

POLICY ISSUE INFORMATION

September 16, 2008

SECY-08-0135

FOR: The Commissioners

FROM: Charles L. Miller, Director
Office of Federal and State Materials
and Environmental Management Programs

SUBJECT: REVISION OF THE CRITERIA FOR IDENTIFYING NUCLEAR
MATERIALS LICENSEES FOR DISCUSSION AT THE AGENCY
ACTION REVIEW MEETING

PURPOSE:

The purpose of this paper is to inform the Commission of the revision to the criteria that are used to identify nuclear materials licensees that warrant discussion at the U.S. Nuclear Regulatory Commission's (NRC) Agency Action Review Meeting (AARM) and to provide the new process used to revise the criteria. This paper does not address any new commitments or resource implications.

BACKGROUND:

In 2002, NRC developed a process for providing information on significant nuclear materials issues and adverse licensee performance. This process was provided in SECY-02-0216, "Proposed Process for Providing Information on Significant Nuclear Materials Issues and Adverse Licensee Performance," dated December 11, 2002. As part of this process, criteria were developed to determine nuclear material licensees with significant performance problems that will be discussed at the AARM. The AARM is an agency meeting that allows senior NRC managers to review: (1) agency actions resulting from the performance of nuclear reactor and nuclear material licensees with significant performance problems; (2) results of the staff's assessment of the reactor oversight process effectiveness; and (3) industry performance trends.

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In January 2008, as part of the AARM preparation process, staff determined that the AARM criteria for determining nuclear material licensees with significant performance problems should be revised to provide additional clarity and incorporate NRC's current policies and procedures. In addition, a decision was made to develop a formal process for revising the criteria because one did not exist. As part of the process for revising the criteria, a *Federal Register* Notice (FRN) was published requesting comment on the proposed revision to the criteria (73 FR 14278, March 17, 2008).

DISCUSSION:

Revisions to the AARM Criteria

Table 1 of SECY 02-0216 provides the existing criteria for identifying nuclear material licensees with significant performance issues that would warrant discussion at the AARM. The initial criteria were divided into two sections. One section described the criteria for identifying candidate licensees for AARM consideration and the other section described the criteria NRC would use in evaluating whether the candidate licensees would be forwarded for discussion at the AARM. A copy of the initial criteria is provided in Enclosure 1 of this paper.

The proposed revisions to the AARM criteria as published in the FRN did not change the main principles of the initial criteria but provided an additional level of clarity to the criteria. The proposed revision to the criteria includes the following:

- combined the two sections of the initial criteria into one and divided the criteria into three different categories (i.e., Strategic Plan, Significant Issue, and Performance Trend);
- added a criterion to include significant events that meet or exceed Level 3 of the International Nuclear Event Scale that requires reporting to the International Atomic Energy Agency (per NRC Management Directive (MD) 5.12);
- added references to NRC's current policies and procedures such as NRC's Strategic Plan, Abnormal Occurrence Report to Congress (per MD 8.1), and the NRC Enforcement Policy; and,
- clarified the meaning of "additional NRC oversight," as described in the Significant Issue and Performance Trend categories, by providing examples such as "a significant event, which requires an incident investigation team (IIT) or augmented inspection team (AIT)."

One public comment was received in response to the FRN on the proposed revision to the AARM criteria. The commenter indicated that it supported the proposed criteria and requested clarification or modification as to why category 3 "Performance Trend" of the criteria explicitly references NRC's Alternative Dispute Resolution Process (ADR) as an element of the enforcement process but category two "Significant Issues" does not reference ADR. In response to the comment, the staff revised the criteria by adding a reference to ADR in Category 2 of the criteria. The final revised criteria for identifying nuclear material licensees for discussion at the AARM may be found in Enclosure 2.

Process for Revising the AARM Criteria

As part of the revision to the AARM criteria, NRC senior management developed a formal process that would be used to revise the criteria in the future. Although the staff does not expect frequent revisions to the AARM criteria, this process helps to ensure transparency and consistency of the process and allows an opportunity for interested stakeholders to comment on proposed revisions. An outline of the process used to revise the AARM criteria for identifying nuclear materials licensees for discussion at the AARM may be found in Enclosure 3.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection.

