document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 6th day of October, 2004.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 04–23006 Filed 10–13–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication; Establishing and Maintaining a Safety Conscious Work Environment

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission is proposing to issue a regulatory issue summary (RIS) to provide the guidance for licensees on establishing and maintaining a Safety Conscious Work Environment (SCWE): that is, an environment in which employees are encouraged to raise safety concerns both to their own management and to the NRC without fear of retaliation. The agency's expectations regarding licensees establishing and maintaining a SCWE are described in the 1996 NRC Policy Statement, ''Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation.''

In a March 26, 2003 staff requirements memorandum, the Commission directed the staff to develop further guidance, in consultation with stakeholders, that identifies ''best practices'' to encourage a SCWE. The guidance document is based on the existing guidance provided in the 1996 Policy Statement, including the elements and attributes described therein of a healthy SCWE, and expands the guidance or adds new guidance where additional information would help describe practices to meet the intent of each SCWE attribute. In addition, the NRC staff held a public workshop to discuss the draft guidance document, on February 19, 2004.

On February 12, 2004, the NRC staff published an outline of this guidance document for public comment. The Commission received input from the public, in response to the **Federal Register** Notice, expressing general agreement concerning the content of the outline. However, some improvements were suggested, and the NRC staff has incorporated many of these suggestions into the guidance document developed from the outline. The NRC staff's response to each of the individual comments on the outline published on February 12, 2004, is included under ''Supplemental Information—Staff Response to Comments,'' below.

The February 12, 2004, **Federal Register** Notice emphasized that the NRC's 1996 Policy Statement was directed to all employers, including licensees and their contractors, subject to NRC authority, and their employees. Therefore, the guidance document also applies to this broad audience. The **Federal Register** Notice also clarified that the practices outlined in the guidance document may not be practical or necessary for all employers. Rather, the purpose of the guidance is to provide information on practices which have been effective at some larger licensees to maintain or improve the work environment and ensure its employees feel free to raise safety concerns. The scope of the guidance document remains broad and the NRC staff continues to believe that not all the practices outlined in the guidance document will be practical or effective for all licensees. The guidance, in the form of a RIS, is provided below for comment. It is also available on the NRC's Web site at: *http://webwork:300/what-we-do/regulatory/allegations/scwe-guide.html*, well as in ADAMS at ML042800027.

DATES: Comments on the guidance document may be submitted on or before November 15, 2004. Since: (1) A detailed outline of the guidance document has previously been published for comment; (2) the NRC staff has evaluated and responded to these comments below; and (3) the Commission approved, in an August 30, 2004, Staff Requirements Memorandum, issuance of the guidance, the staff requests that any comments provided in response to this **Federal Register** Notice relate to the content of the document rather than the appropriateness of issuing the document. The staff plans to issue a final RIS containing the information in the document after reviewing and addressing any additional comments.

ADDRESSES: Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, Room O–1F21, 11555 Rockville Pike, Rockville, Maryland. Publically available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the document located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or email to *pdr@nrc.gov*.

You may also e-mail comments to *nrcrep@nrc.gov*. Fax comments to: Chief, Rules and Directive Branch, U.S. Nuclear Regulatory Commission at (301) 415–5144.

FOR FURTHER INFORMATION CONTACT: Lisamarie Jarriel, Agency Allegations Advisor, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301)–415–8529, email *LLJ@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Staff Response to Comments

The NRC received 17 submittals providing comments suggesting changes or expressing concerns in response to the outline of the proposed industry guidance for establishing and maintaining a SCWE published in the **Federal Register** on February 12, 2004. Although most stakeholders, including representatives from both the industry and whistleblower advocates, were in general agreement concerning the content of the outline, some improvements were suggested and many have been incorporated into the draft document. The most significant comment, however, addressed whether the Agency should be producing such a document at all. Industry representatives commented that the industry, rather than the NRC, should develop the guidance. The following specific comments related to the topic of whether it is appropriate for the NRC to issue the guidance, and the NRC staff's

response to these comments, are as follows:

Comment: The May 1996 Policy Statement clearly set the NRC staff's expectations for development of a SCWE and placed responsibility for establishing and maintaining a SCWE on the licensees. Therefore, it is not appropriate for the NRC staff to assume responsibility for development of a ''best practices'' document in the area of SCWE.

Response: The staff notes that the Commission more recently (March 26, 2003) issued a staff requirements memorandum that specifically requested that the staff develop more guidance regarding ''best practices'' to encourage a SCWE. The 1996 Policy Statement did in fact place the responsibility for establishing and maintaining a SCWE on licensees, and this responsibility remains with licensees. The guidance document does not transfer the responsibility for establishing and maintaining a SCWE from licensees to the NRC; rather, the guidance document provides some tactics for establishing and maintaining a SCWE which have been successful at some licensees and may be of use to other licensees in upholding the responsibilities described in the 1996 Policy Statement.

Comment: ''Best practices'' are not enforceable nor useful for NRC inspectors.

Response: The NRC staff plans to issue the attached guidance in the form of a RIS, which is not a regulatory requirement but is an established method of providing guidance to the industry. The purpose of the document is to provide guidance to the industry, rather than to dictate regulatory requirements or to serve as a required standard for use during NRC inspections.

Comment: Several comments were received that expressed a concern that any guidance developed by the NRC would be ''defacto'' regulatory requirements in this area, and that guidance from the NRC on ''best practices'' for establishing and maintaining a SCWE would create the impression that the guidance provided by the NRC would become the standard for an acceptable program. One commenter indicated that a requirement that surveys and interviews be performed on a regular basis would provide little benefit and would demand a substantial use of licensee resources.

Response: As noted above, the NRC staff plans to issue the guidance document on establishing and maintaining SCWE as a RIS, which is not a regulatory requirement, but provides guidance to the industry on this important topic. While a perception may exist that such guidance documents are ''defacto'' requirements, the NRC staff clarified in the document that some of the practices outlined in the guidance may not be practicable or appropriate for every NRC licensee or contractor depending on the existing work environment and the size, complexity, or hazards of licensed activities. This statement should clarify that the information in the guidance document is not a requirement.

Comment: The industry has developed and is using guidance from Nuclear Energy Institute (NEI) 97–05 [1]; therefore, additional guidance from the NRC is not necessary.

