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NUCLEAR ENERGY INSTITUTE

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Robert Willis Bishop  
Vice President &  
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July 1, 2002

Ms. Annette Vietti-Cook  
Secretary  
U.S. Nuclear Regulatory Commission  
Mail Stop 0-16C1  
Washington, DC 20555-0001

Attention: Rulemakings and Adjudications Staff

**SUBJECT:** Request for Comment, *Rulemaking Communications Improvements*  
(67 Fed. Reg. 37733; May 30, 2002)

Dear Ms. Vietti-Cook:

On behalf of the commercial nuclear energy industry, the Nuclear Energy Institute<sup>1</sup> submits the following comments in response to the NRC's request for public comment on improving agency communications with respect to rulemaking activities. The stated objective of the NRC's inquiry is to identify potential enhancements to the agency's methods of informing the public about rulemaking activities for the larger purpose of "encourag[ing] public participation in the rulemaking process." The Federal Register Notice identifies nine questions related to NRC communications regarding agency rulemakings. NEI's response to these questions is contained in the attachment to this letter.

The industry commends the NRC for seeking ways to more effectively handle its rulemaking responsibilities. In the main, the NRC is effective in its communications regarding initiation of rulemakings and agency rulemaking activities. Nevertheless, the industry supports the NRC's effort to ensure that

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<sup>1</sup> NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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stakeholders have adequate notification of and opportunity to participate in NRC rulemaking activities. It is not only appropriate, but also sound government policy, for the agency periodically to inquire of its stakeholders how it is performing in particular areas.

The opportunity for public participation is an important component of agency rulemaking, and, in fact, is required by the Administrative Procedure Act. Yet once the NRC provides notice and the opportunity to comment, a balance must be struck between offering additional opportunities for providing information and obtaining feedback, and the need for efficiency in rulemaking proceedings. Thus, as the NRC considers the various comments it receives from stakeholders, the agency should balance its desire to serve the public by offering additional opportunities for interaction against the legitimate interest of all stakeholders in a rulemaking process that is both efficient and effective. The following recommendations are intended to meet both criteria.

First, the NRC already makes some information regarding the agency's rulemaking process available on its Web site. The NRC could add some more detail on what the rulemaking process entails, how stakeholders can participate productively, how to obtain additional information regarding the status of a rulemaking, as well as other any relevant information it deems appropriate. Educating the public on the NRC's rulemaking process should enhance the level of participation, as well as increasing efficiency.

Second, and perhaps the most important action for the agency to take to improve communication with stakeholders, is to notify them at the outset of the rulemaking of proposed milestones related to public meetings/workshops, evaluating comments and completing the rulemaking process. We strongly urge the staff to set a timeline for prompt action on rulemakings (i.e., completion within considerably shorter timeframes than in the past). Deadlines to advance the current pace of rulemakings should be set, but they also should be realistic. Additionally, milestones and deadlines should be tailored to the individual rulemaking—complicated subject areas or rulemakings that involve significant policy decisions would appropriately have a longer timeline for completion than rulemakings involving more straightforward issues.

Once staff has set a deadline which senior NRC management concurs is appropriate and realistic, staff should be held accountable for maintaining that schedule unless exigent circumstances arise. The NRC may want to amplify guidance in the Management Directive on rulemakings specifying time periods within which the Staff is to evaluate, obtain comment, if appropriate, hold public meetings, and issue a final rule, based on several factors discussed above.

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There are several benefits associated with more clearly defining the timeframe for each rulemaking. Setting milestones and deadlines is likely to improve the NRC's overall timeliness in conducting rulemakings. It would advance the NRC's ongoing commitment to better and less costly regulation. Finally, setting and adhering to a more timely schedule for rulemakings also is likely to foster a more cooperative relationship between the NRC and stakeholders. By informing stakeholders about the process and anticipated progress, stakeholders can more easily develop realistic expectations.

Obtaining stakeholder perspective in the most effective and timely manner should continue to be the goal of the rulemaking process, and the NRC should seek ways in which those goals can be advanced. For example, for more complicated matters or on rulemakings involving significant policy decisions and technical matters, the NRC could institute a limited Request for Additional Information (RAI) type process to elicit additional, focused information. The response to question 2 in the Attachment elaborates on this concept.

We appreciate your consideration of the industry's comments on potential rulemaking communications improvements and other ways to make the agency's rulemaking process more efficient. If further information is desired, please contact Ellen Ginsberg, NEI Deputy General Counsel, at (202) 739-8140, or me.

Sincerely,

A handwritten signature in black ink, appearing to read "R. W. Bishop", written in a cursive style.

