UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
***
OFFICE OF THE SECRETARY
***
BRIEFING ON 10 CFR PART 70 -- PROPOSED RULE
FOR REVISED REQUIREMENTS FOR THE
DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL
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PUBLIC MEETING
Nuclear Regulatory Commission
One White Flint North
Building 1, Room 1F-16
11555 Rockville Pike
Rockville, Maryland
Monday, June 14, 1999

The Commission met in open session, pursuant to notice, at 2:10 p.m., the Honorable SHIRLEY A. JACKSON, Chairman of the Commission, presiding.

COMMISSIONERS PRESENT:

SHIRLEY A. JACKSON, Chairman of the Commission
EDWARD McGAFFIGAN, JR., Member of the Commission
GRETA J. DICUS, Member of the Commission
JEFFREY S. MERRIFIELD, Member of the Commission

STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

WILLIAM TRAVERS, Executive Director for Operations
KAREN D. CYR, General Counsel
ANNETTE L. VIETTI-COOK, Secretary
MARVIN S. FERTEL, Senior Vice President, NEI
STEVE SCHILTHELM, Nuclear Safety Manager, BWX Technologies
BILL SHARKEY, Director of Regulatory Affairs, ABB Combustion Engineering
CARL PAPERIELLO, Director, NMSS
ELIZABETH Q. TEN EYCK, Director, Fuel Cycle Safety and Safeguards, NMSS
THEODORE S. SHERR, Chief, Licensing & International Safeguards Branch, NMSS

P R O C E E D I N G S

[2:10 p.m.]

CHAIRMAN JACKSON: Good afternoon. Today we are going to be discussing the requirements for the domestic licensing of special nuclear material. This is found in 10 CFR, Part 70. Several industry representatives have asked to provide a presentation regarding the perspective of the fuel fabrication industry on the draft proposed revisions to

Part 70 and accompanying guidance.

In addition, the NRC Staff will brief the Commission on its proposal for revising the requirements in 10 CFR, Part 70. The process to revise Part 70 began in 1993 and various aspects were presented to the Commission for resolution in 1996, 1997 and 1998. Following the last briefing in August of 1998 the Commission directed the Staff to work closely with stakeholders to resolve remaining differences and I understand that slides from both the Staff and the Nuclear Energy Institute, from their slides rather, that this has been a fruitful interaction and that many contentious issues have been resolved, but this is a public process so they are having a public meeting.

My colleagues and I look forward to the briefing to assist us in our review of the draft proposed rule that is presented in the SECY 99-147, so unless my colleagues have any opening remarks they would like to share, Mr.

Fertel, please begin.

MR. FERTEL: Thank you, Chairman Jackson, and good afternoon Commissions Dicus, McGaffigan, Merrifield. I am pleased to be attending this Commission briefing on behalf of both NEI and all of our fuel fabrication enrichment company members that operate facilities licensed under 10 CFR Part 70.

Joining me on my left today is Bill Sharkey, who is Director of Regulatory Affairs at ABB Combustion Engineering for their hematite facility in Missouri, and on my right is Steve Schilthelm, who is the new Nuclear Safety Manager for BWX Technologies at their Lynchburg plant.

On behalf of NEI's Facility Operations Committee I wish to thank you for the opportunity to appear before the Commission this afternoon and to discuss the ongoing rulemaking to amend 10 CFR Part 70.

Today's briefing marks a milestone in the joint efforts by the Commissioners, the NRC Staff, the Part 70 licensees and other stakeholders to revised the Part 70 rule in accordance with the NRC's new risk-informed, performance-based regulatory philosophy, and I think Chairman Jackson mentioned it got started in '93. It's been a long road but I think we are almost at the end.

Since the last Commission --

CHAIRMAN JACKSON: What did they say in '96?

[Laughter.]

MR. FERTEL: We're closer now. Since the last Commission briefing on this subject in August of 1998, significant progress has been made in addressing and resolving many of the issues we raised at that briefing. I would like to compliment the NRC Staff for their efforts towards resolving those issues and to thank the Commission for providing the leadership and policy direction to the Staff that was essential to address the issues we raised last August.

Given the progress made to date, my remarks this afternoon will be briefing, highlighting those key modifications to Part 70 which we believe will make the rule most effective. I should also identify three principal areas where we believe further improvements are necessary and where Commission guidance may be appropriate.

Since the August 1998 Commission briefing our efforts have focused primarily on modifying the Part 70 rule

and few NRC or industry resources were available to review and revise the Standard Review Plan. As I shall discuss later, NEI and the industry are committed to working with the NRC Staff and other stakeholders over the next few months to undertake a dedicated and comprehensive review of the SRP.

Turning first to the draft rule, we were pleased

that the rule reflects a majority of industry's recommendations made in NEI's petition for rulemaking filed on September 30th, 1996. NRC's use of the rulemaking web page facilitated an open and constructive exchange of ideas in the draft rule and we encourage its use in the future. We believe that the assignment of a dedicated team of NRC specialists was instrumental in achieving the successful resolution of issues and in expedited rule modifications.

We would like to compliment NMSS management for its effective commitment of resources to this project and we certainly appreciate the efforts of both the NMSS staff and the dedicated team members.

Finally, a series of workshops and public meetings facilitated face-to-face discussions of outstanding issues and led to a narrowing of differences and achievement of greater understanding of the basis for the positions being taken by all parties and a better understanding of how to reach mutually acceptable positions.

CHAIRMAN JACKSON: Let me ask you a question, Mr. Fertel. Do you feel that there was ever any risk of having successive revisions of the rule on the website creating a moving target or do you think it was actually facilitating --

MR. FERTEL: We thought it was facilitating it and we'd encourage it, and in fact one of the things I think I

would encourage very strongly was when the Staff got ready to send the rule up to the Commission they kind of froze everybody out from seeing it because it was going to the Commission and they didn't want to say, okay, this is the rule when the Commission hasn't seen it, and from our standpoint what it did is we got their SRP and we didn't have a rule, so it was making it very difficult for us to give them any constructive feedback on the SRP at that point, even though there wasn't a lot of time.

I think that as long as -- whether it is the industry or the public -- it is clear that the rule is in a dynamic state and it is changing. I think it can work very well. I think in Part 70 it worked well.

I think the experience that my folks told me about Part 35, Chairman Jackson, was a little different. There wasn't a lot of feedback to the industry that was inputting or the stakeholders that were inputting in Part 35, so the sense was that it went into a black hole and I think there was frustration in that process, whereas in this process I think our folks were very pleased with the interaction and the dialogue and the amount of information provided, so I would encourage it.

CHAIRMAN JACKSON: And Karen, you are clear, just for the record, that the way of doing it this way is consistent with the notice and timing provisions of the

Administrative Procedures Act via-vis rulemaking --

MS. CYR: Certainly. You can lay that out as part of this is how your process is going to do that, you know, make it clear what is the record and what you are basing your decision on, and people have essentially an equal opportunity -- all interested participants have an opportunity to make their comments known to those people who are involved in the decision-making process.

MR. FERTEL: NEI is certainly supportive of the Commission's directive to implement a risk-informed, performance-based regulatory philosophy and how this philosophy is being incorporated into the new Part 70. This approach will enable NRC and licensee resources to be allocated to safety-significant issues and thereby increase our confidence in the margin of safety at the fuel cycle facilities.

It also appropriately places the responsibility on the management of individual facilities to operate in a safe and responsible manner.

We are particularly pleased with the following improvements to the draft Part 70 rule:

First, the adoption of the integrated safety analysis as the principal safety basis of the facility and is fully committed to implementing those.

Second, specification of performance criteria to

serve as an effective safety template against which the effectiveness of licensee safety programs can be judged makes it more objective.

Third, adoption of a graded approach to safety whereby the robustness of the safety control depends upon the importance to safety of the control.

Fourth, inclusion of a facility change process that attempts to codify the current practice permitting modifications without NRC pre-approval to a facility's processes, structures or sites.

Fifth, adoption of a licensing process that appropriately makes the results of the ISA, the ISA summary and supporting safety basis information available to the NRC without unnecessarily encumbering the license itself.

Finally, the flexibility to adopt alternative approaches to demonstrate the safety of the facility's operation.

In addition to these improvements, we concur with the Staff's recommendations to remove from SECY 98-185 the requirements for a license applicant to conduct a preliminary ISA or preliminary process hazards analysis. Such preliminary safety scoping studies will, as appropriate, be undertaken by licensees. We concur with the Staff that existing provisions of the Part 70 rule will satisfy the NRC's pre-licensing needs.

We are encouraged by the deletion from earlier drafts of the Part 70 rule revisions of considerable prescriptiveness, deletions of the requirement to conduct a separate decommissioning ISA, and a focus placed on the comparative risk of an accident sequence rather than in quantitative specifications of its likelihood and/or consequence.

Finally --

CHAIRMAN JACKSON: Repeat what you just said.

MR. FERTEL: The last point?