Response: The NRC staff has reviewed NEI 97–05, Revision 1 and a draft of Revision 2, and concurs that both revisions contain elements that are important to establishing and maintaining a SCWE. However, the staff noted some important distinctions in comparing the NEI document to the proposed NRC guidance on establishing and maintaining a SCWE, including: (1) A difference in the scope of the documents' emphasis on problem identification and resolution processes, in that the NEI document focuses on the effectiveness of the Employee Concerns Program while the NRC document more broadly addresses the effect of all problem identification and resolution processes on the SCWE; (2) additional details in the NRC document regarding several practices, such as management behaviors and oversight of contractor activities, which may impact the SCWE at licensed facilities; (3) additional details in the NRC document regarding the content of SCWE training; (4) inclusion of a discussion of several important and complex issues in the NRC document which are not contained in the NEI document, such as the effect of incentive programs and 360 degree appraisal programs on the SCWE; and (5) guidance in the NRC document with respect to processes to help detect and prevent discrimination, or mitigate perceptions of discrimination, which is not included in the NEI document.

In addition to the above comments which generally related to the appropriateness of the NRC staff issuing a guidance document on establishing and maintaining a SCWE, the following comments were received:

Comment: Several comments were received regarding a concern that issuance of a guidance document on best practices to establish and maintain a SCWE may give the impression that the practices in the document are all inclusive, when in fact additional practices may be effective or necessary at some sites, and some intangible issues, such as trust and management turnover, may significantly impact the SCWE. In addition, a concern was raised that issuing a best practices document for establishing and maintaining a SCWE may give the impression that the practices in the document have been objectively demonstrated to be effective when in fact they have not.

Response: The NRC staff agrees that not all of the practices outlined in the guidance document may be practicable or appropriate for every licensee or contractor and that practices not included in the guidance may also be effective in establishing and maintaining a SCWE. The NRC staff also agrees that additional licensee efforts beyond the practices in the guidance may be necessary to establish or improve a SCWE. The staff has revised the title of the document from one that refers to ''best practices'' to further emphasize the unique nature of each licensee's work environment and has added language to emphasize that the practices in the document may not be practical or effective at all licensees, and that additional practices may be helpful or necessary to establish or maintain a SCWE at some facilities. In addition, several comments requested the addition of specific items to the outline. The specific comments were:

Comment: More emphasis needs to be placed on the interpretation of data obtained and its impact on safe operations.

Comment: More emphasis needs to be placed on the effectiveness of communications and teamwork as effective tools for the resolution of identified problems.

Comment: The results of industry benchmarking (positive and negative attributes) should be included in the guidance.

Comment: Industry Lessons learned should be included in the SCWE training.

Response: Emphasis was added to the guidance document as requested in the first of these comments, but for the others the NRC staff determined that the guidance already adequately addressed these topics.

Comment: Two comments were received which indicated that the NRC staff should develop a SCWE performance indicator or minimal acceptable standards for SCWE.

[1] NEI 97–05, ''Nuclear Power Plant Personnel-Employee Concerns Program-Process Tools In A Safety Conscious Work Environment,'' Rev. 1, January 2002.

Response: The NRC staff has considered developing an inspection process and assessment tools to evaluate the broader area of safety culture, which, as described in the guidance document, relates to a ''safety-first focus''. SCWE is an attribute of safety culture. In an August 30, 2004, staff requirements memorandum, the Commission indicated that the staff should consider developing tools that allow inspectors to rely on more objective findings in the area of Safety Culture. The Commission specifically approved enhancing the reactor oversight process' treatment of cross-cutting issues to more fully address Safety Culture, and to allow for more agency action as the result of the identification of a cross-cutting issue regarding Safety Culture. Implementing this direction from the Commission may involve development of some form of a performance indicator for SCWE or Safety Culture. However, the Commission to date has not approved development of a regulation or ''minimal acceptable standards'' in the area of safety culture or SCWE.

Comment: A question was posed in one comment regarding whether the guidance was intended to address only SCWE or the broader topic of Safety Culture. The commenter pointed out that the Commission did not specifically direct that the staff develop guidance about Safety Culture, but requested that the staff monitor developments abroad to ensure that the Commission remains informed about these efforts and their effectiveness.

Response: The guidance document only addresses the topic of SCWE, rather than Safety Culture, and the NRC staff clarified this point in the draft guidance document. The staff notes that the commenter was correct in stating that the Commission did not direct that the staff develop guidance about Safety Culture, but requested that the staff monitor developments abroad to ensure that the Commission remains informed about these efforts and their effectiveness.

Comment: The NRC has not previously issued ''best practices'' documents for other areas where it has a regulatory requirement or other interest.

Response: While the NRC staff has not routinely issued ''best practices'' documents for other areas where its has a regulatory requirement or interest, the staff notes that the Commission specifically directed the staff in the March 26, 2003 staff requirements memorandum, to develop further guidance that would identify ''best practices'' to encourage a SCWE. While issuing documents which identify ''best practices'' is not routine for the NRC staff, it is also not prohibited by NRC policy, and many NRC guidance documents, while not titled ''best practices'', incorporate industry practices which have been effective.

The following two comments were received regarding a concern that the NRC guidance related to a review of lessons learned/case studies may involve privacy and attorney-client privilege information:

Comment: The Draft Best Practices document suggests that licensees conduct self assessments of SCWE by periodically evaluating and assessing information from areas/organizations that may contribute or negatively effect the SCWE, including from legal counsel. Any such assessment that seeks information contained in attorney's files could compromise the attorney-client privilege.

Comment: The Draft Best Practices document suggests that licensees provide continuous training for employees, managers, and supervisors. Such training, according to the Draft Best Practices Document, should include ''lessons learned/case studies''. However, in the past the NRC has expressed concern that training involving cases studies might compromise the confidentiality of complainants who made allegations or engaged in litigation at that facility. The NRC should clarify its expectations with respect to the use of case studies.

Response: The NRC staff acknowledges that information in licensees' attorney's files and some information in case studies could contain attorney-client privilege or privacy information and that review of such information by individuals completing self assessments or release of the information in a report of a self assessment would not be appropriate. Nonetheless, the NRC staff continues to believe that review of some legal documentation and case studies may be beneficial during self assessments of SCWE and training. As such, the NRC revised the sections of the guidance document which discuss review of legal documentation and inclusion of case studies in training to reflect that licensees should take into consideration privacy and attorney-client privilege considerations during such reviews.

