UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF THE SECRETARY
***
BRIEFING ON THE FINAL RULE -- PART 70
REGULATING FUEL CYCLE FACILITIES
***
PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland
Tuesday, June 20, 2000

The Commission met in open session, pursuant to notice, at 9:30 a.m., the Honorable RICHARD A. MESERVE, Chairman of the Commission, presiding.

COMMISSIONERS PRESENT:

RICHARD A. MESERVE, Chairman of the Commission
GRETA J. DICUS, Member of the Commission
NILS J. DIAZ, Member of the Commission
EDWARD McGAFFIGAN, JR., Member of the Commission
JEFFREY S. MERRIFIELD, Member of the Commission

STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

ANNETTE L. VIETTI-COOK, Secretary
KAREN D. CYR, General Counsel
JACK ALLEN, WESTINGHOUSE COMMERCIAL NUCLEAR FUEL DIVISION
MARVIN FERTEL, NUCLEAR INFRASTRUCTURE SUPPORT & INTERNATIONAL PROGRAMS
CHARLES VAUGHAN, GLOBAL NUCLEAR FUEL
HEATHER ASTWOOD, NRC
DREW PERSINKO, NRC
MICHAEL WEBER, NRC
WILLIAM TRAVERS, EDO
CARL PAPERIELLO, NRC
MARTIN VIRGILIO, NRC

P R O C E E D I N G S

[9:30 a.m.]

CHAIRMAN MESERVE: Good morning. The Commission is meeting this morning to hear from the Office of Nuclear Materials Safety and Safeguards and the Nuclear Energy Institute on the staff's draft final rule for amending 10 CFR Part 70.

This, of course, is the part of our regulation that deals with the licensing of facilities that handle greater than a critical mass of special nuclear material.

I am particularly pleased to be able to participate in this, in that this is yet another of the Commission's activities of which I'm the beneficiary of the hard work of my colleagues in the past. This is an example, I think, of an area in which very significant efforts have been by both the staff and my colleagues to go to a more risk-informed and performance-based approach to regulation.

As I understand it, this is also an area in which there has been extensive work with stakeholders, which has, I think, as I understand it, served to significantly reduce the controversies associated with this proposal. So a very pleasing story, I think.

Why don't we proceed. Let me turn to my colleagues, first, however, to see if they'd like to make an opening statement. If not, Dr. Travers, you may proceed.

MR. TRAVERS: Thank you, Mr. Chairman. We are here to discuss with you our proposed final rule for Part 70 and, as you mentioned, there has been quite a lot of hard work by the staff and quite a high degree of participation by our stakeholders in this developing rule.

In fact, there is additional work that we will tell you about that deals with continuing efforts to develop the standard review plan and some of the guidance associated with implementation of that rule.

So why don't we get underway? Let me introduce, very quickly, Carl Paperiello, of course, is my deputy for materials research and state programs; Marty Virgilio, who is the deputy office director in NMSS.

Of course, Mike Weber is the director of the Division of Fuel Cycle Safety and Safeguards, and Heather

Astwood and Drew Persinko, who are also from the Division of Fuel Cycle Safety and Safeguards.

With that, let me turn over the briefing to Drew and Heather, who will be giving the principal part of the briefing.

MS. ASTWOOD: Thank you. Good morning. I will be giving the first part of the presentation and then I will turn it over to Drew.

If you'd turn to your first slide, this contains an overview of the briefing that we will present today. We

plan to discuss the draft final rulemaking that's before the Commission currently, the issues that have arisen during this rulemaking process, both on the rule and the SRP, and to go over our plans for the future.

Next slide, please. This rule is a significant element in making the materials regulation program more risk-informed and performance-based. It is consistent with the performance goals of the strategic plan. It maintains safety in that it requires an integrated look at safety and maintenance of the safety basis once it's established.

It increases the public confidence, because it requires facilities to do an integrated safety analysis and identify and maintain those items it identifies as most important to safety.

This rule was also developed in a very open public process, which began in 1993, and has allowed ample opportunity for public comment.

It increases the effectiveness and efficiency of the NRC regulatory programs in that it establishes objective performance goals or performance objectives and it focuses on the areas of most risk.

It reduces unnecessary regulatory burden, in that it has a provision in it that allows licensees to make changes to their facility without NRC prior approval. It also reduces the burden associated with reporting

requirements, in that it replaces Bulletin 9101 for criticality reporting, and it allows licensees to grade controls at their facility commensurate with their risk importance.

Next slide. A very brief history of this rulemaking. I think everybody is very aware of the history here. The need for this rulemaking was realized through the operating experience of fuel cycle facilities. The 1986 even at Sequoyah Fuels, as shown in this picture, this is a picture of the actual rupture, UF-6 cylinder, in addition to the 1991 GE incident, as well as other incidents at other facilities in the past, initiated a comprehensive review of

the fuel cycle safety program.

This review identified some weaknesses and areas that needed to be improved in this program.

Therefore, in 1991, the staff began trying to increase its knowledge of the safety areas of facilities. They developed the Bulletin 9101 to be aware of criticality events and began initiating this or considering initiating this rulemaking activity.

The industry also recognized the need for this rulemaking and submitted a petition for rulemaking in 1996.

Next slide. After reviewing the proposed rulemaking package that the staff submitted in June of 1999, the Commission issued an SRM approving the proposed rule for

public comment and directing the staff to pay particular attention to some specific issues when doing their final rulemaking package.

I'm going to briefly touch on some of those issues. Drew will follow up in more detail when he talks about the major rule issues in his presentation.

One of the issues asked to consider was backfit. In the SRM, the Commission stated that backfit should be deferred, the implementation of backfit should be deferred until staff has adequate experience and a safety basis for the facilities has been established.

They also asked us to go to the stakeholders and ask for input on how long that implementation delay should be. We did do that. We asked for comments. The comments we received indicated that stakeholders wished that the backfit to provision B implemented immediately effective.

We did include the backfit provision in the rule based on the comments. It's very similar to the current regulations in 76.76 for gaseous diffusion plants and 5109 for the reactor facilities. It has one small difference in that it does not contain the word "substantial."" It's based on a December 1998 SRM. The Commission stated "The Commission supports the requirement that any new backfit pass a cost-benefit test without the substantial increase in safety test. The Commission believes that modest increase

in safety at minimal or inconsequential costs could be justified on a cost-benefit basis."" Therefore, we left that out of the final rulemaking package.

The Commission also asked the staff to make sure that the definition of unlikely and probably are clearly defined. The staff did do this. We added words to the SRP in both chapter 3 and 11 to make sure these words were clearly defined.

I skipped reporting frequency. Excuse me. The Commission directed the staff to reconsider the reporting frequencies for the changes made by the licensee under the change control process.

We did reconsider those frequencies. We went back and looked at our reasons for having those frequencies in the first place and we did change them, we feel, to be generally consistent with the change process for the reactors, yet still maintain the safety information that we require, and Drew will explain that more in detail in his presentation.

The Commission also directed the staff to ensure that the SRP continues to clearly acknowledge that all licensees can use approaches that are different than what are currently in the SRP. We added more language to the SRP to make sure that it is clear to everybody who uses it, both the NRC reviewers and the licensees, that other alternative

approaches can be used.

And, finally, the Commission directed the staff to consider using public workshops and meetings in order to discuss rule comments and issues. Staff feels that we have continued the extensive stakeholder interactions that were started in 1993 for the Part 70 rulemaking. We have had numerous interactions since the proposed rulemaking was issued. We've had four public meetings where we discussed rule issues, SRP issues, public comments, and several example documents that both industry and staff developed.

We have also addressed numerous written comments and maintained an extensive SRP web site -- I mean, Part 70 web site.

That concludes my introduction to the presentation and I will now turn it over to Drew Persinko.

MR. PERSINKO: Good morning.

CHAIRMAN MESERVE: Good morning.

MR. PERSINKO: We have received numerous comments on both the rule and the associated guidance documents in the process of this rulemaking. The public comments raised general issues concerning the rule and the guidance documents.

For each comment, staff has carefully considered the comment, evaluated alternative approaches that could resolve the comment, and recommended the approach that it

thought best addressed the comment.

The following are the major issues raised by the public comments. The first is backfit. As Heather stated, the final rule incorporates a backfit provision similar to the 5109 provision and the 76.76 provision. Under the final

rule, licensees are expected to assess the safety of the facility in an integrated fashion and establish a new safety baseline with respect to the performance requirements of the rule.

However, there are facility requirements for which a baseline is adequately established and for which the staff does have experience and they are not affected by this rulemaking; for example, Part 20 requirements.

For these areas, the backfit requirements apply after the staff publishes its guidance document, which we expect to be approximately six months from now.

For those areas where there is not a defined baseline and for which the staff does not have much experience, meaning specifically the subpart (h) requirements of the new rule, the backfit provision would apply after the staff approves the ISA summary submitted by the licensee, which establishes the safety baseline.

We have discussed this position with the committee to review generic requirements, the CRGR, and the CRGR supports this position.

If issues arise between now and when the backfit provision becomes effective, technical staff and management will continue the process it has in the past. Currently, both staff and management review all safety issues raised and any concerns are elevated to higher levels of management. Historically, staff and management have successfully dealt with safety decisions to this consistent structured decision-making process.

The next issue where public comments were received was reporting frequency for the ISA summary updates. The Commission, in an SRM, directed the staff to reconsider the reporting frequencies for the ISA summary updates. Specifically, the Commission said that absent a compelling reason that the change -- the updating frequency should be changed to annually to be consistent with the reactor regulatory program.

We revised the rule to be what we believe to be consistent with the reactor regulatory program. We've relaxed the reporting requirements to annually for all ISA summary information, except those that relate to the items relied on for safety.

However, for the changes to the descriptive list of the items relied on for safety, the final rule still requires that these changes to this list be reported quarterly.

Staff believes that reporting this information

quarterly is important for three reasons. First, the items relied on for safety and their function most directly affect the risk of the facility. Second, it allows the licensees and the staff to have a common knowledge -- common understanding that is relatively up-to-date of what is being relied on to maintain the safe operation of the facility.

