CHANGE PROCESS FOR THE COMMITMENT?

Commitments that are embodied in the Updated Final Safety Analysis Report as descriptions of the facility or procedures are changed by applying the provisions of 10 CFR 50.59 to determine if an unreviewed safety question (USQ) exists. If an

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USQ does not exist, licensees may make the change and provide a description of the change to the NRC annually or coincident with filing FSAR updates. Otherwise, prior NRC review and approval of the change is required.

Commitments that are contained in certain programs and plans required by 10 CFR 50.54 are changed by applying the provisions of the applicable section of 10 CFR 50.54 (50.54(a) for Quality Assurance Plan, 50.54(p) for Safeguards Contingency Plan or 50.54(q) for Emergency Plan). Changes that do not reduce commitments in the Quality Assurance Plan or that do not "reduce the effectiveness" of the Safeguards Contingency Plan or Emergency Plan may be made without prior NRC review and approval with notification of the change as specified in the applicable 50.54 section. Otherwise, prior NRC review and approval of the change is required.

NOTE: Efforts are in progress within the industry and NRC to provide guidance on the types of changes that do not "reduce the effectiveness" of these plans

STEP 2: IS THE CHANGE SIGNIFICANT TO SAFETY?

Commitment changes that are not captured by Step 1 above need to be evaluated in terms of their safety significance.

There are a number of techniques available to perform this evaluation. Certainly a 10 CFR 50.59 like evaluation may be used. However, the degree of rigor and documentation usually associated with 10 CFR 50.59 is not always necessary, and sometimes the questions in 50.59 do not readily apply to the commitment (e.g., commitments to perform a review or establish additional oversight mechanisms). Efforts are underway to develop evaluation approaches that may pre-define the safety significance of different categories of commitments. A Probabilistic Safety Assessment (PSA) Applications Guide is under development. Pilot efforts are underway to use this information in "grading" implementation of Appendix B "Quality Assurance." Results of these efforts could, in essence, bin commitments as being potentially safety significant or safety-insignificant. This approach would provide for regulatory coherence and further progress efforts to focus attention to safety significant items and de-emphasize other issues. THIS APPROACH NEEDS TO BE FURTHER DEFINED IN A FUTURE REVISION TO THIS CHANGE PROCESS.

Changes to commitments that are evaluated as being significant to safety would either not be implemented or would require discussion with the NRC and review and approval, as appropriate, or written notification. Changes evaluated as not

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significant to safety would proceed to Step 3 to assess the degree of past regulatory interest.

STEP 3: DID THE NRC APPROVE THE ORIGINAL COMMITMENT BEING CONSIDERED FOR CHANGE?

Some commitments are made in response to a subject of regulatory interest where the NRC either reviewed and approved the action volunteered or agreed to by the licensee or relied upon the commitment in lieu of taking other action, such as issuing orders. Items in this category include (1) specific statements in NRC Safety Evaluation Reports crediting specific licensee commitments as being the basis for an NRC staff safety conclusion; (2) commitments made in response to NRC Bulletins and Generic Letters; and, (3) commitments identified in Confirmatory Action Letters.

If the commitment has yet to be implemented, the licensee can proceed with the change, but the NRC should be notified of the change as soon as practicable after the change is approved by licensee management, but before any committed completion date. Notification should be accomplished by supplementing the docketed correspondence containing the original commitment.

If the commitment has been implemented, or is of a recurring nature, the licensee can make the change and provide annual or refueling outage interval notification to the NRC.

STEP 4: WAS THE ORIGINAL COMMITMENT NECESSARY TO ACHIEVE COMPLIANCE WITH AN OBLIGATION?

Non-compliance with regulations are identified to licensees through notices of violation (NOVs). Response to NOVs include the immediate corrective actions taken to restore compliance with the regulation. Additionally, licensees may have made specific commitments related to the method of complying with orders. Changes to these commitments of action need to be evaluated to determine if the change would still preserve compliance with the obligation.

If the change to the commitment would not preserve compliance, licensees would have the option of (1) not proceeding with the change, or (2) applying for the appropriate form of regulatory relief (i.e., exemption or order revision).