Comment: The Draft Best Practices document suggests that SCWE be reinforced by demonstrated management behavior that promotes employee confidence in raising and resolving concerns, including incentive programs. The use of incentive awards may be inappropriate in a SCWE toolbox and the use of this tool needs to be left to individual licensees.

Response: As indicated in the guidance document on establishing and maintaining a SCWE, the NRC staff recognizes that some of the practices outlined in the guidance may not be practicable or appropriate for every NRC licensee. The information in the guidance is provided for licensees' consideration when developing or enhancing existing SCWE programs, or attempting to identify and correct potential problems with a program. As indicated in the guidance, the NRC staff believe that incentive programs may encourage reporting of safety concerns, and the guidance specifies that licensees should ensure that incentive programs do not inadvertently discourage raising safety concerns.

Comment: The Draft Best Practices document suggests that the volume and trend of such statistics as NRC allegations, NRC retaliation allegations, anonymous concerns, and of internally raised concerns be used as performance indicators. Reliance upon such statistics may be misleading. As the NRC has previously recognized, allegers bring concerns to the NRC for various reasons, including self-serving reasons and reasons unrelated to the work environment at a nuclear plant.

Response: While allegers raise concerns to the NRC for differing reasons, the NRC staff believes that, in general, the volume and trend of NRC allegations, anonymous concerns, and internally raised concerns can be used as performance indicators. While some individuals may bring concerns to the NRC and the licensee for reasons other than problems with the work environment, statistics such as the number and type of allegations received involve the total licensee alleger population and therefore may be a reflection of the status of the general work environment. Clarification was added to the guidance document to indicate that no single indicator is sufficient in identifying weaknesses in the SCWE, nor are there absolute measures that indicate an unhealthy environment. This clarification emphasizes that while such information may be indicative of the status of the work environment, further analysis is needed to identify the causes of changes in the number and types of allegations received.

Comment: Certain language in the Draft Best Practices document encourages licensees to encroach on contractors' areas of responsibilities regarding SCWE. For example, it suggests that a licensee should oversee contractor SCWE-related matters,

including contractor SCWE-related programs, procedures, and training. In addition, the Draft Best Practices document suggests that licensee management should be involved in contractor proposed changes to employment conditions. Such actions could be an inappropriate encroachment on a contractor's ability to manage its own employees and could expose licensees to liability. NRC should clarify that contractors, and not licensees, are responsible for the content and effectiveness of the SCWE program within the contractor's organization.

Response: The NRC staff disagrees that licensee oversight of a contractor's SCWE activities is an inappropriate encroachment on a contractor's ability to manage its own employees. Rather, the Commission's long-standing policy has been to hold licensees responsible for compliance with NRC requirements, regardless of whether the licensee uses a contractor to complete licensed activities. Since the actions of contractors can affect the SCWE at NRC licensed facilities, licensees are responsible for ensuring that their contractors maintain an environment in which contractor employees are free to raise concerns without fear of retaliation. While the NRC staff agrees that contractors are responsible for the content and the effectiveness of the SCWE within the contractor's organization, licensees are also responsible for overseeing contractor activities which may impact the SCWE at NRC licensed facilities.

Comment: The Draft Best Practices document suggests that senior management review proposed employee actions (above oral reprimand) before they are taken to confirm that there are no elements of retaliation involved. Requiring senior management to review every disciplinary action would pose an unnecessary burden upon management.

Response: As noted in the response above, the staff plans to issue the document on establishing and maintaining a SCWE as guidance for the industry rather than as a regulatory requirement. In addition, the NRC staff clarified in the document that some of the practices in the outline may not be practical or appropriate for every licensee, depending on the work environment and/or the size, complexity, and hazards of licensed activities. As such, the guidance does not require that senior management at every NRC licensee review every disciplinary action. Rather, the guidance suggests that review of disciplinary actions, such as those above an oral reprimand, may be beneficial at some licensed facilities. Review of disciplinary actions has benefited the work environment at some licensee facilities. The NRC staff also revised the language to the guidance document to provide disciplinary actions above an oral reprimand as one potential threshold to consider rather than as the suggested threshold. This language should further emphasize that licensees should customize SCWE practices to suit the needs of the facility.

The comments are available in their entirety on the Office of Enforcement's Web page at: *http://www.nrc.gov/what-we-do/regulatory/allegations/scwe-comments.html.*

Supplementary Information—Draft NRC Regulatory Issue Summary: Guidance for Establishing and Maintaining a Safety Conscious Work Environment

Addressees

All U.S. Nuclear Regulatory Commission (NRC) licensees, applicants for licenses, holders of certificates of compliance, and their contractors.

Intent

Although not required by regulation, licensees and other employers subject to NRC authority are expected to establish and maintain a safety conscious work environment (SCWE, pronounced ''squee''). The NRC is issuing this regulatory issue summary (RIS) to supplement guidance for fulfilling this expectation. The guidance describes a number of practices that may facilitate the efforts of licensees and others in developing and maintaining a SCWE. The NRC recognizes that some of the practices described in this document may not be practical for every licensee, depending on the existing work environment and/or the size, complexity, and hazards of the licensed activities. Although this RIS requires no action or written response, all NRC addressees are encouraged to review and consider the contents of this RIS when evaluating whether a SCWE exists at their facility.

Background Information

In April 2000, the Nuclear Regulatory Commission's Executive Director of Operations chartered the Discrimination Task Group (DTG) to evaluate issues associated with matters covered by the NRC's employee protection standards, including SCWE. The DTG recommendations were provided to the Commission in September 2002 in SECY–02–0166. In a March 26, 2003, staff requirements memorandum (SRM) for SECY–02–0166, the Commission directed the staff to take certain actions in the area of SCWE and safety culture, including providing the guidance herein. Regarding these two terms, SCWE and safety culture, there has been some confusion historically. Many use the terms interchangeably. They are, in fact, distinct, but related concepts. In the Commission's January 24, 1989 ''Policy Statement on the Conduct of Nuclear Power Operations,'' safety culture is described as ''the necessary full attention to safety matters'' and ''the personal dedication and accountability of all individuals engaged in any activity which has a bearing on the safety of nuclear power plants.'' A strong safety culture is also often described as having a ''safety-first focus.'' Attributes include the principles of safety-over-production, procedural adherence, and conservative decisionmaking. The willingness of employees to identify safety concerns, *i.e.*, SCWE, is also an important attribute of a strong safety culture.