CHAIRMAN JACKSON: Yes.
MR. FERTEL: We think that it was much better to get away from talking about -- talk risk rather than separate consequence and frequency, which the initial draft of the rule the Staff was talking about, the frequency of an event or they were talking about the consequence of an event and we were saying that we ought to look at it as relative risk. We ought to basically integrate the frequency and the consequence and think in risk-based -- and we believe the current rule does that.
CHAIRMAN JACKSON: You are not proposing to eliminate consideration of frequency or consequence?
MR. FERTEL: No.
CHAIRMAN JACKSON: Rather it's more of the overall integrated risk analysis?

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MR. FERTEL: Yes.
CHAIRMAN JACKSON: Just wanted to be sure.
MR. FERTEL: I think that early on we may have had agreement on that with the Staff and we're just all using terminology that had us in disagreement, but then I think we finally got to a point where we are in agreement.
Finally --
CHAIRMAN JACKSON: A state of --
MR. FERTEL: What?
CHAIRMAN JACKSON: Never mind, it is a mathematics term.
MR. FERTEL: Finally, we believe the proposed rule revisions provide an effective regulatory framework which recognizes the comparatively low risk to public health and safety and the environment posed by Part 70 licenced facilities. The Commissioners and NRC Staff can attest to the excellent demonstrated safety record of Part 70 facilities. Modifications to the Part 70 rule should therefore reflect a comparatively low risk. At such facilities we believe it does.
While significant progress has been achieved in revising the Part 70 rule, we will be commenting on the rule as part of the formal comment process. This is part of what I'm sure Karen meant when you go out with the proposed rule itself.

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Today we would like to bring to the Commission's attention three specific issues.
I have previously addressed these issues and shall only highlight our arguments related to them. I should also note that for two of the three issues significant progress has been made and we believe resolution of the issues may be possible even without Commission intervention.
The first is backfit. In the first area, providing for a backfit provision, Commission policy direction is required.
I recognize that the Commission position on this issue is mixed. We would reiterate our position that Part 70 facilities should be afforded the protection of an immediately effective backfit provision and currently there is none in the rule.
We disagree with the Staff's position that a risk-informed safety basis for a facility cannot be established prior to completion of the ISA. The NRC knows the safety basis of such plants, as evidenced by their

licensing and relicensing for over 30 years. Most facilities were originally licensed in the 1950s and 1960s and have each undergone three more license renewals, most recently in the last three to four years for all the facilities.

The Staff concern about conflicts over whether a

plant change will be deemed implementation of the Part 70 regulation or a backfit issue is highly unlikely in our opinion, as all the Part 70 licensees have committed in their licenses to address all unacceptable performance deficiencies identified in the ISAs.

Facility operators routinely --

CHAIRMAN JACKSON: They have agreed in their licenses to do that.

MR. FERTEL: Yes, license conditions in their license as part of license renewal.

Facility operators routinely implement without NRC direction changes to their facilities that do increase safety, something Commissioner McGaffigan is interested in. This is sound and prudent business practice.

Finally, the Staff expresses concern that significantly larger NRC resources will be required for backfit provisions implemented. Obviously industry has similar concerns. While this may be the case, the appropriate implementation of a backfit provision should represent one of the basic foundation blocks of an effective risk-informed, performance-based regulatory process and as such be effectively implemented.

CHAIRMAN JACKSON: Hold on -- we have lost our sound.

[Pause.]

CHAIRMAN JACKSON: Go ahead.

MR. FERTEL: -- and as such be effectively implemented.

Also, the impact on the licensee and the imposition of unnecessary regulatory requirements could have much greater --

CHAIRMAN JACKSON: Mr. Fertel, could you slow down?

MR. FERTEL: Sure. You should be able to follow me.

CHAIRMAN JACKSON: I can, but they cannot.

MR. FERTEL: Sure. Also the impact on the licensee and the imposition of unnecessary regulatory requirements could have much greater economic consequences than the cost to NRC to implement an appropriate process and therefore we urge the Commission to include in their rulemaking an appropriate backfit provision.

The second area that I would like to discuss is the ISA summary. NEI fully supports preparation of a summary of the ISA to assist the NRC Staff in understanding the safety basis of a facility, but the summary should be tailored to provide NRC with the information it needs in a useful way and not be designed to summarize everything in the ISA.

The draft rule requires the description of each

process analyzed in the ISA tabulation of all hazards identified for each process and a general description of all

identified accident sequences.

We believe this requirement is too broad. The ISA summary should provide a general description of the high and intermediate risk accident sequences. We would propose to exclude from the ISA summary references to low risk accident sequences which the ISA shows cannot exceed the performance criteria of Section 70.61.

The draft rule also requires a list of all items relied on for safety and I emphasize "all" -- the amount of information that this request solicits could be tremendous. What we believe would be most useful to the NRC staff would be a narrative description of the type and function of the items relied on for safety at the systems level and specifically for high and intermediate risk accident sequences.

CHAIRMAN JACKSON: Is it possible at all for under certain configurations a quote/unquote "no risk" accident sequence to become a higher risk accident sequence?

Does anybody have an answer to that question?

MR. SCHILTHELM: As you go through the ISA process you identify many of the accident sequences and you attempt to score them as to their likelihood. You could find as you are executing the ISA process a system or situation that you

had previously believed to be low risk and now is falling into a higher risk because of some different methods of scoring or some new information that wasn't brought to bear on the original analysis. Likewise, if you were to reevaluate a system you might find that, but to suggest you would have a low risk item that somebody on review might think is high risk, I guess that could happen. It is a qualitative process.

CHAIRMAN JACKSON: How much of a burden is it to put these current but lower risk accident sequences into the ISA somewhere?

MR. FERTEL: We think it is probably less the burden, Chairman Jackson, than the fact that for it to be useful, and the Staff needs to decide what is useful to them but they aren't cluttered with lots of information that is not relevant to the kind of decisions and the kind of analysis that they had to do, and the bigger we make the ISA summary, the more the folks are busy preparing ISA summary updates to submit in, rather than focusing on the stuff they ought to be, so that is kind of our attitude on that right now, that I think the question you asked is certainly a relevant one. It would be answered as they go through, using the ISA throughout the year and as they provide the annual update to the ISA that we would propose. Obviously as things change, the summary would change to reflect that.

I would also think the Staff in their review, particularly in the early years of the ISA when they are at the plants would take a hard look at the process and the methodology to see if they buy into the approach that is being used by the facilities, but our attitude was that you ought to try to make the summary most useful.

CHAIRMAN JACKSON: But then in the end it is actually for the Staff at a certain level --

MR. FERTEL: It is for the Staff --

CHAIRMAN JACKSON: -- to decide what is most useful if in fact it is not an undue burden to have all of

these sequences --

MR. FERTEL: The undue burden is probably not submitting it, Chairman Jackson, but answering all the questions on it.

CHAIRMAN JACKSON: Well, that would be true of anything that you are --

MR. FERTEL: That's true, but the more you submit that's probably not relevant and the more questions you get, the more the burden.

CHAIRMAN JACKSON: Well, of course relevance is always in the eye of the beholder.

Why don't you go on? But I would like the Staff to give an answer to that -- to these questions I am posing.

MR. FERTEL: But we propose to work with the NRC

Staff in better defining the actual content and format for the ISA summary. I don't think that either one of us have had the same kind of dialogue on that that we have had on some of the other issues, and we are prepared to develop an industry guidance document on this subjected if that were deemed to be the most effective way to resolve this issue.

We do suggest that the unnecessarily prescriptiveness in the ISA summary can be removed in the draft rule and still accomplish what you need to.

The last area we wanted to touch on from the rule was the facility change mechanism. We endorse the Option 1 facility change mechanism as proposed by the Staff, focusing NRC resources on safety-significant high risk facility changes, and granting the licensee the flexibility to implement changes that do not adversely affect human health and safety is the correct regulatory approach.

A typical plant will implement from 300 to 400 plant or procedural changes annually, of which we estimate about one percent might be deemed safety significant and subject to NRC review and pre-approval. That is based upon the experience of the facilities over the last five years, showing what they are doing. It is not that many license amendments that they are going for.

As the Commission stated in its December, 1998 SRM, to effectively use NRC resources a change mechanism

must establish a threshold to, quote, "capture those few significant facility changes that will require a license amendment."

The proposed mechanism in 70.72 does require several important technical changes to make the mechanism more practical and workable. That's what I would like to touch on.

For example, the first criterion to exclude a proposed change from NRC preapproval requires a change not to be, quote, "a new type of accident sequence or one that has not previously been described in the ISA summary." The footnote to the rule goes on to state that a new type of accident sequence includes a different initiator, significant change in consequence or change in the safety function of a control.

This language may be interpreted to include any process changes, and as such would require significantly more license amendment applications for changes that do not affect the results of the ISA summary. Therefore, NEI recommends that this criterion be focused on new accident types in systems or facilities that were not previously

included in the ISA summary. We think we need to work closer with the Staff at looking at how you would implement this particular provision. We understand the analog to 50.59 and we are not sure it works directly here.

