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Submitter Information

Name: James Slider
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Organization: Nuclear Energy Institute

General Comment

See attached file(s)

Attachments

07-02-18_NRC_NEI Comments on RROAR_Letter

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July 2, 2018

Ms. Annette Vietti-Cook
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Submitted via regulations.gov

Subject: Comments on Review of Administrative Rules; 83 FR 19464; Docket ID NRC-2017-0214

Project Number: 689

Dear Ms. Vietti-Cook:

On behalf of its members, the Nuclear Energy Institute (NEI)¹ appreciates the opportunity to provide comments on the subject Review of Administrative Rules. We are submitting our comments electronically on the regulations.gov website as specified in the subject Federal Register announcement.

We applaud the NRC for undertaking the Review of Administrative Rules. With the decades of experience, changes in technology and NRC's approach to oversight since many of those rules were established, it is timely to review NRC's reporting and record keeping requirements to find opportunities to streamline or eliminate them for the benefit of the NRC and its licensees. We would like to see the NRC repeat this type of review of administrative rules at least every five years to reflect the changing conditions of the nuclear marketplace and NRC regulation.

The draft screening criteria mentioned in the subject Federal Register announcement are a good start. We believe the screening criteria will yield a much more useful result if they identify requirements that produce information which:

- (a) No longer makes a material difference to the regulatory decisions of the NRC or those of another federal or state agency;
- (b) Is available through other sources or could be retained onsite for inspection upon request rather than routinely submitted to NRC, or

¹ The Nuclear Energy Institute (NEI) is responsible for establishing unified policy on behalf of its members 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.

Ms. Annette Vietti-Cook

July 2, 2018

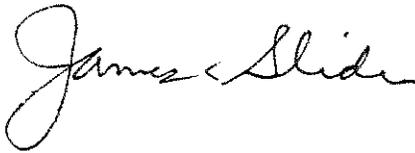
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(c) Yields a benefit to public health and safety that is less than the burden on licensee and NRC resources associated with producing, reviewing and analyzing the information.

Our detailed comments on the four draft criteria and the NRC's four specific questions mentioned in the subject Federal Register announcement are provided in the attachment to this letter.

If you have any questions concerning this letter, please contact me.

Sincerely,

A handwritten signature in black ink that reads "James E. Slider". The signature is written in a cursive style with a large, looping initial "J".

James E. Slider

cc: Ms. Margaret S. Ellenson, NMSS
Mr. Andrew Carrera, NMSS

Attachment

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Comments on Retrospective Review of Administrative Requirements²

1. **The Universe of Requirements.** It is unclear how the NRC will identify the universe of requirements to which the screening criteria of the Retrospective Review will be applied in subsequent phases of the project. This is as important as the screening criteria themselves.

Recommendation:

The NRC should identify the universe of requirements that will be screened, and show how the agency will assure that the universe of identified requirements is complete.

2. **Criterion 1 (Reports Not Used in Three Years).**³ This criterion would find ("screen-in"⁴) requirements that yield information potentially no longer used by the NRC. For this purpose, the draft criterion is narrower than it should be. The relevant consideration is not whether the information was "consulted or referenced", as described in the draft criterion, but whether the information made a material difference in a regulatory decision. The NRC's wording "...consulted or referenced in programmatic operations or policy development..." is undefined. In addition, the NRC should consider how often and for what purpose the information was "consulted or referenced." A report that is reviewed only once in a three-year period and then only out of an individual's curiosity, should be screened-in and considered for elimination. The NRC should also "screen-in" (i.e., consider for elimination) administrative requirements that are not clearly linked to the agency's mission to protect public health and safety, and the agency goals and objectives that support that mission.

Recommendations:

- (a) The NRC should modify the wording of Criterion 1 as follows:

"Routine and periodic recordkeeping and reporting requirements which collect or provide information that, in the past three years, has not made a material difference in an NRC regulatory decision, or the NRC has not consulted or referenced in a regulatory decision."

- (b) In applying this criterion in subsequent phases of the Retrospective Review project, the NRC should document the last known use of the records and reports determined to have been used more than three years ago (i.e., the requirements that "screen-in" based on this criterion), and the ongoing use and materiality of records and reports used within the last three years (i.e., the requirements that "screen-out" based on this criterion).

- (c) The NRC should repeat this review periodically, e.g., every five years, for the requirements that "screen-out" this year and confirm that they are still needed.

3. **Criterion 2 (Information Available Elsewhere or Needed Less Frequently).**⁵ This draft criterion blends two disparate ideas that deserve separate consideration. The first portion finds reports or records containing information accessible from alternative sources. In our view, these

² 83 FR 19464, "Review of Administrative Rules," Docket ID NRC-2017-0214 on www.regulations.gov.

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

⁴ The NRC uses the term "screen-in" to mean that passing the criterion results in the requirement remaining within the scope of the Retrospective Review. The NRC uses the term "screen-out" to mean that passing the criterion results in excluding the requirement from the scope of the Retrospective Review with the result that the requirement will not be examined by the Retrospective Review and likely will remain unchanged.

⁵ Draft Criterion 2 reads, "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."

Attachment

requirements are prime candidates for elimination and should "screen-in" to the set of requirements subject to the Retrospective Review. The second portion finds requirements that can be met with less frequent reporting. In our view, these requirements would be prime candidates for revision (e.g., to reduce the reporting frequency or replace the reporting requirement with an obligation to retain the information onsite for future inspection) and might be candidates for complete elimination. These should "screen-in" to the review, as well, but warrant identification and treatment distinct from other requirements that screen-in under the first portion of Criterion 2.

