

Regulatory Impact Summary

BACKGROUND:

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

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

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

This paper reports on feedback received from licensees from September 1, 2003, through August 31, 2004.

DISCUSSION:

From September 1, 2003, through August 31, 2004, the staff received feedback from 77 reactor licensees on 256 issues. The staff also received feedback from the Regulatory Information Conference in March 2004. Of the comments received, 77 percent were favorable and 23 percent were unfavorable. The comments fell into four main categories: formal communication with licensees, inspector performance, security and safeguards activities, and the Reactor Oversight Process (ROP). The following sections summarize the feedback received, the staff's evaluation, and the proposed improvement actions.

A. Solicited Feedback

(1) Formal Communication With Licensees

Feedback

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

Many licensees said that communication was good or excellent, and others noted that the staff's communication skills have improved. A few licensees reported communication problems (such as disagreement with the staff's characterization of inspection issues or licensee actions) and unclear expectations about the numerous regulatory changes in the safeguards and security area.

Evaluation and Action

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

The staff is aware of the importance of prompt and accurate communication and emphasizes this goal in the policy, guidance, and training for the inspection program. Effective communications will remain a challenge and will receive continuing attention from regional and NRR management.

(2) Inspector Performance

Feedback

One-third of the licensees' comments concerned inspector performance. This category covers a wide range of inspector practices, but excludes issues involving communication with licensees discussed in the previous section. Almost all of the comments praised the NRC's inspection staff, noting the high quality of inspections, the technical competence, and the effective working relationship between the NRC and its licensees.

Licensees viewed inspections performed by resident and region-based inspectors (including team inspections) as professional and of high quality. Most licensees stated that NRC inspections were effective and correctly characterized the licensee's performance. However, two licensees made unfavorable comments on what they perceived as untimely inspector notifications during a team inspection. The first issue was when licensee senior management was notified that the licensee was having difficulty providing requested inspection documents and the second issue was when management was notified of inspection findings that were identified late in the inspection.

Evaluation and Action

The staff concludes that inspectors were generally professional and maintained effective working relationships. The percentage of favorable comments received this year was about the same as reported last year.

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

(3) Security and Safeguards Activities

Feedback

Eight percent of the comments received related to the NRC's security and safeguards activities and all these comments were unfavorable. Commenters expressed concerns with the lack of stability and the number of regulatory changes in this area. Specifically, licensees complained that the number of changes led to unclear expectations, that some changes were not necessary, and that the changes added costs.

Evaluation and Action

The Office of Nuclear Security and Incident Response (NSIR) has placed a high priority on communicating with licensees and other Federal agencies, including the Department of Homeland Security, the Homeland Security Council, the Federal Bureau of Investigation, and the intelligence community. These communications include responding to the changing elevated threat environment, reviewing and approving revised security plans for all 104 nuclear power reactors, and clarifying requirements and expectations for orders issued since September 11, 2001.

Even though implementation of the revised security plans and NRC's planned inspections of the plans provide more stability in the requirements and more oversight of security, other efforts, such as additional actions for compensatory measure B.5.b and redevelopment of the physical protection cornerstone of the ROP, will continue to contribute to further changes in this area.

(4) Reactor Oversight Process (ROP)

Feedback

About five percent of the licensees' comments concerned the ROP, and about half of those comments were favorable. Licensees praised the staff's oversight process as effective and an improvement over the previous process. However, half the comments were unfavorable regarding specific program elements, especially the significance determination process (SDP). One licensee expressed concern with the extensive analysis needed to resolve SDP issues, and another complained that including plant modifications in SDP evaluations represented a disincentive to implementing future plant modifications.

Evaluation and Action

The staff concludes that while the ROP continues to be an improvement over the previous process, additional improvements are needed. This view is validated by other sources of industry and public feedback that strongly support the ROP.

