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FOR: The Commissioners

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

SUBJECT: ANNUAL REPORT ON FEEDBACK FROM LICENSEES REGARDING THE
IMPACT OF NRC'S ACTIVITIES ON LICENSEES' OPERATIONS

PURPOSE:

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

BACKGROUND:

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

CONTACT:
D. K. Allsopp, NRR
301-415-3073

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

In response to the "Nuclear Regulatory Review Study" by Towers Perrin dated October 1994, the NRC implemented two additional feedback paths on July 11, 1995. Specifically, the Office of the Executive Director for Operations (OEDO) established a formal process by which power reactor licensees' senior officials could report directly to the OEDO any regulatory actions that they considered inappropriate. In addition, each region developed a process for dealing with concerns related to inappropriate regulatory actions by the NRC staff. Through this process, the regions receive, act on, resolve, or forward to other authorities (e.g., the NRC's Office of the Inspector General (OIG)) allegations of inappropriate actions by members of the NRC staff who are involved in inspections or other matters related to NRC-licensed activities.

This paper reports on feedback received from licensees, INPO, and NEI over a 2-year period (from September 1, 2001, through August 31, 2003) because last year's evaluation was deferred to support security activities in the Office of Nuclear Security and Incident Response (NSIR).

DISCUSSION:

From September 1, 2001, through August 31, 2003, the staff received feedback from 95 reactor licensees on 534 issues. The staff also received feedback from the Regulatory Information Conference in February 2002 and again in April 2003. Of the comments received, 83 percent were favorable and 17 percent were unfavorable. The comments fell into four main categories: formal communication with licensees, inspector performance, reactor oversight process, and security and safeguards activities. The following sections summarize the feedback received, the staff's evaluation, and the proposed improvement actions.

A. Solicited Feedback

(1) Formal Communication With Licensees

Feedback

Over one-third of the licensees' comments concerned the effectiveness of communication between the NRC staff and licensees. About 85 percent of the licensees' comments on communication with the NRC staff were favorable (the same percentage as last reported). Almost all comments were favorable with regard to communications with resident inspectors and regional management.

Many licensees said that communication was good or excellent, and others noted that the staff's communication skills have improved. A few licensees reported communication problems related to the clarity of inspection issues, including differences in the assessment of an issue as discussed during the inspection, as presented at the exit meeting, and as documented in the inspection report.

Evaluation and Action

The staff concludes that the communication between the NRC and its licensees is effective and that the reported communication problems were isolated instances. This conclusion is based on the large number of routine interactions between the NRC and its licensees, combined with the relatively large number of favorable comments and the relatively small number of unfavorable comments received during the past 2 years.

The staff is aware of the importance of prompt and accurate communication and emphasizes this goal in the policy, guidance, and training for the inspection program. To improve inspector communication skills, the staff developed additional training on communication skills as part of a new, competency-based inspector training and qualification program implemented in April 2002. Effective communications will remain a challenge and will receive continuing attention from regional and NRR management.

(2) Inspector Performance

Feedback

Over one-third of the licensees' comments concerned inspector performance. This category covers a wide range of inspector practices, but excludes issues involving formal communication with licensees, which are dealt with in the preceding section. Almost all of the comments praised the NRC's inspection staff, noting the high quality of inspections, inspector professionalism and safety focus, and the effective working relationship between the NRC and its licensees.

Licensees viewed inspections performed by resident and region-based inspectors (including team inspections) as professional and of high quality. Most licensees stated that NRC inspections were effective and correctly characterized the licensee's performance. However, two licensees made unfavorable comments related to the working relationship established by an inspector.

Evaluation and Action

The staff concludes that inspectors were generally professional and maintained effective working relationships. The percent of favorable comments received this year was about the same as last reported. This shows that the staff has maintained the improvements achieved in recent years while implementing new inspections in response to the vessel degradation found at Davis-Besse and to the terrorist attacks on September 11, 2001.