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The proposed facility change mechanism, specifically Section 70.72(d) requires a 90-day reporting timeframe for all changes to the content of the ISA summary. We believe such 90-day reporting is unnecessary and will prove burdensome to both the NRC and the licensee. We believe the licensees should only have to submit such information annually, particularly as no NRC approval is required for what's being asked for here.

We note that nuclear reactor licensees must report such information at the time of a refuelling outage, which generally occurs every two years.

These were our comments on the rule.

On the SRP, as mentioned at the beginning of my remarks, NEI and our Part 70 licensees have not yet undertaken a thorough review of the draft SRP. In fact, the fellows are going to begin working on that tomorrow and the next day.

We did have a very productive workshop with the NRC on nuclear criticality safety, which provided the groundwork for the NRC Staff to undertake revisions to Chapter 5 of the SRP.

In general, NEI finds the SRP to still contain an unnecessarily large amount of prescriptive detail. The draft SRP was also written prior to revision of the Part 70 rule, and as a result many of the rule provisions are not

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accurately captured in the SRP today.

We understand that NMSS management intends to keep its dedicated team together to work with NEI and other stakeholders on revising the SRP. We strongly encourage Commission support for that approach and are fully committed to working with the dedicated NRC Staff to complete a detailed review of each of the remaining chapters.

In conclusion, I wish to compliment the Commissioners and the NRC staff for the progress achieved in revising the proximity rule. NEI will provide additional clarifying comments in a proposed rule that proceeds through the rulemaking process, although the major issues we have with the rule have been identified to you today. We look forward to working with the NRC team to revise the SRP to ensure that its implementation provisions accurately reflect the rule content. Thank you for your attention and we would be pleased to answer any questions you may have.

CHAIRMAN JACKSON: So are you basically recommending that NRC publish the proposed rule for public comment?

MR. FERTEL: We are certainly fine with that. We would like you to include a backfit provision if you did that, but we will comment accordingly if you don't.

CHAIRMAN JACKSON: That is good to know.

Commissioner Dicus? Commission McGaffigan?

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COMMISSIONER McGAFFIGAN: Let me ask a few questions about the process going forward and Karen can comment. Once we issue the rule for comment, can we

continue to -- and I think we did it in Part 35, as we get comments in, we can at least put those on the web page.

MS. CYR: Certainly.

COMMISSIONER McGAFFIGAN: And we can, if it turns out that the staff has -- you would have to make changes.

MS. CYR: I mean you can do it as a dialogue. I mean I know in one, we had pilot one time where we had in a sense a proposed rule, and there was an ongoing dialogue even, a dialogue with on that with respect to comments, as part of the comments. Even proposed, but it depends on much your resource demand is with respect to that.

COMMISSIONER McGAFFIGAN: How about on the Standard Review Plan, which is not itself a rule, it is a plan for implementing the rule, can that -- can public meetings occur where drafts go up? That is going to be a more dynamic document. In fact, we have already gotten some through the T&A; process, some changes that the staff is going to make and they say they are going to publish in the paper, what they are going to publish with the rule is whatever the document is the day they publish it. Can that be --

MS. CYR: Certainly. Continue the public

iteration and noticeable reactions.

COMMISSIONER McGAFFIGAN: Okay. With regard to the language itself, I am trying to understand a couple of points you are making about the rule language. Your problem with the create new types is not the criterion itself, but the footnote, is that the footnote that got added?

MR. FERTEL: It is the combination of the two. If you go into reactor space, which is I think what may be the basis was you do look at, in Chapter 15, the different types of accidents. And if I do create a new accident under 50.59, I have to go and get NRC's review and an SER.

If you look at the way the evaluations are done for fuels facilities, you don't have an exactly parallel path for the initial licensing review. The staff apparently does their own independent evaluation from a modeling standpoint of consequences from the accidents that have been identified, but they don't review the accidents, per se, at least the understanding I have gotten from our folks.

COMMISSIONER McGAFFIGAN: I am looking at your comments in March and it looked like you had bought off on -- there is slightly different wording, but you all were the ones proposing it does not create new types of accidents, not previously evaluated in integrated safety analysis.

MR. FERTEL: I think we are okay with new types. In fact, the words that I used in my comments again,

Commissioner McGaffigan, was type. For instance, if I have gone ahead at my facility and I never handled UF-6, and all of a sudden I start to bring UF-6 in, I have created a new type of accident I can have, we think there is no doubt you should review that.

If I go ahead and I change part of a process that exists and it doesn't -- it may cause me to do a new analysis, and I may have to go through my ISA, but it doesn't push me beyond the boundaries of what the consequences were before. It is not really -- even though it could be a new accident, if I looked at the sequence to sequence, I may have a slightly different set of events. We wouldn't consider that a new type of accident. And, again,

we are not entirely sure what the footnote which said initiating events and everything else, what is meant.

COMMISSIONER McGAFFIGAN: Okay. Well, it strikes me that trying to compare it to your March stuff, it is mostly the footnote that seems to be giving pause.

In the language, one of the items you are raising is the breadth of the summary. And as I looked over the rule language, I am going to ask the same question of the staff, one of the comments that you made earlier, and there is an interplay among all this stuff, was when we are looking at what needs to be -- these items relied on for safety, the rule language says they must -- the design of

items relied on for safety must provide adequate inspection testing and maintenance to ensure their availability and reliability to perform their function when needed.

And you all, in your comments, said provide reasonable assurance. And the staff, when you then do it for each item, it can start to look burdensome. Additional contents of applications, description of each process. Back in another place, where you talk about each, is that -- yet another thing that happens on this page is we recognize defense-in-depth, there is a very nice footnote with regard defense-in-depth in the page 52 of the Federal Register Notice in the same general section.

And it seems to imply that these items are go to be interplaying and that they don't -- I mean the connotation to ensure rather than to provide reasonable assurance is that they will all be available all the time. The concept of defense-in-depth is that they might not be. You are going to try, you are going to have a high probability they are available, but if one fails, you are not entirely relying on it.

How did your discussions go on this?

MR. FERTEL: Again, I think you probably are putting your finger on one of the issues, and I am not sure how far we and the staff are apart on this, because, again, I don't think we have really sat down to truly work this

through like we have on things like the chemical safety issues. But we are more looking at it from the standpoint of systems as opposed to components. We are looking at it that you have defense-in-depth and that you can afford to lose something, not that you are going to plan to lose something, and that if you give just reams of information and details, we are not quite sure it is providing either a useful or an accurate picture of the safety embedded in the plant systems.

COMMISSIONER McGAFFIGAN: Madame Chairman, I just might say that I do think this has been a very good process and I want to compliment both the staff and NEI, but especially the staff for learning from the Part 35 experience and making this a very fruitful process. I am not sure whether -- this is not really an enhanced participatory rulemaking because we haven't started the rulemaking yet. It is enhanced preparticipatory or enhanced participatory pre-rulemaking. But I think doing this sort of thing and the CSAS report is going to suggest we do more of it, when and if it ever gets out. I think we really make the rulemaking process, once it is started, go more rapidly.

One question I meant to ask, do you all have any

problem with the 75 day comment period that is proposed by the staff?

MR. FERTEL: No, I think we are fine.

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CHAIRMAN JACKSON: Actually, you do have things called advanced notices of proposed rulemaking.

MR. FERTEL: Right.

CHAIRMAN JACKSON: Which, to me, provides you with a kind of a framework cover for doing a lot of what is going on anyway. And I think you might do well to think about that kind of thing going forward. We did it on electricity, electricity utility industry restructuring. There was a lot of interactions back and forth and the final rule on decommissioning funding reflected that. But it was a full notice and it allowed various stakeholders, if they wished, to be on full notice about it. And I guess that is why the caveat, I am not -- I think using the web page does facilitate things, and it is a kind of enhanced participation. But I think you need to ensure that we have the right framework. So I don't think we are disagreeing with each other.

COMMISSIONER McGAFFIGAN: No, I think in this case all the public meetings, too, were fully noticed, so the three public meetings that were held, four if you count the one that was in September.

CHAIRMAN JACKSON: I guess I just -- my point of view is that you can accomplish the same thing and not be ad hoc, that is all I am going to say.

Commissioner Merrifield.

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COMMISSIONER MERRIFIELD: Thank you, Chairman. One question, we have got a relatively large document here before us. One piece of it today that I normally hear you comment on with a degree of specificity was that the draft NUREG-1513, the integrated safety analysis guidance document, and I am wondering if there is anything I can infer from that. Are you comfortable with that document? And would you like to make some comments on that as well?

MR. FERTEL: Bill?

MR. SHARKEY: I just think that is where we still need to do a lot of work is on that document. That is where the details are and that is what is going to make or break the rule to us. So as an industry, we have focused most of our time and energy on the rule itself and not quite as much on the Standard Review Plan. So we need to spend a lot of time in the next two days, myself and my peers, we will be working on that and try to make more sense out of it.