Robert W. Bishop

Enclosure

c: Karen D. Cyr, Esq., General Counsel

NEI Response to NRC request for Comments on  
Rulemaking Communications Improvements

- 1. In addition to the use of the Federal Register and the NRC rulemaking Web site, what other forums would be effective in informing the public about rulemaking activities (e.g. e-mail, mailing lists, announcement on related web sites, public meetings or other suggestions)?**

This question does not differentiate between initiation of a rulemaking and “activities” the agency might thereafter undertake. As to notification of a rulemaking being initiated, publication in the Federal Register and listing the rulemaking on the NRC web site provide adequate notification to anyone interested in NRC rulemakings. In addition, any stakeholder who anticipates that the NRC will initiate a rulemaking and seeks a status report on when that might occur is free to call NRC staff to obtain that information. We are not aware of an instance in which the NRC has not been responsive to this sort of inquiry by a stakeholder.

With respect to rulemaking “activities,” i.e., once a rulemaking is initiated, it may be appropriate to take additional steps to inform the public of related activities. This would, however, depend on the nature of the rulemaking. For example, some rulemakings are sufficiently complicated to warrant public meetings or workshops, and this fact is readily apparent at the outset of the rulemaking process. In such instances, it may be appropriate to request in the Federal Register notice that interested stakeholders notify the NRC of their interest in participating in rulemaking “activities” prior to the deadline for submitting comments. That would enable the agency to develop mailing or email lists, or conference call lists for the purpose of announcing public meetings, workshops, etc.

Similarly, and as is done by a number of state agencies, the NRC could undertake a stand-alone effort to maintain e-mail or mailing lists on particular categories of issues, so that each list is designed to include those stakeholders already actively involved with or likely to be interested in the issues related to a proposed rule. For the purpose of developing e-mail or mailing lists, the NRC could, for example, create various rulemaking categories such as “NRC practice and procedure,” “decommissioning,” “fuel,” and “licensing.” Developing categories for the lists and even developing the lists themselves are relatively straightforward. However, this effort could become an extremely resource intensive means of ensuring public notice; such notice is already provided in duplicate through Federal Register publication and posting on the NRC web site. If the NRC considers developing e-mail and/or mailing lists, it should develop a sufficiently deliberate process to

ensure efficiency. NRC should identify any costs assigned to this activity in its annual 10 CFR Part 171 rulemaking.

As noted above, the NRC has several choices. The agency may opt to develop e-mail and/or mailing lists for categories of issues as a stand-alone effort. Alternatively, the agency could choose a case-by-case approach in which an e-mail and/or mailing list is developed for a particular rulemaking or such other action is undertaken as may be appropriate for an individual rulemaking. The point is the NRC should not burden its resources, stakeholder resources or the process itself by requiring additional communication steps if they are unnecessary in the context of a particular rulemaking.

**2. Are there any other methods that might be used to facilitate public comment on rulemaking activities?**

In addition to seeking written comment, the agency could, as appropriate, hold a public meeting to discuss the proposed action with interested stakeholders. The meetings could be structured to allow participants to provide their views through limited statements. Alternatively, these sessions could be structured like the breakout sessions of the NRC's Regulatory Information Conference—with an agency panel providing an overview or status report on the rulemaking and stakeholders being given an opportunity to pose written questions to the agency panel members. A third possibility would be to structure a public meeting as a workshop to explore the various positions espoused by industry and other stakeholders. Certainly there are many other ways to structure public meetings on rulemakings, but the feature of importance is the opportunity to offer additional views to the NRC for consideration prior to promulgation of the final rule.

While the industry favors public meetings to ensure further exchange of information on a proposed rule, this is not necessary in every case. Importantly, public meetings should not delay the agency's schedule for completion of a rulemaking.

Another method to facilitate public input would be to institute a limited RAI-type process to elicit additional, focused information. If such a process were adopted, it should be used for more complicated matters or on matters involving significant policy decisions and technical matters. That is, we recommend that this process be used only where necessary to ensure the NRC fully understands stakeholder concerns. We further recommend that the NRC provide RAIs to all commenters to provide them with the opportunity to offer their perspective on the issue addressed in the RAI.

RAIs should be issued promptly after the receipt of a comment to elicit clarification by the stakeholder to ensure the NRC fully understands the stakeholder's position. Notification of the agency's issuance of the additional information requests could be handled through the mail, email, or a conference call. The RAIs also could be posted on the NRC website. Such RAIs should have a short turn around time so as not to delay the completion of the rulemaking. Further, the issuance of RAIs should not become a "second bite at the apple" for those who did not submit comments in response to the original Federal Register notice or for commenters to raise additional issues – the purpose of the RAI is to enable the NRC to better understand the commenter's position or data so that the NRC can make a more informed decision.

**3. At what stage(s) of the rulemaking process is interaction with the public most effective and beneficial?**

Effective interaction with the public begins with NRC issuance of well-considered rule proposals and clearly written explanations in rulemaking documents. Where stakeholders are compelled to request written clarification of multiple aspects of a proposal or express difficulty in understanding it, the stakeholder's overall ability to provide meaningful comment is compromised.

There is no precise juncture at which interaction with the stakeholders will ensure such communication is effective and beneficial. As a general principle, however, obtaining information relatively early in the process usually improves the likelihood of identifying issues the agency should address. However, there are many other instances in which it would be helpful to ventilate a more fully developed proposal prior to issuance of the final rule and, thus, such interaction necessarily would take place later in the process.