In July 1993, the agency reassessed the NRC's program for protecting allegers against retaliation. Retaliation is prohibited by NRC regulations in Parts 19, 30, 40, 50, 60, 61, 63, 70, 72, 76, and 150. It was recommended that an agency policy be developed to emphasize that licensees and their contractors are responsible for achieving and maintaining a work environment which is conducive to the reporting of concerns without fear of retaliation. In May 1996, the NRC issued such a policy, ''Freedom of Employees in the Nuclear Industry To Raise Safety Concerns Without Fear of Retaliation (61 FR 24336 or *www.nrc.gov/what-we-do/regulatory/allegations/scwe-frn-5-14-96.pdf*). A SCWE is defined by the NRC as an environment in which ''employees feel free to raise safety concerns, both to their management and to the NRC, without fear of retaliation.'' The NRC also recognizes that, aside from fear of retaliation, other matters can affect an employee's willingness to identify safety concerns, such as the effectiveness of the licensee's processes for resolving concerns and senior management's ability to detect and prevent retaliatory actions. The NRC policy statement, therefore, addresses these attributes of a SCWE as well. The guidance provided by this policy, however, is very broad.

In SRM–SECY–02–0166 the Commission directed the staff to develop further guidance, in consultation with stakeholders, that would identify ''best practices'' for encouraging a SCWE. The Commission indicated that the proposed guidance should emphasize training of managers on their obligations under the employee protection regulations and should make

recommendations about the content of the training in this important area. In the 1996 policy statement, the NRC acknowledged that although the statement and principles, described therein, apply to all licensees and other employers subject to NRC authority, some of the suggestions, programs, or steps that might be taken to improve the quality of the work environment (*e.g.*, establishment of a method to raise concerns outside of the normal management structure such as an employee concerns program) may not be practical for every licensee or other employer, depending on factors such as the number of employees, complexity of operations, potential hazards, and the history of allegations made to the NRC. Similar to the suggestions and principles in the 1996 policy statement, the practices described in this document may not be practical for every licensee, depending on the existing work environment and/or the size and complexity and hazards of the licensed activities. For example, some of the practices in this guidance document may not be applicable for very small licensees or other affected employers that have only a few employees and a very simple management structure.

Summary of Issue

An environment where employees feel free to raise safety concerns may contribute to a reduced risk associated with licensed activities and the use of radioactive materials. Attachment 1, ''Establishing & Maintaining a Safety Conscious Work Environment,'' is provided as guidance to licensees, applicants, and contractors on developing and maintaining a SCWE in response to the Commission's March 2003 directive. Current industry guidance, Nuclear Energy Institute (NEI) 97–05, ''Nuclear Power Plant Personnel—Employee Concerns Program—Process Tools In a Safety Conscious Work Environment'' *(www.nei.org/documents/Nuclear_Employee_Concerns_Tools.pdf)* contains elements that are important to establishing and maintaining a SCWE as well, and complements the guidance provided by this RIS. However, NEI 97–05 primarily focuses on establishing an effective employee concerns program (ECP), an alternative process for reporting safety concerns. Attachment 1 addresses SCWE more broadly as it applies to all problem identification and resolution processes.

The NRC recognizes that some of the practices outlined in this guidance may not be practicable or appropriate for every NRC licensee or contractor, depending on the existing work environment, and/or the size or complexity, and the hazards of the licensed activities. In addition, practices not included in this guidance may be equally effective in establishing and maintaining a SCWE. The NRC staff emphasizes that licensees are responsible for establishing and maintaining a SCWE and that implementation of the guidance may not improve a SCWE without additional efforts by site management. However, the NRC believes that the elements in this guidance could be helpful to NRC licensees, applicants, and their contractors.

The guidance in Attachment 1 is intended to supplement existing information that was communicated in the 1996 policy statement. The supplemental elements of a SCWE summarized in this attachment were developed utilizing information obtained from reactive inspections of problematic licensee programs, as well as reviews of successful progressive SCWE programs, and insights obtained during discussions with nuclear industry professionals in this field.

The attached document provides guidance with respect to (1) encouraging employees to raise safety concerns, including incentive programs and communication tools, (2) SCWE training content and periodicity, (3) ECP and ombudsman programs, (4) tools to assess the SCWE, including performance indicators, behavioral observations, and surveys, (5) contractor awareness of SCWE principles and expectations, and (6) processes to help detect and prevent discrimination, or mitigate perceptions of discrimination.

Backfit Discussion

This RIS requires no action or written response and is, therefore, not a backfit under 10 CFR 50.109, 70.76, 72.62, or 76.76. Consequently, the staff did not perform a backfit analysis.

Federal Register Notification

A notice of opportunity for public comment on this RIS was published in the **Federal Register** (xx FR xxxxx) on {date}. Comments were received from {indicate the number of commentors by type}. The staff considered all comments that were received. The staff's evaluation of the comments is publicly available through the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML042800027.

Small Business Regulatory Enforcement Fairness Act of 1996

The NRC has determined that this action is not subject to the Small Business Regulatory Enforcement Fairness Act of 1996.

Paperwork Reduction Act Statement

This RIS does not request information collections and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). 44 U.S.C. 3501 *et seq.*).

Attachment 1: Establishing & Maintaining a Safety Conscious Work Environment

Background

In July 1993, the Nuclear Regulatory Commission's Executive Director for Operations directed that a team reassess the NRC's program for protecting allegers against retaliation. The team evaluated the process that was in place in 1993 and sought comments from other NRC offices, other Federal agencies, licensees, former allegers and the public. One recommendation from the 1993 effort was the development of an agency policy to emphasize that licensees and their contractors are expected to achieve and maintain a work environment which is conducive to the reporting of concerns without fear of retaliation.[2]

On May 14, 1996, the NRC issued a policy statement [3] to express the Commission's expectation that licensees and other employers subject to NRC authority will establish and maintain safety-conscious environments in which employees feel free to raise safety concerns, both to their management and to the NRC, without fear of retaliation. Licensees, contractors, subcontractors, and other employers in the nuclear industry are responsible for maintaining a safety conscious work environment (SCWE). This policy statement is applicable to the NRC-regulated activities of all NRC licensees, certificate holders, and their contractors and subcontractors.