MR. FERTEL: I think, Commissioner Merrifield, just out of the intensity on the rule dialogue, which I think was very productive, there was not a lot of time spent by either NRC staff or our folks when commenting on the SRP or trying to submit a lot of comments. We did on a few chapters actually, and probably the chapter that got the most attention, because we had a workshop on it, was the chemical safety chapter. And we would say that that part of

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the SRP is actually really in very good shape.

And just a comment on something Chairman Jackson said, I think that probably the most productive part of this interaction since September were the workshops and the interactions in person. The web was very helpful, but I

think that the most progress was made when the people got in the same room in an open meeting and discussed it and said, gee, is that what you meant when you said that? And what does that mean? And Steve drew some very interesting pictures, which I know Carl Paperiello and some of the others really found interesting when they looked at them, to try and explain some of our points that we were making.

But those face-to-face interactions were really I think a major contributor to getting us to the point where we are today, which is really very far down the road. The SRP has just not had the attention yet. I can't tell you that there is tremendous disagreement with the staff. Neither one of us have put a lot of effort into it yet.

COMMISSIONER McGAFFIGAN: Could I just clarify that?

CHAIRMAN JACKSON: Please.

COMMISSIONER McGAFFIGAN: Commissioner Merrifield asked not about the SRP, but the integration safety analysis guidance document that is behind the SRP. We though you were closer on that.

MR. FERTEL: Yes.

MR. SCHILTHELM: The ISA guidance document has been in existence for several years and I don't think there is any major disagreement or anything with how an ISA is done or actually with the results of an ISA. I think what we are just struggling is with what is the ISA summary that gets submitted during licensing.

MR. FERTEL: How does the ISA fit in the licensing process? Because there has been, literally since 1993, I think, discussions on what is an ISA and how would one go about doing it.

CHAIRMAN JACKSON: Right. That one goes back six years. And I would that -- and I think there is, as you have said, yes, concurrence on that.

Anything else, Commissioner?

MR. FERTEL: Thank you.

CHAIRMAN JACKSON: Well, thank you very much. I think we will now hear from the NRC staff.

Your name is not Ted Sherr?

MS. TEN EYCK: No. I didn't think you would be confused, but we just thought we would make it official.

DR. TRAVERS: Good afternoon, Chairman and Commissioners.

CHAIRMAN JACKSON: Dr. Travers.

DR. TRAVERS: As you pointed out, Chairman,

earlier, as a result of him following the September '98 Commission meeting, the Commission directed the staff to obtain stakeholder input and revise the draft proposed rule that we had submitted to the Commission at that time. And, of course, we have done just that, and in SECY-99-147 have submitted a proposed rule in Part 70 that we would like to discuss with you today.

Joining me at the table are some familiar faces, Carl Paperiello, of course, the Director of Nuclear Material Safety and Safeguards is joining me. I also have Ted Sherr, who is the Chief of Licensing and International Safeguards Branch, and Liz Ten Eyck, who is the Director of the Division of Fuel Cycle Safety and Safeguards. And Carl is going to start the briefing.

DR. PAPERIELLO: Thank you. Good afternoon, Madame Chairman, Commissioners. The rulemaking that is the subject of today's Commission meeting has been underway for a number of years, as has been noted, and it has involved much Commission and industry interaction.

In December of 1998 the Commission directed the staff to submit a revised proposed rule by June 1, 1999. In order to meet this deadline we formed a task group to support Ted Sherr in this effort. This task group is seated behind us, Andrew Persinko, Bob Lewis, Heather Astwood and Gary Comfort.

Mr. Sherr will now brief you on the proposed rulemaking with a focus on where agreement was reached through the stakeholder interactive process and identify residual differences in view.

I would like to take note that in comparison to Part 35, there has been a much more cohesive set of views on the part of the regulated industry and Part 35 has a far greater diversity in stakeholders which has made it more difficult. But I will turn it over to Ted to make our presentation.

MR. SHERR: Thank you, Carl. Good afternoon.

Marvin Fertel had referred to the dedicated NRC staff that has been involved, and I think dedicated as in both senses of the term, the administrative notion as well as they have been very dedicated. I appreciate the significant efforts that they have provided and the good quality work.

CHAIRMAN JACKSON: Thank you.

MR. SHERR: I would also like to recognize at this time the extensive support that the task force received from other NRC staff. Kathryn Winsberg and OGC provided continuing support to the task force and she was able to respond to us quickly in spite of the significant demands on her time. And also Barry Mendelsohn managed the web site, which is a very important part of this effort, and did a

tremendous job on that. And Rich Milstein, who had been involved in the rule that the Commission saw last year, provided the continuity and supported the task force in carrying forth the effort.

In the briefing that I have that we are going to cover today, I am going to give a brief overview of the rule, discuss some aspects of the stakeholder interaction, discuss the status of the resolution of issues and I will try to address some of the questions that came up in the NEI portion of the briefing in that regard and, finally, the staff's recommendation. Slide 2, please.

The rule is risk-informed, performance-oriented. It focuses on major accidents at the facilities and requires a systematic and integrated review of accident safety. It is risk-informed. As Marvin had indicated, the performance requirements of the rule are expressed in terms of the elements of risk, where the consequence and likelihood of occurrence are specified. And it is performance-based in the sense that it allows the flexibility of the licensee to employ the specific measures, that they not prescribed. The preventive and mitigating measures is up to them, in whatever combination.

The focus on major accidents, the rule defines consequences at the high and intermediate level. Other

existing Part 70 and Part 20 requirements deal with normal

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operations and minor upsets.

As has already been discussed, the major element of the rule is the integrated safety analysis which systematically identifies the accidents of concern and the items to be relied on for safety to prevent the occurrence of those accidents or mitigate its consequences. And it is integrated in the sense that the different hazards are jointly evaluated. Slide 3, please.

This proposed rule, as has already been mentioned, was in response to the Commission SRM and to the proposal that was provided in SECY-98-185 which addressed the 1996 NEI petition as well as other staff recommendations. The Commission SRM directed staff to modify the proposed rule and provide it for the Commission's consideration in six months, which was June 1st. The SRM provided guidance on some specific issues and directed to staff to interact with the stakeholders in trying to resolve or at least come to closure on issues and using the Internet in that regard.

We believe, and I hope the Commission agrees, that the draft proposed rule and the process that we employed in developing it is responsive to the requirements and spirit of the SRM.

In stakeholder interaction we used the Internet and we also used public meetings. We established a web site that was specific to Part 70 and any time we made a posting

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on that web site, we provided an e-mail to all the interested parties as best we knew them in terms of what posting had been provided, so it wasn't a matter then to discover it.

These postings included changes in rule language as we developed it. The same thing for SRP language and staff comments on related issues. We also posted all comments received in the course, which was primarily in the form of letters from NEI, but there were some others as well. And we also posted the transcripts of the public meetings we had.

We have had a number of public meetings throughout the course, including -- we mentioned the ISA guidance document. We had two or three public meetings back in the 1995 timeframe on that. That was vetted in that process a long time ago.

But since the SRM was issued in December, we had three public meetings, in December, in January and in March, and at those meetings we discussed specific issues on language and exchanged views on possible approaches to resolve concerns.

The meetings that we had were publicly announced, but, generally, the attendees of the meeting were NRC staff, representatives of the industry and other government agencies. There wasn't a broad participation, but we

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announced it broadly. And we had announced the public meetings also on the web site, so we put those announcements there as well.

As a result of the significant and substantial comments we received both on the rule and the SRP, and the discussion of the public meeting, we think we made

significant progress in the rule language and the SRP and that as a result of this process we think we resolved most of the major concerns that were identified with the rule that was before the Commission a year ago.

But as noted in the discussion, there are still some areas, more on the specific level rather than the policy level, I think, broad policy level. Slide 5, please.

This slide lists the major areas of agreement. Marvin had identified a number of these, the form of the ISA submittal, the matter relating to decommissioning ISA, preliminary ISA, chemical hazards, nuclear criticality safety, the change process and the reporting requirements. And these were the areas of major industry concerns on the proposed rule that we had last year, and they also involved many of the specific issues that were identified in the SRM as well. Slide 6, please.

The first area of agreement was on the general nature of the ISA submittal. The concern expressed last year was the concern of where all the ISA summary

information would be in the license. Any changes to that would require an amendment. Also, there has always been and there still seems to be a little confusion in terms of when we are talking about the ISA itself and when we are talking about the ISA summary. The ISA is the very detailed information that is maintained on the site and the rule attempts to make that clear.

And the ISA summary would not be part of the license, but would be submitted on the docket in conjunction with the license application. And so that resolved that area of issue.

Another, a second area of agreement, the earlier proposed rule had included a requirement for decommissioning ISA. The SRM had requested that requested that staff justify, based on health and safety and cost benefit basis, any requirement for -- any specific requirement for decommissioning ISA. And the SRM had suggested different parts of the regulation that might want to focus on it in that regard, and staff was obedient in this regard and determined that 70.38 and other provisions are sufficient to deal with the decommissioning plan requirements and no new specific requirements were needed.

The FRN does include -- does encourage the use of the ISA in the decommissioning plan submittal.