And, third, it allows the staff to review important changes to the items relied on for safety on a relatively timely basis. This is important because if an analysis is performed incorrectly, the staff would see the results of that analysis within three months afterward and could question the licensee if it has safety concerns.

The staff position is based on an analogy that the items relied on for safety are equivalent to reactor technical specifications and that both the items relied on for safety and the technical specifications define the safety envelope of the facility.

Reactor plants have both Q lists and technical specifications. However, it is the tech specs, not the equipment on the Q list, that establish the safety envelope of the facility.

The rule for the fuel cycle facilities requires identification of each of the items relied on for safety and a description of their function in sufficient detail for the

staff to understand how the performance requirements are met. The staff -- excuse me. It's a descriptive list, it's not merely a list of components, and the staff considers that the descriptive list of the items to be equivalent to the information contained in tech specs, because both the descriptive list of items relied on for safety and the technical specifications contain identification of equipment or systems and their functional requirements.
Actually, if you accept the analogy, the quarterly updates are less restrictive than the tech specs, since the tech specs require pre-approval by the staff before implementing the change.

The next area where comments were received has to do with the level of detail in the ISA summary. Actually, few rule comments were received in this area. Most of the comments were SRP comments.

Staff considers the ISA summary to be the primary licensing document by which the staff uses to determine with reasonable assurance whether the performance requirements are met. The rule requires nine types of information in the ISA summary; for example, the descriptive list of the items relied on for safety, information to demonstrate compliance with the performance requirements, process descriptions, things of that nature.

By approving the ISA summary, it establishes the

licensing baseline which is beneficial for both licensees and the staff. This one-time initial approval brings closure to the issues through the licensing process and gives a consistent baseline upon which to conduct inspections and apply the change process and the backfit provision.

The proposed rule did not specifically call out that the ISA summary would be approved by the staff, but it was called out in the statements of consideration. Staff always intended that the ISA summary would be approved, so the staff revised the rule language to be consistent with the statements of consideration.

Also, regarding the ISA summary, the Nuclear Energy Institute and the industry are developing a guidance document to complement the standard review plan. Staff is working with NEI in developing that document and a meeting is tentatively being arranged for late July to continue to work on the document.

The next area relates to the failure log for the items relied on for safety. The proposed rule contained a provision that a log be maintained which documents failures of items relied on for safety. That provision is no longer in the final rule.

Based on the comments we received, staff believed that this information was being recorded by licensees. So

we changed the final rule to require that this information be readily retrievable for NRC inspections, but it no longer has to be maintained in a separate document.

Comments were also received on the time period for completion of the ISA. Comments received requested more time than the four years.

The staff reviewed the comments and felt that the four years to perform the ISA and implement the resulting modifications was sufficient.

However, we did add words to the final rule which provided for an extension of time for circumstances which may be beyond the licensee's control.

Next slide, please. The next slide is on the standard review plan.

With respect to the standard review plan, based on comments we received at stakeholder meetings, there appears to be general support by stakeholders on the standard review plan, except for areas in two chapters, chapter 3, the ISA, and chapter 11, the management measures.

Regarding the comments on the ISA, they appear to

be -- there appears to be concern about the level of detail in the ISA summary. This was discussed at a June 8 meeting with stakeholders. At that meeting, the industry presented a document that it's working on, the ISA summary guidance document.

The document is a work in progress. It was not complete at the time of that meeting. But based on what the staff saw at that meeting, the staff felt that the document was clear, it was well written, it was complementary to the standard review plan, and that some further clarification was needed, however, and the staff intends to provide written comments to the industry on this document and plans to work with the industry further on this.

Other comments on the ISA summary had to do with the methodology, the ISA methodology. There appears to be some concern about the methodology to be used, specifically whether the use of a quantitative probabilistic risk analysis assessment is necessary.

Staff's NUREG on the ISA allows different methods to be used. One of the methods is a quantitative PRA, however. But the SRP specifically states, "An applicant may use quantitative methods and definitions for evaluating compliance with 10 CFR 70.61, but nothing in the SRP should be construed as an interpretation that such methods are required.""

So the standard review plan allows flexibility in the methodology to be employed.

With respect to the management measures, chapter 11, again, it appears to be a level of detail question. Again, on June 8, this issue was discussed at the June 8

meeting. An example was discussed and it appeared to be generally well received by the stakeholders.

Staff plans to revise the chapter 11 and chapter 3, as appropriate, publish the document on the web, obtain comments, and then revise the document based on the comments received.

As mentioned, staff plans to have follow-up stakeholder meetings on these two chapters in July to work on closing the SRP issues. However, staff believes that there is no need to delay approval of the rule pending the conclusion of that meeting.

Next slide, please. Future actions planned by the staff. If approved by the Commission, the rule will become effective 30 days after publication. Within six months after publication, licensees would submit their ISA plan to the NRC and, about the same time, staff would also publish its backfit guidance.

After the guidance is published, the backfit provision would become effective to the non-subpart (h) requirements on the facility. Approximately one year after the publication, the staff plans to complete its remaining guidance documents, with stakeholder involvement, and those documents are the ISA summary, in conjunction with the industry prepared document, reporting requirements, and the change process.

Then four years after publication of the rule, licensees would be required to complete their ISA, fix any unacceptable deficiencies and submit an ISA summary to the NRC.

It's important to point out that revisions to the fuel cycle oversight process are planned in parallel with the implementation of the final rule. As the Commission is aware, progress has been made in this area with stakeholders and the next workshop will convene in September.

We plan to pilot test revised inspections next fiscal year and the inspection plans will incorporate revisions to reflect ISAs, items relied on for safety, and management measures, as appropriate.

It's also important to note that the application for the mixed oxide fuel fabrication facility, the MOX facility, which is expected by the end of the calendar year, will also use the new Part 70 rule requirements in its application. Staff plans to finalize the MOX standard review plan following the Commission decision on the Part 70 rulemaking.

Next slide, please. In conclusion, staff believes that in the development of the final rule, with the benefit of extensive stakeholder interactions, that we have adequate addressed all the major issues raised by stakeholders concerning the rule and the standard review plan and is

consistent with the Commission's performance goals.

Staff recommends that the rule be approved and placed into effect. Approving the rule would provide stability and would aid the staff and the industry in finalizing guidance documents, the ones that are being developed by the industry, as well as the standard review plan that the staff is currently working on.

Staff will continue to work with stakeholders on these issues. That concludes my presentation.

MR. TRAVERS: And that concludes our presentation this morning, Mr. Chairman.

CHAIRMAN MESERVE: Thank you very much for a helpful presentation. Let me turn to my colleagues for

questions. Commissioner Merrifield.

COMMISSIONER MERRIFIELD: Thank you, Mr. Chairman. I guess the first question I have to the staff goes back to the ISA and the issue of the quarterly -- actually, I'm sorry, the first question I have relates to the quarterly notices.

The basic position that you've got is that the changes to the list of items relied on for safety should be reported to the Commission quarterly and you relate the list as being analogous to the tech specs in power reactors.

Industry argues instead that these items are more closely associated with the Q list and they believe that the

quarterly reporting is not appropriate and that it should be yearly reporting.

Now, it could be argued, I suppose, that if indeed these items that we are requiring quarterly reporting on are, in fact, equivalent to the tech specs, that we should require prior Commission approval, again, analogous to the reactors.

So it seems to me that we've come down somewhere in between. We're allowing a change to be made, but we're requiring them to be reported quarterly.

So I'm wondering if you could flesh out for me the differences that you have with the position being -- that we're going to hear a little later from NEI regarding the Q list and how we should respond to those concerns.

MR. PERSINKO: Regarding your question about the Q list, the Q list is normally a list of components, not necessarily with any descriptive information along with it. The list of items relied on for safety that's in the Part 70 rule is a descriptive list, it's functional descriptions that go along with it.

So it's the combination of the functional description, along with the items, which can be on a system or a component level, that really give the staff its assurance that the performance requirements are being met.

So in that respect, we think it is more analogous

to the technical specifications.

COMMISSIONER MERRIFIELD: Okay. But in that regard, the pregnant question is why didn't we, therefore, require a prior approval by the Commission before those changes were made?

MR. PERSINKO: It has to do with the staff's view of maybe the risk associated with the facility being less than reactors. Also, the process, the change process is different, as well, than what the reactors use.

So the staff felt comfortable, based on the change

process in the 70.72, that it didn't require pre-approval, but it would get a rather relatively up-to-date view of those changes after the change is made.

COMMISSIONER MERRIFIELD: That's fair. Now, in the backfit, we've got sort of a two-part issue. Obviously, for part of this, the backfit test would be implemented within six months and then for that portion where we're relying on the ISA summary, we're going to wait until after that is involved and so we're focusing.

The issues associated with the backfit test that are raised by NEI primarily revolve around that subpart (h).

Given the fact that the industry has to demonstrate compliance with the regulations and then generally backfit doesn't apply to demonstrating compliance with regulations, what is it -- I'm going to direct this to

the folks at NEI, as well. What is it that is to be gained by making subpart (h) effective immediately? Why is it that this is so important to make it effectively immediately?

MS. ASTWOOD: Your question of making it effective immediately, we were trying to address the public comments that requested that it be effective immediately, and we felt we could do that for those areas that we had a baseline that we could apply it to.

We don't feel that we have the baseline or the experience for applying the backfit to the other --

COMMISSIONER MERRIFIELD: That's fair. I guess the question I'm asking really isn't necessarily directed to you, but I want to get sort of your reaction to it.

The industry has got to comply with the regulations, but backfit doesn't apply to comply with regulations. So what is it that is to be gained from making subpart (h) -- what was the explanation for making subpart (h) effective immediately, since they still have to demonstrate compliance?

MR. WEBER: Because what the agency is attempting to do, if the Commission approves the requirements, is to get on with the implementation of the integrated safety analyses and to do that, I think the industry would benefit from having a final rule that's applicable and they need to comply with.

Recall that once the rule goes into effect, the industry has got six months to do their initial plan and then to get on with completed their integrated safety analyses and preparing the ISA summaries, and ultimately implementing whatever safety measures come out of that analytical process.

