



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

PLEASE RESPOND BY:
December 7, 2018

COMSECY-18-0027

November 16, 2018

MEMORANDUM TO: Chairman Svinicki
Commissioner Baran
Commissioner Burns
Commissioner Caputo
Commissioner Wright

FROM: Margaret M. Doane *Margaret M. Doane*
Executive Director for Operations

SUBJECT: EVALUATION CRITERIA FOR RETROSPECTIVE REVIEW OF
ADMINISTRATIVE REGULATIONS

As directed by the staff requirements memorandum (SRM) for SECY-17-0119, "Retrospective Review of Administrative Regulations," dated April 5, 2018 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18096A553), this memorandum presents for Commission review and approval the evaluation criteria for the U.S. Nuclear Regulatory Commission's (NRC's) retrospective review of administrative regulations. The review is intended to identify outdated or duplicative administrative regulations that may be eliminated without an adverse effect on public health or safety, the common defense and security, protection of the environment, or regulatory efficiency and effectiveness. In this context, *administrative regulations* means recordkeeping or reporting requirements or regulations that address areas of agency organization, procedure, or practice.

In SECY-17-0119, dated November 22, 2017 (ADAMS Accession No. ML17286A069), the staff requested Commission approval of the staff's proposed seven-step strategy to accomplish the retrospective review of administrative regulations. In addition, the staff requested Commission approval to publish a *Federal Register* notice (FRN) to seek public comment on the draft criteria that the NRC will use as a guideline to evaluate potential changes to regulations under the subject review in a consistent manner. In SRM-SECY-17-0119, the Commission approved the staff's proposed strategy and the publication of the FRN. The Commission also directed the staff to submit the final proposed evaluation criteria to the Commission for review and approval.

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On May 3, 2018, the staff published the FRN (83 FR 19464) for a 60-day public comment period that ended on July 2, 2018. On May 31, 2018, the staff conducted a public meeting to provide an opportunity for the staff and external stakeholders to exchange information on the overall strategy and the draft evaluation criteria. Twenty-nine individuals attended the meeting, in person or via Webinar or teleconference, including industry representatives, members of the public, and NRC staff. The NRC received 6 comment submissions containing 12 individual comments in response to the FRN. The staff considered the public's comments when finalizing the evaluation criteria, as described in the enclosure. The staff had initially proposed 4 criteria, but based on public comments, decided to divide criterion 2 into criteria 2 and 3. The original Criterion 3, which is re-designated as Criterion 4 for the remainder of the document, was clarified as noted in the enclosure. The staff is not proposing to change Criterion 4, but intends to clarify how burden considerations will be used to screen potential regulatory changes for further review, which would include more detailed assessment of benefits and costs. In addition, the original Criterion 4 is re-designated as Criterion 5 for the remainder of this document. No change was made to criteria 1 and 5.

Criteria 1, 2, 3, and 4 are intended to "screen-in" regulations to consider for potential elimination or modification, as they address whether a regulation is outdated or duplicative. Criterion 4 is intended to focus the review on potential changes to the regulations that will have the greatest impact on reducing or averting regulatory burden and offer the greatest potential benefit to regulated entities and to the NRC. Criterion 5 is intended to "screen-out" regulations from further inquiry so as to avoid unintended consequences.

The proposed final criteria to evaluate potential regulatory changes during the retrospective review of administrative regulations are as follows:

1. Submittals resulting from 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.
2. 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.
3. Requirements for reports or records that could be modified to result in reduced burden without impacting programmatic needs, regulatory efficiency, or transparency, through: (a) less frequent reporting, (b) shortened record retention periods, (c) requiring entities to maintain a record rather than submit a report, or (d) implementing another mechanism that reduces burden for collecting or retaining information.
4. Recordkeeping and reporting requirements that result in significant burden.
5. Reports or records that contain information used by other Federal agencies, State and local governments, or Federally recognized Tribes will be dropped from the review.

These criteria are not intended to be mutually exclusive, and a given regulation may satisfy one or more criteria. Furthermore, although the criteria will serve as useful guidelines in identifying administrative requirements that should be considered for modification or elimination, the staff also will consider its programmatic experience, the intent of the requirement, the effect of

elimination or modification of a requirement on the NRC's mission, and overall effect on resources, when determining whether to pursue a change to the regulations.

The staff requests Commission approval of the five criteria identified above, to be announced in an FRN signed by the Executive Director for Operations. In the same FRN, the staff would, following the strategy previously approved by the Commission, initiate the process of obtaining public input on regulations that should be considered in the retrospective review. The staff intends to use the five criteria to screen in potential regulatory changes for further review. Further review will include considering the benefits and costs of a potential regulatory change. Those potential regulatory changes that would have a benefit to the NRC or to the public, or both, that outweighs the cost to conduct rulemaking and to implement the change, would be recommended to the Commission.

