

POLICY ISSUE
(Notation Vote)

November 22, 2017

SECY-17-0119

FOR: The Commissioners

FROM: Victor M. McCree
Executive Director for Operations

SUBJECT: RETROSPECTIVE REVIEW OF ADMINISTRATIVE REGULATIONS

PURPOSE:

The purpose of this paper is to request Commission approval of the staff's strategy for a retrospective review of the U.S. Nuclear Regulatory Commission's (NRC's) administrative regulations. This paper also requests approval of a *Federal Register* notice (FRN) to announce the strategy and obtain stakeholder input (Enclosure 1).

SUMMARY:

The staff has developed a proposed strategy for conducting a retrospective review for the purpose of identifying outdated or duplicative administrative requirements that may be eliminated, without an adverse effect on public health or safety, common defense and security, protection of the environment, or regulatory efficiency and effectiveness. The staff expects the retrospective review to identify ways that the NRC can improve how applicants and licensees submit information, keep records, and report to the agency. This effort will enhance the agency's efficiency and ensure that the agency's regulations remain current, appropriate, and effective.

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BACKGROUND:

On August 11, 2017, the NRC announced that the agency is initiating, beginning in the fall of 2017, a retrospective review of its administrative regulations to identify those rules that are outdated or duplicative. Once identified, the regulations will be evaluated to determine if they can be eliminated without impacting the agency's safety and security mission. The retrospective review of administrative regulations is intended to complement the NRC's existing plan for retrospective analysis of significant regulations (ADAMS Accession No. ML14002A441). This paper outlines the proposed strategy to conduct the review.

DISCUSSION:

Overall, the goal of the retrospective review of administrative regulations is to enhance the management and administration of regulatory activities and ensure that the agency's regulations remain current and effective. Administrative requirements, for the purpose of this review, are those that impose recordkeeping or reporting requirements or address areas of agency organization, procedure, or practice. The review is intended to identify regulatory changes that will make the information submittal, recordkeeping, and reporting processes more efficient for applicants and licensees without impacting the agency's safety and security mission. For example, if regulations are identified and eliminated, some licensees may realize efficiencies in information submittal, recordkeeping, and reporting to the NRC. The NRC could also benefit if eliminating outdated or duplicative requirements results in a reduced level of effort for handling, reviewing, and recordkeeping of licensee or applicant submittals, or eases the maintenance of agency practice and procedures as codified in regulations.

The staff proposes a seven-step strategy, as outlined below, to accomplish the retrospective review of administrative regulations. The proposed strategy takes into consideration the agency's overall statutory responsibilities, including mandates to issue new regulations, the number of regulations in Chapter I of Title 10 of the *Code of Federal Regulations*, and available resources. A key focus of the overall strategy is to engage in substantial stakeholder interaction and provide opportunities for input from stakeholders. The staff expects stakeholder input to provide important regulatory insight and data on the costs and benefits of existing NRC regulations. Further, the staff proposes to seek input from NRC's committees (e.g., Committee to Review Generic Requirements [CRGR], Advisory Committee on Reactor Safeguards [ACRS], and the Advisory Committee on the Medical Uses of Isotopes [ACMUI]), other Federal agencies, State and local governments, and Federally-recognized Tribes, as appropriate. The anticipated timeframe for the proposed activities are outlined in each step. The overall resources associated with the activities are contained in Enclosure 2 (non-public).

Proposed Strategy for Retrospective Review of Administrative Regulations

Step 1: Develop Evaluation Criteria

The staff is proposing to use evaluation criteria to determine whether an administrative regulation is in scope of the review for potential elimination or modification. The evaluation criteria would serve as factors of consideration to guide the staff's decisionmaking. The staff is not proposing to use the criteria to make stand-alone determinations. Instead, the criteria will be weighed against other activities outlined in the strategy, such as staff programmatic experience/comments, public comments, and the correspondence review. Overall, the use of the evaluation criteria, as well as the other activities outlined in this plan, should aid staff in ensuring that the evaluation is conducted in a consistent and open manner. Criteria 1-3 are

intended to “screen-in” regulations for inquiry, as they address whether a regulation is outdated, duplicative, and scoped appropriately for reductions, respectively. Criterion 4 is intended to “screen-out” regulations from further inquiry so as to avoid unintended consequences. The draft criteria and the intended goals are listed below.

Criterion 1: Routine and periodic recordkeeping and reporting requirements, such as directives to submit recurring reports, that the NRC has not **consulted or referenced** in programmatic operations or policy development in the last 3 years.

Goal: To identify outdated information collection requirements. Periodic reports or records are most likely to cause a significant burden on regulated entities, so this effort will focus on those recurring information collections.

Criterion 2: Reports or records that contain information reasonably accessible to the agency from alternative resources **or** routine reporting requirements where less frequent reporting would meet programmatic needs.

Goal: To identify duplicative information or overused collection requirements.

Criterion 3: Recordkeeping and reporting requirements that result in significant burden. For example, more than \$100,000 **overall** per potential regulatory change; or over 1000 reporting hours for each affected individual or entity over a 3-year period; or 10 hours for each affected individual or entity each calendar year or per application.