The NRC gives inspector qualifications a high priority. In April 2002, a new, competency-based inspector training and qualification program was implemented to enhance critical inspector knowledge, skills, and attitudes. The competency-based program uses individual

study activities and on-the-job activities to reinforce management's mentoring of the trainee during the qualification process. To emphasize the importance of proper behavior and demeanor to new inspectors, the qualification program incorporates a one-day seminar, led by regional managers, on "Expectations for Inspectors." In addition, NRR is developing a new Web-based operating experience training program to give inspector's more timely technical information.

NRC management continues to emphasize to the staff the importance of proper behavior and demeanor. Standards for staff professionalism and behavior are addressed in NRC's Organizational Values and in the Principles of Good Regulation. These expectations are reinforced by senior NRC managers in inspector counterpart meetings, workshops, and other training courses. The new competency-based training program coupled with NRC's ongoing emphasis on proper behavior should result in improved working relationships between inspectors and licensees. The staff will continue to closely monitor the performance of inspectors.

(3) Reactor Oversight Process

Feedback

Seven percent of the licensees' comments concerned the Reactor Oversight Process (ROP), and about half of those comments were favorable. Licensees praised the staff's new oversight process as an improvement over the previous process. Licensees described the new process as effective and more focused on risk-significant activities. However, over half the comments were unfavorable regarding specific program elements, especially the significance determination processes (SDPs) associated with the reactor safety strategic performance area. Licensees expressed concern with the timeliness of the SDPs and the accuracy of results. In addition, two licensees raised concerns with the accuracy of the safety system unavailability performance indicator (PI).

Evaluation and Action

The staff concludes that while the ROP is an improvement over the previous process, additional improvements are needed. This view is validated by other sources of industry and public feedback that strongly support the ROP. Although the percent of unfavorable comments has increased, these comments deal with specific issues that have been previously identified and are being addressed.

The staff recognizes that improvements in certain SDPs for the reactor safety strategic performance area present a significant challenge, specifically, achieving the proper balance between accuracy and timeliness, and reducing the complexity of the shutdown and fire protection SDPs. The staff implemented the SDP Improvement Initiative and Task Action Plan (TAP) to improve SDP timeliness, the accuracy of reported information, and the staff's proficiency in using the SDP. The staff implemented an SDP timeliness metric, with associated goals, and will report results in the annual ROP self assessment. In addition, the SDP Task Group and the OIG completed independent reviews of the SDP and identified a number of improvements that have been incorporated into the TAP. The staff also continued to revise existing SDPs based on lessons learned and feedback from internal and external stakeholders. Management is focused on SDP improvements and these actions are captured in the NRR Director's Quarterly Status Report.

The staff will continue to hold monthly working-level public meetings with stakeholders to discuss the status and evolution of the new process, including PIs. A joint NRC-NEI working group has been meeting to consider improvements to the safety system unavailability PI. The staff is also evaluating additional changes to improve the accuracy and usefulness of PIs.

The staff continues to closely monitor the effectiveness and implementation of the ROP. NRR developed self-assessment metrics to help determine if the ROP is meeting its stated objectives and agency performance goals, and a summary of the results are made public. The staff annually publishes a *Federal Register* notice (and mails almost 700 copies to external stakeholders) to solicit public feedback on the ROP each November. This feedback, including feedback on SDP issues, continues to be evaluated as part of the annual self-assessment process. Additionally, the staff plans to use a contractor to conduct a Commission-directed survey of licensees to obtain an independent perspective of NRC's regulatory impact on licensees, including ROP activities. The staff plans to combine future Commission reports on regulatory impact with the annual ROP self-assessment to gain staff efficiency in the evaluation of these overlapping areas.

(4) Security and Safeguards Activities

Feedback

Almost 7 percent of the licensees' comments related to the NRC's security and safeguards activities, and about half of those comments were favorable. Commenters generally praised NRC's communication and working relationship with licensees while implementing new security advisories, orders, and various threat levels. However, licensees raised concerns about a lack of clarity regarding security expectations, especially before the NRC issued the revised design basis threat (DBT). Other licensees raised concerns with the long-term impact of some of the new security requirements.

Evaluation and Action

On April 7, 2002, the NRC established the Office of Nuclear Security and Incident Response (NSIR) to consolidate selected NRC security, safeguards, and incident response responsibilities. The creation of NSIR streamlines decisionmaking, improves the timeliness of information dissemination, and provides a more visible and effective point of contact with the Department of Homeland Security, and other Federal agencies. The NRC issued the revised DBT in April 2003.

