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NUCLEAR ENERGY INSTITUTE

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August 26, 2014

Ms. Cindy K. Bladey
Chief
Rules, Announcements, and Directives Branch (RADB)
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Comments on Unified Agenda of Federal Regulatory and Deregulatory Actions (*Federal Register* Vol. 79, 34204, dated June 13, 2014; Docket ID NRC-2014-0039)

Project Number: 689

Dear Ms. Bladey:

On behalf of the nuclear energy industry, the Nuclear Energy Institute (NEI)¹ appreciates the opportunity to provide comments on the Unified Agenda of Federal Regulatory and Deregulatory Actions published in the subject *Federal Register* notice. Our review of the NRC regulatory agenda and underlying regulatory processes has focused on identifying measures necessary to ensure that the NRC conducts the rulemaking process in an efficient and transparent manner, accounts for the cumulative effects of regulation, and appropriately incorporates stakeholder input throughout the process.

Executive Orders 12866 and 13563 direct that agencies "tailor its regulations to impose the least burden..., consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations." Executive Order 13563 further directs that regulations "shall be adopted through a process that involves public participation," including an "open exchange of information and perspectives."

In its Final Plan for Retrospective Analysis of Existing Rules (ML14002A441), the NRC identifies actions that are intended to meet the direction provided in the executive orders. These actions include the common

¹ 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 utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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prioritization of rulemaking (CPR) process, semi-annual publication of the Unified Agenda of Regulatory and Deregulatory Action, and annual publication of the NRC's regulatory plan.

Each of these actions, intended to serve a directed purpose, provides insight into the spectrum of regulatory actions underway at the NRC, which could be improved through greater integration and transparency of individual efforts. We believe that significant benefit can be obtained through changes that encourage a more informed, holistic review of regulatory actions. The following comments and recommendations provide our perspectives on changes that industry believes will help accomplish this goal and complement the agency's efforts to more effectively manage the cumulative effects of regulation and increase transparency in the regulatory process.

Integration of Regulatory Agenda and Rulemaking Prioritization Process

The spring 2014 semi-annual regulatory agenda identifies 56 rulemaking activities and their associated timetable for action. In its current form, there is insufficient information to assess the potential cumulative impact of these activities. For example, without in-depth knowledge of the rulemakings, it is not possible to determine which rulemakings impact specific categories of NRC licensees. Also, information on the priority of a rulemaking relative to other rulemaking activities is not provided. Such information would enable a more holistic review of rulemaking activities and would enable more insightful public/stakeholder comments on the regulatory agenda.

As noted in the *Federal Register* notice, the NRC has a process for developing rulemaking budget estimates and determining the relative priorities of rulemaking projects during budget formulation. The "Common Prioritization of Rulemaking" (CPR) process considers four factors and assigns a score to each factor. Those factors include:

1. support for the NRC's strategic plan goals
2. support for the NRC's strategic plan organizational excellence objectives
3. a governmental factor representing interest to the NRC, Congress or other governmental bodies
4. an external factor representing interest to the public, non-governmental organizations, the nuclear industry, vendors and suppliers.

The incorporation of CPR scores for each of the four factors as part of the semi-annual regulatory agenda would more clearly identify the basis and timetable for each regulatory action, would facilitate assessment of the cumulative impact of regulation and would enable a level of public participation not currently available.

Recommendation 1: Results (scores) from CPR should be incorporated into and published as part of the semi-annual regulatory agenda

Improvements Needed in Rulemaking Prioritization Criteria

Comments on the CPR process were included as part of NEI comments on the spring 2013 regulatory agenda (NEI letter dated August 21, 2013). These comments identified that the CPR factors (in particular, the CPR factor on support for NRC's strategic plan goals) are determined in a qualitative manner through committee discussion. For example, the current process assesses whether a rulemaking activity supports either the NRC strategic plan goal for safety and/or the strategic plan goal for security with little discrimination among issues as to the level of support offered. A review of the CPR results for FY2012-FY2013 shows that of the 15 regulatory actions impacting both NRC strategic plan goals, three received the maximum score of 20, one received a score of 10 and the remainder (11) received a score of 15.