CHAIRMAN JACKSON: It does. That was going to be

that my question. Is the way risk significance is considered in the decommissioning planning process consistent with the way risk is considered in the ISAs?

MR. SHERR: Well, I can't answer that.

CHAIRMAN JACKSON: Are the approaches the same? Because if you are saying that you have a decommissioning planning process and that is in lieu of a decommissioning ISA, then one wants to have some comfort that the approach to considering the risk significance of any activities or configurations, you know, in fact, is consistent. It is a question they really have to answer, but you can make a comment if you want, when he is done. Okay.

MR. LEWIS: For decommissioning, of course, we don't have performance requirements that are set. But the existing decommissioning plan that is submitted prior the start of decommissioning activities does have some language

in the rules that would allow accidents that could occur to be analyzed. And what we would attempt to do is to the ISA and use language in the Federal Register Notice that encourages the ISA, the use of the ISA in developing that decommissioning plan.

So the answer is really no. To date, accidents haven't been analyzed in the way they are going to be analyzed in the ISA as part of the decommissioning plans.

CHAIRMAN JACKSON: So where does that leave us?

MS. TEN EYCK: Well, I think where it leaves us is that the licensees are in a new effort also in developing the ISAs. And once they do that, I think that there is going to be a more specific identification of these risks, and I think their onus would be on them to, as they go into decommissioning, to assure the NRC staff that these risks are appropriately addressed through the decommissioning process.

CHAIRMAN JACKSON: Okay. Mr. Fertel, you wanted to make a comment.

MR. FERTEL: I think what Liz said is probably pretty correct. I mean what was said was we are not using an ISA.

CHAIRMAN JACKSON: It not that it is correct, you mean it is consistent with your point of view.

[Laughter.]

MR. FERTEL: Right now Owen is using ISAs, they are just beginning to use ISAs for operational activities, let alone considering them for decommissioning. I think it is probably less that it is going to be to satisfy NRC needs, though that will certainly be important, than it will be part of the culture on how the operators are managing their facility and their risks. And as the ISA becomes part of their culture activities and their management processes, they will use it appropriately. It may not be the only

thing they use when they do decommissioning planning.

Whatever objections to the decommissioning ISA was, it was being called for, you know, like now, and that doesn't seem to make a lot of sense when you are not planning on decommissioning for maybe 20 years. So it didn't seem to make a lot of sense in timeframe to sort of sit down and do a hypothetical decommissioning ISA early in the process.

But I think that, as Liz said, when the decommissioning plan is submitted, NRC will certainly get to ask a lot of questions. My own expectation would be that we would see the facilities use an ISA because of the nature, the sort of systematic nature and methodology that it applies to assess risk, that by then they would be using it as part of the way they do business. It wouldn't be something imposed, it would be something in the way I normally do my business.

CHAIRMAN JACKSON: So let me let you give again a succinct statement to the Commission as to why the decommissioning ISA and preliminary ISA are no longer required? You feel you were following direction as opposed to a decision that you made?

MR. SHERR: Well, I think the fact the rule now excludes the decommissioning aspect from the performance requirements of the rule, and the staff's perception was

that the Commission was saying that unless you see some significant problem with the current requirements that address decommissioning requirements, you should not address that.

CHAIRMAN JACKSON: So is that what you meant when you said the staff was obedient? Is that what you said?

MR. SHERR: Well, I didn't mean it -- it isn't a vicious complaint.

COMMISSIONER McGAFFIGAN: Madame Chairman, I think the staff does a better job of explaining their views on page 14 of their Attachment 2. And part of it is there is already a decommissioning plan that, quote, in our rules requires the description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning. So a combination of 70.38 Part 20, and 70.25 is a pretty good decommissioning structure that we just recently put into place.

CHAIRMAN JACKSON: But all I was interested in was what was going to be the cross between these ISAs and the decommissioning planning process under those existing requirements. Because in the end, if they aren't consistent, then you just have a proliferation of approaches, whether you require -- so it is not a question to me of whether you require a decommissioning ISA. The question is, what is the linkage between what you find out

by virtue of having the ISA done and how you consider risk in the planning, decommissioning planning process, whenever you do it? And that is my only concern. I think that one ought to make that connection, otherwise you have a proliferation of approaches.

MR. SHERR: The next area deals with the preliminary ISA. As Marvin mentioned, this was a requirement to submit a preliminary ISA, it was included in the previous version of the rule for new facilities or new processes at existing facilities. And the SRM endorsed that approach.

Staff reviewed, in light of the industry's concerns with it, and questions in terms of why NRC would need this. If you are asking to submit it, but you are not asking it to be approved, why require it and all this. And we reviewed the existing regulations and determined that, effectively, what we intended to satisfy by the submittal of the preliminary ISA was covered by the existing regulations for new facilities and by the change process for existing facilities. So with that in mind, we removed the requirement for a preliminary ISA.

CHAIRMAN JACKSON: Let me go back to the decommissioning ISA one more time. Is there a problem with laying out an expectation, not that you could do a decommissioning ISA today, but laying out an expectation

that what comes out of the ISA that is done is folded into risk considerations via-vis decommissioning planning? Is there a problem there?

MR. SHERR: As far as I know there isn't, but I think the way they have the language right now, my recollection is that decommissioning would be excluded from the performance requirements of this rule. But that exclusion could be easily changed and still not require --

what Marvin has expressed, their concern was the fact that having to submit a decommissioning ISA now rather than at the time the decommissioning was taking place, we never intended that. I think that was a misunderstanding of what was intended with the previous rule. So the rule could be written that when the decommissioning plan is submitted, it needs to include consideration of the performance requirements of this rule.

COMMISSIONER McGAFFIGAN: Madame Chairman, I honestly think -- it is my view that that would be duplicative of the requirement that already exists for decommissioning planning.

CHAIRMAN JACKSON: I understand exactly what you are saying.

COMMISSIONER McGAFFIGAN: I don't understand how relevant an ISA for operating the plant --

CHAIRMAN JACKSON: Is to decommissioning.

COMMISSIONER McGAFFIGAN: To decommissioning. Reactor space, we have an FSAR and PRAs and whatever on the operating plant. And then we have a decommissioning plan that gets submitted and then a license termination plan, or whatever. I think that all the steps, and I think it is maybe even an extra step in reactor space, but for a decommissioning ISA to be relevant to the decommissioning of the facility, it probably has to be closer to when decommissioning is going to occur. Since we already require a decommissioning plan at that point, I certainly am not opposed to risk being built into that decommissioning plan. But it just strikes me that we are mixing apples and oranges.

CHAIRMAN JACKSON: It could well be that an operating ISA, you know, may not have direct relevance to decommissioning. But if the Commission is moving to risk-informed regulation, I am just saying somewhere down the line, you need to address things in a consistent way. And so you don't do things one way, you know, in one part of regulatory space and then do something in a different way.

Whatever the methodology is or the mechanism is for doing it, you need to have a consistent approach, that is all I am really saying.

MS. CYR: We certainly make it clear that the ISA process is an acceptable way of going about the

decommissioning plan.

CHAIRMAN JACKSON: If it is relevant.

MS. CYR: I mean in the context of that. I mean so to the extent that you can build on either what you already know, or the processes that you have in hand, that is an acceptable way to move into decommissioning and get there.

CHAIRMAN JACKSON: Right. But to the extent -- we will move into it, right, but to the extent that it is relevant.

COMMISSIONER McGAFFIGAN: Yes, but one of the things we are struggling with in reactor space is one I think Sam Collins, who is not here, is working on giving us rulemaking plan for Part 57, which is how to handle what we are currently handling by exemption for decommissioning reactors, and they are going to build all of the stuff we need there. But the big issue from a risk perspective turns

out, as we all know, to be fires and zirconium cladding in the first few years after the reactor -- or first few months after the reactor is shut down. And that is so far from being typically analyzed when the plant is operating because there is a lot worse things happening than that.

CHAIRMAN JACKSON: I think you are getting hung up on the specific use of the operating ISA or an operating PRA for decommissioning activities. The fundamental point I am

making is, if you are going to risk-informed when you are operating, then be risk-informed when you are decommissioning. And it doesn't matter to me when or if you put in the specific requirement relative to an ISA. Just be consistent, that is all I am saying.

DR. TRAVERS: I understand your point about consistency of approach and I think we will, if you agree, as a take away, look at that relative to the existing requirements Commissioner McGaffigan has mentioned and get back to the Commission on, you know, whether or not that is the case or whether we think something additional should be done.

MR. SHERR: Okay. The next area deals with -- where agreement was reached, deals with the consideration of chemical hazards in the rule. The SRM had indicated that staff needs to clarify the basis for the chemical safety and chemical consequence criteria in the rule and particularly in the context of the Memorandum of Understanding with OSHA.

CHAIRMAN JACKSON: Speak a little more into the mike.

MR. SHERR: I'm sorry. And the rule, substantial revision was made to the performance requirements of the rule in this regard, and that it incorporates the language found in the OSHA MOU. Slide 7.

COMMISSIONER McGAFFIGAN: OSHA is now happy. We

were not happy at one point in February, but they are now happy.

