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July 2, 2001

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David L. Meyer, Chief
Rules and Directives Branch
U.S. Nuclear Regulatory Commission
Mail Stop T-06 D59
Washington, D.C. 20555-0001

RE: Comments Concerning Reducing Unnecessary Regulatory Burden While Maintaining Safety, 66 Fed. Reg. 22,134 (2001)

Dear Mr. Meyer:

In the referenced *Federal Register* Notice of May 3, 2001, the U.S. Nuclear Regulatory Commission ("NRC") Staff (the "Staff") requested comments concerning the NRC Staff's initiatives for reduction of unnecessary regulatory burden while maintaining safety. 66 Fed. Reg. 22,134 (2001). The comments provided below are submitted on behalf of the Nuclear Utility Backfitting and Reform Group ("NUBARG")¹ as part of our ongoing monitoring of NRC's regulatory reform efforts and application of the backfitting rule to regulatory actions. Rather than suggesting specific initiatives, NUBARG's comments focus on regulatory process issues associated with burden reduction efforts.

First and foremost, NUBARG supports the Staff's burden reduction efforts. They are necessary and appropriate in today's energy environment. As the electric utility industry undergoes deregulation, and as performance-based ratemaking becomes more widespread, nuclear power plant licensees' resources should be focused on issues of safety- and risk-significance. Performance-based and risk-informed regulations provide licensees with greater flexibility to meet requirements and implement programs in the most resource-effective manner, while maintaining the appropriate focus on safety.

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 subsequently has monitored the NRC's implementation of the backfitting rule and NRC regulatory reform efforts.

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NUBARG participated in the May 31, 2001, workshop conducted by the Staff to solicit stakeholder input concerning NRC activities associated with these initiatives. Industry representatives attending the workshop expressed concern with the Staff's progress in completing many previously-identified burden reduction initiatives. While the Staff has successfully implemented a number of burden-reduction actions since initiation of early program efforts in 1984,² it appears that the Staff treated each initiative largely on a case-specific basis, without a publicly available integrated plan, schedule, and/or milestones.³ During the May meeting, NUBARG suggested that the Staff apply an appropriate level of rigor to the process. We noted that, by using an already established check and balance process, such as cost-benefit analyses, both the NRC and licensees can assess the candidate initiatives and assign a higher priority to those that offer the most benefits for resource expenditures involved in the regulatory process and in implementation.

NUBARG recognizes that more recently, the Staff has attempted to integrate its activities into a cohesive plan. For example, SECY-00-0213 describes the Risk-Informed Regulation Implementation Plan,⁴ and SECY-00-0191 provided the plans to the Commission for developing high-level guidelines for performance-based activities.⁵ It appears, however, that these plans may not have the necessary rigor, priority, or level of management oversight to effectively and efficiently provide timely results concurrent with Staff accountability regarding the satisfaction of Commission goals. Therefore, NUBARG recommends that the appropriate level of dedicated Staff resources be assigned to burden reduction initiatives already underway and to new initiatives suggested by stakeholders, and that detailed schedules, with Staff accountability to the Commission, be established.

With the above focus in mind, NUBARG responds below to the Staff's specific questions in its request for comments:

² The NRC Staff publicly initiated efforts to reduce regulatory burden as early as October 3, 1984, with the issuance of a *Federal Register* Notice regarding the availability of a program plan for review of the effectiveness of its regulatory requirements. 49 Fed. Reg. 39,066 (1984). The Staff initiated these efforts in response to the Commission's "Policy and Planning Guidance" (NUREG-0885, Issue 3, January 1984), which directed that "[e]xisting regulatory requirements that have a marginal importance to safety should be eliminated."

³ See Commission Voting Record, SECY-99-176, "Plans for Pursuing Performance-Based Initiatives," September 13, 1999.

⁴ SECY-00-0213, "Risk-Informed Regulation Implementation Plan," October 26, 2000.

⁵ SECY-00-0191, "High-Level Guidelines for Performance-Based Activities," September 1, 2000.

1. *“What aspects of these initiatives interfere with the NRC’s ability to maintain safety or increase public confidence?”*

NUBARG does not believe that the risk-informed and performance-based initiatives under consideration will interfere with NRC’s ability to protect the public health and safety. Nor does it appear that they will result in a decrease in public confidence regarding the NRC’s ability to protect the public health and safety. Rather, implementation of a regulatory scheme based on risk-informed insights should allow licensees and the NRC to more appropriately focus resources on risk-significant and safety-significant elements of operation and maintenance of nuclear facilities. Licensees and the NRC are already increasing the use of probabilistic risk assessment insights in licensing actions and the oversight process. Providing regulatory flexibility through a performance-based regulatory framework allows licensees and the NRC to establish acceptable methods and techniques for achieving the intent of the regulations in more efficient and effective ways. Flexibility also encourages technological changes that provide new opportunities for compliance (e.g., new ways to measure pump flowrate to assure adequate emergency core cooling system flow). These approaches can yield a more objective and transparent regulatory process.

