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MEMORANDUM TO: Lisa M. Regner, Chief
Operating Experience Branch
Division of Reactor Operations
Office of Nuclear Reactor Regulation

FROM: Eric Thomas, Sr. Reactor Systems Engineer **/RA/**
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SUBJECT: RESPONSE TO PUBLIC COMMENTS ON NRC FORMS 366,
366A and 366B, LICENSEE EVENT REPORT FORM
RENEWAL

A notice of opportunity for public comment on the subject form renewal was published in the *Federal Register* (84 FR 48650) on September 16, 2019. Comments were received from Justin M. Wearne of the Nuclear Energy Institute (NEI) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML19325F603) and Justin T. Wheat of Southern Nuclear Company (SNC) (ADAMS Accession No. ML19325F604). Enclosed are the U.S. Nuclear Regulatory Commission's responses to all public comments.

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LICENSEE EVENT REPORT FORM RENEWAL.

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ADAMS Accession No.: ML20003C697

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**RESPONSE TO PUBLIC COMMENTS ON NRC Forms 366, 366A and 366B, Licensee Event
Report form renewal
[for 84FR48650; September 16, 2019; Docket ID NRC-2019-0085]**

Comments on the periodic Office of Management and Budget (OMB) clearance renewal for NRC Forms 366, 366A, and 366B, Licensee Event Reports, were submitted by the Nuclear Energy Institute and Southern Nuclear Corporation on November 15, 2019. The table below summarizes the submittals.

Letter No.	ADAMS Accession No.	Commenter Affiliation	Commenter Name
1	ML19325F603	Nuclear Energy Institute	Justin M. Wearn
2	ML19325F604	Southern Nuclear	Justin T. Wheat

In 84FR48650, the NRC requested public comment on four questions related to the information that is collected from power reactor licensees under 10 CFR Part 50.73. Each of the four questions is listed below. Following each question, please find the comments received from NEI and SNC, along with the NRC's response to the comments.

Questions and Comments

Question 1: Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

NEI Comments on Question 1:

No.

The NRC, through the resident inspector and baseline inspection program, reviews events reported in the LER. These inspections focus on the causal evaluations that are used to develop the LER rather than the LER itself. Interviews are used as well to satisfy the inspectors' need for additional information. Inspection procedure 71153, "Follow-up of Events and Notices of Enforcement Discretion", allocates a nominal 65 hours to LER follow-up.

COMSECY-18-0027, "Evaluation Criteria for Retrospective Review of Administrative Regulations" (RROAR), provides six screening criteria for rules to be considered for elimination. Criterion #2 states:

Requirements for reports or records that contain information reasonably accessible to the agency from alternative resources. As a result, these requirements may be candidates for elimination through a potential rulemaking.

Information contained in LERs is contained in the stations' corrective action program (CAP) Causal Evaluations and is readily available to the inspectors. The quality and quantity of information contained in CAP exceeds what is included in LERs. Therefore, the reporting of issues via LER represents an undue burden to the stations and should be considered for elimination in the (Retrospective Review of Administrative Review) RROAR review.

Enclosure

The information provided in the LER is not providing any practical utility that is not already being provided by the licensee's CAP. The LER is of little value to other plants, even as a source of operating experience (OE). The OE function is better served by information shared with industry through the Institute of Nuclear Power Operations' OE program. For members of the public, NRC Inspection Reports and the NRC's Reactor Oversight Process website provide the public with a more comprehensive picture of plant performance than is available through the LER process.

SNC Comments:

No.

SNC does not view the collection of information via an LER necessary for the NRC to fulfill its mission and the information does not have practical utility. Specifically, the information included in an LER is redundant to that which is already well documented in multiple locations (e.g., the Corrective Action Program, NRC Performance Indicators) and is available for inspection.

NRC Response:

Concerning NEI's comment that LER information is reasonably accessible elsewhere [SNC had a similar comment]: The statements of consideration for the original rulemaking on 10 CFR Part 50.73 focus on codifying "...reporting requirements in order to establish a single set of requirements that apply to all operating nuclear power plants," and to "...define the information that must be provided in each report." The staff agrees that much of the information used to develop LERs is contained in the stations' corrective action programs (CAPs). However, these databases are not available to the public, nor are they remotely accessible by NRC staff who do not work from the resident inspectors' office onsite. In addition, there is neither a regulatory requirement for power reactor licensees to maintain a CAP nor an industry standard software system for CAPs.

