

July 16, 2015

MEMORANDUM TO: Marissa G. Bailey, Director
Division of Fuel Cycle Safety, Safeguards,
and Environmental Review
Office of Nuclear Material Safety
and Safeguards

FROM: Soly I. Soto-Lugo, Project Manager /~~MGuardiola~~ for RA/
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SUBJECT: SUMMARY OF JUNE 11, 2015, MEETING WITH THE INDUSTRY
AND STAKEHOLDERS TO DISCUSS FUEL CYCLE REGULATORY
ACTIVITIES AND CUMULATIVE EFFECTS OF REGULATION

The staff of the U.S. Nuclear Regulatory Commission (NRC) met with representatives of the Nuclear Energy Institute (NEI), fuel cycle industry, and members of the public on June 11, 2015, in Rockville, Maryland. The purpose of the Category 2 public meeting was to discuss several topics of mutual interest, including the Revised Fuel Cycle Oversight Process, Part 26 Rulemaking on the U.S. Department of Health and Human Services (HHS) guidelines, the agency's plans to conduct a cyber security rulemaking, and Cumulative Effects of Regulation. The meeting announcement is available in the Agencywide Documents Access and Management System (ADAMS) under the accession number ML15159A550.

Revised Fuel Cycle Oversight Process

The presentation on the Revised Fuel Cycle Oversight Process (RFCOP) discussed the NRC's vision overall of the RFCOP and the activities associated with it, including a proposed definition of a performance deficiency. Industry commented that the definition should only involve violations and stated that the term "written commitments" seemed to expand the scope to include deficiencies that were not associated with violations. Both the staff and industry agreed that more work needs to be completed before an acceptable definition of a performance deficiency is reached. The staff reviewed the current status of the cornerstones, key safety and security attributes, and associated inspectable areas.

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Several industry representatives provided detailed comments on how to improve some of the language and overall structure. In addition, the NRC staff reiterated that an adequate corrective action program (CAP) is a prerequisite for participation in RFCOP and several industry representatives asserted that they do not plan on submitting a license amendment to commit their CAP to Regulatory Guide (RG) 3.75, "Corrective Action Programs for Fuel Cycle Facilities," or another acceptable standard. Both industry and the staff agreed that developing performance indicators was not a feasible effort and that inspection is sufficient to cover the key safety and security attributes under each cornerstone. The staff and industry also discussed the possibility of taking another look at the resources allocated to the core inspection program and several approaches to include cross-cutting areas in a revised performance assessment process.

10 CFR Part 26 HHS Guidelines Rulemaking

The Office of Nuclear Security and Incident Response staff discussed the rulemaking initiative to better align Title 10 of the *Code of Federal Regulations* (10 CFR) Part 26 drug testing provisions with those described in HHS' Mandatory Guidelines for Federal Workplace Drug Testing. The staff presented the history of this rulemaking and the incorporation of lessons learned from rule implementation that support and justify this staff-proposed rulemaking. The staff then outlined the technical provisions that would be changed, the safety and security outcomes that should result from the proposed amendments and the estimated costs on all affected entities, with a particular emphasis on the low costs associated with proposed rule implementation at the Category I fuel cycle facilities. After this presentation, the staff then provided its views on a future staff-proposed rulemaking (i.e., the Part 26 "Technical Issues" rulemaking, a designated high priority rule). This was presented to inform the affected external stakeholders that societal changes in substance abuse will continue to occur and challenge the effectiveness of the Part 26 rule; however, under the technical issues rulemaking the staff will work, in part, to establish a regulatory framework that better addresses societal changes in drug use and improve upon the flexibility afforded in Part 26 to help reduce the occurrence of future drug-related rulemakings.

Cyber Security Rulemaking

The staff discussed the agency's plans to conduct a cyber security rulemaking for fuel cycle facilities. The presentation addressed the following topics: a summary of the Commission's direction in SRM-SECY-14-0-147, "Cyber Security for Fuel Cycle Facilities" dated March 24, 2015; projected timeline for the rulemaking; an overview of the proposed technical approach; and a request for feedback on licensee's voluntary cyber security efforts.

The timeline for the rulemaking will consist of 3 three parts: (1) develop the regulatory basis [April – December 2015]; (2) develop the proposed rule and guidance [January – December 2016]; and (3) develop the final rule and guidance [January – December 2017]. Currently, public meetings are scheduled to occur in July, September, and December 2015. NEI expressed interest in conducting additional public meetings as needed including in the spring of 2016, which the NRC supports.