MR. SHERR: Well, define happy.

[Laughter.]

COMMISSIONER McGAFFIGAN: They are not going to pull you in Federal Appeals Court.

MR. SHERR: No. Well, that is not -- there is the problem of preemption. I mean, basically, they are agreeing that what we have in our rule, they have no objection to, and that it is consistent with the MOU, but they are also saying it creates problems in terms of their own statutory authority.

COMMISSIONER MERRIFIELD: When I worked for the Senate Environment Committee, Senator Chafee had a term for this, he said it was sullen, but not rebellious.

CHAIRMAN JACKSON: Did you deal with OSHA in that Committee?

COMMISSIONER MERRIFIELD: No. But we did on the EPA.

CHAIRMAN JACKSON: We are going to stay on point. We are staying on point here today.

MR. SHERR: We did consult with the EPA as well, they are very happy.

CHAIRMAN JACKSON: We are having a good discussion.

MR. SHERR: Not sullen. Slide 7, please. Your next area is in the area of nuclear criticality safety. This wasn't focused on any SRM but we had numerous comments from the industry suggesting that the requirements be more closely tied to existing industry standards and the rule language in the SRP was modified accordingly. The rule language closely follows the language of ANSI/ANS State 8.1 and the acceptance criteria in the SRP makes extensive reference to applicable ANSI/ANS Standards.

The next area of agreement deals with the general formulation of the change process. The proposed rule that was before the Commission last year, the change process was along the lines of 50.59 language. The concerns at that time expressed by the industry, and subsequently, was the fact that this would result in a significant number of changes, it would be in to NRC all the time. And the Commission's guidance on the SRM was the fact that the change process should be such that it captures a significant few changes along the lines of what currently are required in license amendments.

Staff continued two options, one, which is reflected in 70.72 of the rule.

The other, which parallels the current proposed version of 50.59 language, and that Option 2 is included as Attachment 4 in the Commission paper.

The provisions in 70.72 identify the specific situations when preapproval of changes would be required. They are expressed in straightforward objective criteria, with the exception of one issue that Marvin raised and we will talk about shortly and the application of these criteria is expected to conform to the notion that the number of license amendments would be along the line -- the number and types of license amendments would be along the lines of what we experience at the present time.

The issue that Marvin raised in the course of his presentation in terms of the term "new type of accident sequence" versus "new type of accident" -- the basic question is what constitutes a new type of accident. It could be in a very general sense -- in other words, well, we already addressed a criticality type accident so this is just another criticality type accident so we don't have to -- I agree with Marvin that this is an area where further work and interaction -- I think there are two extremes. One is that it could be looked at so broadly that if you have one criticality accident then you don't have to look at anything, any other type of accident.

At the other extreme, minute changes in the accident sequence could be viewed as a different type of accident sequence so I think we need to work at trying to define exactly, but the underlying intent is the fact that

when we have new types of controls or types of accidents that could occur that are going to be relied on that have not been evaluated previously that these would in fact have to be looked at by Staff before being put into place.

The last area that we have identified has to do with the reporting requirements. The SRM had indicated that the reporting requirement should contain those certain significant events because of their potential to impact the worker or public health and safety. The proposed rule

includes one hour and 24 hour reports for significant events that have occurred or where there is a loss of items relied on for safety and there doesn't seem to be any disagreement in that area.

So these seven areas that we have discussed here, as I indicated earlier, represent the major areas of concern that were expressed other than backfit with Staff's earlier proposals and we think that it represents significant progress.

I'll now cover some of the residual differences. These are on Slide 8.

These differences relate to matters concerning the ISA summary content -- and you heard a little bit about that already; the ISA summary update frequency -- and again Marvin has mentioned that; the concurrent reporting requirement; backfit -- which we have heard about: and the

Standard Review Plan.

I think Staff shares the views that NEI expressed that further consideration of these differences would benefit from the public comment period and we would expect that to take place.

I address each one of these separately, identifying the industry view and the corresponding Staff proposal and perspective on the issue. Slide 9, please.

The first issue deals with the ISA summary content, and Marvin had identified two aspects of this. One has to do with the listing of all the items relied on for safety and the second issue deals with whether or not they should include in the summary all accident sequences or just those relating to the high and intermediate consequences.

I think with regard to the latter, the Staff is asking for all accident sequences -- one of the things that Staff needs to do when it reviews the ISA summary is determine whether or not they feel that the analysis has been complete and if Staff only has the accident sequences for the high and intermediate consequence accidents, it doesn't have a basis for judging that completeness.

The other thing is that the Staff would be reviewing the input to see whether it agreed with the categorization that was made, so that is the reason why the Staff is asking for the complete set of identification of

accident sequences rather than those for just the high and intermediate consequences.

CHAIRMAN JACKSON: Say that again?

MR. SHERR: Okay. If the ISA summary just included the intermediate and high consequence accident sequences, Staff wouldn't have a basis to judge the completeness of the review. That was the first point. In other words, whether or not -- to know whether a specific accident sequence was considered but viewed not to be in an intermediate category or whether it just wasn't considered at all, so that is the first aspect.

The other one is to review those that weren't considered intermediate, to the level of intermediate consequence, and Staff has a basis for judging whether or not they agree with the licensee's conclusion that that is right categorization, so that's the reason why we were asking for that completeness.

Now on items relied on for safety, as Marvin indicated, the industry perspective is to provide more of a

narrative description of the items relied on for safety at the systems level, but not a listing of each of the individual items relied on for safety, but the individual items relied on for safety doesn't necessarily mean on a component level. That can be at a systems level as well.

Under the Staff-proposed rule, the language is

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that a list briefly describing all items relied on for safety in sufficient detail to understand their functions in relationship the performance requirements.

Now the items relied on for safety is the basic element of the safety program under the rule. This measure is to either prevent the accidents from occurring or to mitigate their consequences. I guess to some extent perhaps the concerns in this area may be the basic issue in terms of what kind of level of Staff review is expected, and the Staff is expecting to be able to make -- is looking at its proposals in the sense that it would have enough information to be able to make a judgment in terms of whether or not the accident sequences that have been identified are adequately protected against in relation to the performance requirements of the rule.

In the absence of a listing of all the items relied on for safety, which is your key aspect of the rule, Staff's licensing decisions would either have to be limited to based on just broad licensee commitments that in fact they will employ all the right systems, or will require extensive review on-site, to review the detailed information, so that is the reason for Staff's.

COMMISSIONER McGAFFIGAN: Let me probe a little on this too.

CHAIRMAN JACKSON: Commissioner McGaffigan.

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COMMISSIONER McGAFFIGAN: Do we have -- once this question of how much is enough, are you going to need additional resources to look at these ISAs when they come in at the level of detail you want to look at them?

MS. TEN EYCK: No. I think that we programmed resources with the expectation that we will have enough of the detail at a high summary level to be able to make determinations that they have adequately addressed the risks -- that they have measures in place and they have identified items relied on for safety and they have measures in place to ensure that they are going to be available and reliable when needed, and that is the level of detail that we are looking at and the licensee gets the option to be able to identify this level that they give us in the identification of items relied on for safety

As Ted said, it could be at the systems level if that is the way they want to identify it, but we feel we need to have the specific identification on what they are relying on to control the risk.

COMMISSIONER McGAFFIGAN: Madam Chairman, again I think this comes down to just a few words, because I don't think there is a lot of disagreement about the definition of items relied on for safety, but then in the summary there are these words "at the systems level" that list briefly describing at the systems level is what I think the industry

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would prefer to all items relied on for safety, and you all

leave out the words "at the systems level" and yet you just said and I think it is implied in the definition that they to some degree can define items for safety at the systems level, and so are you setting yourself up for an argument years down the road when you are actually implementing this thing as to whether in the summary it was okay to be at the systems level?

As I say, I read the definition, if I apply the definition to items relied on for safety in the discretion you have given the licensee there, they can come in and do what you may not want them to do, listening to Mr. Sherr, so try to straighten me out on this.

MR. SHERR: I think there is going to be flexibility on the part of the licensee and we have even seen this already in the types of information that licensees submit -- in terms of the level of detail that they define the items relied on for safety, and the items relied on for safety themselves, you know, in terms of the definition, is structures, systems, equipment, components and activities and personnel -- so I mean it covers a broad range of things.

To the extent that licensees choose to describe things at the systems level, that will work. I mean it might be that some things can't be described to that level

or they choose not to because it will be more onerous to describe it in the long-run, to describe it at the systems level than it will at the component level.

COMMISSIONER McGAFFIGAN: But the more you put into this document, it does get down to components and whatever, the more the 90-day or one year, depending on what we decide, update requirement the more onerous that becomes, because if they are going to change a component, they are -- if this description in the summary is at the component level rather than the systems level, you are going to -- you know, there is just going to be a lot of bookkeeping.