The timeliness of an LER (60 days from an event or condition) becoming available to the public is normally much shorter than the time it takes for the completion of a periodic inspection report, which, based on NEI's comment, would be the new method for making power reactor event information available to the public. This would result in routinely failing to meet the 10 CFR 50.73 timeliness metric for reporting, thus requiring a change to the rule. In addition, the narrative for each event reported by an NRC inspector would become the inspector's version of what occurred at the site, based on their review of the CAP and any other reporting systems used by the licensee. Licensees would thus lose the benefit of reporting events to the public in their own words.

On August 2, 2018, NEI submitted a Petition for Rulemaking (PRM) (ADAMS Accession No. ML18247A204), which proposes a rule change for 10 CFR Part 50.72, "Immediate notification requirements for operating nuclear power reactors." In its PRM, NEI states that 10 CFR 50.72 non-emergency notifications are redundant with resident inspectors' communications to the NRC and proposes to modify the rule to omit the requirement for one, four, and eight-hour non-emergency reports. In the PRM, NEI also makes the following statements:

"Indeed, the non-emergency event information is often better and more fully described in other available documents, including NRC inspection reports and LERs required by 10 CFR 50.73."

“Given that these are non-emergency events, fuller descriptions afforded by complete Licensee and NRC understandings of the event, available to the public, are provided within the 60 days required by 10 CFR 50.73 and is [sic] sufficient for transparency purposes.”

It appears to the NRC staff that the NEI petition to amend 10 CFR 50.72 to remove non-emergency notification requirements and NEI’s comments regarding this 10 CFR 50.73 LER form renewal are at cross purposes.

Concerning NEI’s comment on the baseline inspection program: Attachment 1 to NRC Inspection Procedure (IP) 71153, “Follow-up of Events and Notices of Enforcement Discretion” (ADAMS Accession No. ML19197A110), is a flowchart which shows the relationship between event response and the reactor oversight process (ROP). It shows the LER as one of the notifications that begins NRC’s event assessment and the LER review process. IP 71153 also lists LERs as one of the inspection samples that the NRC staff is required to review. While causal factors are a consideration in this process, they are not the primary focus of inspector activities.

Concerning NEI’s comment that the OE function is better served by information shared with industry through the Institute of Nuclear Power Operations (INPO) OE program: The staff points to the fact that like the CAP, INPO’s OE database is not available to the public, and is available only to authorized NRC staff with restrictions. Information in any INPO database is considered proprietary, and NRC staff cannot make INPO information available to the public without receiving INPO’s consent. Furthermore, the NRC has no regulatory jurisdiction over licensee reporting to INPO, and the details contained in INPO records do not always provide the information that the NRC needs to inform various programs. For example, in the Statements of Consideration for NRC’s update to 10 CFR 50.73, published in October 2000 (65FR63774), the staff disagreed with a public commenter who proposed elimination of reporting of invalid Emergency Safety Features (ESF) actuations. Additional commenters recommended that invalid ESF actuations could be collected from the INPO database or from maintenance rule reports. The staff disagreed with these comments, stating that invalid actuations do provide information needed in estimating equipment reliability because they constitute unplanned demands, and plant response to unplanned demands may or may not differ significantly from those of planned test demands. These comparison data are one of the categories of information that the NRC uses to make equipment reliability estimates. The statements of consideration go on to say that INPO’s reporting system is voluntary and does not provide a breakout of invalid actuations and their results, and the fact that ESF actuations are reported in written LERs was one of the key factors in making the determination that the NRC could work around weaknesses in the INPO data to develop reliability estimates.

Concerning NEI’s comment that the information provided in the LER is not providing any practical utility that is not already being provided by the licensee’s CAP; and SNC’s comment that the collection of information via LER is not necessary for the NRC to fulfill its mission: The NRC staff notes several programs which use this information which would be negatively impacted if LER reports were no longer required. These include:

- The NRC reactor operating experience program, mandated in NRC Management Directive 8.7, “Reactor Operating Experience Program” (ADAMS Accession No. ML18012A156); which collects, communicates, and evaluates information from**

several sources, including 10 CFR 50.72 and 10 CFR 50.73 reports, to determine which safety issues may require agency attention and follow-up.