If the alternative that you're perhaps contemplating would be a deferred implementation of subpart (h), the question would be what confidence does the industry have to go forward and expend the resources to do the analyses, not knowing that those requirements apply to them. I think that might be a bit of a concern for the licensees.

On the other hand, if we go forward now and begin implementing the ISAs and developing the ISAs, with a deferred implementation of the backfit, then we do not have to go through the backfit exclusion for compliance every time a change is made or at the time staff reviews the ISA summary that comes in from the licensees during that four years.

So there is an administrative convenience, as well as the economy of not having to go through that part of the process.

And recall, the ISA summary provides the baseline that we will then use as we go forward with the implementation of backfit to compare against.

COMMISSIONER MERRIFIELD: That's fair. The last question I have, very briefly. We have a lot of issues and the Commission has placed a lot of issues before the staff relative to Part 70, all of the work you've been doing here, as well as consideration, you've recently touched on it, of the issue of a new assessment and oversight program.

Have you received concerns from the industry about perhaps we're doing a little bit too much too soon? Is the area of a new assessment and oversight program an area where perhaps given the fact we're still evaluating our results on the reactor side, that there may be some usefulness maybe to taking a little bit more time to consider where we go relative to Part 70 licensees?

MR. TRAVERS: I think the answer to that -- I don't think. I know the answer to that question is yes. I had a discussion with some of the representatives yesterday in a drop-in and basically the issue is should we drop back, would they be interested in dropping back, would other stakeholders be interested in dropping back a bit and making an assessment of the applicability of something like what we've done for reactors in this program or not.

What makes sense from a holistic, sort of integrated perspective? We agree that's a good idea and we agree that some sort of near-term stakeholder meeting is appropriate, so that we can involve all stakeholders in a

broad assessment of going forward and just how to do that.

COMMISSIONER MERRIFIELD: Okay.

MR. PAPERIELLO: If I could make a comment,

because the revision of the inspection program for fuel facilities in NMSS was an initiative I took before I assumed the current position.

You need to realize the current inspection program was driven by the reaction to the events that caused us to develop these rule, the development of the rule.

Essentially we attempted to inspect quality into the program. The resources are relatively high and I say that relative to where we stand now on the reactor side. So the initiation of the program to re-look at the inspection program was recognition that we had created a program to inspect quality and maybe the resources were not quite balanced, particularly with the implementation of this particular rule.

So I'm just trying to frame the reason why we did it. It was not meant to copy the reactor inspection program, but what was initiated was an attempt to come up with a program that was consistent with this rule and not how we had actually created an inspection program in reaction to the events that occurred a number of years ago.

MR. WEBER: If I can add to that. There are many attributes that we see in the revised reactor oversight

program that are appealing to us within the staff. There is greater efficiency in some areas. There are opportunities to address cross-cutting elements of licensee performance that are appealing.

The concept of risk-informing our inspection and the oversight process is very appealing to us. And those are the base attributes that we're striving for as we go forward with the oversight process.

There is the whole licensee performance review process that we go through. We think that there is a way to make that a little more systematic, more objective, to provide the information in a more timely way.

So all those elements that have been affirmed in the revised oversight process for the reactors are very appealing to us in the fuel cycle program.

Now, having said that, we certainly have heard from the industry concerns not only about, hey, let's take this in a measured way, let's not leap before we know where we're going to land, but we've also heard that in some ways, the stakeholders are strapped for resources to participate in the public effort that is required to develop this new oversight process in a way that's going to share broad ownership to that revised oversight process.

Many of the individuals that we have the benefit of interacting with from the licensees are, in fact, safety

managers back at their plants. So every time they come to Washington or go to one of our regional offices, that's a day or two days or three days that they're away from the licensed facility. That means they are not doing their normal safety function, managing a part of the program or contributing to that program, and we've heard that.

In addition, I only have part of the program that affect these licensees. They're also interested in transportation safety, the revisions of ST-1, and the implementation of that rulemaking.

So I think the licensees legitimately have raised a concern of looking at the integrated programs and not just what are we doing in the revision mode, but also major licensing actions that are coming up that they need to invest their effort and attention to so that they come off in the best way.

COMMISSIONER MERRIFIELD: Mr. Chairman, I think this raises a fair point about resources. It is somewhat refreshing to say that we're in a position as an agency of perhaps being ahead of our licensees, and I think that's a recognition that the staff is doing a good job.

The only supplement I would add to the list that Mr. Weber had for all of the good things about our new reactor oversight process is increased public confidence, which I think is something very meritorious about our new

system.

Thank you, Mr. Chairman.

CHAIRMAN MESERVE: I'd like to follow up for a second on the backfit issue, and then let me say that I'm a newcomer, again, to this game, on this Part 70.

But I would have understood that you don't have any backfit issues as to the promulgation of this rule because the existing Part 70 doesn't have a backfit provision in it. So you can proceed to promulgate.

MR. WEBER: That is correct.

CHAIRMAN MESERVE: And the question I have, therefore, is why not make the backfit provision immediately effective, because it seems to me that to the extent the issue you raised was to the ISA summary is adequate, you have the benefit of the analogy you have to the reactor backfit rule, which is the compliance exception, and you will be defining -- and as you go forward, you'll be defining what compliance with this rule means and you have an exception that's built into the backfit rule that covers that situation, so you don't have to do a backfit analysis for that.

I'm sort of wondering what are the stakes here. I

don't quite understand why the staff has wanted to delay the -- with Commission guidance, in fairness, why there was this pressure to delay the backfit applicability given the fact

that there is a compliance exception in the backfit part of the rule.

MR. VIRGILIO: Mr. Chairman, if I could take a shot at that. One reason, as you've pointed out, is the compliance issue and we really don't want to have any impediments to getting the rule implemented.

The other issue, from my perspective, is how do you go about doing a cost-benefit analysis. I think the process will be greatly informed by the methods that the applicants and licensees choose to use in performing their ISAs. We offer a range of methodologies. Some have already started using the index method that we have as an example in our standard review plan.

I don't think anybody is going to go to a PRA and we're not pushing or encouraging that, but there are a range of methods that people could use.

I think when I step back and say, then, how would I go about approaching a cost-benefit analysis, I would like to be informed by some of those methods. So, therefore, I see a tremendous benefit in holding back and seeing how this is developed and then performing our cost-benefit analysis methodologies based on what is actually implemented by the licensees and applicants.

CHAIRMAN MESERVE: I can appreciate that, that if you actually had to do a backfit analysis, you'd like to

have some experience with this rule so you could understand, using the ISA as the backdrop for doing it.

But the issue that was raised is that in the ISA summary that would be submitted, that that would somehow become a backfit, and I would have thought that you wouldn't have to have done this cost-benefit analysis because you would be defining for that what compliance with the rule means.

MR. VIRGILIO: Yes. We are in agreement.

CHAIRMAN MESERVE: So you have the exception that gives you basically the opportunity to avoid having to do the cost-benefit analysis as you're approving those ISA summaries. Am I missing something?

MR. VIRGILIO: No. It should flow right through, but hopefully we wouldn't get embroiled in any discussions about what is compliance and what isn't compliance with the rule, and we wouldn't want to have a burden imposed on us or the licensees or applicants for going through that.

We would just like a smooth process that would expedite the implementation for the rule, form a baseline, and from that baseline, then we go to it's either a compliance backfit beyond that baseline or it's a cost-beneficial enhancement beyond that baseline, but it would allow us, I think, a smooth and expeditious transition to the implementation of the rule.

MR. TRAVERS: It may be a distinction with not a great deal of practical difference, but the thought was a clear statement of the applicability once this baseline was established, the need not to have to go through the determination of backfit exception, if it were immediately effective, where attractive, and just raising the issue with the Commission and making sure we are all on the same page relative to going forward with all this.

But in the main, though, you're correct. If you establish the ISA summary and the expectation that that is compliance or is the required compliance with the new rule, then we could clearly establish the need not to apply backfit to that particular exercise.

CHAIRMAN MESERVE: I have a related question, and this may also reflect my ignorance of where you are. Your slide eight that you have would require submission, as I read it, of ISA plans within six months, but the guidance not to be due for an additional six months, namely a year.

So it looks as if you are requiring submission of a plan to do something that you haven't defined until six months later.

MS. ASTWOOD: Right. I can answer that one. The ISA plan is simply a document that the licensee tells us their schedule for implementing their ISA, how they're going to do it, their methodologies that they're going to use.

The documentation that we're developing later is the amount of information, the things that are in the ISA summary which is submitted at the four year mark later on.

So we're not developing guidance on how to develop an ISA plan, although we have had discussions with the industry that that is something that they would like us to work with them between now and the six month period.

MR. WEBER: Keep in mind, also, that, from what we have already presented, the industry has made substantial progress in developing that guidance document and we're already reviewing or we will soon review the third draft of that document and each time we're coming closer to defining success.

So it's entirely conceivable that that guidance that's listed here at six months out will be available

within three months and if that's the case, tremendous, because then it will be available as the licensees develop their plans.

But as Heather pointed out, what really the plans address are schedules and methodologies. Also keep in mind that many of the licensees are well progressed in developing their integrated safety analyses.

So for them, the task of developing their plan is one of how do I take what I've already done and now use that to respond to the rule, and do I do that by bits and pieces

or do I want to submit one holistic integrated safety analysis.

That's the real value of that plan, so that there can be interaction early on between the agency and the licensee and so there's no surprises in the future when the actual ISAs are submitted.

CHAIRMAN MESERVE: I think that's helpful. It seems to me that even setting a schedule does require you to have a pretty good idea of what you're required to do. But it sounds to me that you think you're far enough along and your licensees are far enough long that they're going to be able to accommodate that.

MR. WEBER: And specifically to that point, sir, the SRP is, in large degree, received well by the licensees. We're talking about level of detail that needs to be in there in chapter 3. We're not talking about differences on methodology or about intent or application. It's really the level of detail, what needs to be in the ISA summary, how does it all get linked together.

CHAIRMAN MESERVE: Okay. I have some other questions I could ask, but I do want to allow time for my colleagues. Commissioner Dicus.

COMMISSIONER DICUS: Thank you. I want to go through two lines of questioning rather quickly, I hope. One has to do with the quarterly reporting for the IROFs and

the other one will go a little bit into the ISA summary and some questions regarding that.