In April 2000, the Nuclear Regulatory Commission's Executive Director for Operations chartered the Discrimination Task Group (DTG) to evaluate issues associated with matters covered by the NRC's employee protection standards, including SCWE and SCWE training for managers—the subject of a petition for rulemaking, PRM–30–62, submitted on August 13, 1999. The DTG

[2] ''Reassessment of the NRC's Program for Protecting Allegers Against Retaliation, NUREG 1499, January 1994.''

[3] ''Policy Statement for Nuclear Employees Raising Safety Concerns Without Fear of Retaliation,'' **Federal Register** Notice May 14, 1996, (Volume 61, Number 94).

recommendations [4] were provided to the Commission in September 2002. In a March 26, 2003, staff requirements memorandum,[5] the Commission directed the staff, in consultation with stakeholders, to develop further guidance that identifies best practices for encouraging a SCWE. On February 19, 2004, the staff met with stakeholders to discuss an expanded outline of best practices prepared by the staff based on the guidance contained in the 1996 policy statement. Comments on the outline were also solicited in a February 12, 2004, **Federal Register** notice. The comments that were received during the meeting and in response to the **Federal Register** notice were considered in preparing this guide.

Introduction

The guidance in this document is intended to supplement existing information that was communicated in the 1996 policy statement. The supplemental elements of a SCWE summarized in this document were developed using information obtained from reactive inspections of problematic licensee programs, reviews of successful progressive SCWE programs, and insights obtained during discussions with nuclear industry professionals, including individuals who provide training to the industry on the subject and attorneys who have represented licensees and whistleblowers in proceedings.

The NRC recognizes that some of the practices outlined in this guidance may not be practicable or appropriate for every NRC licensee or contractor, depending on the existing work environment and/or the size, complexity, and hazards of the licensed activities. In addition, practices not included in this guidance may be effective in establishing and maintaining a SCWE. The NRC staff emphasizes that licensees are responsible for establishing and maintaining a SCWE and that implementation of this guidance may not improve a SCWE without additional efforts by site management. However, the NRC believes that the elements in this guidance could be helpful to NRC licensees and their contractors when developing or enhancing existing SCWE programs, or when attempting to identify and correct potential problems in a program.

Elements of a Safety Conscious Work Environment

Effective Processes for Problem Identification and Resolution

Effective processes for problem identification and resolution are essential to ensuring the safe use of nuclear materials and operation of facilities. The following guidance discusses attributes of the work environment that encourage individuals to look for and articulate safety concerns and effectively and efficiently address and resolve the concerns. The approach taken to develop the SCWE and to implement the appropriate processes described below will depend on several factors, including the size of the licensee, applicant, or contractor.

A. Employees Are Encouraged To Raise Safety Concerns

SCWE Policy. A SCWE policy statement which (a) is applicable to employees and contractors, (b) asserts that it is everyone's responsibility to promptly raise concerns, and (c) makes clear that retaliation for doing so will not be tolerated helps establish a SCWE and helps communicate senior management's expectations for maintaining it. In addition, the policy may include:

- A statement that, to the extent appropriate, employees are allowed and encouraged to use work hours to report concerns;
- Sanctions for retaliation by supervisors, managers, or peers;
- Expectations for management behavior that fosters employee confidence in raising concerns;
- Information on the various avenues available for raising concerns;
- The rights of employees to raise concerns externally; and
- A commitment to provide SCWE training.

SCWE Training. SCWE training for managers, supervisors, and employees helps reinforce the principles outlined in the licensee's SCWE policy. The training given to managers and employees should include applicable laws, regulations and policies underlying SCWE expectations.

- Managers and employees should know what ''protected activities'' are, besides raising safety concerns.

The term ''protected activity'' has been broadly interpreted by the Department of Labor and the U.S. Courts. A protected activity is defined by NRC regulation as including, but not limited to:

○ Providing the Commission or employer information about alleged or possible violations of the Atomic Energy Act, the Energy Reorganization Act, or requirements imposed under either statute;

○ Refusing to engage in any practice made unlawful under either statute or the requirements, if the employee has identified the alleged illegality to the employer;

○ Requesting the Commission to institute action against the employer for the administration or enforcement of these requirements;

○ Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding a provision of either statute;

○ Assisting or participating in, or being about to assist or participate in, these activities.

- Managers and employees should also know what an ''adverse action'' is. An ''adverse action'' is generally defined as an adverse change of the terms, conditions, or benefits of the employee's work. Adverse employment actions may include changes in employment status, regardless of whether the individual's pay is affected, and threats to employment.
- They also need to know the meaning of ''retaliation'' under the NRC's regulations.

An adverse action is deemed retaliatory if it is taken because the individual was engaged in a protected activity.

The training given should also include the consequences for deviations from applicable laws, regulations, and policies underlying SCWE expectations.

The training should identify appropriate gateways for employees and contractors to identify concerns (manager, quality assurance programs, corrective action programs, appeal processes, alternative processes for raising concerns such as a licensee Employee Concerns Programs or an ombudsman program, NRC, and DOL). The training should include a description of how each program works, and the role of the manager in each program.

The training should include expectations for management behavior. For example, managers should be expected to make themselves available to the workforce by various means, including an ''open-door'' policy in the office and when managers are in the field. Managers also need to be sensitive to employees' potential reluctance to raise concerns and may need to protect employees' identity or the identity of others involved. Basic listening skills, effective ways to seek input, and

[4] SECY–02–0166, ''Policy Options and Recommendations for Revising the NRC's Process for Handling Discrimination Issues,'' September 12, 2002.

[5] Staff Requirements—SECY–02–0166—''Policy Options and Recommendations for Revising The NRC's Process for Handling Discrimination Issues'', March 26, 2003.

expressions of appreciation to those who raise concerns are other behaviors to be encouraged in managers. Managers should be knowledgeable of and periodically use various media instruments to communicate their SCWE principles. Management should establish timeliness goals for responding to concerns, commensurate with safety significance, and provide periodic updates to the individuals who identified the concerns. Managers should evaluate the effectiveness of their responses to determine whether the responses adequately addressed employees' concerns. Managers should ensure that operational or maintenance goals do not make supervisors less receptive to safety concerns, particularly concerns which may result in significant costs or schedule delays. Finally, training for managers should include information to help them identify and address signs of a ''chilled environment,'' that is, an environment in which employees are afraid to raise safety concerns for fear of retaliation.