- Standardized Plant Analysis Risk (SPAR) models, which are used by NRC risk analysts to determine risk-significance of events or plant conditions. Data from LERs are fed into SPAR models in order to calculate initiating event frequencies. These numbers are used to calculate the risk significance of an event or condition and determine the outcomes of the NRC's Reactor Oversight Process and Accident Sequence Precursor (ASP) Program.
- NRC's ASP program, which fulfilled agency commitments following the Three Mile Island accident and helps the agency meet its Strategic Plan and Safety Performance goals, normally uses LERs as a starting point for event analysis. Risk analysts from NRC's Office of Research screen all LERs, and flag those that are potentially risk significant for further study. The staff issues an annual report summarizing each event that qualifies as a precursor or significant precursor. ASP results also feed into the NRC's Abnormal Occurrence report, which is required to be issued to Congress on an annual basis.
- Safety significant system and component studies performed by NRC's Office of Research and its contractors which provide additional risk insights to plant operations.
- LERs make up the main dataset that NRC staff provides to the International Atomic Energy Agency (IAEA) Incident Reporting System. The U.S. provides more reports to this system than any other country, and our LERs present an important source of information that other countries with existing or developing nuclear power programs can use for learning and operating experience.
- Many U.S. licensees use LER data to develop system and component risk values for their own plant-specific probabilistic risk assessment (PRA) models.

The LER Search page on the NRC's public website is typically one of the top five pages visited by our stakeholders which include many state and federal agencies. Discontinuing LER reporting by power plant licensees would stop the flow of structured data into the LER Search database maintained by NRC. This database allows both NRC staff and members of the public to search through the last 40 years of event data for tracking and trending purposes. Removal of this information source would prevent the public from having timely access to event data affecting nuclear power plants and public safety.

In summary, the NRC staff disagrees with the comments from NEI and SNC regarding whether the proposed collection of information is necessary for the NRC to properly perform its functions and whether the information has practical utility.

Question 2: Is the burden estimate accurate?

NEI Comments on Question 2:

The NRC's estimate of 80 hours for completing an LER appears to be low. The number of person-hours involved in completing an LER varies greatly, depending on the complexity of the issues and corrective actions involved. It is also difficult to break out the person-hours tied to completing the LER from the hours required to address the underlying event or issue in accordance with the licensee's CAP. Among the complexities are the following:

- The contents of the LER depend on the quality and timeliness of the investigation and analysis that precedes it. Correcting the underlying problem drives the licensee's response and level of effort, not completing the LER.
- For complicated issues, the licensee may have to spend a great deal of time and resources to write the LER in a way that is understandable to the public.
- Because the LER is both an official submittal to the NRC and potentially a summary report on a significant plant issue, the LER garners additional internal reviews that the NRC might not be considering in its estimate of 80 hours. For example, most licensees require their onsite safety review committee review the proposed LER. This multi-discipline team's review and discussion, plus the processing and retention of the associated meeting minutes, can be a significant part of the burden associated with completing the LER.

SNC Comments on Question 2:

SNC has found that the amount of time to complete an LER can vary significantly based on the type and complexity of the issue. Though the estimated completion time of 80 hours may be reasonable for most LERs, SNC does not view the value gained by the regulator to be commensurate with the resources applied by the licensees.

NRC Response:

Concerning NEI's comment that the burden estimate appears to be low: This burden estimate of 80 hours represents the average amount of time spent by the licensee to complete an LER. Some complex LERs may take longer, while other LERs are relatively simple and may take far less time. NRC staff have observed licensee staff as they perform these processes including the reviews by onsite safety review committees. The NRC staff has not noted significant time increases for event review. Additionally, many of the licensee's activities involved in developing an LER would occur in response to these sorts of events or conditions regardless of whether the LER program existed.

The number of LERs industry-wide averages out to fewer than four per operating reactor in a typical year, and some plants go a year or more without being required to submit an LER.

The value gained by the regulator is explained in NRC's response to Question 1 above. Writing reports in such a way that they are understandable to the public is necessary so that external stakeholders can understand the nature of significant events that occur at nuclear power plants. The staff agrees that this and other considerations described by NEI in its comments can add to the complexity of generating an LER, but absent specific data on LER time expenditures, the NRC staff disagrees with the assertion that the 80-hour estimate appears to be low.

Question 3: Is there a way to enhance the quality, utility, and clarity of the information to be collected?