The industry will tell us today, maybe, unless they've changed their minds in the last 18 hours, but they may tell us that these quarterly reports of items that are relied on for safety could be as many as 20 to 50 per quarter, which the numbers surprise me.

MR. WEBER: Per licensee?

COMMISSIONER DICUS: Per licensee. The number surprised me quite a bit. I thought that was a very high number. My impression was that if you've got a good ISA,

that you should not have very many of these quarterly reports, but the industry told me no, we're getting really down in the grass on these items relied upon for safety and there will be a large number of these quarterly reports, and that's a burden to them.

So I need some feedback. Do you agree or disagree?

MR. WEBER: I disagree.

MR. PERSINKO: That number appears high, to me, especially considering that the industry has indicated they plan to identify the items relied on for safety on a systems level. So that further -- I would expect that further would reduce the number of changes if you identify your items on a systems level. So that number appears high, to me, per

quarter.

COMMISSIONER DICUS: It may be something, when the industry comes to the table, they've had a chance to listen to this, their explanation that they gave to me yesterday on a drop-in on why the number would be so very high.

So I think perhaps we obviously have a difference of opinion here and I think getting that resolved is resolution perhaps of this quarterly report issue.

MR. PERSINKO: Let me just clarify. That would be one report, though, for the quarter. It's just one report with 50 changes in it.

COMMISSIONER DICUS: Right, per licensee.

MR. WEBER: Right, but not 50 separate reports.

COMMISSIONER DICUS: Well, it would be one report, but it would have all these items in it.

MR. WEBER: Right.

MR. PERSINKO: That is one thing we tried to clarify in the final rule, because in the proposed rule, there appeared to be a misunderstanding in that one of the comments made at the time was that there would be continually a reporting requirement.

That's why we changed the words in the rule from 90 days, in the proposed rule, to quarterly. So the maximum number of reports we see before, and it could be less if there were no changes to the items relied on for safety

within that quarter.

COMMISSIONER DICUS: Understood. Let me go now to the ISA summary. The first question really goes to this concept of approving the ISA. Now, my understanding is this approval is a one-time thing, right or wrong?

MR. VIRGILIO: Right.

COMMISSIONER DICUS: One-time thing.

MR. VIRGILIO: Yes, correct. Unless they chose to

parse it, Commissioner. They could choose, for example, to do it on a system by system basis. This is something that we heard yesterday. And then we would approve it that way.

But our thoughts are it's a one-time approval.

MR. WEBER: There would be additional ISA summaries for new processes that would come on line at some point or new facilities.

COMMISSIONER DICUS: That's understood. Those would have to be approved, too. What does the concept of approval mean? It's not part of the license and I guess what I'm really going toward is that in approving the license itself, you're approving the safety program. So isn't that essentially the same thing as approving not only the ISA, but the ISA summary?

So I'm asking the question why are we approving the summary? Would you have this in a brand new license, a new facility coming on line? Would you still require this

and if so, why?

MR. PERSINKO: Would you require approval of the ISA summary?

COMMISSIONER DICUS: Yes.

MR. PERSINKO: You're approving the ISA summary along with other information that is submitted. You would be -- by issuing the license and writing the staff safety evaluation report, you would be, in effect, approving the ISA summary, and that's what we anticipated, was that you would be issuing a --

COMMISSIONER DICUS: You're talking about for a new licensee.

MR. PERSINKO: For a new licensee.

COMMISSIONER DICUS: Okay.

MR. PERSINKO: For existing licensees, you would have amendments. You would also get -- you would approve -- you would have -- by approving an amendment, you would be approving any changes to the ISA summary, as well, if that was needed. But the idea was that it wouldn't be approved as a stand-alone document. It would be approved in the context of a license or an amendment to a license, along with other information.

COMMISSIONER DICUS: What about existing facilities? I'm trying to get what is the health and safety benefit of approving the ISA summary for existing licensees?

What are we accomplishing?

MR. WEBER: What the staff is saying is by approving the ISA summary, we would be saying that we find acceptable the submittals from the licensee that they are in

compliance with the requirements in subpart (h).

COMMISSIONER DICUS: But it's not part of the license.

MR. WEBER: It's not part of the license.

COMMISSIONER DICUS: When they send in changes --

MR. WEBER: If they need to send in changes.

COMMISSIONER DICUS: Okay. Well, say the quarterly reports on IROFs, are you going to approve those?

MR. WEBER: No.

COMMISSIONER DICUS: Okay.

MR. WEBER: Now, we will review those to determine whether they still fit within the safety envelope that was established for the facility through the ISA summary and if we find that they trip over any of the criteria in the rule, we may go back to them and, as is done in the reactors and as is done in GDPs, say we've made a review of what you submitted and we've determined that you fall outside of the bounds of the safety envelope.

COMMISSIONER DICUS: Okay.

MR. WEBER: In which case, if you want to implement that change, you'll need to submit an amendment

request.

COMMISSIONER DICUS: That's fair, and that I understand. I'm still struggling just a little bit with this approval situation. But let me go on from here.

Do you have any idea where the licensees stand today on their ISA development progress?

MR. WEBER: I don't think we have the specifics here, but all but one, I believe, have committed and have license requirements, conditions in their licenses to complete ISAs.

Some are very well advanced in developing their ISAs and have implemented the controls. Others are not as far along, but -- so it's a range. But we have, at this point, I believe, enough experience from the licensees that they've actually tried a variety of different methods and have incorporated them into their own internal safety programs, so we have the benefit of that experience.

But they haven't gone the full measure of developing an ISA summary that applies across the board.

COMMISSIONER DICUS: So it's fair to say perhaps that some licensees will get their ISAs in sooner than four years.

MR. WEBER: I would expect that would be the case. But they still have the full four years.

COMMISSIONER DICUS: Okay. Understood. How far

-- have you done much of a section by section comparison of

the new subpart (h) with where licensees are today to kind of have some idea of how much work they have to do? Do we have any feel for that at all?

MS. ASTWOOD: It is in the regulatory impact analysis. I know specifically for the management measures area, we did an extensive review, most of the management measures area, we felt that they -- the amount of effort involved is not voluminous to come up to compliance with that chapter.

COMMISSIONER DICUS: Okay. I may put that same question to the industry. One last quick question, Mr. Chairman, that follows off of your question on backfit.

If it were a brand new licensee and you grant the license today, would backfit apply immediately?

MR. WEBER: Well, we'd still have the six months to develop the guidance, but at that point it would.

COMMISSIONER DICUS: Okay. Thank you. Thank you, Mr. Chairman.

CHAIRMAN MESERVE: Commissioner Diaz.

COMMISSIONER DIAZ: Thank you, Mr. Chairman. I thank my fellow Commissioner for an excellent job of going through all the questions that I have.

COMMISSIONER DICUS: It's one of the disadvantages of being down the line.

COMMISSIONER DIAZ: Or the advantage.

COMMISSIONER DICUS: That's true, that's true. That's happened to me before.

COMMISSIONER DIAZ: I think it's great. Just one question on the issue of the level of detail between you and the licensees, and chapters 3 and 11.

Could you tell me what are we talking about, what specifically additional level of detail? Are we talking something very massive or what is the difference in the level of detail that we are asking for in what the licensees are preparing?

MR. PERSINKO: We discussed this at the June 8 meeting with respect to both chapter 3 and chapter 11. We went over examples that we had developed and like I said, it appeared to be generally well received.

One of the, I think, misconceptions that came out at that meeting was it appeared that the industry thought we were requesting information at a procedural level, which would be at a plant procedure, and we were clear at the meeting that we were not looking for that kind of detail.

We actually, in our example, tried to use the example to show the information that we would be looking for. And that information is what we were looking for is so

that we have the reasonable assurance that the performance requirements were met.

But, no, I think we were clear at that meeting we don't believe it would be voluminous.

MR. WEBER: To place it into some context, let me describe, I believe, where we started out this discussion. The staff laid out, in fairly excruciating detail, in the standard review plan, the level of detail that we were seeking and it was based on the experience gained through the years in doing licensing reviews and, as Carl pointed out, responding to events where it became evident that a particular licensee had a problem, a performance problem, and the fix to that problem was either putting in place configuration management or a maintenance program or something of that effect.

On the other side, what we heard from some of the industry folks was what we want to come in with in our license applications is nothing much more than we will have a maintenance program. It's a broad commitment. We will have a training program and the staff, of course, reacted to that by saying, oh, come on, you know, what benefit do we derive from having that high level commitment.

Yes, we need that high level commitment, but we need some more stuff there that we can look at to develop confidence that you will operate this facility safely, that you have the controls in place to maintain worker safety and public safety, and that's where the two ends of the spectrum

started.

And I think through the back and forth, both parties have benefited by the exchange of information and we have come to realize, at least on the staff's part, that we're really not that far off. And in some cases, what the licensees have in their existing licenses today may be more detailed than what we're looking for under the new rule.

COMMISSIONER DIAZ: All right. Thank you, Mr. Chairman.

CHAIRMAN MESERVE: Commissioner McGaffigan.

COMMISSIONER McGAFFIGAN: I'm going to follow-up on a question that Commissioner Dicus asked you. The approval process for an existing licensee of the ISA summary, do you envision doing an SER, that that will be the mechanism for providing that approval?

MR. WEBER: Yes.

COMMISSIONER McGAFFIGAN: That's straightforward. The flexibility you gave licensees with regard to the four-year requirement, you described it, Mr. Persinko, in your comments as items beyond the control of the licensee,

but the actual words are a little more flexible than that, it strikes me.

If the Commission determines that the alternative is warranted by consideration of the following, adequate compensatory measures have been established, whether it is

technically feasible to complete the correction of unacceptable performance deficiency within the allotted four-year period, other site-specific factors, one of which is that they are beyond the control of licensees.

So there is an awful lot of flexibility for more than four years. I guess the one that bothers me most is the one whether, after all this time, it's the B, whether it is technically feasible to complete the correction of the unacceptable performance deficiency within the allotted four-year period.

That's all new, isn't it?