Recommendations:

(a) The NRC should revise proposed Criterion 2 into two separate criteria, e.g., Criterion 2a, "Requirements that yield reports or records that contain information reasonably accessible to the agency from alternative sources;" and Criterion 2b, "Reporting requirements that yield information that would still be timely and adequate for agency needs if submitted less frequently."

(b) The NRC should also consider which of its information needs that currently requires licensees to submit reports to NRC on the docket could be met instead by the licensee retaining that information onsite for inspection.

4. **Criterion 3 (Burden).**⁶ The Retrospective Review should evaluate the burden imposed by requirements for licensees to provide records and reports. The burden imposed should be less than the benefit to public health and safety derived from the information collected. In addition, the NRC should consider that "burden" includes both the imposition on licensee resources (e.g., licensee labor and expenses) and costs the NRC bills to licensees for its work related to those records and reports. The latter includes NRC costs associated with the handling, review and analysis of licensee reports and records. If the requirement produces information that is not of commensurate value to public health and safety, the NRC should consider eliminating the requirement.

The threshold values presented in Criterion 3 appear to be too high for today's economic environment, by at least an order of magnitude for power reactor licensees. In addition, these threshold values do not reflect the different business conditions pertaining to different classes of licensees. For example, for the operating power reactor licensees, a burden of \$10,000 or 100 reporting/review hours over a three-year period would be a more realistic and more meaningful threshold. For fuel cycle facility licensees and other materials licensees, another decade lower than that would be a more appropriate test of the burden of reporting and record-keeping requirements.

Recommendations:

(a) The NRC should revise proposed Criterion 3 to provide lower threshold values that reflect the differing sensitivities of the major classes of licensees and today's challenging market conditions.

(b) The NRC should specify how it would gather the data needed to test against its "burden threshold values."

⁶ Draft Criterion 3 reads, "Recordkeeping and reporting requirements that result in significant burden. For example, more than \$100,000 overall per potential regulatory change; or over 1,000 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."

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5. **Criterion 4 (Other Agencies).**⁷ This criterion is too broad and would allow categorical exclusion of many administrative reports based solely on a presumption of use by other agencies. The NRC review must require other agencies and entities to demonstrate and document that the information is still essential to their decision-making and that the value of the information to the agencies' public health and safety mission exceeds the burden of producing that information.

Recommendations:

(a) The NRC should revise proposed Criterion 4 to "screen-in" requirements for information used by other agencies. Requirements that thus "screen-in" should be treated as candidates for potential elimination unless and until NRC confirms the information need remains current and material to the mission of the other agency (or agencies) and cannot be met through other means (e.g., other sources, retention onsite, etc.).

(b) In conjunction with this review, the NRC should identify the specific Memorandum of Understanding, statute, or other source of its obligation to provide industry information to the other agency (agencies). If the obligation arises from a source other than statute, the NRC should "screen-in" these reporting requirements for further review. The NRC should verify that the obligation remains essential to the mission of the other agency (agencies). Where the obligation is no longer applicable, the NRC should document the basis for that determination.

Responses to NRC's "Specific Questions"

NRC Question 1. Do the proposed evaluation criteria serve the purposes described in this notice? Why or why not?

NEI Response: This retrospective review appears to be a worthwhile endeavor and the criteria should serve that purpose. Key to its success is how the criteria are applied.

Recommendation: Consider performing a tabletop exercise with a few reporting or recordkeeping requirements to evaluate the effectiveness and accuracy of the criteria.

NRC Question 2. The NRC is considering whether the burden reduction minimum is appropriate. Is "significant burden" the appropriate measure? Are the examples given for Criterion 3 appropriate or useful? Should the NRC use different bases for measuring "significant burden," and if so, what are these measures and how would they result in a more accurate or complete measurement of burden?

NEI Response: In addition to feedback on the burden thresholds provided in our comments on Criterion 3 above, the NRC should consider the level of effort expended in the Retrospective Review. The effort expended in the Retrospective Review should be in proportion to the expected benefit (burden reduction) to the NRC and licensees from the review.

Recommendation: The NRC should further evaluate the effort required to acquire the data needed to estimate the burden of administrative requirements.

⁷ Proposed Criterion 4 reads, "Reports or records that contain information used by other Federal agencies, State and local governments, or Federally-recognized Tribes will be eliminated from the review."

Attachment

NRC Question 3. The NRC is considering multiple thresholds for different classes of regulated entities, as a single threshold might not be useful to identify burden reductions for all licensee types. What is the appropriate threshold for your entity class (e.g., operating reactor, industrial radiographer, fuel cycle facility)?

NEI Response: Yes, the burden criterion should be tailored to the class of licensee affected. See comments on Criterion 3 above.

Recommendation: The NRC should further research the impacts on classes of licensees to determine the variation within classes.

NRC Question 4. Are there other evaluation criteria the NRC should consider using in its retrospective review of administrative regulations? What are those criteria and why?

NEI Response: There are no other criteria, however, the NRC should review how the four criteria will be applied in aggregate. In the May 31, 2018, public meeting related to the criteria, the NRC noted that the potential regulatory change would meet Criteria (1 or 2) and "ideally" 3 and not 4. It is understandable why the NRC believes that if the change meets Criteria 1 or 2, it would likely also meet Criterion 3. Criteria 1 and 2 evaluate the value of a requirement, while Criterion 3 evaluates the cost or burden of a requirement. It is not necessary for a change to meet (1 or 2) and 3 (i.e., low value requirements should be eliminated even if they are not costly or burdensome). In other words, a requirement that meets either 1 or 2 or 3 should be considered for elimination.

Recommendation: The NRC should make clear how it will apply the criteria in aggregate during the Retrospective Review.