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July 20, 2015

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. 80, 35170, dated June 18, 2015; Docket ID NRC-2015-0071)

**Project Number: 689**

Dear Ms. Bladey:

On behalf of the nuclear energy industry, the Nuclear Energy Institute (NEI)<sup>1</sup> appreciates the opportunity to provide comments on the Unified Agenda of Federal Regulatory and Deregulatory Actions published in the subject *Federal Register* notice. The semiannual publication of regulatory activities being pursued by the agency provides an opportunity to step back from the review of individual rulemaking actions and look more broadly at the total landscape of regulatory actions underway within the agency. We offer these comments in hopes that they will be incorporated in the agency's efforts to re-baseline regulatory actions in response to Project AIM 2020 recommendations.

NEI provided comments on the NRC's 2013 Unified Agenda [NRC-2013-0076] in a letter dated August 21, 2013 (2013 comments), and on NRC's 2014 Unified Agenda [NRC 2014-0039] in a letter dated August 26, 2014 (2014 comments). We note, with appreciation, that changes have been made to address some of the comments contained in these letters. While the NRC actions to enhance the rulemaking prioritization process are welcomed and provide a better understanding of the full spectrum of rulemaking activities in play within the agency, there remains a need for further enhancements to provide a more efficient and effective process.

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<sup>1</sup> 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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## **Comprehensive Listing of Rulemakings**

The 2015 Unified Agenda, with its 66 rulemaking activities (up from 56 actions in the spring 2014 agenda), provides a good opportunity to highlight, and recommend actions on any trends seen since the last regulatory agenda publication. This integrated review helps ensure that actions are being taken to conduct the rulemaking process in an efficient and transparent manner, and that efforts to account for the cumulative effects of regulation continue.

Absent from the 2015 Agenda are approximately 15 rulemaking actions identified in the NRC's Common Prioritization of Rulemaking (CPR) process that are rated a high or medium priority. A reason for their absence from the list is unclear, but appears to be because a Regulation Identifier Number (RIN) has not yet been assigned.<sup>2</sup>

Examples of rulemaking actions not included in the 2015 Agenda include:

- Cyber Security for Fuel Facilities (ML15022A581) – A high-priority rule per the CPR scoring.
- Fitness for Duty – Security Force Fatigue at Nuclear Facilities (ML15022A004) – A high-priority rule per the CPR scoring.
- Part 37 Physical Protection of Byproduct Material Follow-on Rule (ML15026A236) – A medium-priority rule per the CPR scoring.
- Adjustment of Civil Penalties for Inflation (Parts 2 and 13) (ML15022A559) – A medium-priority rule per the CPR scoring.

Similarly, the listing of regulatory activities included on the NRC [Rulemaking Priorities](#) website does not include a number of rulemaking actions identified on the 2015 Unified Agenda. This discrepancy appears to be due to the exclusion of "low priority" rulemaking activities from the list.

We encourage the NRC to assess all planned rulemaking activities in the CPR process and to include a full listing of rulemaking actions in future regulatory agenda and as part of the "Rulemaking Priorities" website. Such a comprehensive listing of all planned NRC rulemakings is necessary to fully assess the cumulative effects of regulations.

## **Enhancements to Common Prioritization of Rulemaking Process**

The 2015 Unified Agenda includes several rulemaking actions that we believe provide little-to-no benefit to public health and safety yet would be very costly to implement. Despite their high-cost/low-benefit

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<sup>2</sup> NEI's 2013 comments noted that the unified agenda did not provide a clear rationale for which actions are excluded from the unified agenda. In response to this comment, the *Federal Register* notice for the 2015 Unified Agenda included an expanded introduction section that notes "[t]he NRC reports all rulemaking activities in the Agenda that have been assigned a RIN [Regulation Identifier Number] and meets the definition for a completed, an active, or a long-term rulemaking activity."

potential, these regulatory actions were prioritized as high or medium under the CPR process. This highlights a failure of the NRC's current CPR grading process to distinguish proposed rules that offer high value from those offering low value in terms of safety/security benefits. In particular, it appears that for some rulemakings, the CPR score that determines the priority is inconsistent with the regulatory basis of the planned rulemaking. It further appears that the subjective nature of the CPR criteria results in inconsistent CPR scoring and in some cases inaccurate prioritization. Further, the prioritization does not appear to consider the costs of the associated rulemaking or alternatives to rulemaking. The need for improvements in the CPR review process was highlighted in NEI's 2014 comments. We encourage the NRC, as part of its efforts to address agency priorities (Project AIM Recommendation II.1.b), to consider ways by which the CPR scoring process can be more closely tied to the safety/security benefits of proposed rulemaking action.