Managers who model positive traits of availability, receptiveness, sensitivity, encouraging communications, timeliness, and responsiveness associated with a SCWE will promote employee confidence in identifying and resolving concerns. Managers who have exhibited success in this area should consider training or mentoring other mangers in an effort to duplicate the success.

Similarly, expectations for employees' behavior should also be included in the employees' training. Consider emphasizing the following employee behaviors during training:

- Individual responsibility for reporting concerns;
- Clear communication of the concern and confirmation of understanding with the person receiving the concern;
- Willingness to suggest resolutions to concerns and participate to in their resolution;
- Followup to ensure the concern is adequately addressed;
- Need for every employee to demonstrate respect for others who identify concerns.

Initial training of recently hired employees or recently promoted managers should be conducted as soon as practicable and refresher training for existing staff should be conducted annually or more frequently, as determined by the needs and complexity of the organization. Annual refresher training for employees and managers should review key points from initial training and include lessons learned, as appropriate, from successes and/or problem areas.

SCWE Incentive Programs. An incentive program can be developed which provides recognition and rewards for individual and team efforts in identifying and/or resolving safety issues. In addition, implementation of site-wide bonus and incentive programs which reflect safety objectives over production goals may also encourage reporting of safety concerns. However, some care should be taken to ensure that incentive programs do not inadvertently discourage reporting concerns (e.g., some employees may not want recognition).

Employee errors can have a detrimental effect on safety and efforts should be made to reduce the frequency and significance of errors. An environment that is conducive to the self-reporting of errors will allow errors to be identified more quickly and can reduce the potential significance of some errors. While it is important to hold employees accountable for their errors, licensee personnel management practices, to the extent practicable, should consider that actions against personnel who self-report errors can, in some circumstances, discourage employees from raising concerns, near misses, etc. Consider using self-identification and prompt, effective corrective actions as mitigating circumstances for consideration when addressing personnel matters involving self-identified errors.

B. Management Is Promptly Notified of Concerns

Aside from the practices discussed above concerning policies, training, and incentive programs designed to create a work environment where employees feel free to raise safety concerns without fear of retaliation, there are other behaviors and processes which may help employees promptly identify and notify management of concerns. Employees and management that demonstrate an open and questioning attitude by asking ''why'' and ''what if'' type questions help to ensure concerns are promptly identified. Processes for identifying concerns should be accessible and user-friendly. A corrective action program which is flexible in its use of paper forms and/or terminals, conveniently placed throughout the facility, also helps ensure prompt notification of safety concerns. An accessible and approachable management team further motivates employees to report concerns, including communications that ensure an understanding of the concerns prior to their proposed resolution and inspection. As appropriate, employees should be allowed and encouraged to spend needed work hours to report concerns.

C. Concerns Are Promptly Prioritized and Reviewed

Safety should be a primary factor in the concern prioritization scheme and in determining the breadth and depth of the evaluation. Effective communication plans should ensure the sharing of information between affected departments so that the potential impact of the identified concerns on safety can be appropriately assessed. In addition, management and employees should develop expectations concerning timeliness to complete the evaluation and resolution of issues. The process for screening issues should include a review for operability and reportability as applicable. For significant conditions adverse to quality, the evaluation should be sufficient to identify the root and contributing causes of the issue. In addition, the root cause analysis should address both the extent of the condition and the cause of the issue.

D. Concerns Are Appropriately Resolved

Timeliness of the corrective actions should be commensurate with the safety significance of the issue. Processes should be in place to ensure that appropriate actions are taken in response to all conditions adverse to quality. For significant conditions adverse to quality, corrective actions should be taken to address the root causes, contributing causes, and the extent of the condition caused by the identified concern.

E. Timely Feedback Is Provided to the Concerned Individual

Timely feedback should be provided at appropriate points during the concern resolution process. The individual receiving the information may need to discuss the concern with the employee raising the concern in order to understand the issue and its safety significance. Additional feedback may be necessary during the evaluation when it is apparent that resolution may take longer than anticipated. When the evaluation is complete, it is important to followup with the concerned employee to share proposed actions to address the issue, if appropriate. The most effective feedback process is one which is sufficiently flexible to permit a concerned employee who wants anonymity to obtain feedback.

F. Appeal Process for Concerns

An appeal process to ensure that issues were thoroughly addressed (e.g., differing professional opinion or alternative dispute resolution processes) can provide added assurance that concerns are appropriately resolved.

G. Self-Assessments of Problem Identification & Resolution (PI&R) Processes

It is a good practice to periodically evaluate the adequacy and timeliness of responses, as well as the satisfaction of the concerned individual with the response and process. In addition, a self-assessment should address whether employees feel free to raise issues using the various processes employed by the licensee and whether these processes are viewed as effective, and why or why not. An assessment should include an appraisal of the effectiveness of the root cause analyses for significant issues and the effectiveness of associated corrective actions. Management should have a plan to promptly review the findings of such self-assessments and implement appropriate corrective actions.

H. An Alternative Process to Line Management

To address the situation where an individual wishes to raise a concern to someone other than their management or through the corrective action program, an alternative process, such as an employee concerns program, can be useful. Given the nature of many of the issues one may wish to raise outside of line management, such a process should ensure identity protection and/or anonymity to the extent appropriate. Such an alternative process should be accessible in multiple ways (*e.g.*, walk-ins, hot lines, drop boxes) to the extent practical, given the size of the organization. In considering the physical location of the personnel operating the alternative process, one should consider both their accessibility to the workforce and their visibility. An overly visible office may not allow discreet visits. Personnel training programs, advertising posters, and facility news articles help provide notification of the process. Like concerns brought to the corrective action program, concerns brought to the alternative program must receive appropriate operability and reportability reviews and be properly prioritized using safety as a primary factor for determining the breadth, depth, and timeliness of the evaluation. While independent from line organizations involved in the concerns, the process is most effective if the personnel doing the evaluations are directly accountable to senior management. Senior management provides appropriate support and resources, including staffing and access to necessary documents and materials to conduct inspections. The process should provide timely feedback on the status and resolution of concerns and status reports to senior management with analyses of program data and observations.