Goal: To ensure that elimination or modification of outdated or duplicative information collection requirements would lead to significant burden reductions. For the purposes of this criterion, “significant” means high-cost compared to other information collection requirements. The staff developed the proposed thresholds based on recent regulatory experience. The staff acknowledges that determining a threshold is complex. The criterion will not be used as a stand-alone consideration. The staff will ask the public specific questions in the FRN to define criteria that will be usable for the full scope of NRC-regulated entities.

Criterion 4: Reports or records that contain information used by other Federal agencies, State or local governments, or Federally-recognized Tribes will be eliminated from the review.

Goal: To decrease the potential for unintended consequences. For example, the NRC collects certain information on behalf of other government agencies. It is not the intent of this effort to change that practice.

The enclosed FRN provides opportunity for stakeholder input on the draft criteria. After the close of the public comment period, the staff will consider public input received on the proposed evaluation criteria and will finalize the criteria. In addition, the FRN will allow the stakeholders to propose additional criteria for consideration.

Step 2: Gather Staff Input

Concurrent with the request for public input on the evaluation criteria in the enclosed FRN, the staff would establish an internal mechanism (e.g., e-mail box or SharePoint site) to collect staff input on administrative regulations that fit the proposed criteria. As appropriate, the staff would consult with and seek input from the CRGR, ACRS, and ACMUI.

Step 3: Perform a Correspondence Review

Additional insights could be gained from reviewing historical correspondence submitted to the agency related to eliminating duplicative or outdated regulations. Under this activity, the staff would identify and review correspondence received from members of the public, other Federal agencies, State and local governments, Federally-recognized Tribes, non-governmental organizations, and representative industry groups. Staff is proposing to implement this activity concurrently with development of the second FRN, as outlined in Step 4.

Step 4: Request for Public Input on Outdated or Duplicative Administrative Requirements

The staff is proposing to publish a second FRN that would contain the final evaluation criteria and a request for the public to identify any NRC administrative requirements that may be outdated or duplicative and that the Commission could consider for elimination or modification. As part of this effort, the staff would request input regarding costs and savings estimates for submitted proposals. In accordance with the current best practices for rulemaking, the staff would provide a 60-day public comment period. The staff plans to seek approval of the second FRN from the Executive Director for Operations within 4 months after the end of the public comment period for the first FRN.

Step 5: Conduct Public Meetings

The staff is proposing to schedule a public meeting (in-person, webinar, and teleconference-capable) during the comment period following publication of the first FRN to provide awareness and answer questions to clarify the purpose and scope of this initiative. The staff would also conduct at least one public meeting during the comment period for the second FRN. Meeting attendees will be able to ask the staff their questions regarding the type of information NRC is seeking. Although verbal comments will not be accepted during the meeting, staff will provide instruction on how attendees can submit written comments.

Step 6: Review Input

Once the staff has received stakeholder input, the staff would assess the input and assign the regulation "owner" in the appropriate office to analyze each potential regulatory change to determine if there are requirements that merit elimination or modification. The staff is proposing to provide an initial set of recommendations to the Commission approximately 7 months from the end of the public comment period for the second FRN.

Step 7: Develop Rulemaking Plans to Eliminate or Modify Requirements

This effort would focus on non-substantive administrative changes; therefore, staff expects that most, if not all, rule changes will be exempt from the notice-and-comment requirements under the Administrative Procedure Act as "rules of agency organization, procedure, or practice"

(5 U.S.C. § 553). The staff would not develop a rulemaking plan for non-substantive administrative rule changes. However, the staff foresees the potential for substantive changes to administrative regulations that would not be exempt from notice and comment requirements. In that instance, the resulting rulemaking would be conducted using the process directed by the Commission in “Staff Requirements – SECY-15-0129 – Commission Involvement in Early Stages of Rulemaking,” dated February 3, 2016 (ADAMS Accession No. ML16034A441). As such, the staff would propose the elimination or modification of requirements through a rulemaking plan submitted to the Commission for consideration.

For administrative requirements that have been identified for elimination or modification, the potential outcomes could include:

- a consolidated administrative rulemaking;
- inclusion into an existing planned rulemaking; or
- a stand-alone specific rulemaking.

The schedule for implementing rulemaking activities will be determined using the agency’s budget and rulemaking prioritization methodologies.

COMMITMENT:

The staff will implement the activities outlined in the proposed strategy immediately, upon Commission approval.

RECOMMENDATIONS:

The staff recommends that the Commission take the following actions:

1. Approve the proposed strategy for retrospective review of administrative regulations to identify those requirements that are outdated or duplicative and that may be eliminated.
2. Approve the FRN announcing the strategy and providing the draft evaluation criteria for public comment.

If the Commission approves the strategy and the FRN, the appropriate Congressional committees will be informed of this action. The staff will also consult with the Office of Public Affairs to determine whether press releases should be issued when the FRNs identified in this proposed strategy are filed with the Office of the Federal Register.

COORDINATION:

The Office of the General Counsel has no legal objection to the agency's plan for the retrospective review of administrative regulations.

/RA/
Victor M. McCree
Executive Director
for Operations

Enclosures:

1. Draft Federal Register Notice
2. Resources Associated with Retrospective Review of Administrative Regulations (non-public)

SUBJECT: RETROSPECTIVE REVIEW OF ADMINISTRATIVE REGULATIONS,
 DATED: November 22, 2017

ADAMS Accession No.: ML17286A069 (package)

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