MR. SHERR: Well, I think that, one, we have to first start in terms of what -- as we mentioned before, the ISA itself is maintained at the site, and in any case --

COMMISSIONER McGAFFIGAN: But the summary --

MR. SHERR: Oh, no, no -- but in any case what they have -- the items relied on for safety at the site has to be in some specific form and they have to maintain records of those things, so the fact is that they have to maintain those records anyways. We are going to get into the frequency of updates shortly but I mean the separate issue has to do with once they change those records, the more often they have to send it to NRC for review, but they do have to maintain the records at the site for any changes to the items relied on for safety -- anything that would

affect the ISA, so I don't think what is included in this is affecting that particular problem.

We have some comments, I think.

CHAIRMAN JACKSON: Did you want to make a comment? Would you go to the microphone, please?

MR. PERSINKO: My name is Drew Persinko. Licensees do have the option of identifying the items relied on for safety, either at the systems level or the component level -- which reminds of a question we identified at the systems level. Not every component in the system is really is an item relied on for safety, so now the question will

remain what components within that system, so if a licensee identifies a system as an item relied on for safety and then saying that everything in that system is an item relied on for safety, so there's tradeoffs in how you want to define the items.

CHAIRMAN JACKSON: Did you wish to comment? Go on, feel free.

COMMISSIONER McGAFFIGAN: This is a dedicated group here.

CHAIRMAN JACKSON: I understand -- in both senses of the word.

MS. ASTWOOD: I'm Heather Astwood. The reason why it would be burdensome to some folks -- I am looking at "at the systems level" -- if they did identify it at a system

level, it's because items relied on for safety are tied to the management measures and they would then have to treat that system as an item relied for safety where they would have to follow the rigorous management maintenance of that whole system, identifying it at that level versus identifying it on the component level.

COMMISSIONER McGAFFIGAN: There is one other requirement that comes in fresh in this final rule that we hadn't seen before, at least in the drafts that I had seen that I am not quite sure how it plays but it sounds burdensome at times is this log that crops up in 70.62 in the "Each licensee shall establish and maintain a log available for NRC inspection documenting each discovery that an item relied on for safety or management measure has failed to perform its function either in the context of the performance requirements of 70.61 or upon demand. This log must identify" -- and then there is a long sentence that follows.

I am not sure quite how the log requirement works. I guess at the component level -- you are saying at the system level if something fails, if a single component fails then they are going to have to come in and give you a report, whereas if they had managed to do it at the component level they would only have to focus on the component failing or -- but this sounds like -- I mean

totally aside from how this interplays on the issue we have been discussing, it just in itself sounds like a fairly burdensome reporting requirement, depending on how broadly this stuff is defined.

CHAIRMAN JACKSON: Maybe you might want to look at -- can you make a statement about the burdensome, the burden -- maybe the issue has to do with how well it explained the burden of reporting requirement is -- versus the burden the other way, as the young lady described, and/or the need of the Staff here, and there is some burden, so you can't make the whole burden disappear, so the real issue is do we understand the rationale that the Staff is presenting for wishing to have that, whether it is recordkeeping and/or reporting burden vice what the perceived need is from a safety point of view. I mean that to me is the calculation one wants to do here.

MR. SHERR: Well, included in the rule is to provide a basis for when the NRC inspectors go out to be able to have some basis for assessing how well the management measures are working to provide for the

reliability and availability of the items relied on for safety, otherwise there is really no information to judge that, so it's kind of a performance-oriented aspect.

CHAIRMAN JACKSON: Commissioner, Merrifield, did you have a question or comment?

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COMMISSIONER MERRIFIELD: No.

MR. SHERR: Okay. The next issue is one that NEI had already indicated that has to do with the update frequency of the ISA summary, information on changes that are made that would affect the ISA summary.

First of all, this information would be reported to the NRC for review by the license reviewers to be satisfied that the changes that have been made and that did not require NRC prior approval.

It would not affect the licensing basis. And the systems at the facility continue to satisfy the performance requirements of the rule. So it is there for staff to be kept apprised and informed of the changes that could affect the safety of the facility.

And the issue here isn't whether the information should be provided, it is how frequently it should be provided. The industry view, as Marvin indicated, is annually. The proposed rule is within 90 days. Staff's perspective is that the burdens associated with quarterly reporting versus annual reporting would appear to be reasonable in relationship to the benefits of having confidence on a more currently basis that the licensee's safety programs continue to meet the performance requirements, and also the notion that if there are any problems with changes made, that they would be identified

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early.

It is clear that I think the -- I mean I think to say that the burden would be only the difference of having to put some four packages a year versus one package a year would be understating it because one would expect that there might be number of changes made to the same page throughout the year, and so --

CHAIRMAN JACKSON: Well, we are going to have electronic docketing, are we not? So we are not going to be sending -- taking a package and taking it around.

MR. SHERR: Whatever. But in any case, that is the perspective, that is where the staff comes -- I mean it is just a question of how current staff is, is apprised of changes that are made.

CHAIRMAN JACKSON: Commissioner.

COMMISSIONER McGAFFIGAN: Madame Chairman, I am not going to bother to -- we are going to get comment on this, clearly, as we go forward. But if we ever went and tried to change 50.70 1E to make it every 90 days, I think there would be major backfit issues. But since we don't have a backfit provision here, which I also support, I won't -- but this strikes me that we are going to be getting more information about facilities that are inherently safer than the -- facilities.

CHAIRMAN JACKSON: Well, we now know what your

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vote will be.

[Laughter.]

COMMISSIONER McGAFFIGAN: Actually, for a lot of

facilities, we are willing to wait quite a bit longer for that information.

MR. SHERR: Actually, in other parts of Part 70, some of the update requirements are 60 days, so --

COMMISSIONER McGAFFIGAN: So this is a polite look at Part 70's reporting requirements.

MS. TEN EYCK: I would just like to make one point, is that we are looking at it a little bit more frequently on the SNO, but we are proposing to have a more liberal change process that allows the licensee to make a lot more changes that they would normally make under a 50.59 type process without our review.

COMMISSIONER McGAFFIGAN: But it is what we have been doing forever. I mean all we said was maintain the status quo. So whatever you don't know now, you won't know then, maybe. But whatever.

CHAIRMAN JACKSON: Okay. One man, one vote.

MR. SHERR: Okay. Slide 10, please. The next difference deals with a current reporting requirement. This wasn't identified by NEI and maybe we shouldn't have identified it.

[Laughter.]

MR. FERTEL: You can report us if you want. We don't have a problem.

[Laughter.]

MR. SHERR: The rule requires some current reporting to NRC, news releases and notifications to other government agencies. These reports are limited to events or situations related to health and safety of the public and on-site personnel or the protection of the environment.

The industry view, at least as we understood it, was that they were somewhat opposed to the requirement because there wasn't any safety basis for it. Staff's perspective is that the burdens of concurrently reporting to the NRC are reasonable in light of NRC's need to be able to be responsive to public inquiries relating to the safety of NRC licensed facilities.

Now, the favorite topic is the next one, which is backfit. The industry view, as Marvin indicated, is that the rule should contain an immediately effective backfit provision and other comments made, that it should be as quantitative as possible.

The proposed rule does not include a backfit provision. The Federal Register Notice lists its comments on the Commission's intent to defer that. I will talk about the FRN request in a few minutes. The proposed staff's proposal for the Commission's position on this issue is that

once a safety basis, including the ISA summary, is incorporated into the license application, and staff has gained sufficient experience with implementation of the ISA requirements, a qualitative backfit provision could be considered. And consistent with the SRM, when that is considered, it would not include the substantial increase in safety tests that have been --

COMMISSIONER DICUS: I would like to ask a question about the backfit, particularly the part of gaining ample experience, and that may be the right way to go, but that is very open-ended. So do you have a time, how will you know that you have gained adequate experience? At what

point are you going to look at this and how will you make that decision?

CHAIRMAN JACKSON: We should put a timeline.

COMMISSIONER DICUS: Yes. We need a timeline.

MR. SHERR: Okay. We don't have anything specific in mind, but I think it would certainly be after the application has been approved and the measures have been implemented to NRC satisfaction, I think.

COMMISSIONER McGAFFIGAN: Madame Chairman, I forget in looking here, but you mentioned some experience with Part 76, there wasn't a backfit at the start. Is there a backfit provision in Part 76 now?

CHAIRMAN JACKSON: Yes.

COMMISSIONER McGAFFIGAN: So we didn't wait very long in that case after you did the certification to put in a backfit provision.

MS. TEN EYCK: Maybe I can clarify a little bit. When we certified the GEPs, they had a compliance plan and they needed to do things to come up to NRC's level of expectations, and there was no backfit issues for the compliance plan. So they are still completing the implementation of their compliance plan.

COMMISSIONER McGAFFIGAN: But there is a backfit provision in 76 now that would apply going forward.

MS. TEN EYCK: But there is a backfit provision in 76, yes.

COMMISSIONER McGAFFIGAN: That may give us some hint as to timing.

MR. SHERR: One of the points that we wanted to make in this regard is, in the absence of a backfit provision, the licensee isn't at the mercy of the views of the individual licensee reviewer, that if there are differences between -- I think of the critical areas here has to do with maybe a difference of view of what satisfies the performance requirements of the rule, a difference of view in terms of the adequacy of particular measures and all this thing.

