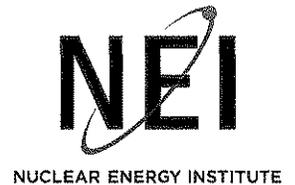


(77FR70123)

**ADRIAN P. HEYMER**  
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February 6, 2013

Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Attn: Rulemakings and Adjudications Staff

**Subject:** Industry Comments on Retrospective Review under Executive Order 13579:  
77 Federal Register 70123, November 23, 2012 [Docket No. NRC-2011-0246]

**Project Number: 689**

On behalf of the nuclear energy industry, the Nuclear Energy Institute (NEI)<sup>1</sup> appreciates the opportunity to provide comments on the U.S. Nuclear Regulatory Commission's (NRC) draft plan for the Retrospective Review under Executive Order 13579, published in the subject Federal Register notice.

The draft NRC plan contains no specific processes for identifying "outmoded, ineffective, insufficient, or excessively burdensome" regulations. The draft plan attempts to describe the effectiveness of, and taking credit for, historical NRC activities and existing regulatory actions to meet the intent of the executive order. Unlike other federal agencies that are responding to the executive order, the NRC plan takes credit for past regulatory reviews instead of outlining a specific review plan, yet does not describe, even in general terms the conclusions and the results. This suggests that the NRC believes that the agency is already addressing the issues described in the executive order, inferring that there is no need for action.

Notwithstanding these deficiencies, the industry understands the NRC's apparent rationale behind committing limited resources to this effort, and agrees that there may not be benefit from a wholesale retrospective review of NRC regulations as contemplated by the executive order. The industry believes that the intent of the retrospective review could be met through addressing the cumulative effects of NRC regulatory actions, rulemaking and other NRC regulatory processes resulting in greater benefit in safety and resource management.

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<sup>1</sup> The Nuclear Energy Institute (NEI) is the organization responsible for establishing unified 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 cycle facilities, nuclear materials licensees, and other organizations and entities involved in the nuclear energy industry.

We note that the NRC staff has already proposed some improvements to the rulemaking process in SECY-12-0137, *Implementation of the Cumulative Effects of Regulation Process Changes*. For example, the recommendation to provide the opportunity for public input on the regulatory basis and regulatory analysis during the development of proposed rules is a positive step. Broadening the scope of applicable processes beyond rulemaking such as orders, generic guidance, and information requests would result in more meaningful improvements. These additional improvements should include a clearer and more precise definition of the problem, safety nexus, desired outcome, and a more complete and understandable disposition of public comments. The result would be a more complete and accurate set of regulatory analysis, basis and implementing guidance improving the overall effectiveness of the NRC regulations. These actions would provide for more practical and understandable regulations that are more consistent with the NRC Principles of Good Regulation reducing the potential for future misinterpretation and prolonged and often unnecessary regulatory interactions in the future.

The suggested additional steps are considered critical to ensuring that regulatory bases and analyses are accurate, complete, and realistic -- something that has been lacking in most regulatory actions. Though rules codified in the Code of Federal Regulations may constitute the majority of requirements, the NRC's draft plan ignores a host of other regulatory actions that are not limited to rulemakings and include orders, generic communications, and establishment of new positions through regulatory guidance. Additionally, dozens of orders have been issued to reactor licensees in response to the accident in Fukushima, Japan in 2011 that have not been subject to a rigorous analytical process and which have not been assessed as part of the agency's cumulative effects effort. As a general matter, orders are problematic because they are not subject to any regulatory basis development, regulatory analysis, or stakeholder feedback. Such feedback would improve the analysis and underlying basis and assist in prioritizing industry and NRC responses and actions. Moreover, assessing these activities in the larger context under the cumulative effects model will assist the agency in determining whether future regulatory actions are necessary and justifiable.

Guidance documents are another example of regulatory activity that remains unanalyzed and unaccounted for in the regulatory analysis process. Though the NRC acknowledges that guidance cannot impose legally-binding requirements, guidance can have this effect and thus create additional burden. For instance, it is not unusual for the NRC to revise its guidance documents to reinterpret existing regulations in a way that effectively requires more of licensees, effectively establishing new positions. This burden is unanalyzed from a regulatory analysis or cumulative effect perspective.

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U.S. Nuclear Regulatory Commission  
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The industry is ready to support a vigorous application of resources on addressing the growing concern on the cumulative effects of regulatory actions. More and more resources are being reallocated to responding to regulatory actions, even though there is a continuing positive trend to industry compliance and safety performance. This is diverting management attention and oversight from its prime safety function, safe and reliable plant operations. The industry believes that there would be greater safety benefit in addressing the cumulative effect of NRC actions than in maintaining the *status quo* through the implementation of the NRC plan for a retrospective review of the regulations.

Sincerely,



Adrian P. Heymer

c: Mr. R. William Borchardt, Executive Director of Operations, NRC  
Ms. Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), NRC  
NRC Document Control Desk

## RulemakingComments Resource

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**From:** REYNOLDS, Deirdre [dmr@nei.org]  
**Sent:** Wednesday, February 06, 2013 3:35 PM  
**To:** RulemakingComments Resource  
**Cc:** Bladey, Cindy; FERTEL, Marvin; PIETRANGELO, Tony; HEYMER, Adrian  
**Subject:** Industry Comments on Retrospective Review Under Executive Order 13579: 77 Federal Register 70123, November 23, 2012 [Docket No. NRC-2011-0246]  
**Attachments:** Industry Comments on Retrospective Review Under Executive Order 13579.pdf

February 6, 2013

Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Attn: Rulemakings and Adjudications Staff

**Subject:** Industry Comments on Retrospective Review under Executive Order 13579:  
77 Federal Register 70123, November 23, 2012 [Docket No. NRC-2011-0246]

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Adrian P. Heymer  
Executive Director, Strategic Programs



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