The technical approach proposed by the NRC would apply a graded set of requirements to the safety, security (physical and information), emergency preparedness, and material control and accounting based on the category/type of the facility. The application of controls will vary by the

type of facility and type of control, (e.g., material control and accounting may not apply to all categories of facilities). The guidance will provide a mechanism to screen out systems or digital assets that would not require any controls to be applied. Industry indicated that they would like to see NRC's regulatory approach be risk-informed, consequence-based, and focused on digital assets directly associated with protecting health, safety, and security with clearly identified consequences of concern. The NRC plans to use the existing cyber security reactor requirements in 10 CFR 73.54 as a starting point and information drawn from the draft cyber security order proposed in SECY-14-0147. The SRM directs the NRC to remain informed about the licensee's voluntary efforts. NEI previously described industry's voluntary efforts in its July 3, 2013, letter, "Industry Comments on Draft Fuel Cycle Cyber Security Order, Requirements and Guidance," which include the following program elements: (1) a cyber security assessment team; (2) cyber training; (3) control of portable media; and (4) cyber security incident response. At this time, NEI does not plan to issue guidance associated with this effort. Industry indicated that each licensee is implementing a significant, voluntary cyber security program that uses the four program elements identified in the NEI letter as guidelines.

The NRC noted that multiple threat vectors must be evaluated, beyond portable media. Industry expressed concern that the NRC was seeking to expand the Integrated Safety Analysis (ISA) to address malevolent acts and insider threats. The NRC stated the cyber security rule would not change any aspect of the ISA requirements in 10 CFR Part 70, Subpart H. Although the cyber security program could be informed by the ISA, the program would be independent of the ISA (i.e., would not be used to demonstrate compliance with the performance requirements).

This was the first public meeting to discuss the Commission's directed cyber security rulemaking. As part of the development of the regulatory basis, the NRC plans to conduct several site visits to observe current cyber security programs in place at licensee facilities. The detailed proposals for rule language and guidance are in their early stages of development. The NRC will hold additional public meetings. The NRC recommended to industry that they send representatives who are knowledgeable in their security and information technology programs. The NRC will continue to seek stakeholder input to develop a regulatory framework that uses a graded, consequence-based approach in an efficient and effective regulatory structure for fuel cycle facilities.

Cumulative Effects of Regulation

The NRC provided updates to the various rulemaking and regulatory activities involving the fuel cycle industry. The NRC staff communicated that 10 CFR Part 40 rulemaking activities and chemical security and RG 3.55 (non-rulemaking activities) were removed from the integrated schedule. For 10 CFR Part 40 rulemaking, the Commission approved the staff's request to terminate it on April 27, 2015. Per SRM-14-0112 issued on April 16, 2015, the Commission disapproved the staff recommendation for chemical security and directed the staff to monitor changes in the Department of Homeland Security Chemical Facility Anti-Terrorism Standards (DHS CFATS) listing of chemicals of interest and should identify a mechanism to inform relevant licensees of changes to the DHS CFATS list of chemicals of interest. With regard to the update of RG 3.55, "Standard Format and Content for License Applications for Uranium Hexafluoride Source Material Facilities," the NRC staff determined to remove this activity from the integrated schedule because this it will only apply to one specific type of facility rather than all fuel cycle facilities.

As part of ongoing discussions related to CER, staff and industry discussed certain aspects of the Part 21 rulemaking. Industry sought further clarification related to the proposed definition of a basic component and potential guidance for commercial grade dedication for fuel cycle facilities. In order to provide insights into the proposed definition of a basic component, staff explained: (1) the relationship between substantial safety hazards and the risk associated with worker and public consequences under Subpart H of 10 CFR Part 70; (2) regulatory infrastructure and precedent related to substantial safety hazards, including excerpts from NUREG-0302, Revision 1, "Remarks Presented (Questions/Answers Discussed) at Public Regional Meetings to Discuss Regulations (10 CFR Part 21) for Reporting of Defects and Noncompliance"; and (3) the concept of how deviations in basic components can be defects without *actual* consequences because Part 21 refers to conditions that "could" create a substantial safety hazard. The staff discussed proposed guidance related to commercial grade dedication for fuel cycle facilities and how it would potentially describe implementation of a management measures program as fulfilling the intent of the dedication process. Industry reiterated its concerns with the rulemaking and emphasized that they did not believe there was sufficient need for the rulemaking in order to maintain safety at fuel cycle facilities.

The NRC staff discussion also addressed development of guidance documents. The NRC staff stated that Revision 2 to NUREG-1520 was made publicly available in June 2015. Industry noted that consolidation efforts for material control and accounting RG might be impacted by the 10 CFR Part 74 rulemaking. The NRC staff clarified that the rulemaking will not impact the consolidation effort because the guidance provided in these RG is not tied to the rulemaking.

The NRC staff also committed to review the information on the integrated schedule and supplement, and to post these documents on the public website available at <http://www.nrc.gov/materials/fuelcycle-fac/regs-guides-comm.html#cumeffects>. The slides for the meeting presentation are included in Enclosure 1 and the attendees list is available in Enclosure 2. Enclosure 3 is the fuel cycle integrated schedule, and Enclosure 4 is the supplement to that schedule. No regulatory decisions or commitments were made during the meeting.

Enclosures:

1. Slide Presentations (ML15174A118)
2. Attendance List (ML15174A120)
3. Fuel Cycle Integrated Schedule (ML15174A125)
4. Supplement to the Fuel Cycle Integrated Schedule (ML15174A129)

cc w/enclosures: Janet Schlueter

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