If the change to the commitment preserves compliance, the licensee can make the change and provide annual or refueling outage interval notification to the NRC.

STEP 5: WAS THE ORIGINAL COMMITMENT MADE TO MINIMIZE RECURRENCE OF AN ADVERSE CONDITION?

Commitments to take long-term corrective actions in NOV responses and Licensee Event Reports (LERs) are made to minimize recurrence of adverse conditions. A good measure of the effectiveness of these commitments is the success in avoiding recurrent adverse conditions. The NRC, under its enforcement policy, uses a three-year time period as an indication that the adverse condition has been corrected.

Licensees may find it useful to periodically review the necessity of commitments related to minimizing recurrence of adverse conditions. Licensees need the flexibility to change or eliminate these commitments for several reasons:

- The committed corrective action may not have been successful in minimizing recurrence of the condition; or,
- There may be a more effective way to minimize recurrence of the condition other than the method selected; or,
- The commitment may no longer be necessary due to changing conditions at the plant; or,
- In hindsight, the commitment may never have been necessary.

If the changed commitment is necessary to minimize recurrence of an adverse condition, the NRC should be notified of the change on an annual or refueling outage interval basis.

If the commitment is no longer considered necessary, the licensee may change the commitment without notifying the NRC.

NOTE: Due to the sensitivity of some issues, licensees may choose to notify the NRC prior to making changes to Regulatory Commitments even though the above change process would not require such action.