2. *“Will implementation of these initiatives improve regulatory efficiency, effectiveness, and realism?”*

NUBARG concludes that implementation of these initiatives should provide opportunities for licensees and the NRC to improve regulatory efficiency, effectiveness, and realism in meeting regulatory requirements that will benefit both the NRC and licensees. Through the use of techniques that can compare the risk of alternatives using realistic data (e.g., combustible gas control, control room habitability), both licensees and the NRC should be able to make more objective, informed decisions in licensing actions (plant-specific or generic). Moreover, by providing flexibility in meeting a regulatory requirement, a range of acceptable approaches offers opportunities for improvements in process efficiencies, as, for example, in implementing a performance-based containment isolation valve leakage program (10 C.F.R. Part 50, Appendix J, Option B). Finally, use of risk-informed insights ensure that resources are focused on those more risk-significant issues.

3. *“Beyond this meeting and the request for comments, how can stakeholder participation in these initiatives be enhanced?”*

Stakeholder input is important and should be continued. In order to enhance these communications in the future, we recommend that the Staff continue to periodically update stakeholders concerning its plans in the areas of risk-informed regulation and performance-based initiatives. As previously stated, we also recommend that these plans be more detailed so that responsibilities and accountabilities can be better addressed. For example, stakeholders should be briefed periodically and, at a minimum, be provided

updates regarding the various initiatives associated with burden reduction, implementation schedule compliance, changes in priorities or focus, or when efforts concerning specific initiatives are discontinued. To ensure a wide distribution of this information, periodic updates and requests for comments could be in the form of a generic communication or a *Federal Register* Notice.

4. *"Which areas being pursued will not likely be fruitful to stakeholders, or otherwise have a negative impact on stakeholder needs?"*

NUBARG does not have any specific suggestions in this area. However, we suggest that an integrated process be used to assess negative impacts when compared to the status quo or other reforms being contemplated. The Staff must keep a lookout for attempts by its personnel to justify additional burdens upon licensees that elect to implement approved burden-reduction initiatives.

5. *"Are ongoing and future activities to reduce unnecessary burden appropriately prioritized? Which activities should receive the highest priority and why?"*

The Staff should review the ongoing initiatives in light of public comments and develop a revised list that reflects priorities generated by obvious needs and a priority determination process. Two types of activities should receive special priority: (1) those that can be completed in an expeditious manner, and (2) those that represent the most significant potential burden reduction. For those actions where the Staff has already expended significant resources (e.g., risk-informing 10 C.F.R. § 50.44 – combustible gas control – and 10 C.F.R. § 50.46 – emergency core cooling systems), actions should continue for expeditious completion.

6. *"Are there any other opportunities that have not been recognized or being pursued at this time. Identify: (a) the regulation or portion thereof that should be evaluated; (b) possible improvements to the regulations; (c) the basis for the proposed reduction including the potential impact on safety, public confidence, regulatory effectiveness and efficiency; and (d) the estimated dollar cost saving per year."*

NUBARG has already addressed other specific burden-reduction initiatives in previous comments.⁶ Also, the Nuclear Energy Institute provides a consolidated listing of recommended initiatives in its comments dated July 2, 2001, on behalf of the industry.

⁶ See NUBARG to D. Meyer, "Solicitation of Public Comments on Elimination of Requirements Marginal to Safety," May 4, 1992, and NUBARG to S. Chilk, "Solicitation of Public Comments on Proposed Rule Regarding Reducing the Regulatory Burden on Nuclear Licensees," July 20, 1992.

7. *“What advancements in technology would help NRC better meet its performance goal of reducing unnecessary burden on stakeholders?”*

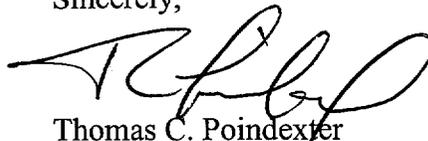
From a regulatory process perspective, allowance for the use of probabilistic risk assessment technology should be increased in the NRC’s regulatory processes, as reflected in the Staff’s Risk-Informed Regulation Implementation Plan (*see* SECY-00-0213, fn. 4), as long as the initiatives are optional for currently operating plants. However, NUBARG reminds the Staff that, as part of the regulatory analysis for rulemakings, it must justify additional burdens that are imposed subsequent to the implementation of optional initiatives. Also, related to advancements in technology, efforts allowing electronic submittals by licensees should continue to be developed to improve efficiencies in communications between the NRC and its stakeholders.

8. *“What new areas of regulatory research may be warranted to advance technology that could better serve these initiatives?”*

Because NUBARG’s comments are intended to focus on process issues, no specific comments are offered in response to this question.

If you have any questions or need additional information regarding our comments, please contact us.

Sincerely,



Thomas C. Poindexter
Patricia Campbell
Counsel for NUBARG