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Comments of Commissioner Merrifield concerning COMSECY-99-038:

The following comments contain my big picture concerns with the draft Nuclear Materials Safety Chapter of the Strategic Plan. My comments focus on the "measures and metrics" values proposed by the staff. Many of the comments are very similar to my comments on COMSECY-99-036 on the Nuclear Waste Safety Chapter.

- There are some instances where the measures and metrics give the perception of encouraging the staff not to take the appropriate response. I am not accusing the staff of actually taking incorrect action, it is just the metric implies a disincentive exists.

For example, under the performance goal "Make NRC activities and decisions more effective, efficient, and realistic", measure number 3 reads "Number of program deficiencies identified by internal or external sources (e.g., requests for rulemaking, 10 CFR 2.206 petitions, operational experience) where potential significant safety, environmental, or safeguards impacts were not adequately considered or where significant operational impacts occur" should occur less than or equal to two times per year. This metric specifically mentions 2.206 petitions but I am assuming it could include differing professional opinions as well. First, the metric of less than two per year is undefined. It could be less than two per year submitted or less than two per year confirmed or less than two per year granted. But assuming it means less than two per year confirmed or granted, this metric could be perceived as a disincentive for staff to grant a 2.206 petition or DPO/DPV because such a decision would count against the NRC in the strategic plan reporting to Congress.

The staff should review the wording of the "measures and metrics" to ensure they do not imply a disincentive to take the appropriate response.

- Many of the measures are nebulously written or the metrics are undefined (or TBD). In particular, this would include all of the elements related to public confidence or interactions with stakeholders. I understand that it is very difficult to define meaningful measures and metrics for many of these areas. But we are going into the second year of the program and I can see the NRC making the same nebulous statements five years from now. For example, at the end of the paragraphs discussing the metrics for public confidence, you state "During the interim, we will identify and report our efforts to increase public confidence in our annual performance plan and performance report." This statement could give a reader the impression that we do not know when these metrics will be developed. As another example, under the performance goal "reduce unnecessary regulatory burden on stakeholders", how is it determined that a valid complaint exists that NRC regulatory activities have resulted in unnecessary burden to licensees or non-licensees? If a licensee or a non-licensee stakeholder raises a concern to the Commission and the Commission changes staff direction, does that indicate that the NRC has not passed this metric or does the stakeholder have to go to Congress or the Federal courts? We need to have an aggressive program for either redefining the measure or deriving a meaningful metric in the next year.
- A majority of the measures and metrics are written in an all or nothing format which results in a fairly negative impression. We either receive the top mark in each area or we receive the worst grade. Since the goals are written with an all or nothing mind set, they tend to be reasonably easy to meet and anything less than perfect leaves a fairly negative impression. Take for example the main measure, "zero deaths resulting from acute radiation exposures" caused by radiation which we regulate. It is a laudable goal, but you either meet it or you do not. If we fail, we fail totally. I fully realize that some metrics (such as the no deaths - if it absolutely must be a metric) may have to be an all or nothing standard. But I would prefer to see additional measures and metrics throughout the document that leave a positive impression and have a range of measures from poor performance to outstanding performance. Then our report to Congress for a particular measurement (such as public confidence) would be a more accurate representation of the progress being made by the Agency.

I will give the staff credit for developing some specific standards under the performance goal "maintain safety and safeguards". However, my impression of these specific metrics is that they represent numbers bounding reality rather than goals for improvement. For example, the goal of reporting to Congress less than or equal to 300 losses of licensed material annually appears to be set at 300 because we reported 272 losses in FY 1998. A similar analysis could be provided for the other metrics for this area. The question could be raised that since approximately 300 devices are being lost per year, why isn't the "goal" to reduce this number to less than or equal to 150 (or some other appropriate lower value). The reason, I believe, goes back to my previous comment that the metrics are an all or nothing mentality. Instead of being goals which we are striving for, they are goals which must be met or we have failed the metric. Also, the specific goals listed may be good operational goals, but do they really reflect a long range strategic goal?

- This chapter must be more clearly written to indicate when Agreement States are included in the goals and when they are not included. Under the goal "maintain safety and safeguards" the metrics discuss national goals (which I assume includes the Agreement States). However, under the goal "make NRC activities and decisions more effective, efficient, and realistic", the chapter states "These measures and metrics are not applicable to Agreement States ...". This raises the question of where in the report does the measures apply to the Agreement States and if they do not all apply to Agreement States, why not? Obviously some goals do apply to the Agreement States and some may not apply. I believe the staff could write a reasonable justification, but it should be clearly articulated in one location in the document (perhaps as a separate paragraph near the front or as a footnote near the front). Since some Agreement States also have responsibility for nuclear waste safety, a similar, but appropriately different explanation should appear in the Nuclear Waste Safety Chapter.