And those differences, in the first instance, will

be at the level of the license reviewer and the licensee's staff. And in the past, when we have had differences of view at that level, they have been elevated through the management chain for broader considerations as appropriate. And we would continue to employ this process.

So I think a lot of the aspects of backfit considerations are things that are considered in the course of that review process.

With regard to the Federal Register Notice, Solicitation of Comments, in addition to commenting on the Commission's position to defer consideration of the backfit provision, the Federal Register Notice requests suggestions for language that would specifically address fuel cycle backfit needs. And then in the context of those proposals, request them to identify the information that would be available to support the analyses that would be needed.

And part of this relates to our concern with the quantitative nature of such reviews, because the ISAs, as we expect them to be employed, are going to be more qualitative than quantitative, and the quantitative database just isn't there.

The last area, and certainly not the least, is

relating to the Standard Review Plan and as I think was reflected earlier, over the last eight months we have gotten a lot of comments on the Standard Review Plan and there have

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been substantial changes. The Standard Review Plan work does lag behind the rule work, it has got to be focused on that.

And we did make significant progress. As Marvin had indicated, the criticality safety and chem safety chapters were substantially revised, and in those particular cases we received very specific, detailed comments. In most instances the comments we received to date are more general, broad. And NEI has indicated in recent correspondence that they plan to provide more specific comments now that they have the rule language that they can judge the SRP against.

We are continuing to review the comments that were received in May. The version of the Standard Review Plan that is attached to the Commission paper incorporates some of those comments. We would anticipate that the version of the Standard Review Plan that is made available at the time the rule is published would address some further comments in that area.

In addition, staff will address all comments received during the public comment period, which we would expect would include those relating to a number of the issues that we have discussed. Also, staff is developing specific SRPs for the tours and the MOX facilities, and the comments we received in relationship to those SRP developments would also be fit back into this process.

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We anticipate that the final SRP that will accompany the final rule that staff transmits to the Commission will have the benefit of all these comments. Slide 11, please.

COMMISSIONER McGAFFIGAN: Madame Chairman, before we get away from that --

CHAIRMAN JACKSON: Yes.

COMMISSIONER McGAFFIGAN: Do you intend to have any further public workshops on the Standard Review Plan during this comment period? I was trying to figure out, are you going to put a Federal Register Notice out separate from the rulemaking on the Standard Review Plan, or is this whole thing going into the Federal Register on the rule language?

MR. SHERR: I think with regard to the last question, I think kind of our practice, and, of course, we are in your hands, that we would maintain the Part 70 web site.

COMMISSIONER McGAFFIGAN: Right.

MR. SHERR: So the next version of the SRP, we would in fact put on the web site, just like we put --

COMMISSIONER McGAFFIGAN: But there wouldn't be Federal Register Notice on the SRP, or would there?

MR. SHERR: We think the Federal Register Notice just indicates that it is available in the public document room.

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CHAIRMAN JACKSON: But you state here that you would publish the most current version when you put out the proposal.

MR. SHERR: That's right.

DR. TRAVERS: Yes.
COMMISSIONER McGAFFIGAN: And we have already gotten a few things.
MR. SHERR: I think, from the staff point of view, we are open -- we think the public meeting process has been -- this whole process has been very helpful to us, and we appreciate the substantial input that we have received. You know, it is nice to have the benefit of the perspective of those people who have to implement the process. So I mean we are open to that. I mean, you know, again, we are --
COMMISSIONER McGAFFIGAN: It sounds like you are being encouraged by the industry to do that.
MR. SHERR: Yes.
COMMISSIONER McGAFFIGAN: And given the success so far, and given the number of differences, it may well be useful.
MR. SHERR: Yes. I am not sure what the right timing for such a meeting. In other words, my intuition would be that those meetings would make sense once we have received the public comments and had time to digest them, and then, on the basis of that review, have public meetings

to discuss the public comments and get clarity on them. And then this thing.
But I think the proposal that was made by NEI was that we would continue to work on the SRP even during the public comment period. Yes, both possibilities are there and maybe even doing both at the same time.
MR. SHERR: The Staff's recommendation, which fortunately is similar to what you heard earlier, was that the proposal will be published for public comment. We agree that the rule is risk-informed and performance-based and would provide increased confidence in the margin of safety at major fuel cycle licensees.
As I indicated earlier, we reviewed the proposed rule and the process for its development has been responsive to the Commission's direction in the SRM of last year. It reflects the results of extensive interactions with the stakeholders and addresses most of the major concerns that were expressed with regard to the July, 1998 version, and as far as the residual issues are concerned Staff will consider in the development of the final rule all comments received and we would expect those comments would include further information in relationship to these residual issues.
That concludes my presentation.
CHAIRMAN JACKSON: Thank you. Commissioner Dicus.
COMMISSIONER DICUS: No.

CHAIRMAN JACKSON: Commissioner McGaffigan?
COMMISSIONER McGAFFIGAN: I want to just go on this question of "shall ensure" versus "shall provide" reasonable assurance.
On page 48 of the Federal Register Notice, and it is 70.61 of the rule, you all -- and this is not -- this is me, it's not the NEI -- I am just trying to -- you all say the safety program established and maintained pursuant to 70.62 shall ensure that each item that is relied on for safety will be available and reliable to perform its intended function when needed, et cetera.
"Ensure" is stronger than "shall provide reasonable assurance" and the same thing happens back on page 52 when you are talking about the inspection, testing

and maintenance program that they have to have -- "the design of items relied on for safety must ensure" their availability and reliability, and yet on that same page there is, as I said earlier, a very interesting footnote about defense-in-depth and we sometimes argue about it in 63 and whatever.

Where you say that the design philosophy -- defense-in-depth practices means a design philosophy applied, et cetera, such that you will not be wholly dependent upon a single element of the design, construction, maintenance or operation. So I am just trying to understand

why. "Ensure" is more absolutist. It's got to be there. It's got to be available. And then there is reporting or recordkeeping requirements that talk about each time something isn't available or whatever they better log it or "each" is used, the adjective "each" is used quite often in this rule and then defense-in-depth sort of gets tossed in as something that is good, and I agree, but that implies that maybe everything individually doesn't have to be perfect, so is it a perfection standard that I am reading in here or does "ensure" really mean "provide reasonable assurance" or what is going on?

MR. SHERR: Well, I think there is probably room for improved wording. I think in the final analysis the focus of the rule is if you have a high consequence accident, you need to provide -- make it highly unlikely that it is going to ever occur, and what makes it highly unlikely is the combination of the item relied on for safety and the management measures that are there to assure that those items are available and reliable, so, you know, it's not like -- the management measures aren't to make it -- isn't an absolute. It is just to make it highly unlikely in the total sum of --

COMMISSIONER McGAFFIGAN: It may well be that this is -- that there isn't enforcement guidance on this rule yet either, but if somebody, if the safety program has to

ensure -- "shall ensure" -- that each item relied on for safety will be available, then every time one isn't available then I guess I may have just violated the rule, as opposed to assuming these things are not perfect, a reasonable assurance standard which is what pervades our regulations --

CHAIRMAN JACKSON: Well, agreed, but you have got to come down somewhere.

If you are going to throw out, quote/unquote "low significance accident sequences" and you are going to be focusing on -- that is if you will agree to that -- high significant ones, then you would want to turn around and you'd sort of say, well, you know, maybe -- you have got to be careful, but I think the language can be tangled up -- without throwing the baby out with the bath water here.

MS. TEN EYCK: I'd also add if you recall we originally proposed programs like maintenance and a configuration control and QA, that they would have to apply to these measures. This is an effort to back up and let the licensee from a performance perspective identify what things they need to have in place to ensure that the item relied on for safety is available and reliable.

If we see a system that is continuing to fail or

is not available, then it is obvious that there needs to be more management measures to assure it's available and

reliable, so that was why our concept of trying to let them identify what measures are necessary, but it is just our confidence in having this measure available to protect against these high consequence areas was just a little bit more than just reasonable assurance.

COMMISSIONER McGAFFIGAN: Is there something between "reasonable assurance" and "absolute assurance" here?

MS. TEN EYCK: I am sure there is.

CHAIRMAN JACKSON: Commissioner Merrifield?

COMMISSIONER MERRIFIELD: No, thank you.

CHAIRMAN JACKSON: Well, I would like to thank each of the presenters today for the information you provided in the briefing. This will assist the Commission in focusing its review of the proposed revision to Part 70, and I am advertising that I intend to complete my review promptly --

[Laughter.]

CHAIRMAN JACKSON: -- to facilitate a time of the proposal of the rule, and I want to commend the industry representatives and the dedicated, in both senses, of the NRC Staff -- seriously for your diligence and commitment in working through the tough issues, and I would say that the results of your effort are apparent in the draft rule in front of us, so unless my colleagues have any additional

comments, we are adjourned.

[Whereupon, at 3:51 p.m., the briefing was concluded.]