MR. WEBER: We modeled that -- that is new, but we modeled -- it's in response to the public comments and we modeled it after the language that's in the existing decommissioning timeliness rules in Parts 30, 40 and 70, where there is a similar provision in which the Commission granted flexibility to itself to determine when alternative schedules for decommissioning are appropriate.

COMMISSIONER McGAFFIGAN: I'm just troubled a bit by subparagraph B, to be honest. The change process, I guess I will hit the same point everybody else has.

The analogy to tech specs of these changes to items important to safety, that isn't really connecting with me. One of the lines of questions we've had in previous Commission meetings that led to changes in this document, I

believe, was the original concern of licensees was that without the flexibility of 70.72, they'd be - you guys would be approving license amendments daily and for each licensee, and that was way beyond what we currently do and there was no real rationale for doing it.

I think we're back now to, under 70.72, approving about the same number of changes. Is that -- well, I'll ask the question. Is it correct that what we envision under 70.72 for a particular existing facility is about the same number of license amendments as we get today, approximately?

MS. ASTWOOD: That's what we were shooting for, yes.

MR. WEBER: But I'd point out that there is a fair amount of uncertainty in that expectation, because it's not clear to us exactly what the licensees will choose to do under the rule and how they construct their own safety

programs will, in effect, dictate the number of amendments that will be required.

In other words, if they come in at a fairly high level, they can provide the assurance that is needed and required by the rule, and yet will not result in the same frequency of amendment needs.

On the other hand, if they choose to come in at a very detailed level and apply management measures to a wider range of IROFs, as we refer to them in the rule, then that

could provoke more amendment requirements.

COMMISSIONER McGAFFIGAN: If I'm listening in the audience, I think I'm going to take option A.

MR. WEBER: But the important thing is the licensees have that flexibility with the way we've created this risk-informed performance-based rule.

COMMISSIONER McGAFFIGAN: So approximately we think we'll get the same number of change requests, but it could vary on how much detail they provide in the ISA summary.

MR. WEBER: Right.

COMMISSIONER McGAFFIGAN: One of the responses to Commissioner Dicus was that it looks like the items relied on for safety are going to be at a system level. But if they are at a system level, it strikes me you're going to get more of these quarterly -- more items included in the quarterly report, because it says for any change that affects the list of items, systems level items, relied on for safety contained in the integrated safety analysis report, but do not require NRC prior approval.

That's a pretty broad requirement. If you're identifying items relied on for safety at the system level, any change, you will be giving us quarterly reports on, and it could be quite trivial, because like you said earlier, they could have gone down into a subsystem level and then

the whole system wouldn't have been relied on for safety.

But now because they're making changes in things that really aren't all that important to safety, we're triggering larger lists of items to report on quarterly.

I don't know. As I say, that's not a tech spec, in my mind.

MR. PERSINKO: It depends how it's presented in the application. It's a function of how you describe the system and the functions of the system that go along with the system. If it's truly at a higher level, this is the system and these are the functions we want that system to do to meet the performance requirements, I would expect there to be less changes to that, because I think you can change

components within the system. Not every component in a system would be a safety-related component.

Even then, if you don't describe on a component level in your application, changes can be made to components as long as the functions described in the application and the system don't change.

COMMISSIONER McGAFFIGAN: It's just -- do you want to follow-up?

COMMISSIONER DICUS: Go ahead. I do want to follow-up.

COMMISSIONER McGAFFIGAN: It just strikes me that the words here, though, are quite -- I mean, there's a --

you're setting up gaming processes for how one is going to do the ISA summary in such a way as to not trigger as many quarterly reports and the words actually are for any changes that affect the list of items relied on for safety contained in the ISA summary, but do not require prior approval, they have to submit revised pages.

So it depends on how things go, but it could be voluminous, what they're saying could be correct depending on how they do the ISA summary.

MS. ASTWOOD: Okay. Could you do that one more time?

COMMISSIONER McGAFFIGAN: For any changes that affect the list of items relied on for safety contained in the ISA summary, but do not require NRC prior approval, a licensee shall submit revised pages of the ISA summary.

MS. ASTWOOD: On an annual basis.

COMMISSIONER McGAFFIGAN: To the NRC quarterly, within 30 days after the end of the quarter. So that's the quarterly report.

MS. ASTWOOD: Right.

COMMISSIONER McGAFFIGAN: And as I say, if they're identifying things at a system level, you do get to the numbers that Commissioner Dicus -- I'll let Commissioner Dicus follow up.

COMMISSIONER DICUS: I think clearly on this

language is the interpretation, maybe I shouldn't speak for the industry, but my sense is that their interpretation of this language does mean if you noodle any little thing in a system, that that's got to be reported, and maybe we need to clarify the language or maybe clarify and make it clear what the interpretation of that actually means.

We do have a pretty good difference in opinion on how many items might be reported.

MS. ASTWOOD: I agree. I want to reiterate what

he said about -- we did not want to see changes where they change the paint color or put in different bolts. That absolutely was not our idea.

However, the list of items relied on for safety, assuming a systems or component level, would be the item, the system or this component, with, like he said, a descriptive list. We have this component to measure temperature or regulate something. Now, changing that bolt or changing the color of that does not change that list.

COMMISSIONER McGAFFIGAN: I'll quit that line of questioning. I'm still at a year, like I said, when I voted the last time. One other issue that came up in my voting last time that doesn't seem to -- it didn't reach the issue of important stakeholder comments, but it was this issue that I remember NEI raising with regard to 70.61(e) and 70.62(d), the use of the word "ensure"" as opposed to

"provide high insurance"" or something like that.

The safety program established and maintained pursuant to 70.62 of this part shall ensure that each item relied on for safety will be available and reliable to perform its intended function.

And the issue was what does ensure mean. Ensure could be an absolutist term that 365 days a year, every second of every day, you'll have to ensure that, which isn't possible.

So there was discussion, at least last time I recollect, of words like provide reasonable assurance, provide high assurance, provide some level of assurance, rather than assure in those sentences.

How was that comment resolved?

MR. WEBER: We did receive public comments on that very language and I believe our resolution was it is the Commission's determination that reasonable assurance exists, not the licensees'. The licensees are obligated to comply with the requirements and the licensee also has the flexibility to build within their safety programs various approaches for compensatory measures, for shutting down operations during maintenance, et cetera.

So again, the ball is the licensees' court to decide how they're going to provide that insurance.

MR. PERSINKO: You ensure that you meet the

performance requirements at all times, but you can ensure it different ways, depending on the consequences of the failure, the potential failure.

And ensure it at the outset, if it's extremely important, you can have completely 100 percent backup or if the consequences warrant, you can factor that out-of-service

time, say, into the ISA at the outset and factor it in that way.

But you do ensure that you meet the performance requirements.

MR. WEBER: If the licensee is relying on a favorable geometry tank and that tank, for whatever reason, becomes unusable, we don't want the licensees to continue operating unless they provide that insurance.

On this change control process, Dr. Travers and I had the opportunity to participate in an NEA conference in Japan at the end of May and one of the most striking conclusions that came out of that was an urging that regulatory authorities approve any change to license to operations.

Now, we're going forward with the rule because we don't think that that's the right way to go. We think that you can maintain safety, yet allow licensees the flexibility to do their own internal change control, because they've been doing it, a number of them have been doing it for some

time.

COMMISSIONER McGAFFIGAN: Okay. I do think the staff has done a good job the last -- I think this episode started in late '97 and we've been through a lot and I think we're down to a small number of items now and I'm very happy with the process and the staff result.

I guess the one last question that I have on these guidance documents, the SRP chapters 11 and 3 that will be still in play after the rule is finalized, if we finalize it as you are recommending.

Should those be submitted to the Commission for our information or even as a voting matter as a mechanism to -- is that -- we've done that in some other guidance documents, 50.59 license renewal, 50.65, et cetera, and I know it's not normally -- guidance documents have normally been in the hands of the staff.

But is this an important enough one that we should take a peek at it in six months or whenever it's ready and make sure that the issues have been resolved?

MR. TRAVERS: Our current plan is not to submit it for Commission approval. Of course, you've done that on occasion and we can do it either way.

COMMISSIONER McGAFFIGAN: But you would plan to submit it for information.

MR. TRAVERS: Absolutely.

COMMISSIONER McGAFFIGAN: Okay.

CHAIRMAN MESERVE: I would like to than the staff

for a very helpful presentation. Clearly a lot of progress has been made and as Commissioner McGaffigan has indicated, we're really down to a relatively small number of issues that are presented to us.

So thank you very much.

Our next panel consists of Mr. Marvin Fertel, who is the Senior Vice President; Mr. Jack Allen, from Westinghouse; and, Mr. Charles Vaughan, from Global Nuclear Fuel. Good morning.

MR. FERTEL: Thank you, Mr. Chairman, and good morning, Commissioners. I won't read my testimony. You have that. What I will try and do is go through using the slides that we prepared and address some of the issues that we've already raised and maybe follow-up on some of the discussion you've already had, and also --

COMMISSIONER MERRIFIELD: Mr. Chairman, given that that's a 15 or 17-page statement, I commend NEI for its wisdom in that regard.

MR. FERTEL: Thank you, Commissioner Merrifield. And also reflect upon some of our follow-on discussions among the licensees yesterday and also discussions with the staff, with the drop-in, with Bill Travers and his folks.

If I could have the first slide. As I think

you're aware, there's three rule issues that we would like to discuss. I think all of them were discussed just previously with the staff and I'll come back and discuss each one of these individually.

Next slide. And there's basically two chapters, chapter 3 and chapter 11 in the SRP that we're going to discuss.

I think I could second very strongly Commissioner McGaffigan's statement that over the last couple, three years, the cooperation, the work and the progress between the NRC staff and the industry has just been exemplary. I think there has been tremendous progress made.

I think that the characterization that Mike made of where we were maybe on chapter 11 might have been a little extreme on the ends, but I think that where we got to is probably indication of the good dialogue and the relationship and trust, and the stakeholder meetings have helped.

I should point out that all the Part 70 licensees, as well as USEC, are represented in the audience today. There are representatives from every facility here.