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FIGURE A-1
COMMITMENT MANAGEMENT CHANGE PROCESS

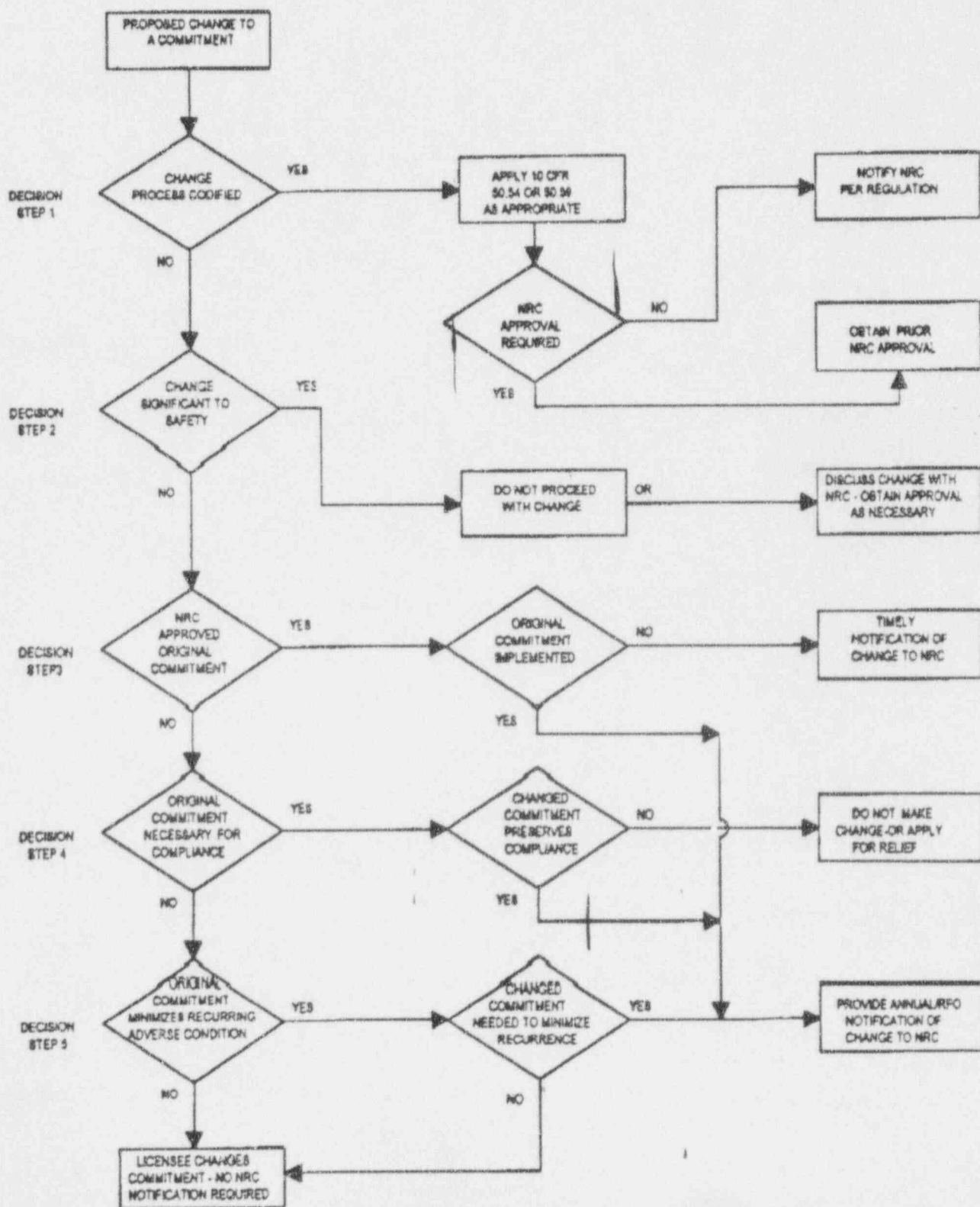


FIGURE A-2
SAFETY SIGNIFICANCE ASSESSMENT (DECISION STEP 2)