The staff recognizes that improvements in certain SDPs for the reactor safety strategic performance area present a significant challenge, especially achieving the proper balance between the level of effort needed to evaluate inspection findings and timeliness and the need to reduce the complexity of evaluating shutdown and fire protection inspection findings.

NSIR revised and tested new SDPs for the physical protection cornerstone in 2004 and is in the process of resolving industry comments and issuing the SDPs for use. The new SDPs address industry and staff concerns with the interim SDP currently being used and incorporate the recently implemented routine force-on-force performance evaluations.

The staff continues to implement the SDP Improvement Plan to improve SDP evaluations and the staff's proficiency in using the SDP. The staff also continued to revise existing SDPs based on lessons learned and feedback from internal and external stakeholders. Management is focused on SDP improvements and these actions are captured in the NRR Director's Quarterly Status Report.

The staff continues to closely monitor the effectiveness and implementation of the ROP. The staff will continue to hold monthly working-level public meetings with external stakeholders to discuss the status of and improvements to the process.

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

As described in the Background section, the NRC has a procedure for resolving concerns raised by licensees regarding perceived inappropriate regulatory action by the NRC staff. During this reporting period, the OEDO did not receive any reports of inappropriate behavior by NRC employees; however, 12 cases were reported to the regions by power reactor licensees.

Feedback

Of the four cases reported to Region I, one was substantiated in part and three were not substantiated. Of the four cases reported to Region II, one was not substantiated and the other three were dismissed after initial review. The one case reported to Region III was substantiated. Of the three cases reported in Region IV, two were substantiated in part, and one was determined not to be a complaint against the staff. The vast majority of cases involved professional performance issues, such as the inspector's professional skills in conducting inspections or communicating with licensee personnel.

Evaluation and Action

The total number of cases reported in each region has decreased significantly from the 31 cases reported in 1997 and the 26 cases in 1998. For the last 6 years, the number of reported cases has been relatively stable, fluctuating between 8 to 12 cases a year.

The regional offices will continue annual assessments in this area in accordance with Management Directive 8.17, "Licensee Complaints Against NRC Employees."

C. Licensee Survey

The Commission approved the conduct of an independent survey of utility managers (SRM-COMNJD-02-0001). The objective of the survey was to augment NRC's normal communication channels to gain insights into the impact of regulatory activities. The staff reported the results of the survey to the OEDO and made them publically available on the NRC Website.

Feedback

Overall, the survey results indicated that utility managers were generally satisfied with NRC regulatory activities, except in the area of fire protection. 60 percent of the responses expressed satisfaction (either generally satisfied or very satisfied), 23 percent were neutral, 10 percent were unsatisfied (generally dissatisfied or very dissatisfied), and the remaining 7 percent considered the activities "not applicable."

Utility managers expressed the greatest satisfaction with the quality of inspections and inspection reports, followed by communications during formal meetings, workshops, and conferences. Managers expressed the least satisfaction in the fire protection area, the only area that received higher levels of dissatisfaction than satisfaction.

Evaluation and Actions

While the survey was useful in generating specific feedback on a broad range of NRC activities, it provided few new insights regarding ROP activities. The survey results were similar to those received through other communication initiatives, such as the annual external ROP survey (published in a *Federal Register* notice and mailed to almost 700 external stakeholders), monthly ROP meetings, the ongoing regulatory impact process, and the Licensing Action Task Force. Since the survey duplicates existing communication channels, the staff does not plan to administer future surveys based on the resources involved and the few insights gained.

D. Additional Feedback

In addition to soliciting feedback from licensees during site visits, the staff routinely provides opportunities for the industry to report on the impact of NRC programs and processes. During the current reporting period, the staff received feedback at the Regulatory Information Conference (RIC) in March 2004. Topics discussed at the RIC included the ROP, fire protection issues, safeguards and security issues, communications, grid stability, license renewal, and emergent technical topics. During a breakout session of the RIC, licensees from each region discussed issues of interest with the responsible regional administrator. No new issues were identified that have not already been discussed in this Commission paper.

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