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*Board Secretary.*

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**NUCLEAR REGULATORY COMMISSION**

[NRC-2008-0154]

**Criteria for Identifying Materials Licensees for the U.S. Nuclear Regulatory Commission's Agency Action Review Meeting**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is announcing the completion and availability of the new criteria for identifying nuclear materials licensees for discussion at the Agency Action Review Meeting (AARM). The new criteria may be found in SECY-08-0135 in the Agencywide Documents Access and Management System (ADAMS) Accession Number: (ML082480564) or in the supplementary information below.

**ADDRESSES:** A copy of SECY-08-0135 is available for inspection and/or copying for a fee in the NRC Public Document Room (PDR), 11555 Rockville Pike, Rockville, Maryland. Publicly available documents related to this notice are available electronically through the NRC's Electronic Reading Room at <http://www.nrc.gov/NRC/reading-rm/adams.html>. From this site, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

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**SUPPLEMENTARY INFORMATION:****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 (ADAMS Accession Number: ML022410435). As part of this process, criteria were developed to identify nuclear material licensees with significant performance problems that will be discussed at the AARM. These criteria may be found in Table 1 of SECY-02-0216.

The AARM is an agency meeting that allows senior NRC managers (1) to review agency actions resulting from the performance of nuclear reactor licensees for those nuclear power plants with significant performance problems as determined by the reactor oversight process (ROP) action matrix, (2) to review results of the staff's assessment of ROP effectiveness, (3) to review industry performance trends, and (4) to review agency actions concerning fuel cycle facilities and other nuclear materials licensees (including Agreement State licensees) with significant performance problems.

In 2008, the NRC staff developed new criteria to be used in identifying nuclear material licensees with significant performance problems that will be discussed at the AARM. The agency will continue to identify nuclear material licensees with significant performance problems based on operating performance, inspection results, and judgment of the severity of the safety performance problems. However, the new criteria provide additional clarity and incorporate NRC's current policy and procedures. The criteria were submitted to the Commission for information in SECY-08-0135.

**Discussion***New Criteria for Identifying Nuclear Materials Licensees for the AARM*

The new criteria for identifying nuclear materials licensees for discussion at the AARM are as follows:

(1) *Strategic Plan*—Licensee has an event that results in the failure to meet a strategic outcome for safety and security in the NRC strategic plan (NUREG-1614); or

(2) *Significant Issue or Event*—Licensee has an issue or event that results in: (a) An Abnormal Occurrence Report to Congress (per NRC Management Directive 8.1), or (b) a severity level I or II violation, as described in the NRC Enforcement Policy (including equivalent violations dispositioned by Alternative Dispute Resolution), or (c) a level III or higher International Nuclear Event Scale Report to the International Atomic

Energy Agency (per NRC 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)); or

(3) *Performance Trend*—Licensee has multiple and/or repetitive significant program issues identified over more than one inspection or inspection period, and the issues resulted in a severity level I, II, or III violation, as described in the NRC Enforcement Policy (including equivalent violations dispositioned by Alternative Dispute Resolutions (ADR)), 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).

You can find NRC's strategic plan (NUREG-1614) and the referenced management directives and enforcement policy on NRC's public document collections Web page at <http://www.nrc.gov/reading-rm/doc-collections/>.

*Public Comments on the Proposed Criteria*

The proposed criteria for identifying nuclear materials licensees with significant performance issues were published on March 17, 2008 (73 FR 14278). The comment period ended on May 1, 2008. The NRC received one public comment on the proposed criteria. This 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 ADR as an element of the enforcement process but, category 2 "Significant Issues" does not reference ADR. Also, the commenter indicated, for clarity, that the title of criterion 2 should be changed to "Significant Issue or Event" to reflect NRC's intent to include both issues and events. In response to these comments, the proposed criteria were revised by changing the title for category 2 to "Significant Issue or Event" and adding a reference to ADR in category 2 of the criteria.

Dated at Rockville, Maryland, this 12th day of May 2009.

**James G. Luehman,**

*Deputy Director, Division of Materials Safety and State Agreements.*

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