From: William Huffman > NRR
To: Qualls, Phil
Date: Fri, Aug 2, 2002 3:56 PM
Subject: Potential New Rulemaking Effort Related to Fire Protection Regulations

Phil,

please take a look at the attached note I have prepared for you regarding the rulemaking concept you are apparently developing related to a change to Appendix R, Section III.G.

I just found out about your effort today (Friday, August 2) and was unable to talk with you before I sent this e-mail (you are on CWS and I will be out of the office through 8/19). I felt compelled to get this information to you quickly because it is my understanding that you are going to be briefing the ET in the near future on using a rulemaking approach to solve your regulatory problem. I believe that the attached rulemaking process change pilot may be important to your deliberations. .....FYI, Bill Huffman

CC: Birmingham, Joe; Hannon, John; Skeen, David; Weiss, Eric; West, Steven

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Phil,

Steve West (my section chief) informed me that you are considering rulemaking to solve a problem that has been identified with the existing fire protection regulations in Section III of Appendix R. Steve has asked me to get involved in the decision-making process to determine:
-whether rulemaking is the best approach to the problem, and
-if the time is right to begin a rulemaking

I don't know any of the details of the regulatory problems (Steve has provided me an overview) so I will need to get together with you on background and specifics.

One of the principal reasons Steve assigned me this task is to use your issue as a pilot for testing a more formalized process for initiating rulemakings that the policy and rulemaking program branch is developing. This means that before the agency jumps into rulemaking, some fundamental questions need to be answered and some entry criteria have to be met.

Specifically, it is the desire of the rulemaking program to have a formally documented basis for proceeding with the development of a rulemaking. We envision a memo from DSSA to DRIP that formally requests the rulemaking and policy program to initiate actions on your rulemaking concept. However, as an attachment to that memo, we would request that you make a reasonable attempt to qualitatively addresses the questions below. This will allow the rulemaking and policy program to judge whether the rulemaking concept is sufficiently developed to proceed into rulemaking.

I would appreciate your attempt to answer the question below as they apply to your contemplated fire protection rule change. We would expect no more than a couple sentences (or a paragraph at most) for each of the questions.

It should be understood that these question will all have to be answered in detail during preparation of the rulemaking plan. Therefore, addressing these question does not result in any additional work and, potentially, could save the agency a lot of effort if we find out early on that moving into rulemaking is premature (for instance, technical or policy issues still need to be resolved).

I will be happy to assist you in addressing these questions. However, I will be out of the office through August 16, so if you wish to follow-up on the requests in this note before I get back, please see Steve West.

Thanks for your consideration on this matter.

Bill Huffman 415-1141
Rulemaking and Policy Program
Section A, NRR

Preliminary Assessment of Rulemaking Suitability

1) Provide a concise explanation of the regulatory issue.

2) Briefly explain why other alternatives to rulemaking cannot resolve the problem?
e.g:
- RIS or Other Type of Generic Communication
- Revised Regulatory Guidance
- Revised SRP
- Issue Plant Specific Exemptions
- Clarify Inspection Modules
- Revise Enforcement Penalties
- Do nothing

3) Explain how the technical basis for changing the regulations has been formally established?. e.g.:
- Previously Approved License Amendment or Exemption Request with SER
- An NRC Sanctioned Industry Topical Report
- An Existing Voluntary Consensus Standard
- NUREG or Contractor Report
- Other Formally Reviewed and Approved Endorsement of the Pertinent Technical Issues

4) Discuss if there are any policy issues involved? If so, cite the SECY or Commission Correspondence that addressed the issue along with the associated Commission response.

5) Discuss the industry's position on the problem. e.g., Reference an industry or licensee correspondence that provides a reasonable perspective of the industry's views.

6) Based on the rulemaking concept envisioned, discuss what impact rulemaking concept will have on licensees? e.g.:
- Will there be any addition burdens placed on the licensee such as
  (a) The need for modification of SSCs
  (b) The need for license amendments
  (c) The need for changes to the licensee's fire protection program
  (d) The need for engineering evaluations
  (e) The need for procedural changes and associated training on the change
  (f) The need for new reports or record keeping
  (g) The need for the licensee to reply or respond to the NRC in any way
  (h) Any additional testing, maintenance, or surveillance requirements
  (i) Other types of burden addition
  (j) No additional burden

- Will there be any burden reductions such as
  (a) Any reduction in testing, maintenance, or surveillance requirements
  (b) Any reduction in reporting or record keeping
  (c) Any reduction in fire protection program commitments
  (d) Any elimination of required SSCs
  (e) Any reduction in engineering evaluations
  (f) Additional flexibility in compliance with the regulations (performance based)
  (g) Other types of burden reduction

- Qualitatively, will the rulemaking concept be a net burden increase, burden reduction, or burden neutral?

- If there is a net burden increase, will the rulemaking concept meet the backfit rule test?

7) Based on the rulemaking concept envisioned, what impact will the rulemaking concept have on the NRC? e.g.:
- Will regulatory compliance be improved? (Regulatory effectiveness)
- Will staff processing of exemptions or amendments be reduced?(Regulatory efficiency)
- How will the staff's receipt and/or review of records be affected?(Regulatory efficiency)
- How will licensee inspections be affected? (Regulatory efficiency)
- How will enforcement be affected? (Regulatory effectiveness)
- Would any NRC training be necessary? (Regulatory efficiency)

8) Are there any safety benefits from the rulemaking?
e.g., reduced CDF or reduced worker/public radiation exposure

9) What additional NRC effort might be needed if a rulemaking were to proceed?
e.g.: How Will Licensee Compliance be Demonstrated?
- Revised Regulatory Guidance
- Revised Standard Review Plan
- Revised Inspection Guidance
- Other