/RA/

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Enclosures:

1. Table 1 – Existing AARM Criteria and Process
2. New Criteria for Identifying Materials Licensees for Discussion at the AARM
3. Outline of Process to Revise the AARM Criteria for Identifying Nuclear Material Licensees for Discussion at the AARM

Table 1

Existing AARM Criteria and Process Description

Performance by Individual NRC Licensees and Groups of Licensees and Selected Agreement State Licensees-Evaluation Criteria

<p>Criteria for identifying candidate licensees for AARM consideration</p>	<p>Criteria Office of Nuclear Materials Safety and Safeguards will be used in evaluating whether candidate licensees will be forwarded for discussion at the AARM.</p>
<p>Licensee has an event that results in the failure to meet a Safety Measure (e.g., a death, release with a significant impact on the environment, etc.).</p>	<p>These licensees will typically be discussed at the AARM unless the matters have already been adequately addressed and discussed before the AARM.</p>
<p>Licensee has an event that results in an Abnormal Occurrence, or an event that qualifies for a Severity Level I or II violation, or multiple events that meet the criteria of the agency Strategic Plan Performance Measures (e.g., reportable loss of material, breakdown of physical protection, etc.), and technical staff believes that there are unique or unusual aspects of the cases that are not adequately or appropriately handled within the normal inspection and enforcement processes.</p>	<p>These licensees will only be discussed at the AARM if Agency actions beyond the normal inspection and enforcement processes are necessary, and other Offices will be required to support these actions, or other Offices would benefit from an awareness of the issues and circumstances associated with licensee performance.</p>
<p>Licensees that have significant breakdowns in their licensed programs, where the breakdowns involve more than one compliance item (e.g., a dose monitoring breakdown and also wide-spread failure to implement and maintain required procedures), and technical staff believe that there are unique or unusual aspects of the cases that are not adequately or appropriately handled within the normal inspection and enforcement processes.</p>	<p>These licensees will only be discussed at the AARM if Agency actions beyond the normal inspection and enforcement processes are necessary, and other Offices will be required to support these actions, or other Offices would benefit from an awareness of the issues and circumstances associated with licensee performance.</p>

New Criteria for Identifying Nuclear Material Licensees for Discussion at the AARM

Strategic Plan

Licensee has an event that results in the failure to meet a Strategic Outcome for Safety or Security in the NRC Strategic Plan (NUREG-1614).

Significant Issue or Event

Licensee has an issue or event that results in:

1. An Abnormal Occurrence Report to Congress (per Management Directive 8.1), or
2. A severity level I or II violation, as described in the NRC Enforcement Policy (including equivalent violations dispositioned by Alternative Dispute Resolution), or
3. A Level 3 or higher International Nuclear Event Scale Report to the International Atomic Energy Agency (per Management Directive 5.12),

and

There are unique or unusual aspects of the licensee's performance that warrant additional NRC oversight (e.g., a significant event, which requires an incident investigation team (IIT) or augmented inspection team (AIT)).

Performance Trend

Licensee has multiple and/or repetitive significant program issues identified over more than one inspection or inspection period, and the issues are supported by a severity level I, II, or III violation, as described in the NRC Enforcement Policy (including equivalent violations dispositioned by Alternative Dispute Resolution).

and

There are unique or unusual aspects of the licensee's performance that warrant additional NRC oversight (e.g., oversight panel formed for order implementation).

**Outline of Process for Revising the Criteria for Identifying Nuclear Materials Licensees
for Discussion at the AARM**

Time	Action
Start of AARM process	Determine if there are any proposed changes to the criteria.
At Division level AARM preparation meeting	Division Directors discuss and agree on changes to the criteria to be given to Office Directors/Regional Administrators for their approval.
At Office level AARM preparation meeting	Office Directors/Regional Administrators discuss and concur on changes to the criteria.
After Office level AARM preparation meeting	Lead Office (e.g., FSME) publishes proposed criteria in FR for 45-day public comment period. A generic communication (e.g., Regulatory Issue Summary) should also be provided to States and licensees informing them of the proposed criteria and comment period.
Public comment period complete	Lead Office reviews public comments and prepares draft of criteria (according to comments) to be presented at AARM meeting. (Note: Public Comments and draft criteria provided to Offices/Regions prior to AARM.)
At AARM	EDO, Office Directors, and Regional Administrators discuss and comment on criteria and decide on final criteria to be presented to the Commission.
After AARM	Provide Commission with an information paper regarding the criteria and if time permits, present criteria to the Commission at AARM Results Commission Briefing.
After informing the Commission of the new AARM criteria	Lead Office publishes new criteria in FR. New criteria for identifying materials licensees will be used for the next AARM.