

PUBLIC SUBMISSION

As of: February 06, 2013
Received: February 06, 2013
Status: Pending_Post
Tracking No.: 1jx-83j6-7ui2
Comments Due: February 06, 2013
Submission Type: Web

Docket: NRC-2011-0246
Retrospective Review of Rulemaking

Comment On: NRC-2011-0246-0003
Retrospective Review Under Executive Order 13579

Document: NRC-2011-0246-DRAFT-0009
Comment on FR Doc # 2012-28436

Submitter Information

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General Comment

Comments in attached file.

Attachments

CommentsNRC2011_0246



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February 6, 2013

Secretary, U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
ATTN: Rulemakings and Adjudications Staff

Docket NRC-2011-0246

The purpose of this letter is to request a revision to the *Plan for Retrospective Analysis of Existing Rules* (the plan) to include a section requiring periodic review of existing non-power reactor (NPR) regulations to determine whether regulatory requirements affecting NPRs should be modified, streamlined, expanded, or repealed. Similar to the section addressing Compliance with the Regulatory Flexibility Act beginning on page 9 of the plan, the requested revision should address NRC compliance with Section 104(c) of the Atomic Energy Act of 1954 (AEA). This section of the AEA is the fundamental constraint the NRC faces with regard to regulation of the NPR community.

Section 104(c) of the AEA of 1954 reads as follows (in part):

The Commission is directed to impose only such minimum amount of regulation of the licensee as the Commission finds will permit the Commission to fulfill its obligations under this Act to promote the common defense and security and to protect the health and safety of the public and will permit the conduct of widespread and diverse research and development

To accurately quantify the regulatory burden imposed on NPRs, the requested revision should address both the regulations and the NUREG guidance. Licensee interactions with the NPR NRC staff have demonstrated that NUREG guidance is not treated as “guidance” but rather as “reasonable assurance” requirements. Unlike proposed rulemakings, implementing NPR NUREG revisions apparently requires no documented objective safety benefit nor does it require a well-defined technical or regulatory basis. This provides a path of low resistance for imposing new “reasonable assurance” requirements on the NPR community with no significant process barriers in-place to ensure NUREG requirements have a more-than-marginal relationship to nuclear safety.

Additionally, the inclusion of NUREG guidance in this burden assessment is critical because of the vague nature of the terminology “reasonable assurance. The lack of a clear definition of how much “assurance” is “reasonable” provides the NRC with broad authority in licensing decisions. The constraints defined in AEA 104(c) impose a legal obligation to use that broad authority judiciously. Currently, there is no apparent objective process, specific to the NPR community, designed to verify NRC compliance with the constraints. It is also important to note that there is a major revision to NUREG-1537 in-progress which will drastically increase the “guidance” required for NPR “reasonable assurance” determinations for the first time since 1996.

The refrain from the NPR community that it is overburdened with regulatory requirements marginal to safety has been repeated over and over again. This refrain has been acknowledged by NRC staff but no apparent efforts are currently underway to objectively quantify the overall NPR regulatory burden. Excessive regulatory requirements on the NPR community have likely already resulted in several NPR closures. At very least, it has resulted in numerous deferred and/or cancelled NPR systems upgrades and improvements which could have provided a measureable safety benefit.

A recent evaluation of the NPR licensing approach and overall regulatory framework is discussed in the NRC document "A Proposed Risk Management Regulatory Framework", dated April 2012 (Ref. ML12109A277). An important finding in this document reads as follows:

The analysis of design basis and the maximum hypothetical accidents based on conservative design limits, acceptance criteria, safety margins, and assumptions in conjunction with the application of a defense-in-depth philosophy continues to be a sound but highly conservative licensing approach to ensuring adequate safety of NPRs.

This document elaborates further on the topic of NPR licensing conservatism as follows:

While significant conservatism has contributed to the demonstrated safety of NPRs, it is reasonable to assume that conservative design beyond some point does not yield an equivalent safety benefit. The imposition of excessively conservative NPR design and licensing criteria could be viewed as inconsistent with Section 104c of the Act.

This cumulative effect of these NPR licensing conservatisms is described as follows:

The combination of the conservatisms introduced through the consideration of an incredible accident scenario (e.g., the MHA), the use of restrictive 10 CFR Part 20 standards for evaluation of the effects of a postulated accident at research reactors, and large safety margins associated with the traditional engineering analyses, may result in an overly conservative NPR regulatory framework.

These NRC conclusions were pointed out to NPR NRC staff in July 2012 in docketed comments regarding proposed NPR License Renewal Rulemaking. In August of 2012, in response to the comments on this topic, the NPR branch provided the following comments (Ref. ML12240A676):

The NRC staff agrees that NPR design requirements are conservative and that the NRC staff must pay careful attention to ensure its regulations are in compliance with section 104(c) of the Atomic Energy Act of 1954, as amended (AEA). The NRC's position is consistent with the AEA and that the regulation requirements are minimal requirements to the NPR community. The mission of the NRC is to protect the health and safety of the American public, regardless of the effect on its licensees. Therefore, NRC regulations that apply to NPR licensees must first meet the standard of providing reasonable assurance of protecting the public health and safety. However, unlike power reactors, NRC regulations that apply to NPR licensees must also be the minimum necessary to protect the public health and safety. The NRC staff consistently strives to write its regulations for NPR licensees that maintain the lowest possible burden while still protecting the public health and safety. In various public meetings, Commission meetings, and other discussions with licensees, the overwhelming

opinion in the NPR community is that the current regulations for relicensing NPRs are overburdensome.

Based on this NPR branch response, the most likely cause of the apparent failure to take action to quantify the regulatory burden it imposes on NPRs, is the NRC mission statement itself.

The mission of the NRC is to protect the health and safety of the American public, regardless of the effect on its licensees.

Noticeably, the underlined portion of this mission statement contradicts the fundamental constraints imposed on the NRC under AEA section 104(c).

At a minimum, and in keeping with the purpose and scope of the plan, the NRC should proactively seek to ensure compliance with AEA 104(c) by objectively quantifying the regulatory burdens it imposes on the NPR community. The continued, unchecked imposition of regulatory requirements marginal to safety on an already overburdened NPR community, "... regardless of the effect on its licensees", will simply result in more and more complaints by the NPR community followed ultimately by more and more NPR facility closures.

A revision of the plan is warranted to ensure the NRC non-power reactor regulatory program is both effective in achieving its regulatory objectives and judicious in the use of its broad authority over an increasingly overburdened NPR community.

Thank you for the opportunity to comment on the proposed Plan for Retrospective Analysis of Existing Rules. I appreciate your thoughtful consideration of these comments.

Sincerely,

Daniel J. Cronin
UFTR Licensing Engineer

cc: UFTR Facility Director
UFTR Reactor Manager

RulemakingComments Resource

From: Gallagher, Carol
Sent: Wednesday, February 06, 2013 2:47 PM
To: RulemakingComments Resource
Cc: Barczy, Theresa
Subject: Comment on Retrospective Review Under EO 13579
Attachments: NRC-2011-0246-DRAFT-0009.pdf

Attached for docketing is a comment from Daniel Cronin on the above noted FRN (77 FR 70123; November 23, 2012) that I received via the regulations.gov website on February 6, 2013.

Thanks,
Carol