The industry believes that there would be benefit in having review criteria for each of the prioritization factors. This refinement of the prioritization process would assist the review process by encouraging greater discrimination among assigned scores and would assure that the focus of NRC and industry attention and resources are on those issues that provide the greatest safety and security benefit.

Recommendation 2: The CPR review process should be revised to incorporate review criteria that enable greater discrimination among issues.

Definitive Action Should be taken on Dormant Rulemaking Activities

Review of the regulatory agenda shows several regulatory actions that have been dormant for an extended period of time. Reasons for the dormancy are identified in some, but not all, cases. The inclusion of some explanation for the lack of timely action on regulatory activities is necessary to inform the review process.

Recommendation 3: The regulatory agenda should ensure that a clear and complete timetable is included for each item.

Recommendation 4: Items that are dormant for three or more years with little expectation for further action should be terminated and removed from the regulatory agenda.

Consideration of Cumulative Impact and Prioritization Should be Addressed Earlier in Rulemaking Process

As outlined in NUREG/BR-0053, the rulemaking process involves four principle tasks: *identify the need for a rulemaking, develop a rulemaking plan, prepare a proposed rule package and publish the proposed rule, and prepare a final rule package and publish the final rule.* The second step in this process—development of a rulemaking plan—provides a preliminary outline of the scope and impact of the rulemaking action, a preliminary analysis of the cost-efficiency of the action, and a proposed rulemaking schedule. The rulemaking plan is provided to the Commission for approval before significant resources are expended on the project.

The rulemaking plan provides an excellent opportunity to assess the schedule and priority for proposed rulemaking actions relative to all other rulemaking activities that are underway. The industry supports broader use of rulemaking plans in the NRC rulemaking process, and believes that the use of rulemaking plans should be mandatory for high priority rulemaking activities. This action would provide valuable and needed information to the Commission on the cumulative impact on both industry and NRC resources and would enable a more informed decision on how to proceed on the proposed actions and whether changes are necessary to the plans for other rule activities.

Recommendation 5: Cumulative impact, schedule and priority should be considered for each high priority rulemaking, included as part of a rulemaking plan and submitted for Commission approval.

Greater Consideration Should be given to Impacts on Stakeholder Communities

The impact of each rulemaking activity will vary across the communities for which NRC regulations apply (e.g., operating plant licensees, material licensees, fuel facilities, etc.). When considering the cumulative effects of regulation, it is important to assess the cumulative impact of regulatory initiatives on each regulated community. This information should then be considered in development of the NRC's regulatory agenda and prioritization process. For example, according to the NRC's website, there are eight rulemakings and several guidance development efforts² relevant to and potentially impacting the diverse fleet of 12 licensed fuel cycle facilities. In addition, the NRC has embarked on an effort to enhance the Fuel Cycle Oversight Process to incorporate elements similar to those of NRC's Reactor Oversight Process. The industry remains concerned that limited resources could be distracted from the primary mission of safe and secure operations.

Recommendation 6: The cumulative impact of regulatory actions on regulated communities should be incorporated as part of a periodic review of schedules and priorities for regulatory actions.

The industry appreciates the opportunity to comment on the spring 2014 Regulatory Agenda and encourages the NRC to carefully consider these comments and recommendations. NEI stands ready to work with the NRC to assist efforts to address the cumulative effects of regulation and to prioritize the agency and industry workload.

² <http://www.nrc.gov/materials/fuel-cycle-fac/regs-guides-comm.html#cumeffects>

Ms. Cindy K. Bladey

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Please contact me if you have any questions regarding these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Butler". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John C. Butler

c: Mr. Mark A. Satorius, EDO, NRC
Mr. Lawrence E. Kokajko, NRR, NRC
NRC Document Control Desk