Tools To Assess the SCWE

Information gathered from the following tools should be considered for program enhancements, training enhancements, coaching and counseling opportunities, organizational changes, and survey topic suggestions. As with the processes for problem identification and resolution, discussed above, the choice of tools and their usefulness will depend on several factors, including the size of the licensee, applicant, or contractor, and the complexity and hazards of the licensed activities.

A. Lessons Learned Evaluations

It may be useful to periodically evaluate information from pertinent organizations and processes which may contribute to or negatively affect the SCWE to identify enhancements or adjustments to the organizations and processes. The organizations and processes with pertinent information may include the primary process for raising concerns (*e.g.*, correction action program), an alternative process for raising concerns (*e.g.*, employee concerns program, or ombudsman), human resources (regarding work environment concerns, etc.), legal counsel (regarding Department of Labor files, etc.), and/or regulatory affairs (regarding NRC findings or observations). Discussions about specific documentation or events should take into consideration privacy and attorney-client restrictions. Lessons learned from external organizations can also be useful

B. Benchmarking

Participation in applicable industry forums or peer-group assessments of other SCWE programs where ideas and practices are exchanged and various SCWE elements compared can also provide valuable insights.

C. Performance Indicators

Parameters that help indicate the effectiveness of the SCWE training and problem identification and resolution processes should be identified and monitored. For example, the number and trend of NRC allegations [6] (available only for large licensees) compared to the number and trend of internally raised concerns may be an indication of employee willingness to raise concerns internally. Similarly, the percent of anonymous concerns raised may indicate employee willingness to raise concerns without fear of retaliation.

Licensee effectiveness in preventing retaliation claims may be indicated by the number and trend of NRC retaliation allegations (available only for large licensees) compared to the number and trend of internally raised retaliation concerns.

The percent of employees with a questioning attitude and a willingness and ability to raise safety concerns may be indicated by comparing the number of risk-significant concerns that are self-revealed, self-identified, or externally identified by INPO, NRC, OSHA, etc., to the total number of concerns.

Finally, the backlog and age of concerns may indicate the effectiveness of processes for resolving concerns.

No single indicator is sufficient in itself to identify weaknesses in the SCWE, nor are there absolute measurements that indicate an unhealthy environment. Nonetheless, monitoring the trends in various characteristics of the SCWE with performance indicators like those mentioned above may provide insights into the strengths and weaknesses of the SCWE at a site.

D. Survey and Interview Tools

Survey instruments and interview questionnaires implemented by organizations independent of the groups being surveyed or interviewed can be useful tools and complement other tools used to assess the SCWE.

Pre-survey or pre-interview communications are a very important part of such tools. Communications with the workforce prior to the implementation of the survey or interview should include a request for participation, a statement of the need for input, a promise to protect participants' identity, the intended use of the gathered information, and a promise to share the results with the workforce.

Regular employee business hours should be made available to conduct surveys or interviews.

The scope of SCWE surveys should include the following:

[6] Although the NRC makes statistical information regarding allegations publicly available and available to some licensees, this information does not include information that could be used to identify a concerned individual who has raised their concern to NRC.

• Awareness of company policies and practices with regard to raising safety concerns and avenues available for raising concerns;
• Management behaviors encouraging the workforce to raise safety concerns;
• Workers' willingness to raise safety concerns;
• Effectiveness of the processes available (normal and alternative) for raising concerns;
• Management's ability to detect and prevent retaliation for raising safety concerns.

Space should be provided on surveys for written comments.

Survey or interview follow-up action plans should be developed to address findings that are specific to work groups or generic to the facility. In addition, management should commit to share the results with the workforce and share action plans to address findings. The results of surveys or interviews may indicate employee beliefs, attitudes, and satisfaction with key SCWE attributes, as well as ways to improve the SCWE.

E. Direct Observations

Direct observations of individuals' behavior provides information regarding the effectiveness of any SCWE training. Management behaviors observed may indicate whether a supervisor is receptive to concerns and supports and rewards employees for raising concerns. Direct observation of employees in the work environment can provide valuable insights into the employees' questioning attitude and willingness to challenge perceived unsafe behavior.

F. Exit Interviews and Surveys

Exit interviews and surveys, conducted to facilitate the identification of safety issues from exiting employees, provide an opportunity to capture concerns an individual may not have been comfortable raising while working at the facility. These activities should include follow-up mechanisms for exiting employees who want to be informed of the resolution of their concerns. Employees' identities should be protected.

G. 360-Degree Appraisals

Consideration should be given to the implementation of a ''360-degree'' appraisal program, where employees are asked to provide feedback on manager SCWE behavior.

Improving Licensee Contractor Awareness of SCWE Principles

The Commission's longstanding policy is to hold its licensees responsible for compliance with NRC requirements, even if licensees use contractors for products or services related to NRC-regulated activities. Thus, licensees are responsible for ensuring that their contractors maintain an environment in which contractor employees are free to raise concerns without fear of retaliation. In considering whether enforcement action should be taken against licensees for the actions of their contractor, the NRC considers, among other things, the extent and effectiveness of the licensee's involvement with and oversight of the contractor's environment for raising concerns.

A. Communicating Licensee SCWE Expectations to Contractors

Licensee SCWE expectations of contractor responsibilities as they relate to creating and maintaining a SCWE should be communicated to contractors providing components, equipment, materials, or other goods and services related to NRC-regulated activities. It should be the licensee's expectation that the contractors and their subcontractors are aware of applicable regulations. Furthermore, a licensee may want to communicate to its contractors and subcontractors that the licensee expects them to demonstrate that either an effective program exists that prohibits discrimination against contractor employees for engaging in protected activity and fosters a SCWE, or they adopt and comply with the licensee's SCWE program for their employees.

B. Licensee Oversight of Contractor SCWE Activities

Aside from communicating its SCWE-related expectations to their contractors, licensees may wish to oversee contractor SCWE-related activities. Such oversight may include:

• Reviewing contractor programs and processes to prohibit discrimination and foster a SCWE;

• Assessing the contractor management's commitment to SCWE principles through document review or behavioral observations;

• Reviewing contractor training, both for content and for effectiveness;

• Monitoring the contractor's actions to address concerns, such as reviewing contractor investigations to determine the need to conduct independent licensee investigations;

• Evaluating actions, if any, the contractor takes to mitigate the potential impact of employment decisions or organizational changes on the SCWE.