### **Re-Prioritization of Rulemakings**

The Commission, as part of its Staff Requirements Memorandum on Project AIM 2020<sup>3</sup>, approved recommendations to re-baseline the work of the agency in combination with an effort to develop and improve work prioritization processes. The planned re-baselining efforts provide a good opportunity to reassess the need/value of rulemakings that are marginal in their value/improvement to public health and safety. We are hopeful that this effort will be effective in determining the need and priority of the 81 active rulemaking activities (66 plus 15 noted above).

At a minimum, the following rulemaking activities should be specifically included in this re-baselining effort and considered for termination, as appropriate:

- *Radiation Protection [NRC-2009-0279]*
- *Dose Assessments for Radioactive Effluents [NRC-2014-0044]*

In both of these rulemakings, the goal is to achieve greater alignment between the NRC's radiation protection regulations and the 2007 recommendations of the International Commission on Radiological Protection. In neither instance is there any concern, by the NRC or licensees, on the adequacy of current standards to protect workers, the public and the environment. Yet the costs to the industry to implement the proposed changes would be a minimum of \$3 million per facility.
- *Independent Spent Fuel Storage Installation Security Requirements for Radiological Sabotage [NRC-2009-0558]*

The proposed rule would amend the Commission's regulations to revise the existing security requirements that apply during the storage of spent nuclear fuel (SNF) at an Independent Spent Fuel Storage Installation, and during the storage of SNF and high-level waste at a Monitored Retrievable Storage Installation. It is unclear why any new or revised regulation is needed in this

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<sup>3</sup> Staff Requirements Memorandum – SECY-15-0015, Project AIM 2020 Report and Recommendations, June 8, 2015.

area. Security orders currently in place provide adequate protection for facilities storing SNF and high-level radioactive waste and should be codified with no additional requirements.

- *Clarifying Requirements in Part 21, Reporting of Defects and Noncompliance [NRC-2012-0012]*  
The stated intent of this rulemaking is to "improve the clarity of part 21 while maintaining the original intent of the rule and minimizing changes to currently compliant programs." This intent can and should be accomplished through the development and approval of guidance versus rulemaking. This would provide a more effective and efficient means to accomplish the desired outcome. The rulemaking does not address a safety issue, and we believe the CPR process should rank this rulemaking as a low priority.
- *Amendments to Material Control and Accounting Regulations [NRC-2009-0096]*  
The goal of this rulemaking is to revise and consolidate regulations for material control and accounting (MC&A) of special nuclear material (SNM) in order to update, clarify, and strengthen them. This rulemaking activity, which ranked relatively low in the CPR scoring, has garnered significant industry concern due to its incomplete and inconclusive regulatory analysis and regulatory basis, ambiguous rule language and the potential to impose significant burden with little to no improvement to safety or security.

While the planned re-baselining effort has the potential to significantly redefine agency priorities going forward, we gratefully acknowledge agency efforts in the previous year to terminate rulemaking actions that were of marginal value or whose intent could be accomplished through more efficient means. This is demonstrated in the termination, or proposed termination, of the following rulemaking actions:

- *Domestic Licensing of Source Material – Amendments/Integrated Safety Analysis [NRC-2009-0079]*
- *Fitness-For-Duty Programs [NRC-2009-0090]*
- *Approach to Risk-Inform, Performance-Base Requirements for Nuclear Power Plants [NRC-2006-0008]*

The planned re-baselining effort also provides an opportunity to identify areas where significant industry and agency resources are expended on actions of low safety/security impact and would encourage changes, as appropriate, to minimize these actions. For example, the 2015 Agenda includes seven instances of rulemakings addressing changes to Certificates of Compliance (CoC) for spent fuel storage casks. The high number of rulemakings is due, in large part, to the lack of clear requirements regarding the format and content of CoCs. This has resulted in CoCs containing an unnecessarily high level of detail. This requires rulemaking to implement, in many cases, inconsequential changes. Changes to 10 CFR Part 72 have been proposed (PRM 72-7) that would standardize the CoC format and content and enable changes with low safety significance to be made through change control processes that do not involve rulemaking.

Ms. Cindy K. Bladey

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NEI appreciates the opportunity to comment on the 2015 Agenda and encourages the NRC to continue its efforts to address comments provided in response to previous regulatory agenda and the comments provided in this letter. Please contact me if you have any questions regarding these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Butler", with a stylized, cursive script.

John C. Butler

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