NEI COMMENTS on Question 3:

The question on “quality, utility and clarity” depends on the use to be made of the information collected. From the industry’s perspective, the quality and utility of information in LERs is insufficient for them to be of use for researching operating experience. INPO maintains a database that is sortable by many more variables than the NRC LER database allows, making this tool far more valuable for the industry’s OE needs. In essentially all cases the clarity of LERs is acceptable. Development of the LER electronically and submittal via Electronic Information Exchange (EIE) has improved the clarity such that this historical issue has not been a recent problem.

SNC Comments on Question 3:

Yes. With respect to utility, SNC does not see value in reporting the component failure data included in Block 13 and the EIIIS codes in the Narrative section, as there is no way to readily retrieve the data through the NRC’s LER advanced search form. Unless the utility is improved, SNC does not see the value in the continued collection of this data.

NRC Response:

NRC staff agrees that the clarity and accuracy of most LERs is acceptable.

Concerning NEI’s comment that INPO maintains a database that is far more valuable: The NRC staff agrees the INPO data base is useful to the industry, NRC, and its contractors who are allowed varying levels of access to the data. However, the INPO database is not publicly available, and therefore not available to external stakeholders who are not INPO members or NRC contractors. For these external stakeholders (e.g., state agencies, federal agencies, universities, international agencies, non-governmental organizations, and the public) LERs remain the primary source of event information.

Electronic submittal of LERs, and their subsequent transmittal into a searchable, publicly available database by Idaho National Laboratory, allows external stakeholders to perform queries of the different types of reported events.

EIIIS codes are still used by some external stakeholders. Component failure data is primarily compiled from the INPO database when it is needed for specific studies. However, as stated above, members of the public who wish to compile this data do not have the benefit of access to INPO failure data, so the LERs may represent their best set of data available.

The NRC welcomes any proposals from NEI or industry on how to improve the quality, utility, and clarity of the information collected in LERs. Such proposals should, however, consider the above facts regarding availability of INPO data. As a reminder, during a November 16, 2017, ROP public meeting, NRC staff demonstrated an online LER submittal tool that would allow licensees to input data directly into a form that would then be used to populate a database and generate the LER. While industry attendees were attentive to this demonstration, at the time they indicated that such a tool would not help solve their most pressing issues related to 10 CFR 50.73. The NRC staff welcomes additional dialogue on this topic.

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

NEI Comments on Question 4:

When a new Form 366 is published, the licensees incur burden by having to convert the revised form to one editable by word-processing software. It would be more efficient for the NRC to provide the Form 366 in a form that licensees can complete electronically, for example as a Word file.

The burden could be reduced by eliminating the LER rule and having the inspectors collect information needed both for inspection and research purposes. This could be done under the RROAR [Retrospective Review of Administrative Requirements (RROAR) initiative] effort as this screens in under Criterion #2, which states:

Requirements for reports or records that contain information reasonably accessible to the agency from alternative resources. As a result, these requirements may be candidates for elimination through a potential rulemaking.

SNC Comments on Question 4:

SNC believes there are several enhancement opportunities that could be considered to streamline the process to reduce burden on licensees. For example, the pdf version of the LER form is cumbersome to work with and would better serve the end user in the form of a Microsoft Word file or similar freeform application. The use of automated collection techniques or other forms of information technology would be a welcome change, and SNC is open to working with the NRC to pilot such applications.

NRC Response:

Concerning NEI and SNC comments regarding difficulty adjusting to each new pdf version of the LER form: As stated in our response to question 3, the NRC is open to re-engaging industry on a pilot process for an online LER submittal tool. A more free-form method (e.g., Microsoft Word) for inputting the data could also be explored as an interim or even final step in simplifying the process. Perhaps cooperation on this tool, along with an update to some reporting requirements would help industry continue to submit information required by the NRC and its stakeholders while also alleviating some of the burden that the rule puts on licensees.

Concerning NEI's comment that eliminating the LER rule and having inspectors collect the information falls under Criterion #2 of the RROAR: The staff does not agree that the requirements of the LER rule could be fulfilled by having its inspectors collect information needed both for inspection and research purposes. As explained in previous answers, LERs are often the only source of information regarding significant operational events at nuclear power plants that are available to external stakeholders. The NRC has an obligation by law to continue to provide this important information to these external stakeholders which includes the public.