

POLICY ISSUE
(Notation Vote)

May 29, 2012

SECY-12-0076

FOR: The Commissioners

FROM: R. W. Borchardt
Executive Director for Operations

SUBJECT: PLAN FOR RETROSPECTIVE ANALYSIS OF EXISTING RULES

PURPOSE:

To request Commission approval of (1) the U.S. Nuclear Regulatory Commission's (NRC's) draft plan for retrospective review of existing rules (Enclosure 1) and (2) the *Federal Register* notice (FRN) that announces the availability of the draft plan for public comment (Enclosure 2). The draft plan and its companion FRN are offered in response to the Staff Requirements Memorandum SECY-11-0032 entitled "Consideration of the Cumulative Effects of Regulation in the Rulemaking Process", directed the staff's response to Executive Order 13579 (July 11, 2011) should be provided to the Commission as a matter for Commission review and approval to capture the opportunity this Executive Order provides to improve our regulatory processes."

SUMMARY:

This action is a part of the NRC's voluntary implementation of Executive Order (E.O.) 13579, "Regulation and Independent Regulatory Agencies," issued by President Barack Obama on July 11, 2011.

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BACKGROUND:

On January 18, 2011, President Obama issued E.O. 13563, "Improving Regulation and Regulatory Review." Independent regulatory agencies were not covered by this order. Executive Order 13563 directs Federal agencies to develop and submit a preliminary plan to the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget "under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives."

On February 2, 2011, Cass Sunstein, the Administrator of OIRA, issued guidance on E.O. 13563 that "encouraged" independent agencies "to give consideration to all of [E.O. 13563's] provisions, consistent with their legal authority" (NRC's Agencywide Documents Access and Management System (ADAMS) Accession No. ML110350275). The OIRA's guidance encouraged independent agencies to "consider undertaking, on a voluntary basis, retrospective analysis of existing rules."

On April 11, 2011, Chairman Jaczko sent a letter to Mr. Sunstein responding to the OIRA guidance (ADAMS Accession No. ML11087A014). The Chairman's letter summarized many of the ways in which the NRC already complies on a voluntary basis with the terms of E.O. 13563.

On July 11, 2011, President Obama issued E.O. 13579, which recommends that independent regulatory agencies comply with the terms of E.O. 13563. On July 22, 2011, OIRA issued guidance specific to the implementation of E.O. 13579 (ADAMS Accession No. ML11210B415).

On May 10, 2012, President Obama issued E.O. 13610, "Identifying and Reducing Regulatory Burdens." E.O. 13610 reaffirms E.O. 13563 and adds that agencies should submit draft reports on their retrospective review efforts to OIRA on September 10, 2012, the second Monday of January and July for each year thereafter, unless directed otherwise through subsequent OIRA guidance. E.O. 13610 does not apply to independent regulatory agencies.

In November 2011, as part of its initial voluntary response to E.O. 13579, the NRC posted an initial plan on the following locations: (1) the agency's Open Government Web page at <http://www.nrc.gov/public-involve/open.html> (under the tabs entitled "Selected NRC Resources" and "Rulemaking"); and (2) the agency's plans, budget, and performance Web page (see <http://www.nrc.gov/about-nrc/plans-performance.html>). The NRC also published a notice of availability in the *Federal Register* (76 FR 70913; November 16, 2011). The NRC did not solicit public comment in November 2011. Instead, the initial plan indicated that an updated draft plan would be made available for public comment by the end of calendar year 2012 that would provide a 75-day comment period.

Using the November 2011 initial plan as a base document, the NRC staff updated the plan. The NRC staff recommends that: (1) the draft plan be posted on the NRC's Open Government Web page as well as the NRC's plans, budget, and performance Web page; and (2) a notice of availability and request for comment be published in the *Federal Register*.

DISCUSSION:

The staff has now updated the initial plan and has created the draft plan for public comment. The draft plan describes the NRC's processes and activities related to retrospective review of existing regulations, including discussion of the following: (1) efforts to incorporate risk assessments into regulatory decisionmaking; (2) efforts to address the cumulative effects of regulation; (3) the NRC's methodology for prioritizing its rulemaking activities; (4) rulemaking initiatives arising out of the NRC's ongoing review of its regulations related to the recent events at the Fukushima Dai-ichi Nuclear Power Plant in Japan; and (5) the NRC's previous and ongoing efforts to update its regulations in a systematic, ongoing basis.

The staff proposes that the Commission approve (1) the draft plan; and (2) the notice that will be published in the *Federal Register* to announce the availability of the draft plan for public comment. The NRC staff will post the draft plan on the following locations: (1) the agency's Open Government Web page at <http://www.nrc.gov/public-involve/open.htm> (under the tabs entitled "Selected NRC Resources" and "Rulemaking"); and (2) the agency's plans, budget, and performance Web page at <http://www.nrc.gov/about-nrc/plans-performance.html>.

In 2013, the NRC will (1) analyze the public comments received on the draft plan and make revisions to the draft plan to respond to public input, if necessary; and (2) present a final version of the plan to the Commission for its approval.

RECOMMENDATIONS:

The staff recommends that the Commission take the following actions:

1. Approve the draft plan.
2. Approve the *Federal Register* notice announcing the availability of the draft plan for public comment.

RESOURCES:

The staff estimates that program office resources required to review, approve, and publish a final version of the plan would be nominal. The Office of Administration has nominal resources within its fiscal years 2012 and 2013 Corporate Support Business Line and Corporate Rulemaking Product Line to support this effort.

COORDINATION:

The Office of the General Counsel has no legal objection to the draft plan. The Office of the Chief Financial Officer has reviewed this SECY paper for resource implications and has no objections.

/RA Darren Ash for/

R. W. Borchardt
Executive Director
for Operations

Enclosures:

1. Draft plan ("Plan for Retrospective Analysis of Existing Rules")
2. *Federal Register* Notice

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ADAMS Accession No.: ML112970155

WITS201100238/EDATS: SECY-2011-0550

*e-mail concurrence

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