SECY, please track.

Enclosure:

Changes to the Evaluation Criteria for the
Retrospective Review of Administrative
Regulations as a Result of Public Comments

cc: SECY
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SUBJECT: EVALUATION CRITERIA FOR RETROSPECTIVE REVIEW OF ADMINISTRATIVE REGULATIONS (NRC-2017-0214) DATED: November XX, 2018

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ADAMS Accession Numbers:

PKG: ML18227A120; Memorandum: ML18227A125; Enclosure: ML18261A173 * via e-mail

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Changes to the Evaluation Criteria for the Retrospective Review of Administrative Regulations as a Result of Public Comments

Changes to Draft Criterion 2

Draft Criterion 2 stated:

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.

Public commenters recommended that Draft Criterion 2 be split into two discrete items addressing (a) reasonably accessible information and (b) reporting frequency, because each item considered alone likely would produce a different result. The staff agreed with the comment, as clear separation of the individual requirements would result in more efficient binning. The staff revised the criterion to divide it into two parts. The first part remains numbered as Criterion 2 in the final proposed criteria:

2. 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.

The second part of Draft Criterion 2 was added to the list of criteria as a new Criterion 3. This criterion focuses on administrative regulations that may be modified, rather than eliminated. The intent of this criterion is to capture situations where the agency still needs a certain piece of information to accomplish its mission, but the requirement could be modified so that the process used to provide the information is less burdensome. The new Criterion 3 in the final proposed criteria is:

3. Requirements for reports or records that could be modified to result in reduced burden without impacting programmatic needs, regulatory efficiency, or transparency, through: (a) less frequent reporting, (b) shortening record retention periods, (c) requiring entities to maintain a record rather than submit a report, or (d) implementing another mechanism that reduces burden for collecting or retaining information.

Clarifying Information about Criterion 4

The original Criterion 3 from the May 3, 2018 *Federal Register* notice has been re-designated as Criterion 4. The staff intends to identify opportunities to reduce administrative burden without impacting the mission of the agency. In its recommendations to the Commission for potential regulatory changes, the staff plans to assess benefits and costs for each potential change, including the cost to conduct rulemaking to implement the potential change. The staff intends to assess each potential regulatory change on a case-by-case basis. The request for comment published on May 3, 2018, provided an example in the original Criterion 3 of a potential regulatory change resulting in \$100,000 of averted burden over a 3-year period. The staff's intent with the quantitative example was to communicate the type of potential regulatory change that might be recommended to the Commission. The quantitative example was not intended as a quantitative cut-off value to exclude potential regulatory changes. Changing a regulation entails a significant amount of staff time, as well as time from the public to participate in the rulemaking process. Some potential regulatory changes would have very little impact on the

ENCLOSURE

overall administrative burden of regulated entities and, therefore, the cost of pursuing the change would exceed the potential benefit. A benefit valued at \$100,000 is roughly on the same order of magnitude as the cost to conduct and implement a simple rulemaking, as might be possible for administrative changes. Ultimately, the staff recommends no change to Criterion 4.

The staff considered an option to establish quantitative thresholds for different types of regulated entities. There are many different ways to categorize regulated entities (e.g., fee class, small business size standards). The economic circumstances for the different types of regulated entities vary widely. Rather than attempt to restrict the review of potential regulatory changes, the staff plans to consider each potential change on a case-by-case basis. In that way, the staff can evaluate the cumulative impact of potential benefits and costs of regulatory changes that affect multiple types of regulated entities that impact several administrative burdens, or both. The term “significant” in the criterion will be used to focus the U.S. Nuclear Regulatory Commission’s (NRC) staff efforts on the potential regulatory changes that offer the greatest potential benefit to regulated entities and to the NRC.

The staff intends to include this clarification about quantitative thresholds when it publishes the final criteria.

Clarifying Information about Criteria 1 and 5

Based on public comments, the NRC staff does not recommend changes to Criteria 1 and 5 (originally designated as Criterion 4 in the May 3, 2018 *Federal Register* notice). Criterion 1 would be used to screen in for further review those periodic reports received by the NRC which the NRC may consider eliminating. With respect to Criterion 5, some NRC regulations require regulated entities to conduct information collections that are used by the NRC, by the public, by other organizations (i.e., Federal agencies, State and local governments, or Federally recognized Tribes), or by all three. Criterion 5 would screen out only potential changes to regulations involving information that is used by the other organizations, as listed. The purpose of Criterion 5 is to screen out potential regulatory changes that would have an unintended consequence on the regulatory objective of those other organizations.