If we could go to the next slide. The ISA approval, we are recommending that the rule not require approval of the ISA. We are not at all questioning the importance of the ISA, the commitment to do the ISA or the

submittal or the ISA summary. There is no question about that. We are fully committed to that and have been from the beginning.

What we're struggling with is that we see the ISA itself as a tool that's used by the licensees to assess the safety at their facility and to ultimately demonstrate compliance with the performance requirements of 70.61, for the rule itself, and then ultimately if I put in a new process, to demonstrate how that process is safe, or if I want to amend my current license to use the ISA in that way.

We see it as a backup document that goes in to the NRC, and I think I agree, and I'm not sure whether it was Bill Travers or Mike Weber or Drew that said that, well, in effect, they're approving a licensing action and de facto you are approving the ISA. We don't question that you're accepting the ISA, you may have questions.

What we'd like is you approve the licensing action, not the ISA itself. And it may be a semantics issue, except the rule is pretty clear that it says approval of the ISA summary.

So I just want to be clear. We have no question about submitting it, using it, its importance. It is what's being approved that we're questioning and we think the licensing action is the approval, the regulatory action itself, not the ISA, and we're certainly prepared to discuss

that in more depth at the end of this.

The next slide, please. There was quite a bit of discussion on the quarterly updates. Our estimate, which is certainly just an estimate right now, I asked the licensees whether they would think the quarterly reports would be, based upon their experience to date.

At least one licensee, who has been looking -- has an ISA in progress, is about halfway done, has items relied on for safety defined, told me yesterday that he estimated, from what he knows, there would be 20 to 30 quarterly submittals. The others haven't given it that much thought yet, even though, off the top of their heads, they had guessed 50.

But the one, the more accurate number was someone who actually said, yeah, if I look at my items relied on for safety, I would expect 20 to 30 on a quarterly basis.

I think it probably falls a bit into what Commissioner McGaffigan said. I think our intent would be you look at a system level, but obviously, the way it's written, anything that affects that system would then become something I have to report quarterly.

I think that just philosophically, where we are is if it's something that requires NRC prior approval, we should get it into you for prior approval. If it doesn't require prior approval, we should report annually. And if

there is something in between, halfway pregnant, I don't know, Commissioner Merrifield, we should figure out what that is and try and deal with that differently.

But we basically would advocate that either it's prior approval or it's an annual report. And we don't feel that that hinders the NRC. I mean, I heard what the staff said and they should be aware of what's happening at the plant on a timely basis and, in fact, they are.

I asked the licensees that question when we were getting ready for this meeting and all of them told me that from their experience, the inspectors, the first thing they do when they visit the facility is review the changes that were made since last time they were there.

So from an NRC staff standpoint, at least part of the staff is getting that information. So, again, our recommendation would be to try and keep it to annual. If it requires prior approval, let's deal with it.

If there is a reason for more information to be presented to headquarters, let's talk about how we need to do that and figure out how to do that, probably not on a quarterly reporting through the change process, but through some other mechanism of maybe meetings where you have those kinds of discussions.

Next slide, please. On the backfit provision, I'm going to be on very solid ground right here. I completely

agree with what Chairman Meserve said in his reading of what the rule and the backfit provision -- he said it much better than I was trying to say it to the licensees yesterday, when I was struggling with -- you know, I'm not quite sure what we're protecting against.

Having said that, I found it instructive listening last evening to the staff's arguments, as did some of the licensees, on why they thought they didn't want to make it effective immediately and at least one of the arguments was they needed the ISA summaries as baseline.

I think that from our standpoint, we would still argue, and we can talk about this during questions, as to what we see as the risk and I think that was some of the questions that were coming up from the Commission.

I think we would still argue that you could make it immediately effective and you wouldn't be hurting your regulatory ability to enforce compliance at all.

I think if you decided not to make it immediately

effective and you were going to implement the way the staff has proposed, what we would strongly recommend is that the wording be such that when people submit ISAs for individual systems or processes, the backfit provision would become effective immediately upon acceptance of that ISA. I don't need to wait until I've finished all of my ISAs.

If you talk with the licensees or the staff, what

you will find is that it's not a PRA for the facility that we're used to at a reactor. It's a series of ISAs for systems and processes, because this is not one big integrated power plant with I'm trying to protect the core only.

So you have a schedule for at least those that have already committed to do ISAs, which have a series of ISAs coming in. And if we were not going to have the rule immediately effective, but it was key to ISAs, what we'd like to do is have it keyed to when the ISA -- not the last one, but as each one is submitted and accepted, that you then have some backfit protection for that particular system or process that they've accepted.

The second aspect of our position on the backfit provision, and I know that the Commission had recommended this to the staff, so this is clearly not a shot at the staff, is that we think that the term substantial should be in there. Substantial is in the backfit provision for the GDP. Significant is in there for the reactors.

If we were looking at a risk-informed rule, these are probably the lowest risk facilities and we've sort of raised the hurdle on the backfit provision. So we would argue substantial should be in there. We recognize that nobody is quite sure what substantial or significant is and the only thing we know is it's greater than something that

doesn't say substantial or significant, and at least you can have some dialogue on that.

So that would be our recommendation there.

We agree completely what you heard the staff say. I think we've made tremendous progress working together on chapter 3. I think, Chairman Meserve, you pointed on the schedule to what appeared to be sort of a discontinuity maybe in when things got delivered versus when things were expected.

Our objective right now is to have the guidance document that we're preparing done before the end of the summer. We would like, and this does not agree completely with the staff, we would like the rule not to be effective until the guidance document from chapter 3 is actually

endorsed and accepted and I will mention, for chapter 11, until the issues there are resolved and chapter 11 is also complete.

So we are making a distinction here between approval of the rule and effectiveness of the rule. I think that going forward on approval of the rule, hopefully with some of our recommendations, you could do and we're not arguing against that, but we would recommend that in order to implement it, when you look at the importance of chapter 3 and chapter 11 implementation, that having those chapters finished before the rule becomes effective would actually, I

think, be an impetus on both the staff side and our side to work hard to get them finished and move into the implementation of the rule.

But, again, I want to say that there has been tremendous progress and a lot of good work done on both sides there.

On chapter 11, I almost have nothing to add to what Mike Weber said. I think that, as he and Drew said, tremendous progress is being made there.

I think there was probably, at the outset, a lack of understanding of what both sides were looking to put in there. I think we're much closer. I think the challenge right now is getting down and making the words reflect the understanding either as a preface or embodied in chapter 11, and, again, I'm not sure that Commission approval, as Commissioner McGaffigan asked, is absolutely necessary, but I think that you ought to be satisfied that the issues have been resolved is what we would encourage before the rule actually becomes effective.

In addition to what's just up there as conclusions, which are the items I've covered, one of the things that came out clearly in our discussions among ourselves yesterday, and maybe it came clearer than what we had thought about, and then discussions with the staff late yesterday, was that while there is not a lot of licensees

here in Part 70, each one is unique in where they sit in both the current licensing process and where they sit actually with one foot, sometimes two feet into the new licensing process.

Both gentlemen sitting on my left and right are basically committed to ISAs in their current licenses. They've got a schedule for preparing them. They've got a whole bunch of them prepared. That's true for a number of the facilities in the audience.

So what we have is a situation where a number of -- well, everybody is a little different and everybody is

somewhere into the new process. Some are entering it for the first time, slowly, others are much further down the road.

That struck us as what we really need is an implementation schedule for each licensee. I know the rule requires a plan for the ISA and that was on the schedule that Drew showed. What we would say is we probably need to look at it broader than just the ISA. We need to look at how we implement this new rule for each licensee and actually come up, and there's not that many, which makes it somewhat easy, but each one is different, from what I got out of the discussions I had last evening and this morning with the licensees, the more they thought about implementation.

They've been focused on the wording in the rule and they've been focused on the SRP and what happened yesterday out of some of the discussions is everybody clicked, oh, now I've got to implement. And it's not as cut-and-dry as it may have seemed to even them.

It's probably not as complex as maybe the initial shake-up of, oh, my God, I've got to figure this out, but what we're encouraging is we'd like to sit down with the staff, each licensee would, and develop an implementation plan.

And I guess the only thing I'm asking of the Commission is your indulgence of the staff as they would go through that with the licensees and maybe encouragement to do that, which I think they would be more than willing to do.

That was all I had. Charlie or Jack, is there something you'd like to add?

MR. ALLEN: The only thing I would suggest is that just so you understand that several of us have -- are currently working on and have submitted ISAs and, in the case of Westinghouse, have gotten acknowledgement.

We have license commitments and we took this five years ago and have been working very heavily in this arena. Our license requirement also calls for a schedule of criticality safety evaluations. We've submitted 13 of those

already. We've submitted six ISAs for highest risk processes and we have about 15 more to complete.

So literally, this baseline we talked about yesterday has really become a set of stairs to evolve to full implementation. So why we're concerned about how this is implemented is really based upon the fact that we have done work, significant work in submitting ISAs and they have

been acknowledged.

And so the baseline does exist for certain process elements and at least two others of us have submitted significant ISAs. One this morning said 18 had been submitted, with about four remaining, and one other has at least three submitted.

So we are at varied states and so we're not arguing that we're all different. We're arguing that we're involved and have evolved through this process very rigorously, and we did this in a very trusting fashion, saying this was absolutely the right thing to do from our facility standpoints and we'd just like the credit and the implementation associated with the work that's been completed for us to be successful and continuing to move forward without significant rework.

MR. VAUGHAN: I don't have anything to add.

CHAIRMAN MESERVE: Thank you very much for a helpful presentation. Let me turn to Commissioner

McGaffigan.

COMMISSIONER McGAFFIGAN: Should I start with the Lawyers Entitlement Act? The backfit provision, if you agree with the Chairman, and I listened to the Chairman and the staff talk earlier about the backfit provision and the compliance exception that would be there.

It strikes me all you do is force the staff to do a bunch of compliance exception analyses, which lawyers can poke holes at and argue about, and I'm not -- you know, I'm not a lawyer, although Commissioner Merrifield warns me my son might benefit somebody. He apparently wants to be a lawyer.

What benefit is there, from a public health and safety perspective, other than employing lawyers?