C. Licensee Management Involvement in Contractor Cases of Alleged Discrimination

Given that the SCWE is most challenged when changes are made to the employment conditions of the workforce, it can be very beneficial to licensees to monitor such changes when proposed or executed by the contractor. Licensee oversight in this area might include evaluating contractor processes for making changes to employment conditions, such as disciplinary policies or reduction-in-force plans, to ensure the processes are well-defined, defensible, and communicated to the workforce in advance of their implementation.

Furthermore, licensee management should evaluate contractor-proposed changes to employment conditions to ensure the proposed changes follow defined processes and are nonretaliatory. The licensee can also assess whether the contractor has taken into consideration the potential effect that their actions might have on the SCWE, and, if appropriate, actions to mitigate the impact.

Finally, contractor changes to employment conditions that are alleged to be or are likely to be perceived as retaliatory should be reviewed to ensure the changes are not retaliatory or would otherwise effect the SCWE adversely.

D. Contractor SCWE Training

Contractor SCWE training can be provided by the contractor or licensee. As with the training given to licensee employees, the contractor training should cover the laws, regulations, and policies underlying the licensee's SCWE expectations; the licensee's governing SCWE policy; the avenues available to contractor staff to raise concerns; and the licensee's expectations for contractor management and employee behavior regarding raising safety concerns. The contractor training should also include an explanation of licensee contractual rights to oversee the contractor's SCWE. Training should be conducted during business hours.

Involvement of Senior Management in Employment Actions

Management should ensure that programs and processes involving changes to employment conditions, such as disciplinary policies or reductions-in-force plans, are well-defined, defensible, and communicated to the workforce prior to their implementation. An effective way for senior licensee management to prevent retaliatory actions by their supervisory staff is to review proposed employment

actions, such as those above an oral reprimand, before the actions are taken to determine whether any of the factors of retaliation are present.

The factors of retaliation are as follows:

• Protected activity—Has the individual against whom the action is being taken engaged in a protected activity?

• Adverse action—Is an adverse employment action being proposed?

• Licensee or contractor knowledge of protected activity—Such knowledge can be attributed to other than the individual's direct supervisor.

• Relationship between the adverse action and the protected activity—Is there evidence that the adverse action is being proposed because of the protected activity?

Senior management review of such employment actions should ensure that programs or processes are being followed to ensure actions are well-founded and nonretaliatory. In addition, the review should ensure that the proposed action comports with normal practice within the limits allowed by the defined process and is consistent with actions taken previously. The review should assess whether the supervisor requesting the action exhibits any sign of unnecessary urgency. The employee's prior performance assessments and the proposed action should be consistent or inconsistencies should be justified and documented.

Finally, an assessment should be done to determine what, if any, effect the employment action may have on the SCWE. If management determines that the action, despite its legitimacy, could be perceived as retaliatory by the workforce, mitigating actions should be considered to minimize potential chilling effects on raising safety issues.

Such mitigating actions may include (1) the use of holding periods during which the proposed employment action is held in abeyance while further evaluations are completed; (2) communicating with the workforce about the action being taken, with appropriate consideration of privacy rights; (3) reiterating the SCWE policy; and (4) explaining the action to the affected employee(s) and clearly articulating the nonretaliatory basis for the action. After an employment action is taken, management should initiate a review of the facts and, if warranted, reconsider the action that was taken. If retaliation is alleged, the licensee should assure that the appropriate level of senior management is involved in efforts to minimize a potential chilling effect that the employment action may have on raising safety issues.

Definitions

Adverse action—An action initiated by the employer that detrimentally affects the employee's terms, conditions, or privileges of employment. Such actions include but are not limited to termination, demotion, denial of a promotion, lower performance appraisal, transfer to a less desirable job, and denial of access.

Alternative dispute resolution (ADR)—Refers to a number of processes, such as mediation and facilitated dialogues, that can be used to assist parties in resolving disputes.

Corrective action program (CAP)—A formal system for issues that may require remedial action that are raised by employees that tracks issues from their identification through evaluation and resolution. The issues are usually prioritized according to the relative safety significance.

Differing professional opinion (DPO)—A formal alternative process which provides an avenue of appeal for an employee to disagree with a position taken by management.

Employee concerns program (ECP)—An alternative process to line management and the CAP for employees to seek an impartial review of safety concerns. Many ECPs handle a variety of concerns and may act as brokers seeking resolution on behalf of the employees.

Hostile work environment—An intentional discriminatory work environment that is either pervasive and regular or acute but severe and detrimentally affects the employee because of protected activity.

Memorandum of understanding (MOU)—A written agreement which describes how organizations, offices, or agencies will cooperate on matters of mutual interest and responsibility.

Performance indicators (PI)—A series of predetermined measured items which usually provide managers with insight into what may be occurring within an organization and give an early sign of problems that, if acted upon, could relieve stress within an organization.

Protected activity—Includes initiating or testifying in an NRC or DOL proceeding regarding issues under the NRC's jurisdiction, documenting nuclear safety concerns, the internal or external expression of nuclear safety concerns, and refusing to engage in any practice made illegal under the Atomic Energy Act or the Energy Reorganization Act if the employee has identified the alleged illegality to the employer.

Safety conscious work environment (SCWE)—An environment in which employees are encouraged to raise safety concerns both to their own management and to the NRC without fear of retaliation.

Dated at Rockville, Maryland, this 7th day of October, 2004.

For the Nuclear Regulatory Commission.

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Approval of Existing Information Collection: Rule 17a–8, SEC File No. 270–225, OMB Control No. 3235–0235.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension and approval of the existing collection of information discussed below.

Rule 17a–8 [17 CFR 270.17a–8] under the Investment Company Act of 1940 (the ''Act'') is entitled ''Mergers of affiliated companies.'' Rule 17a–8 exempts certain mergers and similar business combinations (''mergers'') of affiliated registered investment companies (''funds'') from section 17(a) prohibitions on purchases and sales between a fund and its affiliates. The rule requires fund directors to consider certain issues and to record their findings in board minutes. The rule requires the directors of any fund merging with an unregistered entity to approve procedures for the valuation of assets received from that entity. These procedures must provide for the preparation of a report by an independent evaluator that sets forth the fair value of each such asset for which market quotations are not readily available. The rule also requires a fund being acquired to obtain approval of the merger transaction by a majority of its outstanding voting securities, except in certain situations, and requires any surviving fund to preserve written records describing the merger and its