

65 FR 76669
12/7/00
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January 22, 2001

David L. Meyer, Chief
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Division of Administrative Services
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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Re: Comments on NRC's Proposed Information Collection Initiative

Dear Mr. Meyer:

The following comments are submitted on behalf of the Nuclear Utility Backfitting and Reform Group ("NUBARG")¹ in response to NRC's proposed information collection initiative. 65 Fed. Reg. 76,669 (2000). In summary, the NRC Office of Nuclear Reactor Regulation ("NRR") proposes that licensees, when requesting NRC approval of a licensing action, voluntarily provide information concerning the impact of the requested change on maintaining safety while reducing unnecessary regulatory burden.² The NRR Staff would use the information in (1) planning and scheduling work activities (*i.e.*, allocating staff resources), including the prioritization of specific work items; and (2) measuring how the staff work contributes to the safety goals of maintaining safety and reducing unnecessary regulatory burden. In its proposal, the NRC Staff specifically requested comments on the factors that could inhibit licensees from providing the information.

¹ NUBARG is a consortium of utilities, operating a substantial number of U.S. nuclear power reactors. NUBARG was formed in the early 1980s and actively participated in the development of the NRC's backfitting rule in 1985. NUBARG has subsequently monitored the NRC's implementation of the backfitting rule and NRC regulatory reform efforts.

² The NRC notes that quantitative measures of safety impact would include changes in person-rem dose or changes in core damage frequency, and of burden reductions would include changes in licensee costs or power production capability. Qualitative measures also may be used in responding to the NRC's request.

Template = ADM-013

F-RIDS = ADM-03
add = Pat Madden (PM)

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As set forth in greater detail below, NUBARG believes that the NRC's proposal is unnecessary and, if implemented, will result in additional burdens on licensees and could result in inequities in assigning priorities to licensing action requests. If the recommendation is implemented by the NRC, NUBARG then recommends that the NRC issue guidelines addressing the process by which information is to be submitted and utilized, as well as use of the information by the NRC and other federal agencies -- particularly in the NRC's prioritization of licensing action requests.

Comments

NUBARG believes that the NRC Staff's proposal is inappropriate for a number of reasons and recommends that it be withdrawn. NUBARG's major concerns with the proposal are as follows:

- the proposed information collection activity is an unnecessary burden on licensees because, if licensees choose to participate, then they must expend additional resources to compile the information and include it in a licensing action request;
- despite its "voluntary" nature, this is likely to be a *de facto* request for information with a tangible impact on the prioritization of license amendment requests in the NRC's planning process; and
- the requested information includes sensitive business data that could be problematic in a deregulated, competitive environment.³

Unnecessary Burden: The information requested in the proposal relates to estimates of costs or person-rem savings, as well as information on any qualitative factors that apply to the specific licensing action request. In order to develop a realistic estimate, a licensee could expend several additional man-hours for each licensing action request. If a licensee, in attempting to avoid expending additional resources, provides a more general estimate, then the values could be unrealistically low or high. While it is reasonable for the NRC to gather information measuring its

³ The NRC Staff's proposal does not address the possibility that licensees could submit the information as proprietary pursuant to the provisions in 10 C.F.R. § 2.790(b)(1). If a licensee elects to submit the information as proprietary, then additional burden results in order to comply with the requirements of Section 2.790.

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performance, it may not impose additional burdens on licensees without the proper nexus to safety and adequate protection -- even if such burdens are deemed to be "voluntary" in nature.⁴

Use of Information for Prioritizing Requests: The NRC proposal states that the information will be used to allocate staff resources within NRR, including the prioritization of specific work activities. We believe that this use of the information transfers the "voluntary" activity to a *de facto* request for information. Furthermore, we are concerned that inequities could result, given the use of such information to prioritize licensing actions. There appears to be no process safeguards by which to avoid an arbitrary and capricious use of the information, which potentially could result in inappropriately assigning a high priority to licensee submittals that are overly optimistic as to the benefits while underestimating the potential impact on safety. Additionally, for very similar licensing action requests, a single-plant licensee that cannot demonstrate the level of expected benefits as a licensee with a number of plants could be unfairly penalized with a lower priority assigned to a request. Barring withdrawal of the proposal, at a minimum, the NRC Staff must provide guidance addressing, among other things, the format for submitting such information, the quality of the information, and its use. Further, the NRC should carefully structure an approach for collecting information to assure that the data will be comparable from year to year. We are concerned that without a structured process, any licensee that "voluntarily" reports will risk an uncertain outcome as to the priority of the action and the manner in which the NRC may use the information.

Sensitive Nature of the Information: Because the information could contain sensitive business data, licensees will be reluctant to submit certain cost and burden reduction information that could be used by competitors in a deregulated marketplace. The NRC states that the information would be used in its annual report to the President and Congress to demonstrate to stakeholders that safety is being maintained even as the Staff allows for unnecessary burden reduction. Achieving this purpose does not require that licensees submit the information in a public document, identifiable to a specific licensee; rather, the information could be included in a "blind" database. An example of an approach that could address this concern, as well as reduce additional burden on licensees, would be to establish an interactive database accessible by licensees through the Internet. Such a process would allow the NRC, but not other licensees or the public, to correlate the information to specific licensing action requests.

⁴ It is also unclear whether the NRC Staff would charge additional review time for each license amendment that includes the requested information (*e.g.*, time spent transferring information to a central database). The NRC should exempt Staff review time to collect this information from licensees' fees. Otherwise, additional burden (*i.e.*, additional fees) are imposed on licensees that elect to voluntarily submit the information.

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Conclusions

We recommend that the NRC Staff withdraw the proposal based on the concerns discussed above. If the NRC continues to pursue the action, then we urge the NRC Staff to establish a structured process. We also recommend that the NRC establish a minimum level of participation by licensees before any of the information will be used for either establishing priorities or for measuring NRC performance. Finally, we recommend that the NRC explain its method for establishing priorities for licensees that elect to submit information and licensees that elect to not submit information. Further, the NRC should list other factors that will influence the priority assigned to licensing action requests.

In summary, NUBARG believes that these issues should be carefully considered and addressed in greater detail before the NRC collects and uses the requested information. Because the information will be used to establish priorities for licensing actions, these issues would include ensuring an acceptable level of uniformity of data and equitable treatment among licensees. Accordingly, the NRC should develop specific guidance on the type of information to be submitted, the format for submission, and the compilation of data, including consideration of a "blind" database. If you have any questions regarding these comments, then please contact us.

Sincerely,
[Original signed by T. Poindexter]

Thomas C. Poindexter
Patricia L. Campbell

Counsel for the Nuclear Utility Backfitting
and Reform Group

cc: J. Murphy, Chairman
Committee to Review Generic Requirements