MR. FERTEL: I honestly don't see it being a Lawyers Employment Benefits Act, because the way we're looking at them, I think indications of the way we're looking at is what Jack and Charlie just said about where they are in implementing in ISAs already is that everybody wants to go forward and satisfy the rule.

We've worked real hard to get the rule to where we think it enhances health and safety and it's more effective and it's risk-informed and hopefully performance-based.

So to be honest, what I see is everybody is going to go forward and implement it and not try and get out of

satisfying 70.61 requirements, which you can't.

What I see, the honest protection is I have satisfied 70.61 and I've got it done already in some ISAs and the staff decides they like what Charlie did at his

facility a little better, why don't I do that.

COMMISSIONER McGAFFIGAN: Okay. But that gets -- I'm more open to the notion that once an ISA has been submitted and approved by the staff, a piece of an ISA, then you get protection at that point, if that's what you're worried about.

If you're worried about one person setting the gold standard in the fourth year and everybody else having to be backfit to the gold standard, even though they've all been approved previously, that I thought was a reasonable suggestion.

But we get to this issue of approval. Let me get to the ISA approval thing. For existing licensees, and that's what we're mostly dealing with, we have the MOX plant coming in maybe, but how -- the staff says they're going to do a safety evaluation report on the ISA summary. Presumably they're going to do a safety evaluation report on each of these submittals, if they're coming in system by system. The numbers I think were four to go, 18 done, and various other numbers.

Have they been using SERs to approve the ISA

submittals so far?

MR. ALLEN: No. What I had read to me was a letter of acknowledgement of the ISA, and so we are yet unclear how that will all be "approved"" or finally accepted. And I think we would recognize that --

COMMISSIONER McGAFFIGAN: Do you believe that -- and I forget your numbers. Do you believe that the ISA subimttals you've made thus far have been approved by the staff de facto or have they just acknowledged that they have received them?

MR. ALLEN: I believe that they are administratively accepted and those were the words that were in the letter of acceptance.

I'm uncertain as to whether they've been approved.

COMMISSIONER McGAFFIGAN: Well, that's a complication. I earlier, not realizing that the submittals are going to come in one by one, asked the staff whether they were going to do a safety evaluation and they said yes. I guess I should have asked them whether they were going to do a safety evaluation for each piece of the submittal and that that approval can be done partially, or whether the staff envisions only doing an SER -- Mr. Weber is going to the microphone -- only doing an SER on the final summary after all 22 pieces are in, if there are 22 pieces.

MR. WEBER: If I could, Michael Weber, from the

NRC staff. The renewed license that Westinghouse has specifically created a new vehicle to submit these documents and these documents are submitted as an annex, and it explicitly states in their renewal application, which then becomes the licensing basis, that these will not be submitted for approval.

So when we talk about approval prospectively in the new rule, that would be a different regulatory framework than the current framework under which Westinghouse is submitting its ISAs.

COMMISSIONER McGAFFIGAN: So they aren't approved at this point, but they would be. You would look comprehensively at whatever number of pieces there are at some point or would you look at them piecemeal? You've heard the suggestion that these things may -- you said yourselves, I guess, that they could come in piecemeal and you would handle them one by one, system by system or process by process.

MR. WEBER: It depends. Harry Felsher is the either former project manager or current project manager for the Westinghouse and he is also here. But in some cases, what we've done is we've aggregated them together and looked at them as a package. In other cases, if they come in in large sections of the facility, we may look at them individually.

So it really depends on the scope and breadth.

COMMISSIONER McGAFFIGAN: So would your approval process lend itself to a backfit provision that said once you have approved part of the ISA, for purposes of -- that the backfit provision kicks in at that point? Will there be a mechanism for implementing the industry suggestion for, if we chose to amend the backfit provision in the way they have suggested as a fall-back?

MR. WEBER: Yes. We will be able to apply the backfit in a piecemeal fashion.

COMMISSIONER McGAFFIGAN: Because you'll do multiple SERs, if that's required.

MR. WEBER: Yes.

COMMISSIONER McGAFFIGAN: Okay.

CHAIRMAN MESERVE: Let me make sure I understand this. When you say you have an ISA summary, it's actually the document that you're going to require under the rule, is that an ISA summary of a whole -- of a variety of different ISAs or is it the grand integral of everything?

MR. WEBER: It is up to the licensee to determine how they choose to implement that provision and that's why we required the plan to be submitted within six months.

For some licensees that have chosen to segment

their operation, because of convenience, these aren't coupled systems and they can segregate different parts of

their program, if they have addressed it in a segmented fashion, we could approve them in that same manner.

On the other hand, some licensees may choose to roll them all up into one comprehensive ISA summary and we could also review that.

MR. VAUGHAN: Let me just add our experience with the subject of ISAs and ISA summaries. Our license was renewed four years ago, parallel with a significant modification at the plant, where we changed our conversion, the helium part of the plant.

And as a part of that activity, we committed to perform an ISA for that new portion of the plant that we were putting in and provide that to the NRC as part of their review not only to that modification to our facility, but also as a part of our license renewal, and, at the same time of our license renewal, we included a chapter in our application which described the processes and techniques that we would use for completing the ISA.

And as a part of the license renewal, we committed to the NRC to conduct ISAs for the balance of our plant according to plan which we worked out with the NRC and it did address the balance of the pieces of our plant in a logical sequence.

And the reason that we did it that way, so that we periodically provided results of those ISAs or summaries to

the NRC, was so that this would work would not ball up on both parties and we could proceed through the completion of the work and whatever the review the NRC needs to do of that work on some kind of an orderly fashion over the period of time that it took to complete the plan.

And we have been proceeding on that. We have even had some amendments that have required ISA summaries to support them. So we're in a couple of different positions. One, we've had licensing action, which has required ISA summaries to accompany that, and that has resulted not in approval of the ISA summary, but actually approval of the action that was requested of the Commission in that matter.

We have some other summaries that have been submitted as a part of this overall plan for which we have no word on precisely what their status is, other than we have furnished those in accordance with the plan.

And I will say that the inspection process by the NRC is beginning to use that information because they are inspecting not only a comparison of the total ISA record at

the facility, but also comparing that to the summaries, to make sure that they are consistent.

And they are also doing what I refer to as vertical slices, particularly of the higher risk items, in their inspection from the summaries and doing a vertical slice all the way down to make sure all of the pieces fit

together.

So that's a summary of the experience that we've had so far with this early implementation of the concepts that we're talking about here.

COMMISSIONER McGAFFIGAN: Could I just ask one follow-up? In terms of when you get a license amendment approved, it requires an ISA summary, does the safety evaluation report address the ISA summary as part of the approval of the licensing action, in your experience?

MR. VAUGHAN: I honestly did not look at that particular point, but the technical details that are provided in the summary are clearly reflected in the SER.

COMMISSIONER McGAFFIGAN: It strikes me that those who don't have licensing actions, there's a benefit to having an SER. So as you said, it may be semantic, but approval, if it means writing an SER to say that this piece is now blessed, if you want the backfit provision to kick in at that point, you have to have some document that says this is now okay. And so that's approval.

So I'm not quite sure why you're fighting approval for existing licensees, why you're fighting the words for NRC approval.

MR. FERTEL: I think, again, maybe we're thinking about this the wrong way, but let's take a process that's been submitted and let's assume it's under the new rule and

we want to make sure that you can now apply the backfit to the ISA that was submitted.

The approval I would see at that point is a letter back from NRC which says for process XYZ, we agree, and we have an SER backing us up, that you are now in compliance with subpart (h) and that you're complying with the rule.

COMMISSIONER McGAFFIGAN: Do you think it's really semantic, that point?

MR. FERTEL: Well, they're approving compliance with the rule and I can go change my ISA, which is a living document for us, without asking for a license amendment. It's an analysis document.

COMMISSIONER McGAFFIGAN: That's why we gave you 70.72, so that you would be able to make changes.

MR. FERTEL: Again, this is a tool as opposed to a part of my plan.

COMMISSIONER McGAFFIGAN: I've used more than my time.

CHAIRMAN MESERVE: Commissioner Merrifield.

COMMISSIONER MERRIFIELD: I want to get back to the issue of the quarterly notices. One of the things stated was if there were issues that you felt needed up-front approval, prior Commission approval, let's deal with those things, for instance.

In addition, you stated that according to some

members you have represented here today, there may be another 20 to 30 submittals or 20 to 30 items on the quarterly submittal.

We also heard earlier from the staff that they didn't think it was going to be that big. They were surprised by that level.

Have you discussed with the staff the notion that there perhaps ought to be items that are up-front that can be reported on a yearly rather than a quarterly basis?

MR. FERTEL: We would assume that, the way the change process works, anything that needs to be approved up front wouldn't make it through. So that was sort of a premise that is set up and I couldn't go in and change things, I shouldn't, and the reason I made my statement was the staff keeps going at tech specs as the analogy.

Tech specs, at least in my most of my thinking, is limiting conditions of operations and stuff like that.

COMMISSIONER MERRIFIELD: It require approval.

MR. FERTEL: Right. So if there is something that we have that we shouldn't be changing, I think it's covered, but if it's not, we need to figure that out and talk about it. But the answer to your question is, no, we haven't had that discussion with them.

What I heard when the staff briefed you just before us was they thought they ought to know more about

what's happening at the plant for stuff that doesn't require the prior approval if it relates to an item relied on for safety, and I think our answer is yes, that's probably true and you do it through inspections.

And if that's working, I mean, we just heard that, even informally, the inspection process seems to be using the ISA process really well, from what Charlie Vaughan said.

So we actually think the Commission is getting the information that they probably need. We're not sure what the quarterly reports would do.

The 20 to 30, Commissioner Merrifield, like I said, came out of the discussion with the licensees

yesterday and it was from a licensee who actually had given it enough thought based upon what's been going on over the last six or nine months at his facility, and he said, yeah, it's roughly 20 to 30 when I look at my list of items relied on for safety.

We haven't done -- no one else had that kind of number and some guessed at maybe 50, but it was a guess.

COMMISSIONER MERRIFIELD: It strikes me this is an area worth further discussion between the staff. I don't know if the staff wants the opportunity to comment at this point or not.