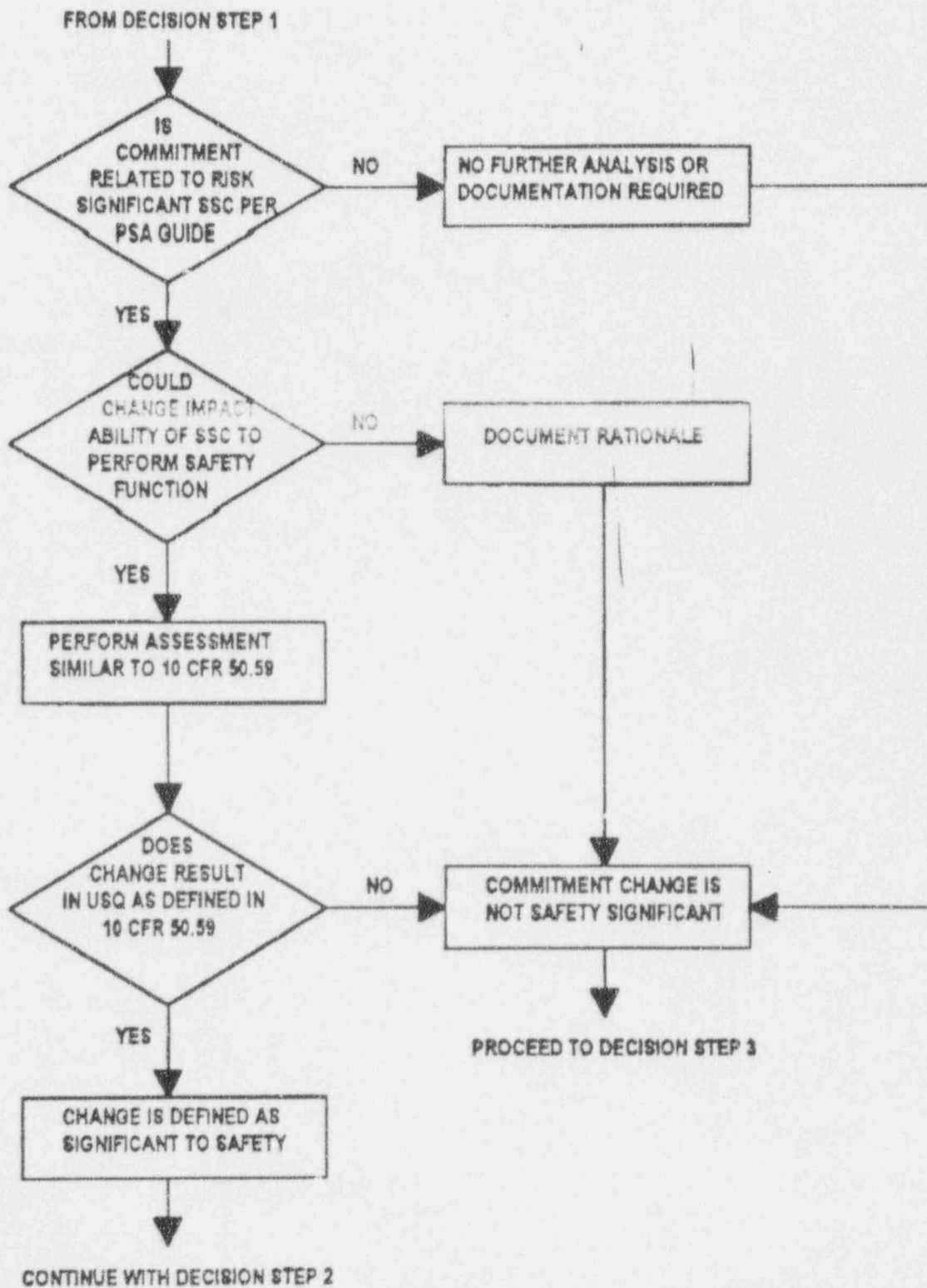


FIGURE A-3
REVISED COMMITMENT EVALUATION SUMMARY

Original Commitment Description: _____

Source Document: _____ Tracking Number _____

Revised Commitment Description: _____

1. Is a codified commitment revision process applicable (i.e., 10 CFR 50.59, or 10 CFR 50.54)?
 No. Continue with STEP 2.
 Yes. EXIT PROCESS*. Use codified process.

2. Does commitment relate to a risk significant activity as identified in the PSA application guide?
 No. Continue with STEP 3. (No additional documentation necessary in this step)
 Yes. Would revised commitment affect the functionality of a risk significant SSC?
 No. Briefly state reason and continue with STEP 3. _____

 Yes. Perform a safety evaluation equivalent to 10 CFR 50.59 and attach a copy. Did evaluation determine an unreviewed safety question exists?
 Yes. EXIT PROCESS*. Do not proceed with revision, OR discuss change with NRC and obtain any necessary approvals.
 No. Continue with STEP 3.

3. Was the original commitment explicitly credited as the basis for a safety decision in an NRC SER, made in response to an NRC Bulletin or Generic Letter, or explicitly listed in an NRC Confirmatory Action Letter?
 No. Continue with STEP 4.
 Yes. Has the commitment been completed?
 No. EXIT PROCESS*. Provide timely notification of revised commitment to NRC.
 Yes. EXIT PROCESS*. Notify NRC of revised commitment in next annual/RFO interval summary report.

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4. Was original commitment necessary for compliance with an Obligation (i.e., rule, regulation, order or license condition)?

No. Continue with STEP 5.

Yes. Does the revised commitment preserve compliance?

No. EXIT PROCESS*. Do not make change, OR apply for appropriate regulatory relief.

Yes. EXIT PROCESS*. Briefly describe rationale:

Notify NRC of revised commitment in next annual/RFO interval summary report.

5. Was original commitment made to minimize recurrence of an adverse condition (i.e., a long-term corrective action stated in a violation response or LER)?

No. Change commitment. No NRC notification required.

Yes. Is the revised commitment necessary to minimize recurrence of the adverse condition?

No. Briefly describe rationale: _____

Change commitment. No NRC notification required.

Yes. Notify NRC of revised commitment in next annual/RFO interval summary report.

*EXIT PROCESS means the balance of this summary is not to be completed.

MEETING WITH NEI - COMMITMENT MANAGEMENT

April 26, 1994

Attendees

NAME	ORGANIZATION
Eric Leeds	NRR
Roy Zimmerman	NRR
Scott Newberry	NRR
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