



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

February 3, 2016

SECRETARY

MEMORANDUM TO: Victor M. McCree
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary /**RA**/

SUBJECT: STAFF REQUIREMENTS – SECY-15-0129 – COMMISSION INVOLVEMENT IN EARLY STAGES OF RULEMAKING

The Commission commends the staff for providing a timely and thorough response to the Commission's direction to provide a proposed plan for enhanced Commission involvement in the early stages of agency rulemaking. The Commission has approved the staff's specific recommendations that were summarized on page 10 of SECY-15-0129, with the exception of recommendation 8, and subject to the changes and comments below. With respect to recommendation 8, the Commission has neither approved nor disapproved reaffirming the current role of the Committee to Review Generic Requirements (CRGR).

During the pendency of the Commission's deliberations on SECY-15-0129, Congress passed and the President signed Public Law 114-113, including Division D, "Energy and Water Development and Related Agencies Appropriations Act, 2016." The Joint Explanatory Statement accompanying the Act stipulates that a rulemaking plan be prepared for all rulemakings except those exempted by the Commission and directs the minimum content of a rulemaking plan. Consistent with this, and upon its own deliberation, the Commission modifies the template and process proposed by the staff in SECY-15-0129, as follows.

Recommendation 1:

The new rulemaking plan requirement should apply to all rulemaking that is not already explicitly delegated to the staff as a staff delegated rulemaking (the modifier "nonroutine" should not be used).

The staff should make the following revisions to the streamlined rulemaking plan template:

- a. In addition to listing a preliminary priority, a brief discussion regarding the basis for the preliminary priority should also be provided.
- b. The "Description and Scope" section of the template should define the regulatory issue, describe the existing regulatory framework, identify regulatory options and alternatives to rulemaking, and ~~also~~ discuss why rulemaking is preferable to these other alternatives.
- c. Include, as an enclosure a summary OGC analysis of legal matters.
- d. Include a section containing a preliminary backfit analysis.

- e. Include a preliminary assessment of the cumulative effects of regulations (CER), to the extent known, including a description of any early stakeholder engagement upon which this assessment is based.
- f. Include a section on Agreement State considerations.
- g. Include an explicit question to the Commission, and recommendation if desired, on whether ACRS review of the proposed rule is warranted.

The staff should provide draft and final regulatory bases to the Commission for all rulemaking that is not already explicitly delegated to the staff via Commissioners Assistants Notes no less than 10 business days before publication to ensure the Commission is provided an opportunity to assess whether additional involvement is warranted. Consistent with the Joint Explanatory Statement accompanying P.L. 114-113, the staff must obtain prior Commission approval if it wishes to prepare a regulatory basis document before the Commission has approved a rulemaking plan.

Recommendation 2:

The staff should explore ways to minimize the resources necessary to discontinue rulemaking, such as not completing a full regulatory analysis once enough information is gained that a cost-benefit test would not be passed.

Recommendations 7 & 8:

The staff should provide the Commission the criteria and guidance it develops for triggering a Committee to Review Generic Requirements (CRGR) review of a proposed rule.

The staff should inform the Commission if it determines that further process enhancements regarding CRGR would be beneficial after it has been able to assess lessons-learned and feedback from the use of the new guidance and criteria.

Additional

The rulemaking process should include explicit guidance for the staff to raise potential policy issues to the Commission as early as practicable in the rulemaking process, especially in those instances where leadership is not able to resolve significant differences in approach.

cc: Chairman Burns
Commissioner Svinicki
Commissioner Ostendorff
Commissioner Baran
OGC
CFO
OCA
OPA
ODs, RAs, ACRS, ASLBP (via E-Mail)
PDR