NSIR maintained a high priority on communication with licensees while it implemented security improvements and coordinated activities with other Federal agencies, including the Department of Homeland Security, the Homeland Security Council, the Federal Bureau of Investigation, and the intelligence community. Security improvements include developing the Threat Advisory and Protective Measures System, modeled on the Homeland Security Advisory System, and improving interaction protocol with Federal, State, and local law enforcement agencies.

Following issuance of the DBT, the staff met regularly with the industry's security working group to address issues and concerns regarding implementation. The industry raised 22 issues, 20 of which have been resolved. The staff is preparing the proposed resolution of the final two issues for Commission approval. In addition to the DBT implementation, the

April 29, 2003 orders required licensees to submit for staff review and approval a physical security plan, a contingency response plan, and a training and qualification plan for each site. The staff has been meeting weekly with industry's working group to develop a template for development of these plans. While the staff and industry representatives have not been able to achieve consensus on every issue, these dialogues have been constructive and have contributed to the effective communications and working relationship noted in industry's comments.

B. Inappropriate NRC Actions Reported to the OEDO or Regional Administrators

As described in the Background section, the NRC has a procedure for resolving concerns raised by licensees regarding perceived inappropriate regulatory action by the NRC staff. During this 2-year reporting period, the OEDO did not receive any reports of inappropriate behavior by NRC employees; however, 15 cases were reported to the regions by power reactor licensees.

Feedback

The two cases reported to Region I were not substantiated. Of the four cases reported to Region II, three cases were substantiated and one was not. Of the four cases reported to Region III, three were substantiated and one was not. Of the five cases reported to Region IV, one was substantiated, three were not, and one was referred to the OIG. The vast majority of cases involved professional performance issues, such as the inspector's professional skills in conducting inspections or communicating with licensee personnel.

Evaluation and Action

The total number of cases reported in each region typically fluctuates from year to year. In this period, the total number of cases reported (7.5 per year on an annualized basis) is down from the 10 cases reported 2-years ago.

All four regions continue to use fundamentally similar written procedures to deal with complaints of improper action by NRC employees. The procedures require actions to address complaints that are substantiated, and the regions took appropriate remedial actions for all substantiated cases. The procedures also require a determination of whether the issue should be referred to the OIG or handled by the region. A complaint referred to the OIG is handled in accordance with Management Directive 7.4, "Reporting Suspected Wrongdoing and Processing OIG Referrals." If the region handles the complaint, regional management approves a course of action, including remedial measures.

A draft management directive on handling complaints of improper actions by NRC staff is under management review. The directive is intended to make the process for handling complaints consistent throughout the agency.

C. Additional Feedback

In addition to soliciting feedback from licensees during site visits, the staff routinely provides opportunities for the industry to report on the impact of NRC programs and processes. During the current reporting period, the staff received feedback at the Regulatory Information Conferences (RICs) in February 2002 and in April 2003. Topics discussed at the RICs included the Davis-Besse experience, circumferential cracking of reactor pressure vessel head

penetration nozzles, the Reactor Oversight Process, safeguards and security, license renewal, power uprates, safety management, risk-informed technical specifications, and fire protection issues. During a breakout session at each RIC, licensees from each region discussed issues of interest with the responsible regional administrator. No other new issues were identified that have not already been discussed in this Commission paper.

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

RESOURCES:

NRR improvements to the reactor inspection program (the regulatory impact process, the operating experience training program, the safety system unavailability PI, and the reactor safety SDPs) are budgeted at 7 FTE in FY 04 and 05. Also, about 1 million dollars in contract support is budgeted in FY 04 to improve the reactor safety SDPs and 300K is unfunded (total 1.3 million). In addition, the Office of Nuclear Regulatory Research budgeted 0.9 FTE and 175K in FY 04 and 0.4 FTE and 75K in FY 05 to improve the safety system unavailability PI.

COORDINATION:

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

/RA/

William D. Travers
Executive Director
for Operations