MR. PAPERIELLO: I'd just note that the objective of receiving the information is to enable staff to not only

keep up-to-date with what changes are made, but to essentially evaluate whether the change is appropriate.

The question is how promptly would the staff get that information. But still the ultimate question is when the staff receives them on an annual basis, they're going to review it and see if the change is appropriate.

The advantage of having it quarterly is that not as much time has elapsed, if, in fact, there is a question of the appropriateness of the analysis.

So I'm not sure what relevance the number of changes has to this process.

COMMISSIONER MERRIFIELD: Well, I guess the first one is are there items out there that don't require pre-approval and perhaps we should think about that, that's one issue. And the second thing is, is the number -- the number isn't really that important, but is there a disconnect between your expectation of what is going to be in the report and what the licensees, based on their interpretation, think they're going to have, is there some way of resolving that?

MR. PAPERIELLO: Well, there are some dynamics here. When we had the proposed rule, the concern of the Commission was that the 90-day reporting requirement may change the ISA summary. So we looked at it in terms of, okay, what makes sense.

I think we didn't look at that in the very first instance. I think the question now is that if staff reviews the items relied on for safety, should that require pre-approval.

I think what we're saying is maybe if we're coming up with a proposed -- on the other hand, we don't see an absolute need for the direct parallel. Quarterly reporting would allow -- we're confident that the judgments by the licensees are --

COMMISSIONER MERRIFIELD: That's fair. Not to belabor this, but it's striking a balance. But the issue is do you think there is a need for further resolution of these differences in terms of what items indeed would need to be reported? I don't know the basis or if that makes sense or not.

MR. PAPERIELLO: We've talked about it before, how are the items relied on for safety defined, that's up to the licensee. We need enough information about the functional relationship so that staff is able to see how the item relied on for safety relates to the accident sequence and, in turn, how the management measure assures the reliability of that item relied on for safety. So that in itself tends to provide some guidance in terms of how it's characterized. The fact of the matter is an item relied on for safety is the control that we are envisioning to ensure

that safety.

MR. FERTEL:

COMMISSIONER MERRIFIELD: One last question. I'm not going to go into backfit. I just wanted to give you an opportunity. I did ask the staff about the amount of changes they're making recently and issues associated with the new assessment and oversight process.

MR. FERTEL: Thank you, Commissioner Merrifield. I think that both Bill Travers and Mike Weber represented the discussion that we had with them during the drop-in yesterday very accurately.

I think everybody is looking to work together to address all of the various activities that are ongoing and I think that Mike did a nice job of saying the burden on the individual licensee facilities, and the people in this room are the people that are responsible for safety at facilities, and they've been here now for three days, not at their facilities, and they are committed to doing this and, of course, it's the right thing to do.

We need to figure out how we plan all of the various activities in sort of an efficient way so that the industry resources, the NRC staff resources can be best applied, and I think that the staff is fully cognizant and wanting to do that and will do that.

I think on the oversight process, I appreciate

what Carl said about that. I do think that we basically were running down the road with the template being the reactor program. Some of it may be very much applicable. It's just not clear it's all as applicable and I think taking a step back, as Bill Travers said, I think will

benefit all parties involved.

So I'm very pleased.

CHAIRMAN MESERVE: I have just a few questions. Mr. Fertel, when you were talking about the implementation schedule, approval is obviously key to the ISA summaries, and you implemented there are broader implementation issues.

Do you envision that that requires us to change the proposed rule we have in front of us?

MR. FERTEL: No, sir. I think it's just us working individually with the staff and the individual licensees and coming up with a good integrated picture of all this stuff. We don't see any change in the rule.

CHAIRMAN MESERVE: On this issue about approving the integrated safety assessment, in your statement, as I understood it, you thought that should be done in the context of the licensing action, either the initial license application or license amendment.

It seems to me that that makes the approval or the re-review dependent on when a -- getting this ISA review, it would then depend on when there was an amendment

application.

It seems to me your scope questions, that the ISA may cover and should cover probably a lot more things than just the subject matter of the license amendment.

MR. FERTEL: This subject is getting really tough to deal with. I've got this simplistic view, which I think I tried on Commissioner McGaffigan and it didn't work, which is that on the initial ISAs, the ones that are being prepared for compliance, it's really -- the way we're going to demonstrate compliance or a major part of the way we're demonstrating compliance with performance requirements in subpart (h) will be the ISAs that get submitted, and NRC will have to make a determination to allow me to keep operating, that I'm in compliance.

Now, the way I think it's being thought of now is I approve the ISA and I'm in compliance and --

CHAIRMAN MESERVE: That's okay.

MR. FERTEL: -- that's okay. What I'm actually saying, and maybe there's another way to skin this cat, and maybe it's the only way we can skin the cat, is that I'm saying when I think I'm asking for a decision by the Commission that I am in compliance, I would ask for -- I would submit my ISA.

The ISA would support my request for a decision that I'm in compliance and the licensing action wouldn't

really be approval of the ISA. The licensing action would be you're in compliance with the rule, it's okay, keep

going, and, in effect, you're approving the ISA.

I think, again, it could be -- and when we talked to the staff, they said, well, you only approve -- we only think the ISA gets approved once. That's not clear from the rule. So that may be another way of looking at this.

If what I'm saying doesn't make sense to you all in regulatory space, then an approval of the ISA is the only way to do it, I think the staff would agree and they may want to do something, but they only expect one approval.

Now, it may be 14 ISAs they're approving once individually, but we were reading it that they're constantly approving ISAs and we didn't think that was a good idea.

So I had the simple view of you're doing the licensing compliance --

COMMISSIONER McGAFFIGAN: Heads are shaking negatively here, so that they don't intend to approve more than once.

MR. FERTEL: That's what we were told last night.

COMMISSIONER McGAFFIGAN: Okay.

CHAIRMAN MESERVE: And that's acceptable.

MR. FERTEL: Yes. If we can't do it any other way, I think that we could live with that, if that was clarified.

CHAIRMAN MESERVE: Commissioner Dicus.

COMMISSIONER DICUS: Actually, being down the line and asking questions, the Chairman and Commissioner Merrifield asked my questions for me and I appreciate that.

CHAIRMAN MESERVE: Sorry.

COMMISSIONER DICUS: That's fine. It made it easy. I did have a question on this implementation of the rule, because that was sort of new to me, doing it on a per licensee basis.

And, also, because you got to listen to my questions to the staff, you answered mine as you were giving your talk. So the short of the issue is I have no questions.

CHAIRMAN MESERVE: Thank you.

COMMISSIONER DIAZ: That sounds just about where I am.

CHAIRMAN MESERVE: Commissioner Diaz.

COMMISSIONER DIAZ: However, let me go back to this word of substantial and/or significant and how it might even apply to what is reported, how we apply backfit and so forth. And I don't think there's any problem with those things that have minimal cost and might have some added safety are probably the more substantial issues.

So let me put our counsel to work in here. When

we actually put wording and looking at the history of how we

put rules, can we actually put a rule out there knowing that we have a backfit rule that does not have the word substantial or significant in it?

MS. CYR: I don't have the language right in front of me, but I think right now it's a cost-benefit test. It doesn't have substantial additional protection. The reactor one, you have to define that it would provide substantial additional protection and then you'd do a cost-benefit analysis.

This one is you're basically looking at whether the benefits outweigh the costs in providing additional protection. So in a sense, it is a less strict test in the agency in making the determination.

Now, what constitutes substantial additional protection in reactor space has been similar that's been developed over time in terms of our experience, in terms of producing guidance out, because we've used not just quantitative, but qualitative judgments about reaching that determination in the ways we've looked at that.

So you wouldn't have that additional kind of test that you would look at in terms of making a determination of whether a backfit was appropriate.

COMMISSIONER DIAZ: Well, the interplay of the words, of course, you add the word significant or substantial, you're actually raising the level. Is that

more consistent with the way we have used the backfit rule in the past?

MS. CYR: The language would be similar to what you would have used in previous rules and with respect to 51.09 and I think 76.76 also uses the word substantial.

MR. FERTEL: Substantial in 76.76, significant in 51.09.

COMMISSIONER DIAZ: So that the use of the wording itself essentially provides backfit protection at that point.

MS. CYR: Right. It's trying to define, in a qualitative way in the regulation, what that additional of protection is that you're looking for.

COMMISSIONER DIAZ: And have we used the word also to limit reporting requirements? Do we use anything that says anything that is significant, like items relied on for safety, it might very well be that we have used in the past. I'm not sure. I'm just fishing.

MS. CYR: All right. I don't think we've done that, but I can't say for certain. We can check that and get back to you if we find circumstances where we've used

that kind of adjective to describe it.

COMMISSIONER DIAZ: Because there is another in here, there is a substantial change in an item relied on for safety, you might have to -- and then limit those who are

not really substantial to the yearly report.

I'm just thinking that there might be an interplay in there that might limit it and still allow us to have the information that is really needed on a more timely basis.

That's all, Mr. Chairman. Thank you.

CHAIRMAN MESERVE: Thank you very much. I think we've reached the end of this meeting. I would like to express my appreciation to the staff and to the panel here from Nuclear Energy Institute for a very helpful presentation on this rule. I would also like to commend both the NEI and the staff for the very substantial progress that they've made in trying to resolve a large number of issues and bring this as close to final resolution as they have. It's a very important activity and I'm pleased that it's happened.

Let me turn to my colleagues and see if they have any closing statements.

COMMISSIONER MERRIFIELD: I just want to make one statement. I think the degree to which we're all grasping to ask questions today is reflective of the fact that there are a few issues that divide us and I think that's certainly -- I agree with the Chairman, that speaks to a lot of hard work.

I also was struck, as I was listening today, we sometimes forget, I think we are somewhat unique as a

Federal agency in the fact that we can sit across the table with our staff and with those who we regulate and try to come to grips and try to resolve issues where we can enhance our level of safety and, at the same time, do it in a manner which is sensitive to a variety of concerns.

I think it was a good meeting today. Thank you, Mr. Chairman.

CHAIRMAN MESERVE: Thank you. With that, we're adjourned.

[Whereupon, at 11:25 a.m., the briefing was concluded.]