Because rulemakings vary considerably, the nature of the rulemaking should dictate whether there is a need for public interaction in addition to that provided through written comments, the form of additional public interaction, and when additional public interaction should occur. The NRC should maintain flexibility in making these decisions based on the individual rulemaking. Rulemakings whose subject matter may be relatively simple or the agency action easily understood probably will necessitate only written comments. In these instances, the NRC should not burden its resources and the rulemaking process by requiring additional steps. As noted above, where rulemakings involve more complicated technical issues or significant policy revisions, it may well be appropriate to supplement written comments with additional stakeholder interaction through public meetings, RAIs or other means.

**4. What method of public interaction on rulemaking activities is preferred?**

See answers to previous questions.

**5. How useful are public meetings for communicating NRC rulemaking activities to all stakeholders?**

If the NRC's question is to inquire of the efficacy of public meetings on a particular rulemaking, we note that a public meeting is not always necessary or appropriate to provide information on rulemaking activities related to the particular proposal. The NRC can accomplish this by directing a letter or e-mail to those who commented, or holding a conference call. If the NRC has determined a public meeting would advance its understanding of stakeholder issues related to a rulemaking proposal, the meeting also should be a useful vehicle to communicate the status of the rulemaking and future rulemaking activities needed for staff to complete its review.

**6. Are published responses to public comments on proposed rules generally comprehensive, clearly written and well argued?**

It varies. In some instances, the NRC's analysis is clear and the Statements of Consideration (SOC) well communicates the agency's evaluation process and resulting conclusions. In other instances it is difficult to discern how the NRC arrived at a particular policy or technical decision.

Unfortunately, there are instances that appear to demonstrate a failure by the NRC to consider the merit of a comment. This may result in unnecessary agency and licensee resource burdens and costs if the rule requires revision at a later point for items that should have been addressed in the original rulemaking. For example, the rule revising 10 CFR 50.71(e)(4) requirements for submitting updates to Final Safety Analysis Reports. The SOC published with the final rule included the NRC's response to public comments (57 Fed. Reg. 39353; August 31, 1992). One commenter suggested wording that would clarify the FSAR updating the periodicity requirement for multiple unit sites that share a common FSAR, to which the NRC responded as follows in the SOC:

"With respect to the petitioner's concern about multiple facilities sharing a common FSAR, licensees will have maximum flexibility for scheduling updates on a case-by-case basis. This final rule does not address multiple facilities."

Because the NRC did not address this concern at the time of the rulemaking and, in turn, did not correct the final rule, many multiple unit sites have had to submit

exemption requests to allow the submittal of common FSAR updates at the periodicity allowed by the rule for single unit sites. The result has been unnecessary resource and financial costs for both the NRC and licensees.

**7. How useful is the initiative to place draft rulemaking language on the web site with or without the associated Statements of Consideration?**

This initiative is beneficial. The more information the NRC provides, however, the more insight that interested stakeholders can obtain. Thus, the NRC should include the SOC whenever possible.

**8. How can the NRC obtain better information and comments on the cost or benefit of a rulemaking under development?**

The NRC may be able to obtain better information on the cost or benefit of a rulemaking by making its requests for such information more specific.

**9. Is the NRC's typical 75-day comment period for proposed rules sufficient?**

The Administrative Procedure Act (APA) mandates that “the agency shall give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation” (5 USC 553(c)). The APA also directs agencies to publish substantive rules at least 30 days prior to the rule’s effective date, unless one of three identified exceptions applies. Beyond those statutory directives, the agency is free to tailor the length of the comment period to the nature of the rulemaking.

That NRC rulemakings “typically” afford a 75-day comment period, which would seem to indicate that the agency is not making any effort to identify the appropriate comment period for a particular rulemaking. There is no legal requirement driving the NRC rulemaking process to take the time it does. The NRC appears to be relying on a North American Free Trade Agreement (NAFTA) provision that requires at least a 60-day comment period (for rules adopting standards that could affect international trade with Canada and Mexico) in combination with a related Executive Order that requires a 75-day comment period. For those NRC rulemakings that do not fall under NAFTA – and most NRC rulemakings do not – the NAFTA comment period is not legally required. While a 75-day comment period certainly qualifies as a conservative approach to non-NAFTA based rules, it is neither legally required nor appropriate in other NRC rulemakings.

As with many of the other comments contained herein, the industry believes it is important for the NRC to retain flexibility in order to foster maximum efficiency and effectiveness. For more complicated rulemakings, it may be 75 days is insufficient to, for example, gather the data necessary to support a particular set of comments or identify all issues the rule should address (e.g., historical examples of rules in this category would be 10 CFR Part 52 and 10 CFR Part 54). There are many other rulemakings, however, for which a much shorter comment period would be appropriate. In those rulemakings, we would also expect a much shorter schedule for completion.